

IN THE CIRCUIT COURT OF THE NINTH JUDICIAL CIRCUIT,
IN AND FOR ORANGE COUNTY, FLORIDA

TERESA MOON-VILENO, an individual,)	
and DEBORAH LYNN FELTY, an)	Case No.
individual,)	
)	
Plaintiffs,)	CLASS ACTION REPRESENTATION
)	
vs.)	
)	
FLORIDA ASSOCIATION OF COURT)	
CLERKS, INC., a Florida Not For Profit)	
Corporation, FACC SERVICES GROUP,)	
L.L.C. D/B/A CIVITEK, a Florida Limited)	
Liability Company, and CIVITEK NATIONAL,)	
INC., a Florida Profit Corporation,)	
)	
Defendants.)	
)	
)	
)	

CLASS ACTION COMPLAINT

The Plaintiffs, TERESA MOON-VILENO and DEBORAH LYNN FELTY (the “Plaintiffs”), on behalf of themselves and all others similarly situated (collectively, with the Plaintiffs, being the “Class Members”), by and through their undersigned counsel, bring this action against Defendants FLORIDA ASSOCIATION OF COURT CLERKS, INC., FACC SERVICES GROUP, L.L.C. d/b/a CIVITEK, and CIVITEK NATIONAL, INC., and, all facts being extant and material hereto, allege as follows:

JURISDICTIONAL ALLEGATIONS

1. This is a Class Action for both damages in excess of Fifteen Thousand Dollars (\$15,000.00) and equitable relief.
2. Plaintiff Teresa Moon-Vileno (“Moon-Vileno”), was a resident of Orange County, Florida, who filed a Civil Action in the Circuit Court of the Ninth Judicial Circuit of Florida and in doing so, paid CiviTek an illegal and excessive fee as described more fully

herein. Specifically, Moon-Vileno paid a mandatory convenience fee to Defendant CiviTek on or about September 14, 2018, which she was required to pay as part of her Civil Action in the Ninth Circuit.

3. Plaintiff Deborah Lynn Felty (“Felty”), was a resident of Seminole County, Florida, who filed a counter-claim in a Civil Action in the Circuit Court of the Eighteenth Judicial Circuit of Florida and in doing so, paid CiviTek an illegal and excessive fee as described more fully herein. Specifically, Felty paid a mandatory convenience fee to Defendant CiviTek on or about September 27, 2016, which she was required to pay as part of her Civil Action in the Eighteenth Judicial Circuit.

4. Defendant FLORIDA ASSOCIATION OF COURT CLERKS, INC., d/b/a Florida Court Clerks & Comptrollers (the “FCCC Association”), is a Florida Not for Profit Corporation with its principal place of business in Tallahassee, Florida and which transacts business in Orange County, Florida.

5. Defendant FACC SERVICES GROUP, L.L.C. d/b/a CIVITEK (“CiviTek”), is a Florida Limited Liability Company with its principal place of business in Tallahassee, Florida. CiviTek, which transacts business in Orange County, Florida, is a subsidiary of and is wholly owned and/or controlled by its parent, the FCCC Association. The FCCC Association is the sole owner of CiviTek.

6. Defendant CIVITEK NATIONAL, INC. (“CiviTek National”), is a Florida for Profit Corporation with its principal place of business in Tallahassee, Florida. CiviTek National is a subsidiary of and wholly owned and/or controlled by its parent, the FCCC Association.

7. Various other persons, public officials, firms and corporations, not named as Defendants in this Complaint, have participated as co-conspirators with Defendants in the

violations alleged herein, and aided and abetted and performed acts and made statements in furtherance of the conspiracy.

8. The true names and capacities, whether individual, corporate, associate or representative, of the co-conspirators, are unknown to Plaintiffs at this time. Plaintiffs will amend this Complaint to allege the true names and capacities of additional co-conspirators as their identities become known through discovery.

VENUE

9. Venue is proper in this Court as the causes of action arose here and the Defendants each transact business in this County.

BRIEF SUMMARY OF CLAIM

10. This action seeks to recover for the Class Members the tens of millions of dollars in excess, illegal fees charged for access to necessary governmental transactions and the judicial system. Class Members paid these illegal fees unknowingly to private entities formed and controlled by the elected Clerks and Comptrollers of the State of Florida, through their formation of the FCCC Association and captive entities, and the monies have been either spent for the benefit of the FCCC Association or retained in bank accounts for their future use and all done in a manner to seek to ensure secrecy.

FACTUAL ALLEGATIONS

11. Plaintiffs are individuals who are residents of Florida. During the Class Period, as described *infra.*, Plaintiffs accessed and/or utilized FCCC Association Portals (defined herein) and were overcharged inflated and illegally set “convenience fees” for payment processing activity. Plaintiffs, and the Class members neither acquiesced to, nor voluntarily paid such overcharges. Plaintiffs have not been reimbursed or otherwise compensated for the overcharges. Plaintiffs were injured as a result of Defendants’ illegal conduct.

12. Article V, Section 16 of the Florida Constitution provides “[t]here shall be in each county a Clerk of the Circuit Court who shall be selected pursuant to the provisions of Article VIII, Section 1.”

13. The Clerks of each of Florida’s 67 counties are fiduciaries for the citizens of Florida, and as such, the Clerks of each of Florida’s 67 counties perform a broad range of record keeping, information management and financial management for the judiciary and county governments. These responsibilities include processing all civil and criminal cases, collecting and disbursing fines, court costs, **fees and service charges**, and maintaining a court registry, among others. Central to this action are the artificially high fees the Clerks charge Florida consumers through the Defendant organizations named herein.

14. Plaintiffs bring this class action against Defendant FCCC Association which is the **professional association** which consists exclusively of the Florida Clerks of Court and Comptrollers. In addition to bringing this action against the FCCC Association, Plaintiffs sue Defendants CiviTek and CiviTek National on behalf of Florida consumers who are forced to pay improper or excessive servicing, processing or **“convenience” fees** to Defendants through one or more of the following Florida compulsory e-commerce technology platforms, products, or websites: (a) www.myfloridacourtaccess.com; (b) www.myfloridacounty.com; (c) www.myfloridaremit.com; (d) www.mypaymentportal.com; (e) <https://fl.smartchildsupport.com>; (f) <https://my.smionecard.com>; and (g) <https://cardholderweb.smionecard.com> (collectively, the “Association Portals”).

15. Plaintiffs, along with the Florida consumers and businesses who are forced to pay the fees that are the subject of this action, comprise the class members who make up the class in this action (the “Class Members”).

16. Collectively, Defendants’ platforms, products, and websites handle hundreds of millions of dollars of basic governmental transactions each and every year. It is

estimated that the Defendants' Portals (described in greater detail below), have processed, and continue to process, billions of dollars of non-cash payments.

