CAUSE NO. _____

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

PLAINTIFF'S ORIGINAL PETITION

The State of Texas, by and through the Attorney General of Texas, Greg Abbott, brings this law enforcement action pursuant to the Texas Medicaid Fraud Prevention Act, ("TMFPA"), TEX. HUM. RES. CODE ANN. chapter 36. The State would show the Court:

I. DISCOVERY CONTROL PLAN

1. Plaintiffs designate this case as a Level 3 case requiring a discovery control plan tailored to the circumstances of the specific suit.

II. THE PARTIES

2. Plaintiff is the State of Texas, by and through the Attorney General of Texas ("Texas" or "the State").

3. Defendant Xerox Corporation is a corporation organized under the laws of New York and may be served with process upon its registered agent, Prentice Hall Corporation, 211 E. 7th Street, Suite 620, Austin, Texas 78701-3218. Defendant Xerox State Health Care, LLC, is a wholly-owned subsidiary of Xerox Corporation organized under the laws of the State of Delaware with Texas offices at 2828 N. Haskell Ave., Dallas, Texas 75204, and may be served with process upon its registered agent, CSC-Lawyers Incorporating Service Company, 211 E. 7th

Street, Suite 620, Austin, Texas 78701-3218. Defendant ACS Healthcare, LLC, a Xerox Corporation, is a wholly-owned subsidiary of Xerox Corporation organized under the laws of the State of Delaware with its Texas offices at 2828 N. Haskell Ave., Dallas, Texas 75204, and may be served with process upon its registered agent, CSC-Lawyers Incorporating Service Company, 701 Brazos Street, Suite 1050, Austin, Texas 78701. Defendant Xerox Corporation acquired Defendant ACS in 2010. On information and belief, ACS State Healthcare, LLC, changed its name to Xerox State Healthcare, LLC, on April 1, 2012. Defendants are referred to hereafter as "Xerox."

III. JURISDICTION AND VENUE

4. This Court has subject-matter jurisdiction over this action pursuant to section 36.052(d) of the TMFPA, which provides statutory remedies to redress the conduct of Defendants. The TMFPA provides authority for this action to be brought by the Attorney General. Tex. Hum. Res. Code §§ 36.052, 36.102. Jurisdiction is further proper because the amounts sought from each Defendant are in excess of the minimum jurisdictional limits of this Court.

5. This Court has jurisdiction over the Defendants named in this Petition, because each Defendant does business in the State of Texas and committed the unlawful acts alleged in this Petition in whole or in part in Texas.

6. Venue is proper in Travis County under section 36.052(d) of the TMFPA and because many of the unlawful acts committed by Defendants were committed in Travis County, including the making of false statements and misrepresentations of material fact to the Texas Medicaid Program.

IV. PRELIMINARY STATEMENT AND NATURE OF THIS ACTION

7. This is a law enforcement action alleging unlawful acts and seeking civil remedies under the TMFPA.

8. Xerox's unlawful acts resulted in a substantial breach of safeguards intended to protect taxpayer dollars, maintain the integrity of Medicaid policies, and ensure the appropriate delivery of services to Medicaid clients. Xerox permitted an unprecedented loss of Medicaid funds to predatory and unscrupulous dental providers. As a result of the conduct of both Xerox and these providers, the Medicaid program was deeply compromised. During the time period beginning January 1, 2004, when Xerox began its tenure as the State's Medicaid contractor, and ending March 1, 2012, when Texas shifted most of its dental benefits to managed care, Texas Medicaid expended approximately $1.1 billion dollars for orthodontic services to Medicaid clients. Although a comprehensive damage estimate has not been completed, initial reviews of those expenditures indicate that a substantial percentage was paid in violation of Medicaid policies, policies Xerox repeatedly assured Texas it was enforcing. Additionally, because of its misrepresentations, Xerox was paid tens of millions of dollars for services it was, in fact, not performing.

9. Xerox's liability arises from its misrepresentations regarding, and concealment of, material facts regarding its discharge of contractual obligations. Xerox bid for, and won, contracts with the Texas Health and Human Services Commission ("HHSC") and its predecessors to perform program administration for Texas Medicaid. Included among the administration responsibilities was evaluation and proper disposition of prior authorization requests submitted to Medicaid by dental providers for approval of orthodontic treatment. Xerox repeatedly represented to Texas Medicaid officials that its prior authorization system ensured

proper pre-determinations of medical necessity and enforcement of Medicaid policy. Contrary to those representations, Xerox knowingly failed to adequately review the orthodontic PA requests and documentation submitted by providers to obtain prior authorization for orthodontic treatment. Orthodontic PA requests were routinely "rubber-stamped" by Xerox employees without proper review. Vast numbers of these orthodontic PA requests were for children whose condition did not meet Medicaid criteria for treatment. Xerox's failure to properly review these applications permitted Medicaid dental providers to receive payment for services that were not within the scope of medically necessary services permitted by Medicaid dental policy. Xerox's conduct violates the TMFPA.

