

CAUSE NO. D-1-GV-14-00581

THE STATE OF TEXAS,	§	IN THE DISTRICT COURT
	§	
Plaintiff,	§	
	§	
v.	§	
	§	
	§	53rd JUDICIAL DISTRICT
XEROX CORPORATION; XEROX	§	
STATE HEALTHCARE, LLC; ACS	§	
HEALTHCARE LLC, A XEROX	§	
CORPORATION,	§	
	§	
Defendants.	§	TRAVIS COUNTY, TEXAS

LINDA REED’S MOTION TO STRIKE “RELATORS’ JOINT MOTION FOR DETERMINATION OF RELATORS’ SHARE”

COMES NOW Linda Reed and moves to strike the pleading entitled “Relators’ Joint Motion for Determination of Relators’ Share and for Expenses, Attorney Fees, and Costs Pursuant to TMFPA §36.110” filed February 20, 2019, and would respectfully show the Court as follows:

I. SUMMARY OF MOTIONS AND REQUESTED RELIEF

The alleged “joint relators” have no standing to file pleadings in this case because they have not intervened or otherwise appeared on behalf of any party in this case. In addition, the “joint relators” are not actually relators in this case; to the extent they are relators in other Medicaid fraud cases they may have some ability to lay claim to the judgment or settlement in those other cases, but they have no standing to do so in this case. Therefore, Linda Reed moves that their “Motion for Determination of Relators’ Share” be struck because the “joint relators” do not have standing.

II. HISTORY

Prior to filing this Motion, Ms. Reed has filed a Motion to Lift Abatement, Motion to Intervene, and Motion for Award. Ms. Reed believes those are motions properly before this Court,

and asks that those motions be considered pursuant to the due order of pleadings, so that Ms. Reed is granted standing to assert this motion.

III. MOTION TO STRIKE “RELATORS’ JOINT MOTION FOR DETERMINATION OF RELATORS’ SHARE”

The “joint relators” are not a party to this case. They have not appeared on behalf of any party for any part of this case. They have not provided evidence or testimony in this case.¹ Their legal counsel have never been on the service list for pleadings or discovery.² They have not intervened.³ Their Joint Motion for Determination of Relator’s Share was not filed in the capacity of an amicus curie brief. Until the “joint relators” establish standing to seek relief from this Court in this case, their pleadings should be struck. For this reason, Ms. Reed requests that their Joint Motion for Determination of Relator’s Share be struck.

Regardless of whether the “joint relators” have complied with the proper procedure for seeking relief in this case, the TMFPA does not provide private plaintiffs a right to a portion of the proceeds of a separate, different TMFPA lawsuit. TEX. HUM. RES. CODE § 36.110. The “joint relators” motion alleges that at least eight (8) individuals filed at least seven (7) TMFPA lawsuits against the Xerox defendants. Relators’ Joint Motion, at page 3. Even if that is true, those seven cases are obviously not **this** case. TMFPA Subchapter C sets out specific acts that must occur in order for a private plaintiff to recover an award. The “joint relators” motion admits that they have failed to satisfy the TMFPA’s award requirements in numerous ways. Without being exhaustive, the most obvious deficiency is that none of those seven qui tam relator cases has resulted in a judgment

¹ Ms. Reed has provided both evidence and testimony in this case.

² The undersigned counsel was on the service list for this case before the Xerox defendants filed their original answer to the State’s original petition.

³ Ms. Reed has followed the Rules of Civil Procedure and filed a plea in intervention as a prerequisite to seeking any relief in this case.

or settlement regarding the specific claims that the individual relator brought in their specific case.

TMFPA section 36.110 states:

Sec. 36.110. AWARD TO PRIVATE PLAINTIFF.

. . . .

(c) A payment to a person under this section shall be made from the proceeds of **the action**. . . .

(d) In this section, "proceeds of the action" includes proceeds of a settlement of **the action**.

TEX. HUM. RES. CODE § 36.110 (emphasis added). "The action" is defined as the civil lawsuit filed by the private person. See TEX. HUM. RES. CODE § 36.101, .110. Clearly, this case cannot be "the action" filed by each of those eight (8) relators. Those cases were not consolidated with this case, they do not share the same cause number as this case, and there is no relator mentioned in any pleading in this case. Therefore, the joint relators are not entitled to seek an award in this case under the strict language of section 36.110. They simply do not have standing in this case. It is strange for the relators to argue that they have received a judgment or settlement with regard to their seven separate lawsuits against Xerox as a result of another plaintiff (the State of Texas, without any of those relators, and in its sole authority) settling its own TMFPA claims against Xerox.

