

CAUSE NO. D-1-GN-19-004849

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| IN RE: STATE OF TEXAS v. | § | IN THE DISTRICT COURT |
| XEROX CORPORATION, et al. | § | |
| SETTLEMENT PROCEEDS | § | 459th JUDICIAL DISTRICT |
| | § | |
| | § | TRAVIS COUNTY, TEXAS |

STATE OF TEXAS’S RESPONSE TO LINDA REED’S PLEA TO THE JURISDICTION AND MOTION TO STRIKE

TO THE HONORABLE JUDGE TIM SULAK:

NOW COMES the State of Texas (“State”), by and through the Attorney General of Texas, and hereby responds to Linda Reed’s Plea to the Jurisdiction, and moves to strike the same. This Court should strike Reed’s Plea because: (1) Reed lacks standing to assert any claims in this lawsuit, including her Plea to the Jurisdiction; and (2) even if Reed did have standing, Reed’s Plea is improper because a plea to the jurisdiction is a *defensive* pleading, and there are no pending claims against Reed. Accordingly, this Court should strike Linda Reed’s Plea to the Jurisdiction.

I. FACTUAL AND PROCEDURAL BACKGROUND

A detailed factual and procedural background on Reed’s claim is presented in the State’s pending Plea to the Jurisdiction, which the State incorporates by reference. It is worth noting, however, that Reed filed a *Motion to Strike “Relators’ Joint Motion for Determination of Relators’ Share”* on April 12, 2019, and a *Motion to Disqualify “Joint Relators”* on April 16, 2019. The TMFPA contains no mechanism for one would-be relator to “disqualify” or “strike” another would-be relator. *See, generally*, Tex. Hum. Res. Code §§ 36.101 *et seq.* Thus, Reed has simply re-packaged one legally impermissible argument

into her instant Plea, which is still legally impermissible and the Court should strike for the reasons set forth herein.

II. ARGUMENT

This Court should strike Reed's Plea because: (1) Reed lacks standing to assert any claims in this lawsuit, including her Plea to the Jurisdiction; and (2) even if Reed did have standing to participate in this lawsuit, Reed's Plea is improper because a plea to the jurisdiction is a *defensive* pleading, and there are no pending claims against Reed.

A. Reed Lacks Standing to Assert Any Claims in this Lawsuit, Including Her Instant Plea to the Jurisdiction.

Legal standing is an essential element of a court's authority to exercise subject matter jurisdiction over a litigant's claims. *Bland Indep. Sch. Dist. v. Blue*, 34 S.W.3d 547, 553-54 (Tex. 2000). As the Fourth Circuit presciently predicted in its discussion of the federal False Claims Act ("FCA"):

The prospect of a large payout is likely to give rise to many cries of "me too." Some of these fortune-seekers may be "but for" causes of a portion of an FCA recovery. But unless these individuals are bona fide relators in the qui tam action from which recovery directly ensues, the statute accords them no share of the bounty.

United States ex rel. LaCorte v. Wagner, 185 F.3d 188, 192 (4th Cir. 1999). As more fully detailed in the State's pending Plea to the Jurisdiction, Reed lacks standing to intervene and assert any claims in this lawsuit for a litany of reasons, not the least of which is that she never filed a TMFPA *qui tam* lawsuit. *See, generally, State of Texas's Plea to the Jurisdiction, Answer to Request for Declaratory Relief, and Motion to Strike Petition in*

Intervention Filed by Linda Reed. As a result, all of Reed’s pleadings, including her instant Plea, should be stricken in accordance with TRCP Rule 60. Tex. R. Civ. P. 60.

Accordingly, this Court should strike Linda Reed’s Plea to the Jurisdiction.

B. Even if Reed Did Have Standing in this Matter, Her Plea is Nevertheless Improper Because a Plea to the Jurisdiction is a Defensive Pleading, and there are no Pending Claims Against Reed.

Even if Reed did have standing in this matter, her Plea to the Jurisdiction is nevertheless improper. A party to a lawsuit may only raise a dispute when the party both has a sufficient stake in the outcome and faces a concrete and personalized injury. *Brown v. Todd*, 53 S.W.3d 297, 305 (Tex. 2001); *Paradigm Oil, Inc. v. Retamco Operating, Inc.*, 161 S.W.3d 531, 538 (Tex. App.—San Antonio 2004, pet. denied). A plea to the jurisdiction is a *defensive* pleading to be raised by a defendant in a lawsuit. *See* Tex. R. Civ. P. 85 (identifying pleas to the jurisdiction as “dilatory pleas” to be raised in an Original Answer); *see also Carmichael v. Page*, 32 S.W.2d 674, 675 (Tex. Civ. App.—Texarkana 1930), writ refused (Jan. 21, 1931) (defining a dilatory plea as one that “embrace[s] all those defenses which only delay or defeat the present suit or action, leaving the cause of action unsettled, so that it may be litigated at some later time”).