10. The State seeks to recover: (1) the amount of any payments or the value of any monetary or in-kind benefits provided under the Medicaid program, directly or indirectly, as a result of the Defendants' unlawful acts; (2) pre-judgment interest on the amount of the payments or the value of such payments; (3) two times the amount of the payments or the value of such payments; (4) civil penalties in an amount not less than $5,500 or more than $11,000 for each unlawful act committed by Defendants;[1] (5) costs, attorneys' fees, and expenses; and (6) any and all other remedies that may be allowed under the TMFPA.

V. BACKGROUND

A. The Texas Medicaid Orthodontic Benefit

11. Orthodontic services for children covered by Texas Medicaid are limited by rule and by policy. To qualify for orthodontic treatment, a child must meet a Medicaid-defined test of medical necessity. In general, a child must be age twelve or older, or have lost all primary

[1] This maximum civil penalty would rise to not more than $15,000, for each unlawful act which results in injury to a child under 18, disabled person, or elderly person. *See* TMFPA § 36.052(a)(3)(A).

dentition (sometimes known as "baby teeth"), and suffer from a severe handicapping malocclusion. Medicaid does not authorize orthodontic treatment for cosmetic correction.

12. To ensure compliance with policy, Texas requires dental providers to obtain prior authorization of orthodontic treatment plans. Claims submitted for treatment are not considered for payment unless prior authorization is obtained in advance. Each prior authorization request must include documentation specified by effective policy. These requirements include the submission of a treatment plan, a properly-completed and scored Handicapping Labio-Lingual Deviation score sheet ("HLD sheet") with a minimum score, and clinical documentation supporting medical necessity including but not limited to facial and intraoral photographs and radiographs. Medical necessity for the requested treatment can be verified only by examination and verification of the clinical documentation by a licensed dental professional. HHSC expected and required the prior authorization process implemented by Xerox to include a proper review of all documentation and verification of the client's eligibility for the services requested; that is, a thorough review to ascertain that the client and treatment plan met all program requirements.

B. <u>The 2003 Contract</u>

13. On or about May 1, 2002, HHSC released a Request for Proposal ("2002 RFP") for fiscal and business administration of the Texas Medicaid Program. The 2002 RFP described the prior authorization performance required of a successful bidder:

> Prior authorization (PA) is a mechanism to determine the medical necessity of selected non-emergency, Medicaid-covered, and medical services prior to service delivery. . . .The PA function will serve as a utilization management measure allowing payment for only those services that are medically necessary, appropriate, and cost-effective, and reducing the misuse of specified services.

Additionally, the 2002 RFP listed Vendor Responsibilities that included:

> PAC-1 Receive, correctly disposition (i.e., approve, deny, modify, or determine incomplete) . . . prior authorization requests for services. . . .

PAC-5 Ensure that non-covered services are not prior authorized.

PAC-8 Conduct quality assurance reviews to ensure appropriateness of Medicaid . . . PA analyst decisions.

PAC-15 Ensure PA staff use well-defined processes and procedures for analysis and research for PA approvals.

PAC-17 Provide sufficient and adequate professional medical staff for staffing and managing the PA function, including medically knowledgeable PA analysts for processing requests and availability of licensed medical professionals to provide consultative services regarding all Medicaid . . . covered service types.

PAC-40 Implement a quality assurance process and establish procedures to periodically sample and review dispositioned [sic] PA requests to determine if PA policy and procedures are being followed.

14. In response, Xerox submitted a proposal on August 21, 2002 ("2002 Proposal"). In the 2002 Proposal, Xerox represented to Texas Medicaid that its prior authorization process would ensure the implementation of HHSC-approved dental criteria and policy and prevent medically unnecessary services and identify over-utilization of services. Xerox represented that qualified PA staff would review each request and determine whether the orthodontic PA requests complied with Medicaid policy and the services were medically necessary. Xerox assured Texas Medicaid that qualified clinical personnel would use their medical expertise and HHSC-approved policy to evaluate medical necessity and cost-effectiveness of requested services. Xerox promised that it would provide ongoing quality reviews of PA activities, including reviews of accuracy of the PA determinations and adherence to documented procedures.