17. The Class Members who are forced to use and pay convenience fees through the Defendants' Portals, constitute a specifically defined market (the "Relevant Market") wherein Class Members are required to pay fees for the use of government services. Class Members are forced to pay Defendants' "convenience fees" in order to access basic government services such as the retrieval of documents, case filing, payment of fines, or child support, to name a few.

18. The Defendants' Portals market and sell services to Florida consumers as summarized below:

(a) **www.myflcourtaaccess.com** – which is the Florida Courts E-Filing Portal ("ePortal"), a system that virtually all Florida court users must use to electronically file and transmit legal documents;

(b) **www.myfloridacounty.com** – a web portal Florida citizens use to make child support and traffic ticket payments;

(c) **www.myfloridaremit.com** – an e-Commerce platform and website established to process "e-Check" child support and traffic citation payments (i.e. payments via direct debit from a bank account);

(d) **www.mypaymentportal.com** – a web portal for users to make credit card payments to state and local governments *generally outside of the State of Florida* via credit or debit cards;

(e) **https://fl.smartchildsupport.com** – the Florida Child Support ePay site, which allows parents who owe child support, and employers of parents who owe child support, to make payments electronically; and

(f) <https://my.smionecard.com/> and

<https://cardholderweb.smionecard.com> – a prepaid card service allowing users to load or fund cards for subsequent use paying online fees and expenses.

I. THE DEFENDANT ENTITIES

A. Defendant FCCC Association

19. Defendant FCCC Association is a not-for-profit professional association of Florida's Clerks of Court and Comptrollers. The FCCC Association was incorporated in 1978 and represents Florida's County Clerks and Comptrollers. The FCCC Association's stated purpose is to provide "continuing education and technical assistance, increasing the efficiency and effectiveness of the Clerks' offices to **better serve the citizens of the State of Florida**" (emphasis supplied).

20. Membership in the FCCC Association is comprised of the 67 Clerks throughout Florida, as well as the Orange County Comptroller, each paying \$2,000 per year to belong to the FCCC Association. The FCCC Association's revenues solely from such dues, therefore total approximately \$136,000 per year.

21. The FCCC Association describes itself as a "statewide, nonprofit member Association composed of Florida's Clerks of the Circuit Court and Comptrollers. The Association provides local government support services, technical assistance and accreditation opportunities for all members of the Association." See [https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/clips2/Media Advisory re Hurricane .pdf](https://cdn.ymaws.com/www.flclerks.com/resource/resmgr/clips2/Media_Advisory_re_Hurricane_.pdf). According to its Mission Statement, the FCCC Association is "united statewide to **protect the public trust**" (emphasis supplied).

22. At all relevant times, Defendants' payment processing practices forced Class Members to transact business within the State of Florida while being overcharged by their elected and/or appointed officials. These government officials, specifically, a small group of

Florida's Circuit Court Clerks and County Comptrollers, combined and colluded to shift their publicly entrusted duties and obligations, including fiduciary duties and obligations, away from the public offices of the elected Clerks, to a private association used to mask, grow and protect itself from public scrutiny.

23. At all relevant times, Defendants created and operated wholly-owned private companies to receive and conceal extra fees from essential government transactions, while at the same time creating and entering into illegal price-fixing agreements to generate, preserve, and hide millions of dollars of improper "profits". Defendants intentionally conduct much of this business through CiviTek and Civitek National in order to avoid Florida's Sunshine and Public Record laws.

24. A Board of Directors and Officers, established in the FCCC Association's Articles of Incorporation, manages the FCCC Association. The Board of Directors consists of 15 members, including Executive Officers, three immediate past presidents, and one member from each of seven arbitrarily drawn districts, who are elected annually by Clerks in the respective districts.

25. The Board of Directors adopts rules and regulations as it deems necessary to carry out the goals of the FCCC Association and provides policy direction to the Executive Committee.

26. The Board of Directors has the power to authorize the officers to enter into contracts on behalf of the FCCC Association. As a result, the FCCC Association has awarded lucrative lobbying, media, and public relations contracts, as well as established consulting agreements with former government officials.

27. The FCCC Association alone employs approximately 20 full-time employees.

28. All members of the FCCC Association are required to pay yearly dues, which, upon information and belief, are paid with public funds.

29. Upon information and belief, the FCCC Association processed \$315 million in payments in FY 2016 through the CiviTek website “MyFloridaCounty.com,” generating \$2.95 million in what the FCCC Association describes as “profit” through CiviTek. Of this amount, CiviTek retained \$1.6 million for itself and distributed \$1.3 million to its parent, the FCCC Association.

30. The FCCC Association combines its revenues with CiviTek’s and CiviTek National’s revenues in its annual audit in order to have the FCCC Association and its entities recognized as a single entity for tax purposes by the Internal Revenue Service (“IRS”).

31. For an organization whose intended purpose is “continuing education and technical assistance” for Florida’s Clerks, the FCCC Association has generated many millions of dollars of profits. In 2017, the FCCC Association (through CiviTek) listed assets totaling \$23.6 million, which included \$10.5 million in cash in short term investments. Accounts receivables stood at \$3.7 million, with fixed assets at \$4.1 million and “other assets” at \$5.3 million.

32. Defendants held net assets for FY 2017 totaling \$22.3 million. For that same year, the FCCC Association and its related entities held \$12.7 million in cash, short-term investments valued at \$7.9 million and property and equipment net of depreciation totaling \$4.4 million.

33. Of the total revenue received by the FCCC Association, approximately 1% comes from member “contributions” or dues, as opposed to Defendants’ Portals-related revenue streams.

34. For FY 2017, the Defendants’ revenue totaled \$23.5 million, \$9.4 million of which was described as “processing fees” received through MyFloridaCounty.com. The

FCCC Association and its related defendant entities earn processing fees from each transaction running through their web portals.

35. Florida Statute § 215.322 governs the application of convenience fees imposed by state agencies, units of local governments and the judicial branch. Pursuant to § 215.322(3)(b), Florida's Chief Financial Officer shall adopt rules governing the acceptance of credit cards and imposition of "convenience fees." Section 215.322(3)(b) requires that "the total amount of such convenience fees **may not exceed the total cost to the state agency**" (emphasis supplied).

36. In accordance with § 215.322, Florida Administrative Code 69C-4.0045(4) "Convenience Fees," requires that "[t]he use of convenience fees to offset service fees is an approved method as permitted by paragraph 215.322(3)(c), F.S., provided that the fees do not exceed the total cost to the state agency and are not received by the state."