In this lawsuit, Reed is a *plaintiff* who has asserted an affirmative claim for relief against the State which is separate and apart from the claims asserted by Putative Relators. Reed has no stake in the outcome of Putative Relators’ claims against the State and can articulate no personalized injury she will suffer as a result thereof. Thus, it is improper for Reed to submit a defensive pleading to Putative Relators’ claims – that prerogative belongs

to the State, the party properly defending against those claims.¹ *See Green Tree Servicing, LLC v. Woods*, 388 S.W.3d 785, 792 (Tex. App.—Houston [1st Dist.] 2012, no pet.) (noting that “in a plea to the jurisdiction ... the *defendant* bears the burden of proving the trial court’s lack of jurisdiction” (emphasis added)).

Accordingly, this Court should strike Linda Reed’s Plea to the Jurisdiction.

III. PRAYER FOR RELIEF

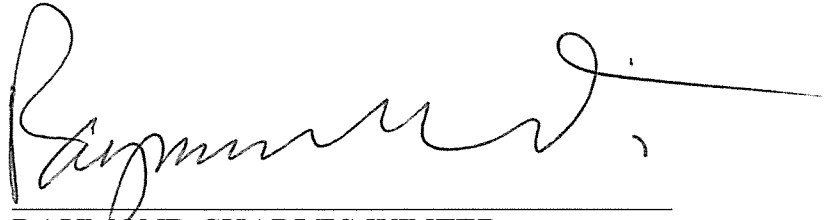
The State respectfully requests that this Court strike Linda Reed’s Plea to the Jurisdiction. The State asks the Court for such further relief to which the State is entitled.

Respectfully Submitted,

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¹ As previously forecasted, the State will argue, in part, that Putative Relators’ claims are barred by the TMFPA’s public disclosure bar. *See* Tex. Hum. Res. Code § 36.113(b). For the Court to summarily rule on the viability of Putative Relators’ claims at this juncture based merely on Linda Reed’s improper filing would unfairly prejudice the State, and the State reserves the right to challenge the merits of Putative Relators’ claims at the appropriate time and based upon a full evidentiary record the State intends to present for the Court’s benefit. Reed’s Plea not only infringes on arguments the State will present, but its fundamental premise – that the TMFPA’s public disclosure bar is jurisdictional in nature – is erroneous. Prior to 2010, the FCA contained a jurisdictional public disclosure bar which expressly stripped courts of subject matter jurisdiction over *qui tam* actions subject to the bar. *See* 31 U.S.C. § 3730(e) (1997) (“No court shall have jurisdiction over an action ... based upon the public disclosure of allegations or transactions ...”). The TMFPA does not have, nor has it ever had, similar jurisdictional language. *See* Tex. Hum. Res. Code § 36.113(b) (“The court shall dismiss an action or claim ... if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed ...”); *see also* Tex. Hum. Res. Code § 36.113(b) (2011) (“A person may not bring an action ... that is based on the public disclosure of allegations or transactions ...”). In 2010, Congress removed the jurisdictional language from the FCA, and federal courts have consistently acknowledged that the FCA’s public disclosure bar is no longer jurisdictional. *See Abbott v. BP Exploration & Production, Inc.*, 851 F.3d 384, 387 n.2 (5th Cir. 2017); *United States ex rel. Moore & Co., P.A. v. Majestic Blue Fisheries, LLC*, 812 F.3d 294, 300 (3d Cir. 2016); *United States ex rel. Osheroff v. Humana, Inc.*, 776 F.3d 805, 810 (11th Cir. 2015); *United States ex rel. May v. Purdue Pharm. L.P.*, 737 F.3d 908, 916 (4th Cir. 2013).



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served electronically to all counsel of record on this 25th day of September, 2019:

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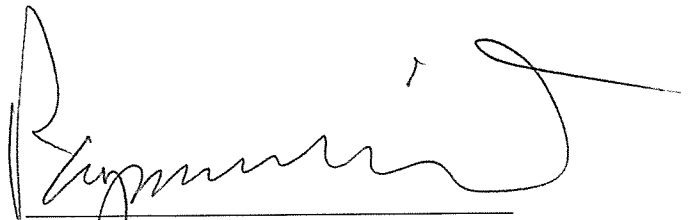
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