15. HHSC awarded the Texas Medicaid Claims/Primary Care Case Management Administrative Services Agreement ("2003 contract") to Xerox. The parties executed the 2003 contract in February, 2003. The 2003 contract specifically incorporates the 2002 RFP and the 2002 Proposal. The 2003 contract expired by its terms on or about August 31, 2007.

16. During the transition period between execution of the contract and the assumption by Xerox of operations on or about January 1, 2004, Xerox personnel submitted for HHSC approval written policies and procedures ("P&Ps") specific to dental PA requests which specifically represented to HHSC that every PA request would be submitted to the dental director employed by Xerox for review. The Xerox P&Ps incorporated the procedure followed by the contractor preceding Xerox, a procedure HHSC expected Xerox to follow unless changes were authorized by HHSC. The P&Ps included a representation that the review of each PA request would include an examination of the HLD scoring sheet as well as the radiographs, facial photographs, and plaster cast models of the patient's teeth.

17. Xerox assumed operations under the 2003 contract on or about January 1, 2004. At or around that same time, Xerox implemented a different procedure than that described in the P&Ps. Without submitting documentation of this change to HHSC, Xerox instructed its dental clerical personnel to automatically approve applications for Medicaid-eligible children, age 12 or over, accompanied by an HLD score sheet that showed a score of 26 or above on its face. The employees assigned to this task had no qualifications to conduct a medical necessity evaluation; and, indeed, these employees made no attempt to do so. In most instances, the employees did not even ascertain that any or all of the required medical documentation was actually submitted by the provider as required by Medicaid policy. Further, the clerical personnel were inadequately trained to review the HLD sheet for obvious over-scoring. If the application was for a person who met Medicaid eligibility requirements and the HLD score was facially 26 or more, approval was entered by the clerical personnel without further examination. This new procedure drastically reduced the number of applications receiving review by the dental director, who was the only person employed by Xerox with the medical qualifications necessary to make a proper

review of these applications.

18. Clerical personnel were directed by Xerox to send only orthodontic PA requests for children whose age was under twelve or whose HLD scores were below 26 to the dental director for review. That was estimated to be 10% of all orthodontic PA requests. However, even the 10% reviewed by the dental director were not properly evaluated. The vast majority of those orthodontic PA requests were approved by the dental director, in many instances when the dental director knew the patient did not meet Medicaid policy requirements. Further, as time went on and the number of PA requests increased, Xerox clerical personnel were instructed to approve applications for children under twelve without dental director review or proper authentication that the child's primary dentition had been lost.

19. During the course of the 2003 contract, Xerox continued to promulgate written documents indicating that every dental PA request was submitted for dental director review. These documents misrepresented material facts regarding the actual procedures followed by Xerox employees.

20. The Xerox clerical personnel processing dental PA requests repeatedly observed providers were submitting dental PA requests that, on their face, indicated a need for professional review by the dental director to ascertain compliance with Medicaid policy. They reported their observations and concerns to their superiors. Despite the concerns raised, Xerox made no changes in its process to increase the level of review. Further, despite its representations regarding the efficacy of its quality assurance processes, Xerox made no attempt to test the accuracy of its orthodontic PA dispositions. Xerox did not even retain the medical documentation necessary to conduct such a test.

21. In fact, Xerox implemented cost-saving measures that made adequate reviews less

likely. In or around August of 2006, Xerox launched its so-called Activity Based Compensation ("ABC"). Under ABC, Dental PA Specialists began working from home and were compensated on a piece-work basis. This incentivized employees to process more PA requests in less time. Xerox's home-based employees had no access to the medical documentation submitted by providers.

22. In 2008, the HHSC Office of Inspector General ("HHSC-OIG") began an audit of the PA processes followed by Xerox employees. HHSC-OIG auditors observed Xerox clerical personnel approving orthodontic PA requests without any review of submitted medical documentation. HHSC-OIG questioned whether this process met Xerox's contractual obligations. Xerox management vigorously contested the issue. Xerox represented to HHSC-OIG that its procedures constituted a medical necessity review of each dental PA request and that the vast majority of the dental PA requests submitted met Medicaid coverage requirements. Xerox made those representations even though it had not verified medical necessity for, in its own estimation, 90% of the dental PA requests submitted and even though Xerox's dental director was approving most of the 10% he reviewed himself even when they did not qualify for services under Medicaid policy. Moreover, Xerox made its representations knowing it had done nothing to test the validity of any prior authorization approvals made by clerical personnel or the dental director.