37. In 2017, the FCCC Association, recognized receipt of a \$2.9 million "dividend" paid by CiviTek to the FCCC Association from excess profits received from processing and convenience fees, which Class Members were forced to pay in violation of Florida laws and regulations.

B. Defendant CiviTek

38. CiviTek is the fictitious name registered in 2011 for FACC Services Group, LLC, a Florida Limited Liability Company. CiviTek was first established in 1991 to provide financial and technical services for Clerks of Circuit Courts and Comptrollers.

39. The FCCC Association is the sole member and is the single owner of CiviTek. In this regard, CiviTek is a wholly owned subsidiary of the FCCC Association.

40. CiviTek is a for profit entity that generates millions of dollars of income for the FCCC Association.

41. CiviTek supposedly exists to create technology solutions that protect revenue, save time, and free up resources. CiviTek's products and services are aggressively marketed to all Clerks and Comptrollers. In 2015, CiviTek re-branded its programs into two areas: (a) CiviTek Citizen Solutions; and (b) CiviTek Government Solutions.

42. "CiviTek Citizen Solutions" offers information technology products for making payments for government-related services through web-based and other e-commerce platforms. All of its services are focused on processing electronic payments. These solutions are profit-based and contribute a staggering amount of revenue, a portion of which flows unmonitored to the FCCC Association.

43. "CiviTek Government Solutions" provides payment and financial services, court case management and technical support to state and local governments. These products are designed to appeal to the budgets of the local Clerks' offices.

44. Financially, CiviTek manages and operates all of its programs primarily to enhance the power and stature of the Clerks through the FCCC Association. In 2016, the FCCC Association reported that it employed 16 full-time employees with a budget of \$12.7 million, while CiviTek, operating as a for-profit enterprise controlled by the FCCC Association, managed 91 full-time private employees under a budget of \$23.8 million. CiviTek's budget at that time was almost double the budget of the FCCC Association, the entity that created CiviTek.

45. In 2011, the "doing business as" name of "CiviTek" was adopted, when the FCCC Association decided to create a "marketable" name for the organization to use instead of the formal registered legal name.

46. CiviTek actively works to become a national leader in providing government payment processing and technology support. CiviTek has a unique logo and the name

“CiviTek” is copyright protected. In June 2015, Civitek hired Moore Communications to spearhead CiviTek’s rebranding campaign.

47. CiviTek is governed by a seven member “Board of Managers,” each of whom is a Clerk of the Circuit Court, elected for a two-year term by the member Clerks of the Circuit Court and Comptrollers.

48. CiviTek now employs approximately 100 full time private employees.

49. CiviTek profits from the day-to-day transactions and payments made in connection with core services provided by the Florida Clerks of Court. CiviTek’s revenue comes from three sources: (a) credit card processing fees; (b) Automated Clearing House (“ACH”) processing fees; and (c) user fees for “CLERICUS,” Florida’s court case maintenance system.

50. CiviTek deploys a variety of products and services that payors are forced to use during routine citizen transactions with the government (e.g. the filing of a lawsuit, paying traffic tickets and paying child support).

51. CiviTek derives most of its income from seemingly innocuous “service,” “processing,” or “convenience” fees. These additional charges are added on top of the electronic payments of standard statutory fees made in connection with governmental transactions or payment for governmental services.

52. CiviTek is registered as a Money Services Business (“MSB”) pursuant to the Bank Secrecy Act (“BSA”) regulations at 31 CFR 1022.380(a)-(f), which are administered by the Financial Crimes Enforcement Network (“FinCEN”).¹ Specifically, CiviTek is registered in Florida as a “money transmitter,” akin to a credit card company or a bank, see, Fla. Stat. §560.103(19), and is registered as such in Florida through the Florida Office of Financial Regulation’s “RealSystem” web portal. CiviTek has certified to FinCEN that it conducts MSB

¹ See <https://www.fincen.gov/msb-state-selector> (last visited August 28, 2019).

activities in the following states and territories: Florida, Hawaii, Maryland, New Jersey, Oregon, the U.S. Virgin Islands, and Washington.

53. In exchange for processing electronic transactions, CiviTek takes, for itself, a percentage-based fee which is **higher** than the rates charged by other card processors and money transmitters.

54. For example, CiviTek charges Florida consumers a 3.5% **convenience fee** for payments made via credit or debit card. CiviTek charges consumers a flat \$5.00 convenience fee for payments made via electronic check (direct debit from a bank account).

55. CiviTek, in conjunction with the other Defendants, determines the fees which users are required to pay in order to utilize the FCCC Association Portals. Having such control allows Defendants to affect and control the price users pay to access the Relevant Market. Defendants established user fees that are substantially higher than market rate for such services.

56. CiviTek charges inflated fees because Defendants have successfully monopolized the Relevant Market, and they have forced out or conspired amongst themselves and with competitors to maintain and expand their e-commerce payment processing scheme. CiviTek, through the actions of the Defendants, has avoided substantial public scrutiny through its opaque structure and Defendants' purposeful efforts to avoid operating under Florida's Sunshine Laws.

57. For most consumers involved in non-recurring transactions, the convenience fee they were forced to pay by CiviTek goes unnoticed or unscrutinized. For example, the convenience fee charged to a Class Member who files a civil lawsuit may be as little as \$14 (i.e. 3.5% of a \$400 filing fee).

58. However, the FCCC Association, using CiviTek and CiviTek National, process more than \$1.9 **billion** in payments each year, with no less than \$540 million

consisting of confirmed electronic – or “e-commerce” – payments. As an example, when CiviTek and CiviTek National collect for themselves 3.5% in fees from the \$540 million e-commerce payments they process annually, this means the companies collect convenience fees totaling \$18.9 million in a single year.

59. The profits taken in by CiviTek are supposedly reinvested into project enhancements and used as reserves for contingencies, but due to CiviTek’s ability to escape Florida’s Sunshine Law, it is not clear where exactly all of the tens of millions of dollars of secret profit earned by the Defendants has gone.

60. The FCCC Association uses its Class Member funded “profits” for such vague items as “legislative services,” “member services,” “strategic planning,” and “best practices.” Within “member services,” the FCCC Association uses Class Member funded profits to subsidize three annual conferences at luxury resorts, as well as various workshops, board retreats, and other FCCC Association programs.

C. Defendant CiviTek National, Inc.

61. CiviTek National, Inc. describes itself in promotional material as “a member-operated group of government officials.”²

62. Like CiviTek, CiviTek National is also a Florida For Profit Corporation. In 2012, the FCCC Association saw an opportunity to make money for itself by providing child support payment services **to other states**. This entailed deploying the FCCC Association/CiviTek payment processing services for child support in states other than Florida. Because the services provided are inconsistent with the stated purpose of the FCCC Association, a separate legal entity was formed: CiviTek National, Inc. The

² See https://ericosa.org/sites/default/files/ERICSA%202014%20Vendor%20and%20Sponsor%20Web%20Document_v.2.pdf (last visited August 28, 2019).

corporation is currently providing child support payment services for multiple states and the Virgin Islands.