Recognizing the limitation of section 36.110, the "joint relators" motion asserts that this lawsuit is an "alternate remedy" that is being pursued by the State under section 36.109. See Relators' Joint Motion, at page 5. That is not true. Relators invoke section 36.109 to manufacture a creative argument that might allow them to enjoy a portion of the Xerox settlement. That section states:

Sec. 36.109. PURSUIT OF ALTERNATE REMEDY BY STATE. (a) Notwithstanding Section 36.101, the state may elect to pursue the state's claim through any alternate remedy available to the state, including any administrative proceeding to determine an administrative penalty. If an alternate remedy is pursued in another proceeding, the person bringing the action has the same rights in the other

proceeding as the person would have had if the action had continued under this subchapter.

TEX. HUM. RES. CODE § 36.109(a). The State filed this case under the TMFPA, seeking all of the available remedies under the TMFPA. So did each of the relators, using their own facts and allegations. Relators' Joint Motion, at 1, 3. Because the remedies sought by the State in this case are exactly the same as the remedies sought by the relators in their case, the State did not pursue an "alternate remedy." The State filed a different TMFPA lawsuit against Xerox, it did not pursue an "alternate remedy." An example of an alternate remedy would be a SOAH contested case administrative hearing brought under Texas Government Code ch. 2001 and HHSC's rules, or a criminal indictment and prosecution under Penal Code ch. 35A, or a civil case brought under TEX. HUM. RES. CODE § 32.039, or a Deceptive Trade Practices Act lawsuit. The State did not elect to pursue its claims under those statutes, which would have provided "alternate remedies." Thus, there is no legal basis to allow the relators to share in the Xerox settlement.⁴

The "joint relators" point to letters between the State and relators' counsel, asserting that those letters endorse or ratify their ability to share in the proceeds of this case. Their interpretation of those letters is incorrect. The earliest letter is dated Feb 18, 2014. That letter, from the Attorney General's Office to Rusty Tucker, confirms only that the Chief of the Medicaid Fraud Division believes Mr. Tucker's client has a vested interest in a Dallas County District Court TMFPA lawsuit. That letter does not reflect that the State's TMFPA lawsuit is an "alternate remedy" to Ms. Tucker's

⁴ Even if the "joint relators" history of events is assumed to be true, the failure to include them as parties in this case, or reference any of the alleged evidence they provided to this case, creates significant due process problems. TMFPA sections 36.110, .111, .112, and .113 all require that the quality and quantity of the evidence provided to the attorney general by a putative relator, and how the relator came to possess that evidence, be explored and weighed in determining whether the whistleblower is even qualified to bring the lawsuit, much less whether they are entitled to an award. The defendants and any other interested party would have been entitled to explore these areas throughout the last five years of discovery. Because the "joint relators" are not a party to the case, no factual discovery regarding the relators' individual contributions to this case was ever considered.

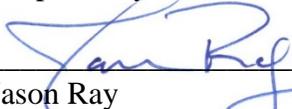
case, nor does it reference section 36.109 directly or indirectly. There is no basis to conclude that the letter was even intended to allow Mr. Tucker's client's Dallas TMFPA claims to proceed in this case. But even if it was, it could not be effective to do so, because the State cannot legislate a statutory change through a letter. Mr. Tucker and the other relators' counsel complain that the Attorney General's Office statements secured their right to a large portion of the settlement in this case. The Attorney General's statements may have created expectations in the minds of the relators, but it did not create law or allow the State to circumvent procedural rules.

There is also no factual basis to allow the relators to share in the Xerox settlement. Frankly, the joint relators have not even argued that their individual lawsuits mirrored the allegations in this case. There is no reason to presume that the State's instant claims were lifted from the "material evidence and information" disclosed by the "joint relators" pursuant to section 36.102. See TEX. HUM. RES. CODE § 36.102 (requiring the relator to provide their evidence of TMFPA violations to the attorney general when the relator first files his under seal petition). Because there is no legal or factual basis to conclude that the "joint relators" should have standing in this case, their joint motion should be struck.

IV. PRAYER

WHEREFORE, PREMISES CONSIDERED, Linda Reed prays this Court strike the pleading entitled "Relators' Joint Motion for Determination of Relators' Share and for Expenses, Attorney Fees, and Costs Pursuant to TMFPA §36.110" filed February 20, 2019 and award such other and further relief to which she may show herself justly entitled.

Respectfully submitted,



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LINDA REED

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served via email and/or eservice on this 12th day of April 2019, on all counsel of record.



Jason Ray E-signature