23. On or about August 29, 2008, HHSC-OIG published its Performance Audit Report ("2008 HHSC-OIG Audit"), finding: "The PA dental team members could be approving a portion of orthodontic PA requests that are not for the treatment of severe handicapping malocclusion and other specially medically necessary circumstances. Dollars paid for orthodontic treatment, for the months of September 2007 through February 2008, were at least

$52.6 million." HHSC-OIG made the formal recommendation that Xerox should sample the orthodontic PA requests approved by its personnel to ensure the PA requests meet the criteria for Texas Medicaid benefits. In its management response to the audit findings and recommendations, Xerox represented that it reviewed the orthodontic PA requests "in accordance with the Medicaid administration contract, policies and rules." Xerox further represented, "[T]he absence of PA reviews by a licensed dental professional does not mean that payments for orthodontic treatment during the audit period of September 2007 through February 2008 were inappropriate." Xerox maintained that dental director review was not required by the contract, only staffing by "medically knowledgeable analysts." Xerox made that representation, knowing that, in fact, none of the clerical personnel processing orthodontic PA requests were medically knowledgeable. Xerox never implemented a process to sample for and confirm compliance with Medicaid policy and/or the documentation of medical necessity in applications approved by its personnel.

24. In or around March, 2009, in response to demands by HHSC for updated P&Ps for all areas of operations, Xerox submitted Dental Prior Authorization P&Ps and Work Instructions to HHSC that indicated that all requests for dental PA were scrutinized to determine that all required documentation was submitted, that the dental and orthodontic PA requests and HLD sheets met Medicaid policy requirements, and that qualifying dental and orthodontic PA requests were routinely submitted for dental director review to determine medical necessity.

25. In or about April, 2009, the HHSC Deputy Medicaid/CHIP Director for Claims Administrator Operations ("HHSC Deputy") became concerned about Xerox's orthodontic PA process. The HHSC Deputy was responsible for oversight of Xerox's contractual performance and was vested with authority to impose sanctions under the contract. The HHSC Deputy's

concerns arose from a review of the 2008 HHSC-OIG Audit and a letter written to HHSC-OIG in November, 2008, by the Texas Office of Attorney General Medicaid Fraud Control Unit ("MFCU letter"). The MFCU letter set out information obtained by MFCU from Xerox's dental director regarding the way Xerox was reviewing orthodontic PA requests.

26. On or about April 15, 2009, the HHSC Deputy issued a State Action Request (SAR) to the Managing Director for Xerox. The SAR attached the MFCU letter of November, 2008, noting: "The contract required that [Xerox] research, analyze, and evaluate all PA decisions and ensure all facts are considered and documented prior to making a PA determination. The contract further requires that [Xerox] correctly disposition all PA requests." The SAR further stated:

> The remarks attributed to the [Xerox] Dental Director by the OAG, if accurate, suggest a serious lack of understanding of the prior authorization requirements for the Medicaid dental program. It is absolutely imperative that [Xerox] exercise clinical judgment for each individual dental prior authorization request submitted and approve only those services that are clinically appropriate.
>
> If the . . . Dental Directors [sic] comments are accurate then those comments represent a serious and material breach of the contract. [Xerox] may be subject to actual damages for any procedures that were not clinically evaluated but were authorized and/or liquidated damages for failure to adequately manage the dental prior authorization program.
>
> Prepare a response to each comment attributed to the . . . dental director in the attached [MFCU] letter and provide HHSC with assurances that each prior authorization for dental services is reviewed by an appropriately credentialed professional to determine dental necessity for the service. Provide HHSC with assurance that every dental service during the current [Xerox] Dental Directors [sic] tenure has been reviewed for clinical necessity.

27. In a meeting held in or about early May, 2009, the HHSC Deputy confronted Xerox with the evidence that Xerox was not reviewing orthodontic PA requests to determine medical necessity and ensure Medicaid policy was properly enforced. Xerox was asked specifically whether it was "rubber-stamping" these requests based solely on the HLD score;

Xerox's Managing Director assured the HHSC Deputy that such was not the case. Xerox represented that it was following policy and properly reviewing orthodontic PA requests. Xerox did not reveal to HHSC that it had, without authorization from HHSC, interpreted HHSC's policies to mean that clerical personnel without any dental training whatsoever were making determinations of medical necessity based solely on whether they saw a 26 or above on the HLD score sheet.