63. An audit of CiviTek National is included in the annual audit of FCCC Association. The company's Board of Directors consists only of three Clerks: one appointed by the FCCC Association President, one by the CiviTek President and the third selected by the other two. The Board meets annually or as called by the President. CiviTek National's primary website is called MyPaymentPortal.com and currently accepts child support payments via credit card and e-check. The FCCC Association is aggressively expanding MyPaymentPortal.com's services to other states.

64. CiviTek and CiviTek National sell technology services to Clerks' offices and on-going support for a number of technology-based programs. Despite being a subsidiary of the FCCC Association, CiviTek National markets itself on the internet as "help[ing] customers coast to coast on everything from payment solutions to case load management." Through the FCCC Association and its wholly owned entities, Florida's Clerks of Court, as constitutional officers, are now operating and benefiting from a nationwide, profitmaking enterprise.

65. Acting under the auspices of the FCCC Association, CiviTek, and CiviTek National, the Florida Clerks have created for-profit organizations that provide various forms of compensation and other benefits to the Clerks at the expense of fixed and inflated transaction fees.

66. The Defendant organizations are self-perpetuating and far exceed the constitutional duties and responsibilities of the Clerks. To maintain and grow these for-profit organizations, the Florida Clerks, acting through the Defendants, are now on a mission to expand their offerings throughout the United States.

67. In order to sustain the needs of the Clerks, the FCCC Association requires Class Members in this action to pay illegal, fixed and inflated fees which inure to the benefit of the Defendant organizations, not the Class Members or the citizens of the State of Florida.

II. THE WEB PORTALS

A. MyFloridaCounty.com

68. Launched in 2003, this web portal and its mobile version provide a public, internet-based infrastructure for a single point of access to local government information, services, and, most importantly, e-commerce.

69. The users of MyFloridaCounty.com are businesses and the general public who interface with local Clerks' offices. The following services are provided: child support payment statuses; official records inquiry and document ordering; electronic child support payments; and electronic traffic citation payments.

70. MyFloridaCounty.com processes over \$20 million in transactions (principally child support and traffic payments) per month and processes between \$240 to \$340 million annually in payments for Clerks' offices. For example, between April 1, 2014, and March 31, 2015, MyFloridaCounty.com processed \$164,902,476 in child support payments, through an estimated 522,558 transactions. Additionally, MyFloridaCounty.com processed \$116,091,503 in non-child support payments, through an estimated 942,102 transactions.

71. CiviTek, on behalf of the Clerks, owns and leverages MyFloridaCounty.com to extract inflated and monopolized "service" or "convenience" fees from the public for each electronic payment transaction. The non-refundable service fee for payments made via credit card or debit card is 3.5% of the total payment amount, an amount in excess of standard market rates for similar transactions.

72. Without a healthy suspicion and significant research, no one using the site would be able to uncover the fact that MyFloridaCounty.com enables Civitek, a company owned and controlled by Florida's Clerks of Court (i.e. elected public officials), to surcharge users above market fees for the "convenience" of remitting governmental fees electronically.

B. MyFloridaRemit.com (MFR)

73. MyFloridaRemit.com is the website created by CiviTek to handle e-check Child Support payments (i.e. payments via direct debit from a bank account).

74. CiviTek charges a service fee of \$5.00 to make one child support case payment by e-check. More than 6,000 e-check transactions totaling no less than \$4 million are processed on a monthly basis.

C. MyPaymentPortal.com (MPP)

75. Launched in July 2012, MPP is a web portal that provides a single public point of access that allows users in subscribing states, **other than Florida**, to make credit card payments to state governments via a major credit or debit card. MyPaymentPortal.com initially launched in Oregon. Since then, Washington, Hawaii, the U.S. Virgin Islands, Guam, Maryland, New Jersey, Ohio, Missouri, and select Florida cities have become participants.

76. MyPaymentPortal.com processed substantial monthly child support payments since at least 2015. Funding for MyPaymentPortal.com is purportedly provided through service fees charged to its non-Florida users. The users of the web portal consist of the general public with child support cases residing in a participating state. MyPaymentPortal.com levies a 3.5% fee for credit and debit cards transactions, and a \$5.00 flat fee for users making payments through electronic checks.³ MyPaymentPortal.com

³ See <https://www.ncsea.org/ncsea-corporate-partners-2/> (last visited August 28, 2019).

provides revenues in excess of \$2 million annually to the FCCC Association, CiviTek, and CiviTek National.

D. *Myflcourtaccess.com – The “ePortal”: Florida Court eFiling (and eRecording)*

77. Myflcourtaccess.com, which is referred to by its users as the Florida courts’ “ePortal,” was developed by CiviTek at the urging of its parent company, the FCCC Association, and is maintained and operated under the supervision of the Florida Courts E-Filing Authority. There are two main functions of the portal: eRecording and eFiling.

78. By April 1, 2013, the Florida Courts e-Filing Portal saw active e-filing in all 67 counties for all five civil court divisions, Circuit Civil, County Civil, Probate, Small Claims and Family Law. The number of filings per month over the year went from 11,263 in July 2012 to over 1,200,000 in June 2015. The number of registered Florida Bar member users jumped from 10,248 to over 80,000.

79. Florida Supreme Court Administrative Order 11-399 (10/18/12) (the “Order”), designating dates for the mandatory use of the Portal, directly drove the upswing in filings in the trial courts and numbers of registered users over that time. Between April 1, 2013 and June 30, 2013, 2,347,648 submissions were sent through the Portal, equaling 4,049,342 documents for that three-month period. Pursuant to the Order, all attorneys were mandated to file electronically in the trial courts’ civil divisions by April 1, 2013. The order set October 1 of that year as the mandatory date for all attorneys to file on criminal cases through the portal. Today, over 80,000 attorneys file in all criminal and civil divisions and electronically pay the required court fee⁴.

⁴ Not only must all attorneys file court documents electronically using the ePortal, they must also pay the filing fees electronically, exclusively through the ePortal, which uses CiviTek for payment processing and requires the payment of inflated convenience fees.

80. According to the FCCC Association, the ePortal is currently funded “with existing funding sources”.

81. The ePortal processes hundreds of millions of dollars annually in case filing and other court payments. For example, between April 1, 2014, and March 31, 2015, CiviTek processed \$239,515,791 in ePortal payments, through an estimated 846,445 e-commerce transactions.