28. On or about May 13, 2009, the Managing Director submitted Xerox's formal written response to HHSC's SAR. Xerox stated: "We have reviewed the SAR comments with [the Dental Director] who states his comments were taken out of context." Xerox made the following representations:

> We review the documentation the provider submits to determine the medical necessity criteria, as outlined in the Texas Health Steps (THSteps) Orthodontic Dental Services Medical Policy. . . .[Xerox] reviews the dental services prior authorization request for medical necessity based on the medical policy guidelines established by HHSC and the dental policy and procedures that are approved by HHSC. The dental specialists who review the requests are trained in the dental Medical Policy and follow the approved policy and procedures to appropriately disposition the PA requests.

29. On or about July 3, 2009, HHSC issued another SAR requesting information regarding Xerox's corrective measures to address the HHSC-OIG audit recommendations had been appropriately implemented. Specifically, HHSC required Xerox to provide to HHSC documentation demonstrating Xerox's quality assurance process and the existing P&P describing that process. HHSC also requested updated work instructions used to train PA staff. On or about July 20, 2009, Xerox issued its response to the July 3, 2009, SAR. Xerox stated that it had not added the sample step recommended by HHSC-OIG but had reviewed an internal sample of ten cases approved by its dental team. Xerox represented to HHSC: "The results of that sample were that all ten cases reviewed showed evidence of a malocclusion and were approved correctly

according to dental policy." Xerox attached what it represented to be its current quality assurance ("QA") P&P for PA. The QA P&P represents that the QA process tests whether "[a]ll medical facts are considered and documented in the PA determination." In addition to the QA P&P, Xerox attached what it represented were current Dental PA work instructions. The described procedure represents dental authorization requests assigned to Dental PA specialists are reviewed "to be certain the request is submitted in its entirety." The procedure continues: "After the request is checked for client and provider eligibility and duplications, the request is forwarded to the Dental Director's in-box for review, and x-rays/photographs (molds, if necessary) are prepared for his inspection." The work instruction adds: "The Dental Director will enter the decision . . ." This documentation submitted by Xerox to HHSC misrepresented material facts regarding actual procedures followed by Xerox personnel.

C. The 2010 Contract.

30. On or about August 15, 2008, HHSC released a new Request for Proposal ("2008 RFP") for administrative services to Texas Medicaid. The 2008 RFP included specifications of the Prior Authorization services HHSC expected a successful bidder to provide:

> Generally, Prior Authorization (PA) is a process used to determine the medical necessity for selected non-emergency medical services, equipment, drugs and supplies before the services or supplies are provided. . . .In compliance with State-approved policies and procedures, the Vendor prospectively implements processes to review the facts associated with certain treatments proposed by providers . . . and makes determinations regarding the medical necessity and appropriateness of care. Prior Authorization requests must be reviewed on a case-by-case basis for clients who are eligible for services. . . .
>
> The primary objective of the PA function by the Vendor is to manage utilization by only allowing payment for those covered services that are medically necessary, appropriate, and cost-effective, thereby reducing over-utilization and/or abuse of specified services.

The general requirements imposed upon the Vendor included:

PAC – 03 Retain and retrieve all PA records in accordance with the State-approved record-retention and retrieval guidelines.

PAC – 04 Establish and follow State-approved policies and procedures for analyzing and researching PA determinations.

PAC – 06 Submit to the State for review and approval a quality assurance plan and procedures for verifying the accuracy of analyst and medical director prior authorization dispositions/decisions (approval, denial, incomplete and modification). The quality assurance plan must include at least a bi-annual review schedule for all types of Prior Authorization decisions, and be submitted to the State annually. Changes to the quality assurance plan and procedures must be approved by the State prior to implementation.

Prior Authorization Processing tasks and activities were included in the 2008 RFP to describe the "results/outcomes" the Vendor must achieve:

PAC – 20 Receive, correctly disposition (i.e. approve, deny, modify, or determine incomplete), . . . prior authorization requests for all services. . . .

PAC – 23 Establish and maintain State-approved processes and procedures to ensure that non-covered services are not prior authorized unless specifically directed by the State.

The 2008 RFP also identified specific criteria to "ensure that appropriate Medical Necessity evaluation is conducted for PA determinations," including:

PAC – 36 Research, analyze and evaluate all PA decisions and ensure all medical facts are considered and documented prior to determination.

The 2008 RFP specified the following with regard to PA staffing:

The Vendor's PA staff must have the education and professional credentials defined by the State to perform the PA tasks and activities.

PAC – 37 Provide and maintain a sufficient number of knowledgeable and professional medical personnel to perform the PA function, in accordance with State-approved processes and procedures.

PA personnel must include:

- Medically knowledgeable PA analysts, to process requests;
- Licensed medical professionals available at all times to provide consultative services with regard to all covered service types; and
- Licensed nurses acting within their scope of practice . . .

31. On or about January 27, 2009, Xerox submitted its Proposal for Medicaid/Children with Special Health Care Needs Services Program Claims Processing, Primary Care Case Management and Pharmacy Claims and Rebate Administration ("2009 Proposal") to HHSC. The Proposal included representations specific to Prior Authorization management:

> The [Xerox] Prior Authorization department offers clients, providers, and the State the benefits of detailed knowledge of medical policy authorization criteria and program services limitations, industry standard evidenced based criteria, as well as the clinical knowledge to facilitate medical necessity determinations.
>
> The Prior Authorization (PA) department consistently demonstrates the principles of good health care program management, enabling the State to conserve health care funds while ensuring the provision of necessary services to clients who genuinely need them.
>
> The director of the PA department . . . accepts responsibility for processing provider authorization requests according to . . . Medicaid . . . program requirements. The director ensures compliance with State and Federal regulations for authorization of services. Along with [Xerox's] medical affairs officer and the medical director, [the PA director] leads the prior authorization activities and is responsible for processing provider authorization requests in accordance with HHSC approved medical policies. We review authorization requests for clients who are eligible for services . . . on a case-by-case basis.

Xerox represented that its PA department met the "primary business objective of the PA function . . . to reduce the excessive utilization or abuse of specified services by requiring prior authorization based on Medicaid policy and sound medical/dental criteria before allowing payment . . .[ensuring] that the services are medically necessary, appropriate, and cost-effective. Xerox represented that it meets this objective by "maintaining an efficient prior authorization process using HHSC approved medical/dental criteria and experienced qualified staff to review authorization requests." Xerox represented that it was meeting HHSC's Business Objective of

Utilization Review to Ensure Appropriate Determinations for Requested Services and Supplies through its reviews of authorization requests for completeness and its determinations by professional medical personnel for medical necessity. Xerox represented that its "PA policies and procedures provide the ability for the prospective review of requested services and benefits," allowing "a comprehensive medical necessity review." Xerox addressed the quality assurance requirements as follows:

> PA quality assurance activities include reviewing that PA determinations apply . . . established policies and procedures appropriately, thereby meeting the applicable Federal and State laws, rules, and regulations and guidelines.

Xerox stated:

> PA staff review and consider all medical facts submitted by a provider . . . when determining medical necessity for requested services. Before making a PA determination we research, analyze, evaluate, and ensure we consider all documented medical facts, in accordance with State approved criteria.

Xerox represented that its PA personnel includes "Medically knowledgeable PA Specialists who analyze and process requests." Xerox further represented that medical necessity reviews were performed only by medically qualified personnel. All of these representations were false.

32. On or about September 1, 2010, Xerox was awarded the new contract ("2010 Contract"). The 2010 contract incorporates both the 2008 RFP and Xerox's 2009 Proposal.

33. On or about January 19, 2011, HHSC issued a SAR identifying performance issues with the prior authorization of orthodontic requests. This SAR named specific authorizations approved by Xerox that did not meet Medicaid policy. On or about May 18, 2011, HHSC issued an "Oral Notice of Deficiency with Corrective Action Plan – Orthodontia Prior Authorization." On or about May 20, 2011, Xerox sent a response SAR to HHSC with what it represented as its current work instructions along with what purported to be "draft" work instructions. The "current" work instructions still described all dental prior authorization requests going to the

dental director. The "draft" work instructions describe a process wherein the Dental Specialist ensures that the request is complete, ensures that the HLD score is 26 or more, and sends orthodontic PA requests for dental director review if the score is less than 26. On or about June 8, 2011, Xerox sent a "follow-up" SAR response to the Oral Notice of Deficiency. In it, Xerox represented to HHSC that the PA specialists who process requests for orthodontia services are "medically knowledgeable PA analysts who do not make final determinations of medical necessity; therefore, these staff are not licensed or certified." Xerox represented to HHSC that the "medically knowledgeable" analysts only approved those applications with a "verified" score of 26 or above. In fact, Xerox personnel were not trained to check the validity of a score of 26 or above. On or about July 19, 2011, in response to continuing requests for clarification by HHSC, Xerox finally admitted: "[Xerox] 'validates' the score by mathematically calculating the providers recorded numbers to ensure the score totals 26 or higher."

34. In or about October, 2011, at HHSC's insistence, Xerox implemented new procedures including a review by a licensed dental professional of all orthodontic PA requests.