III. SYSTEMS & METHODS, INC.

82. Systems & Methods, Inc. (“SMI”) is a Georgia-based company that partners with state and local government agencies to provide case management, financial systems, and payment processing services.

83. Child support services constitute over 92 percent of SMI’s business. The company processes over 30.7 billion transactions annually across 15 states, totaling over \$4.7 billion per year.

84. In 2016, SMI contracted with the State of Florida to provide child support payment processing and began the smiONE Visa Prepaid Debit Card Program.

85. The smiONE Visa Prepaid Card reduces the administrative aspects of child support payment processing by giving the cardholder instant access to child support payments that are credited to the card as an alternative to receiving a check in the mail. The smiONE Visa Prepaid Debit Card Program is promoted as a low-cost benefit to cardholders with limited or no banking privileges who no longer have to cash checks or purchase money orders to pay their bills.

A. The Market Division and Price-Fixing Agreement with Systems & Methods, Inc.

86. In 2016, Florida’s Department of Revenue replaced an incumbent state disbursement unit (“SDU”) vendor, Xerox, with a new firm, SMI. SMI contracted to process

child support credit card payments for a **2.55% convenience fee** and phone payments for the very same fee. The directors, staff, and members of FCCC Association, CiviTek, and Civitek National immediately realized that SMI's processing fee would be 27% lower than the MyFloridaCounty.com child support convenience fee of 3.5%.

87. The arrival of SMI presented an imminent threat to the Defendants' entire business model and monopoly on electronic child support payments and payment processing. Previously, the Defendants' convenience fee model faced effectively no threats of detection or competition, as the prior SDU vendor, Xerox, did not process credit card payments in Florida. Instead, CiviTek's proprietary payment portal, MyFloridaCounty.com, was listed on the Department of Revenue's website, and the Defendants received a tremendous volume of referrals from the Department of Revenue's child support website.

88. The Defendants determined that when SMI took over operations on September 24, 2016, two rate offerings (i.e. SMI's 2.55 % vs. CiviTek's 3.5%) would appear on the Department of Revenue website. The FCCC Association concluded, however, that this development, which publicly showed a convenience fee lower than Civitek's, presented a significant business threat to Defendants' business model and required a drastic response from the Defendants.

89. Defendants' staff were directed to evaluate the possible impact of SMI on the current Florida child support "throughputs" (i.e. total dollars transacted) to gauge the potential fiscal damage to the Defendants business. The FCCC Association, CiviTek, and CiviTek National staff responded with multiple projections and recommendations.

90. In one scenario, the Defendants considered whether to simply reduce the MyFloridaCounty.com convenience fee from the existing 3.5% to 2.55%, and to also mimic SMI's elimination of payment by American Express. The FCCC Association, CiviTek, and CiviTek National concluded that under this approach there would be an annual loss of

revenue of approximately \$1 million if just the Child Support portion of MyFloridaCounty was transitioned to match the new rate.

91. The Defendants collectively decided that this would be a permanent loss of revenue that would substantially reduce the amount of profit earned and, thus, the dividend available to be provided to the FCCC Association. Reducing the convenience fee charged to users of MyFloridaCounty.com was rejected by the Defendants, and a non-refundable convenience fee for payments made via credit card or debit card of 3.5% remains to this day.

92. In a second projection, the FCCC Association concluded that if CiviTek were to deploy the FCCC Association's other company, CiviTek National, Inc., to take on the processing of SMI's other payment processing states, the scheme could eventually lead to a revenue increase of \$11,000,000 per month, which would translate into additional gross profits to CiviTek, and ultimately to the FCCC Association, of approximately \$1.88 million annually.

93. This, the Defendants determined, could offset the unwelcome reduction in child support fees and still provide profits to the FCCC Association. The Defendants recognized that the transition to this model would be challenging and could require up to a year of planning, but that overall profits to the Defendants would grow if SMI agreed to this scheme.

94. A third scenario was also debated and quickly rejected collectively by the Defendants. In this hypothetical scenario, the Defendants considered the impact of not conspiring with SMI and, instead, reducing not just child support, but all service and convenience fees collected on MyFloridaCounty.com to 2.55%. The FCCC Association determined that reducing rates across all programs – traffic, child support and point of sale

transactions for individual clerk offices – would result in a substantial net loss of millions of dollars of revenue to the Defendants.

95. From the Defendants' perspective, there was little choice. They had to align with SMI to preserve and expand their overall convenience fee revenue – which extended far beyond child support – if not, they risked losing millions of dollars in convenience fee revenue, yearly.

96. The advantages of teaming up with SMI and swallowing a small portion of reduced fees were clear: the alliance would prevent current child support payers from switching to a new vendor.

97. By acting in concert with SMI, the FCCC Association also saw a “very strong” market acquisition opportunity for their MyPaymentPortal.com product; by increasing overall “throughput,” (i.e. the total dollars transacted) the FCCC Association, acting directly as well as through CiviTek, could leverage its position with existing financial partners to demand reduced fees, and by expanding to other states the Defendants could leverage their existing technology investments and surreptitiously move some of the FCCC Association's operations outside of Florida.

98. Representatives from the FCCC Association, CiviTek, and CiviTek National gathered with SMI personnel at multiple meetings to discuss the integration of SMI's systems with Florida's current child support process. During these meetings, the Defendants and SMI agreed in principle to hand over all processing of child support credit card payments in Florida to the Defendants exclusively, so long as the Defendants would abide by SMI's contractually required rate of 2.55%.

99. In exchange for the Defendants performing SMI's payment processing obligations at the agreed upon rate, SMI promised to introduce the companies controlled by the FCCC Association to the other state governments SMI was working with, so that the

FCCC Association could gradually take over SMI's credit card processing contracts in a dozen other states in which SMI had processing contracts.

100. In addition, SMI agreed not to intrude on the Clerks' continued processing of child support payments initiated through MyFloridaCounty.com at CiviTek's higher 3.5% rate.

101. Defendants conspired and set in motion a plan to prevent Class Members from paying a more competitive fee of 2.55%. Defendants did so solely to protect their "dividends" and "profits," to the detriment of the Class Members.

IV. CIVITEK IS USED TO CIRCUMVENT THE CLERKS' LEGAL OBLIGATIONS UNDER FLORIDA STATUTE § 28.35, ET SEQ., AND FLORIDA'S SUNSHINE LAWS

102. Florida Statute § 28.35, *et seq.*, created the state-sanctioned organization for which the Clerks are supposed to collectively conduct business. Section 28.35 provides in relevant part:

The Florida Clerks of Court Operations Corporation ["CCOC"] is created as a public corporation organized to perform the functions specified in this section and § 28.36. All clerks of the circuit court shall be members of the corporation and hold their position and authority in an *ex officio* capacity. The functions assigned to the corporation shall be performed by an executive council pursuant to the plan of operation approved by the members.

103. Florida Statute § 28.35(3)(a) limits what the CCOC may do with the filing fees, service charges and costs that the CCOC receives from Class Members:

The list of court-related functions that clerks may fund from filing **fees, service charges, costs**, and fines is limited to those functions expressly authorized by law or court rule. Those functions include the following: case maintenance; records management; court preparation and attendance; processing the assignment, reopening, and reassignment of cases; processing of appeals; **collection and distribution of fines, fees, service charges**, and court costs; processing of bond forfeiture payments; data collection and reporting; determinations of indigent status; and paying reasonable administrative support costs to enable the clerk of the court to carry out these court-related functions (emphasis supplied).

104. As to the scope of CCOC's duties, Florida Statute § 28.36(1) mandates that "[o]nly those functions listed in § 28.35(3)(a) may be funded from fees, service charges, costs and fines retained by the clerks of the court." Absent from the statute is any legislative authority to allow CCOC to abdicate its statutorily required duties to collect fees and services charges to a for-profit entity such as CiviTek.

105. In May of 2016, the FCCC Association made a presentation titled "Interdynamics Between [the Association] & CCOC." In its presentation, the FCCC Association listed out the scope of services for the FCCC Association, the CCOC and CiviTek. Within its presentation, the FCCC Association lists the primary function of the CCOC to review, certify and recommend court-related budgets. As for CiviTek, the FCCC Association lists its primary function merely as providing case management services.

106. However, the FCCC Association, through the creation and use of CiviTek, transferred some of the CCOC's court-related functions mandated under § 28.35(3)(a) from CCOC to CiviTek.

107. The FCCC Association concluded its May 2016 presentation with the following question: "What is the CCOC governed by that [the FCCC Association] is not?" The FCCC Association answers the question as follows: "Sunshine and Public Record Laws."

108. Here the FCCC Association explains a reason why it created CiviTek – to illegally shield its actions from public scrutiny by creating a privately held company that would charge inflated and illegal "convenience fees," all while avoiding Florida's Sunshine and public records laws. Florida's Clerks of Court, acting through the FCCC Association, have found a way to cloak their actions from public scrutiny and profit for themselves by evading Florida's Sunshine and Public Record Laws.

CLASS ACTION ALLEGATIONS

109. Plaintiffs bring this action on behalf of themselves and all persons similarly situated pursuant to Florida Rule of Civil Procedure 1.220 (previously defined as the “Class Members”). The Class Members include all users and payors who, from 2013 to the present (the “Class Period”), accessed the FCCC Association Portals and were overcharged payment processing, servicing, or “convenience” fees for processing, transferring and/or posting payments, and who were not reimbursed or otherwise compensated for the overcharges. The Class members neither acquiesced, nor voluntarily agreed to be overcharged for those fees they were forced to pay.

110. Excluded from the Class Members are (a) Defendants and their co-conspirators; (b) any entity in which Defendants have a controlling interest; (c) Defendants' officers, directors, and employees; (d) Defendants' legal representatives, successors, and assigns; (e) governmental entities; and (f) the Court to which this case is assigned. The proposed Class Members are both ascertainable and share a well-defined community of interest in common questions of law and fact. Furthermore, this action satisfies the numerosity, commonality, typicality, adequacy, predominance and superiority requirements. The Relevant Market is the market in Florida for non-cash payment processing services connected to Florida clerk of court and comptroller related governmental transactions.

111. Plaintiffs do not know the exact number of Class Members at the present time. However, due to the nature of the trade and commerce involved, there are hundreds of thousands of Class Members, geographically dispersed throughout the State of Florida such that joinder of all Class Members is impracticable. Included in the Class Members are consumers and any end-payor who remitted processing, servicing, or “convenience” fees to Defendants and who did not receive reimbursement for those inflated fees.

112. **Commonality:** The Plaintiffs' claims raise questions of law and fact that are common to each Class Member and these questions predominate over any questions affecting any individual members. The common legal and factual questions, which do not vary from Class Member to Class Member, and which may be determined without reference to individual circumstances of any Class Member include, but are not limited to, the following:

(a) Whether Defendants and their co-conspirators engaged in a contract, combination or conspiracy to raise, stabilize, fix and/or maintain prices of non-cash payment processing services connected to state and local governmental transactions;

(b) The duration and extent of the alleged contract, combination or conspiracy;

(c) Whether Defendants and their co-conspirators were participants in the contract, combination or conspiracy alleged herein;

(d) The effect of the contract, combination or conspiracy on the prices of non-cash payment processing services connected to state and local governmental transactions in Florida during the Class Period;

(e) Whether the conduct of Defendants and their co-conspirators caused injury to Class Members;

(f) Whether the alleged contract, combination or conspiracy violated state statutes;

(g) Whether the alleged conduct violated the common law of unjust enrichment; and

(h) Whether the alleged conduct violated the common law of prohibited conflicts of interest by Florida public officials.

113. Questions of law and fact common to Class Members predominate over any questions which may affect only individual members.

114. **Typicality:** Plaintiffs' claims are typical of the claims of the Class Members, and Plaintiffs will fairly and adequately protect the interests of the Class Members. Plaintiffs' interests are not antagonistic to the claims of the other Class Members, and there are no material conflicts with any other member of the Class Members that would make class certification inappropriate. Plaintiffs have retained competent counsel experienced in complex antitrust and consumer protection class action litigation and will prosecute this action vigorously.

115. **Adequacy:** The Plaintiffs are Florida residents who will fairly and adequately protect and represent the interests of each Class Member. Additionally, the Plaintiffs are fully cognizant of their responsibilities as Class Representatives, and they have retained counsel who has extensive experience and expertise in prosecuting class actions. The Plaintiffs and their counsel are fully capable of, and intent upon, vigorously prosecuting this action on behalf of the Class Members.

116. A class action is superior to other available methods for the fair and efficient adjudication of this controversy because individual litigation of the claims of all Class Members is impracticable. Even if every Class Member could afford individual litigation, the court system could not. It would be unduly burdensome on the courts if individual litigation of numerous cases would proceed. By contrast, the conduct of this action as a class action, with respect to some or all of the issues presented in this Complaint, presents fewer management difficulties, conserves the resources of the parties and of the court system, and protects the rights of each Class Member.

117. Prosecution of separate actions by individual Class Members would create the risk of inconsistent or varying adjudications, establishing incompatible standards of

conduct for Defendants, and would magnify the delay and expense to all parties and to the court system resulting from multiple trials of the same complex factual issues.

118. Whatever difficulties may exist in the management of the class action will be greatly outweighed by the benefits of the class action procedure, including, but not limited to, providing Class Members with a method for the redress of claims that may not otherwise warrant individual litigation.