35. In or about January, 2012, HHSC instructed Xerox to discontinue processing dental prior authorization requests in anticipation of the implementation of managed care.

VI. APPLICABLE TEXAS STATUTORY PROVISIONS

36. Prior to August 31, 2005, a person committed an unlawful act as defined under the Texas Medicaid Fraud Prevention Act by, among other things:

A. Knowingly or intentionally making or causing to be made a false statement or misrepresentation of material fact on an application for a contract, benefit, or payment under the Medicaid Program; or that is intended to be used to determine a person's eligibility for a benefit or payment under the Medicaid program. TEX. HUM. RES. CODE § 36.002(1)(A) & (B).

B. Knowingly or intentionally concealing or failing to disclose an event that the person knows affects the initial or continued right of the person to a benefit or payment under the Medicaid program and to permit a person to receive a benefit or payment that is not authorized, or that is greater than the benefit or payment that is authorized. TEX. HUM. RES. CODE § 36.002(2).

C. Knowingly or intentionally making, or causing to be made, inducing, or seeking to induce the making of a false statement or misrepresentation of a material fact concerning information required to be provided by a federal or state law, rule, regulation or provider agreement pertaining to the Medicaid Program. TEX. HUM. RES. CODE § 36.002(4)(B).

D. Knowingly or intentionally entering into an agreement, combination, or conspiracy to defraud the state by obtaining or aiding another person in obtaining an unauthorized payment or benefit from the Medicaid program or a fiscal agent. TEX. HUM. RES. CODE § 36.002(9).

37. Since August 31, 2005, a person commits an unlawful act as defined under the Texas Medicaid Fraud Prevention Act by, among other things:

A. Knowingly making or causing to be made a false statement or misrepresentation of a material fact to permit a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized. TEX. HUM. RES. CODE ANN. § 36.002(1)(A) & (B).

B. Knowingly concealing or failing to disclose information that permits a person to receive a benefit or payment under the Medicaid program that is not authorized or that is greater than the benefit or payment that is authorized. TEX. HUM. RES. CODE ANN. § 36.002(2).

C. Knowingly making, causing to be made, inducing, or seeking to induce the making of a false statement or misrepresentation of material fact concerning information required to be provided by a federal or state law, rule, regulation, or provider agreement pertaining to the Medicaid program. TEX. HUM. RES. CODE ANN. § 36.002(4)(B).

VII. DEFENDANTS' VIOLATIONS OF THE TEXAS MEDICAID FRAUD PREVENTION ACT[2]

38. The State re-alleges and incorporates by reference as set forth herein the allegations contained in Paragraphs 1 through 35 of this Petition.

39. Xerox knowingly made or caused to be made false statements or misrepresentations of material facts to HHSC authorities charged with overseeing Xerox's contractual performance regarding:

- The application and enforcement of Medicaid policy with regard to orthodontic treatment;
- The conducting of medical necessity reviews of requests for orthodontic prior authorization;
- The provision of adequate medically knowledgeable personnel to make medical necessity determinations;
- The application and appropriate enforcement of Medicaid policy with regard to the review of documentation submitted by providers to support medical necessity for orthodontic treatment;
- The implementation of quality assurance processes necessary to assess the dispositions of requests for orthodontic prior authorizations;
- The retention of records necessary to justify the dispositions of requests for orthodontic prior authorizations.

Xerox's false statements and/or misrepresentations permitted orthodontic providers to receive benefits under the Medicaid program in violation of Section 36.002(1) of the TMFPA.

---

[2] In August of 2005, applicable provisions of the TMFPA were amended as set forth in ¶¶ 36 through 37 above. Plaintiffs are seeking the appropriate remedies for Defendants' unlawful acts (which include Defendants' conduct both prior to and after August 2005 for purposes of this lawsuit) as defined in the TMFPA at the time such unlawful acts were committed.

40. Xerox knowingly concealed from, or failed to disclose to, HHSC authorities charged with overseeing Xerox's contractual performance events or information regarding:

- The application and enforcement of Medicaid policy with regard to orthodontic treatment;
- The conducting of medical necessity reviews of requests for orthodontic prior authorization;
- The provision of adequate medically knowledgeable personnel to conduct medical necessity determinations;
- The application and appropriate enforcement of Medicaid policy with regard to the submission by providers of medical documentation to support medical necessity for orthodontic treatment;
- The implementation of quality assurance processes necessary to assess the dispositions of requests for orthodontic prior authorizations;
- The retention of records necessary to justify the dispositions of requests for orthodontic prior authorizations.