119. The effect of Defendants' conduct as described herein has been to artificially inflate the prices of non-cash payment processing services connected to Florida clerk of court and comptroller related governmental transactions.

120. By manipulating the rates for non-cash payment processing, price competition has been suppressed and prices have been supported at artificially and unnecessarily high levels throughout the State of Florida and the other states using Defendants' products, services, and, as a result, end users of Defendants' products, services, and payment portals have paid supra-competitive prices.

DELAYED DISCOVERY, FRAUDULENT CONCEALMENT, AND TOLLING

121. Defendants and their co-conspirators engaged in a successful, illegal price-fixing, market allocation, and monopolization conspiracy that was self-concealing. Defendants effectively, affirmatively, and fraudulently concealed their unlawful combination, conspiracy, and acts in furtherance thereof from the Class Members.

122. Defendants effectuated their concealment by, among other things, claiming that the actions of, and records created by, CiviTek and CiviTek National are not subject to Florida's Sunshine Laws.

123. Class Members did not know, nor could they have known, that the prices for non-cash payment processing services connected to state and local governmental transactions were artificially inflated and maintained by virtue of Defendants' illegal price-

fixing, market allocation, and monopolization conspiracy, and that Plaintiffs and the Class Members were paying higher prices. Therefore, Class members neither acquiesced, nor voluntarily paid such artificially inflated charges.

124. Plaintiffs, on behalf of Class Members, have exercised due diligence by promptly and carefully investigating the facts giving rise to the claims asserted herein upon having reasonable suspicion of the existence of Defendants' conspiracy.

125. As a result of Defendants' fraudulent concealment of their conspiracy, the running of any statute of limitations has been tolled with respect to any claims that the Class Members have as a result of the anticompetitive conduct alleged in this Complaint.

126. Plaintiffs have retained the undersigned attorneys to represent them in this action and are obligated to pay them a reasonable attorney's fee and Defendants are obligated to pay such fee pursuant to Fla. Stat. §542.22 and other laws.

COUNT I
Unlawful Restraint of Trade
(Against all Defendants on behalf of the Class)

127. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs set forth in Paragraphs 1 through 126 above and further allege:

128. As described above, Defendants intentionally and deliberately entered into a continuing agreement, understanding, combination and/or conspiracy for the unlawful restraint of trade resulting in harm both to competition generally and Plaintiffs and Class Members specifically, in violation of Fla. Stat. §542.18.

129. Plaintiffs, including the Class Members, represent a specifically defined market of consumers who have a need to, or are required to, utilize the FCCC Association Portals to process payments, access documents and otherwise utilize government services and resources.

130. Plaintiffs, including the Class Members, represent a specifically defined market of consumers who pay, or have paid, inflated, non-competitive fees to utilize services through the FCCC Association Portals.

131. Defendants, by owning, operating and/or maintaining the Association Portals, and charging Florida consumers for use of the Association Portals, possess the ability to affect the price for use of the Association Portals.

132. Defendants, through their establishment, control and maintenance of the Association Portals, control access and use of the Association Portals by end users such as Plaintiffs and Class Members.

133. Defendants, through an agreement among themselves, have artificially inflated, or otherwise set above-market pricing for access and use of the Association Portals, which in turn prevents Plaintiffs and Class Members from accessing such services at market prices.

134. Defendants' actions, including their agreement to restrain trade as set forth in this Complaint, have made the market less competitive for Florida consumers, including the Plaintiffs and Class Members, who are forced to pay artificially inflated prices to utilize the Association Portals.

135. Defendants' actions, including their agreement to restrain trade as set forth in this Complaint, including but not limited to price-fixing, have harmed the market established for pricing "user" or "convenience" fees for accessing and utilizing the Association Portals, by prohibiting competitive pricing from being introduced into this particular marketplace.

136. As a result of Defendants' unlawful conduct, including Defendants' agreement to restrain trade, Plaintiffs and Class Members have been injured in their business and property in that they have paid more for access and utilization of the

Association Portals than they otherwise would have paid in the absence of Defendants' unlawful conduct. Moreover, Defendants' unlawful activities and conspiracy injured competition in this particular market, including reducing consumer choice and raising prices, and proximately caused Class Members' economic loss and damages, which Plaintiffs and Class Members seek to recover.

137. As a result of Defendants' unlawful conduct, Plaintiffs and Class Members have sustained damages including, but not limited to:

- a) payment of wrongfully inflated "convenience" and user fees;
- b) loss of use of such sums; and,
- c) treble damages.

WHEREFORE, Plaintiffs, individually and as Class Representatives, respectfully demand judgment for both consequential and incidental damages sustained by Plaintiffs and the Class Members which they seek to represent against the Defendants, FLORIDA ASSOCIATION OF COURT CLERKS, INC., FACC SERVICES GROUP, L.L.C. d/b/a CIVITEK and CIVITEK NATIONAL, INC., reasonable attorneys' fees, pre-judgment interest on all liquidated sums, and taxable costs. Further, Plaintiffs demand a trial by jury on all issues so triable.

COUNT II
Unjust Enrichment
(Against all Defendants on behalf of the Class)

138. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs set forth in Paragraphs 1 through 126 above and further allege:

139. Plaintiffs and the Class Members have conferred a benefit on the Defendants by paying inflated, non-competitive fees for non-cash payment processing services through the Association Portals. Plaintiffs and the Class Members made these payments to Defendants unaware that the prices for these services were artificially inflated

and maintained by virtue of Defendants' illegal price fixing, market allocation and monopolization.

140. Defendants knowingly received and voluntarily accepted and retained the benefit of the fees paid by Plaintiffs and Class Members. In fact, in fiscal year 2015 – 2016, Defendants' revenue totaled \$10,051,078, a substantial portion of which came from fees paid by Plaintiffs and Class Members for using the Association Portals.

141. The Defendants knowingly received and retained wrongful benefits and funds from the Plaintiffs and Class Members. In doing so, the Defendants acted with conscious disregard for the rights of the Plaintiffs and Class Members.

142. The circumstances underlying how Defendants were able to accept and retain the benefits conferred on them by the Plaintiffs and Class Members, namely the receipt of artificially inflated fees are such that it would be inequitable for the Defendants to retain the benefit without paying the excess fees unjustly received to the Plaintiffs and Class Members.

143. By means of the Defendants' wrongful conduct alleged herein, Defendants knowingly are enriched directly, or indirectly, by the creation and retention of fixed, illegal prices for use and/or payment processing through the Association Portals.

144. Defendants' acceptance and retention of the benefits under these circumstances makes it unjust and inequitable for Defendants to retain such benefits.

145. Restoration is the remedy for unjust enrichment. Defendants must refund to the Class Members the amount of fees paid over and above market prices for use of the Association Portals.

146. Defendants' unjust enrichment is traceable to, and resulted directly and proximately from, Defendants' conduct alleged herein.

147. Defendants have unjustly benefited by receiving higher prices for payment processing through the Association Portals. These higher prices in the form of fees were paid by Class Members and such unjust enrichment would not have been possible absent Defendants' wrongful and unlawful conduct.

148. Defendants have violated the common law of unjust enrichment of the State of Florida.

149. Accordingly, Plaintiffs and the Class Members seek full restitution of Defendants' enrichment, benefits and ill-gotten gains which Defendants acquired as a result of the unlawful and/or wrongful conduct alleged in this Complaint.

WHEREFORE, Plaintiffs, individually and as Class Representatives, respectfully request this Honorable Court to enter judgment in favor of the Plaintiffs and the Class Members on account of Defendants' unjust enrichment and compel Defendants to disgorge into a common fund for the benefit of the Plaintiffs and Members of the Class all wrongful or inequitable proceeds received by them. Plaintiffs further request a constructive trust be imposed upon all wrongful or inequitable sums received by the Defendants traceable to the Plaintiffs and Class Members.

COUNT III
Declaratory Judgment/Injunctive Relief: Illegal Fees
(Against All Defendants on behalf of the Class)

150. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs set forth in Paragraphs 1 through 126 above and further allege:

151. This is an action for declaratory and injunctive relief pursuant to Chapter 86 of the Florida Statutes.

152. Plaintiffs, individually and as Class Representatives, contend, as set out in detail herein, that the Defendants, and each of them had no right to conspire and agree to set artificially high user fees for Class Members who had no choice but to use the

Association Portals. Moreover, requiring payment of illegally set fees as a condition to utilizing the Association Portals is wrongful.

153. Further, Plaintiffs individually and as Class Representatives, contend that there is no right under either the common law, statute or regulation that would permit Defendants, and each of them, to set artificially high user fees for Class Members who had no choice but to use the Association Portals, contrary to Florida common law and Florida Statutes as set forth above.

154. As a result of Defendants' conduct, and each of them, Plaintiffs individually, and all Class Members were forced to either pay the wrongfully charged user fees or they could not otherwise use the Association Portals, and therefore sustained damages as a result.

155. On the facts of this case, the Plaintiffs, individually, and as Class Representatives, are in doubt as to their rights and the rights of all other purported Class Members regarding the fees charged for usage of the Association Portals.

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all Class Members, respectfully request that this Court:

- A) Take jurisdiction over this matter for purposes of rendering a declaratory/injunctive decree;
- B) Having taken jurisdiction, that this Court enter an order declaring that Defendants, and each of them, had no right, either under Florida Law or common law, to charge Class Members for the inflated, non-competitive and fixed fees for usage of the Association Portals;
- C) Enter an order that by virtue of such violation of Florida law, that the Defendants, and each of them should be, and are estopped from requiring Class Members to continue paying the inflated, non-competitive and fixed fees for usage of the Association Portals at their current rates and to disgorge such payments that have been paid over and above reasonable market prices;

D) Require that the Defendants, and each of them, properly notify each and every such Class Member of this Court's findings and further require that such Defendants fully compensate each Class member injured as a result of such wrongful conduct;

E) Grant both preliminary and permanent injunctive relief to prevent any further harm resulting from such acts and/or omissions of the Defendants, and each of them;

F) Grant such other relief as this Court deems proper;

G) Retain jurisdiction over the parties and the subject matter to assess reasonable attorney's fees and costs to Class counsel and any and all penalties this Court deems equitable and just.

COUNT IV

Declaratory Judgment/Injunctive Relief: Conflict of Interest (Against All Defendants on behalf of the Class)

156. Plaintiffs incorporate and reallege, as though fully set forth herein, each of the paragraphs set forth in Paragraphs 1 through 126 above and further alleges:

157. This is an action for declaratory and injunctive relief pursuant to Chapter 86 of the Florida Statutes.

158. Plaintiffs, individually and as Class Representatives, contend, as set out in detail herein, that the Defendants, and each of them had no right to conspire and agree to set artificially high user fees for Class Members.

159. Florida Statute § 112.311(1) provides in relevant part that “[i]t is essential to the proper conduct and operation of government that public officials be independent and impartial and that **public office not be used for private gain other than the remuneration provided by law**. The public interest, therefore, requires that the law protect against any conflict of interest and establish standards for the conduct of elected officials and government employees in situations where conflicts may exist.”

160. Florida Statute § 112.311(6) provides “[i]t is declared to be the policy of the state that public officers and employees, state and local, are agents of the people and hold their positions for the **benefit of the public.**”

161. Through the establishment of CiviTek and CiviTek National, Defendants are not holding their positions as organizations of county clerks and comptrollers for the benefit of the public, but instead are holding their positions to perpetuate a private benefit to themselves and for the benefit of private, for-profit organizations that they have created.

162. On the facts of this case, the Plaintiffs, individually, and as Class Representatives, are in doubt as to their rights and the rights of all other purported Class Members regarding the overt conflicts of interests that exist due to the conduct of the Defendants.

WHEREFORE, Plaintiffs, on behalf of themselves and on behalf of all Class Members, respectfully request that this Court:

- A) Take jurisdiction over this matter for purposes of rendering a declaratory/injunctive decree;
- B) Having taken jurisdiction, that this Court enter an order declaring that Defendants, and each of them, had no right, either under Florida Law, to charge for the inflated, non-competitive and fixed fees for usage of the Association Portals as Defendants’ actions in so doing represents a clear conflict of interest;
- C) Enter an order that by virtue of such violation of Florida law, that the Defendants, and each of them should be, and are estopped from requiring Class Members to continue paying the inflated, non-competitive and fixed fees for usage of the Association Portals at their current rates and to disgorge such payments that have been paid over and above reasonable market prices;
- E) Require that the Defendants, and each of them, discontinue the establishment of private, for-profit organizations for the implementation, usage and management of the Association Portals;

- F) Grant both preliminary and permanent injunctive relief to prevent any further harm resulting from such acts and/or omissions of the Defendants, and each of them;
- G) Grant such other relief as this Court deems proper;
- H) Retain jurisdiction over the parties and the subject matter to assess reasonable attorney's fees and costs to Class counsel and any and all penalties this Court deems equitable and just.

DEMAND FOR JURY TRIAL

163. Plaintiffs, on their behalf and on behalf of all others similarly situated, demand a trial by jury on all issues raised in this Complaint to which they are so entitled pursuant to Florida Rule of Civil Procedure 1.430.

Dated: September 9, 2019

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