Xerox's concealment and failure to disclose material information permitted orthodontic providers to receive payments under the Medicaid program that were not authorized or that were greater than the benefits authorized in violation of Section 36.002(2) of the TMFPA.

41. Xerox knowingly or intentionally made, or caused to be made, induced, or sought to induce the making of false statements or misrepresentations of material facts concerning information required to be provided by a federal or state law, rule, regulation or provider agreement pertaining to the Medicaid Program in violation of Section 36.002(4) of the TMFPA. Xerox's conduct permitted Xerox to receive payments for services it failed to perform and

induced the Texas Medicaid program to make payments to both Xerox and orthodontic providers that should not have been paid.

42. As a result of Xerox's conduct, hundreds of millions of dollars in payments were made for services not performed and orthodontic benefits not authorized by Medicaid policy by the State of Texas.

43. Under the TMFPA, Xerox is liable to the State of Texas for the value of any payments or any monetary or in-kind benefits provided under the Medicaid program, directly or indirectly, as a result of its unlawful acts, two times the amount of those payments, plus pre-judgment interest on the value of those payments, and a civil penalty for each unlawful act committed, in addition to the fees, expenses, and costs of the State of Texas in investigating and obtaining civil remedies in this matter. TEX. HUM. RES. CODE §§ 36.052, 36.007.

44. The State invokes all relief possible at law or in equity under TEX. HUM. RES. CODE §36.052, whether specified in this pleading or not.

45. The amounts sought from Xerox are in excess of the minimum jurisdictional limits of this Court.

VIII. STATUTORY INJUNCTION UNDER § 36.051 OF THE ACT

46. The Attorney General has good reason to believe the Defendants are committing, have committed, or are about to commit unlawful acts as defined by the TMFPA. These illegal acts may be enjoined under § 36.051 of the Act, and under TEX. GOVT. CODE § 2001.202.

IX. JURY DEMAND

47. The State respectfully requests a trial by jury on all claims pursuant to Texas Rules of Civil Procedure 216.

X. PRAYER

48. The State asks that judgment be entered upon trial of this case in favor of the State against Xerox to the maximum extent allowed by law.

49. The State asks for injunctive relief pursuant to § 36.051 of the TMFPA and under TEX. GOVT. CODE § 2001.202.

50. The State asks that it recover from Xerox:

A. restitution of overpayments made as a result of Xerox's unlawful acts;

B. two times the value of any overpayments made as a result of Xerox's unlawful acts;

C. civil penalties;

D. prejudgment interest;

E. expenses, costs and attorneys' fees; and

F. post-judgment interest at the legal rate.

Respectfully submitted,

GREG ABBOTT
Attorney General of Texas

DANIEL T. HODGE
First Assistant Attorney General

JOHN SCOTT
Deputy First Assistant Attorney General

RAYMOND C. WINTER
State Bar No. 21791950
Chief, Civil Medicaid Fraud Division
raymond.winter@texasattorneygeneral.gov
(512) 936-1709
MARGARET MOORE
State Bar No. 14360050
Deputy Chief, Civil Medicaid Fraud Division
margaret.moore@texasattorneygeneral.gov
(512) 936-1319 direct dial
REYNOLDS BRISSENDEN
State Bar No. 24056969
reynolds.brissenden@texasattorneygeneral.gov
(512) 936-2158 direct dial
DAVID DREW WRIGHT
State Bar No. 00789965
drew.wright@texasattorneygeneral.gov
(512) 936-1486 direct dial
DAMON T. ONG
State Bar No. 24065846
damon.ong@texasattorneygeneral.gov
(512) 936-6615 direct dial
MATTHEW MILLER
State Bar No. 24051959
matthew.miller@texasattorneygeneral.gov
(512) 936-1420 direct dial
BRADEN CIVINS
State Bar No. 24080836
braden.civins@texasattorneygeneral.gov
(512) 463-7975 direct dial
WILLIAM VAN SCHELLENBECK
State Bar No. 24084006
william.vanshellenbeck@texasattorneygeneral.gov
(512) 936-9912 direct dial
JENNIFER L. HOPGOOD
State Bar No. 24073010
jennifer.hopgood@texasattorneygeneral.gov
(512) 463-1045 direct dial
KATHRYN B. ALLEN
State Bar No. 24055134
kathryn.allen@texasattorneygeneral.gov
(512) 936-1703 direct dial

Assistant Attorneys General
P.O. Box 12548
Austin, Texas 78711-2548
(512) 499-0712 fax

ATTORNEYS FOR THE STATE OF TEXAS