

**IN THE DISTRICT COURT IN AND FOR OKMULGEE COUNTY
STATE OF OKLAHOMA**

DR Z LEAF CULTIVATION, LLC,)
DR Z LEAF PROCESSING, LLC)
DR Z LEAF, LLC, individually and)
on behalf of all similarly situated)
persons,)

Plaintiffs,)

vs.)

STATE OF OKLAHOMA *EX REL.*,)
THE OKLAHOMA MEDICAL)
MARIJUANA AUTHORITY A)
DIVISION OF THE OKLAHOMA)
STATE DEPARTMENT OF HEALTH)

Defendants.)

CASE NO. _____
Judge: _____

**CLASS ACTION PETITION FOR
DECLARATORY JUDGMENT AND INJUNCTIVE RELIEF**

COME NOW the Plaintiffs, by and through their attorneys of record Ronald E. Durbin, II, Christina M. Vaughn, Jaclynn R. Loney, and Wilson White of Viridian Legal Services, PLLC, and for their causes of action against the Defendant, allege and state as follows:

NATURE OF THE ACTION: CLASS ACTION STATUS

1. This is a class action that: (1) seeks declaratory judgment as outlined herein and (2) seeks emergency and permanent injunctive relief as requested herein.
2. The following questions of law and fact are common to each proposed Class Member and predominate over questions that may affect individual Class members, and include, among others:
 - a. Whether OSDH violated the Oklahoma Administrative Procedures Act by not properly adopting regulations and by adopting regulations in excess of its

statutory authority related to implementation of a medical marijuana seed-to-sale program;

- b. Whether the contract between OSDH/OMMA and Metrc constitutes an unlawful tax;
- c. Whether OSDH/OMMA improperly used and continues to improperly use taxes collected from the Oklahoma medical marijuana program;
- d. Whether OSDH/OMMA is properly allocating tax revenue it receives from the Oklahoma medical marijuana program;
- e. Whether the contract between OSDH/OMMA and Metrc constitutes the creation of an unlawful monopoly;
- f. Whether OSDH/OMMA violated the Due Process Clause of the Oklahoma Constitution by forcing licensees to accept/pay for the Metrc seed-to-sale system;
- g. Whether the contract between OSDH/OMMA and Metrc forbids Metrc from charging Oklahoma businesses shipping costs related to the purchase of RFID tags from Metrc.

JURISDICTION AND VENUE

- 3. Dr Z Leaf Cultivation, LLC is an Oklahoma limited liability company with its primary business activities located in Okmulgee County, State of Oklahoma.
- 4. Dr Z Leaf Cultivation, LLC holds a medical marijuana grower license issued by OKDH/OMMA and engages in the cultivation and sale of medical marijuana in Okmulgee County, State of Oklahoma.

5. Dr Z Leaf Processing, LLC is an Oklahoma limited liability company with its primary business activities located in Okmulgee County, State of Oklahoma.
6. Dr Z Leaf Processing, LLC holds a medical marijuana processor license issued by OKDH/OMMA and engages in the processing and sale of medical marijuana in Okmulgee County, State of Oklahoma.
7. Dr Z Leaf, LLC is an Oklahoma limited liability company with its primary business activities occurring in Tulsa County, State of Oklahoma.
8. Dr Z Leaf, LLC holds medical marijuana dispensary licenses issued by the Oklahoma Department of Health and engages in the sales of medical marijuana in the State of Oklahoma.
9. Plaintiffs have a vested interest in the matters at issue in this litigation and the proper enactment and rule promulgation related to 63 O.S. §§ 420A *et seq.*
10. A class action pursuant to 12 O.S. § 2023 is proper due to the fact that: (1) Plaintiffs are businesses licensed by OSDH/OMMA pursuant to 63 O.S. §§ 420 *et seq.* (hereinafter the “Act”) and thus impacted by the matters addressed herein, (2) there are more than ten thousand (10,000) businesses licensed pursuant to the Act, (3) there are questions of law and fact common to all class members, (4) the claims and defenses of the representative parties are typical of the claims and defenses of the class, and (5) the representative parties will fairly and adequately protect the interests of the class.
11. The Defendant, State of Oklahoma, is a State and part of the United States of America.

12. The Defendant, the Oklahoma Department of Health (“OSDH”), is a political subdivision of the State of Oklahoma, and it is the state agency with the statutory authority to license and regulate medical marijuana business in Oklahoma pursuant to the Act.
13. The Oklahoma Medical Marijuana Authority (“OMMA”) is a further subdivision of OSDH and most directly regulates the activities of medical marijuana businesses in Oklahoma on behalf of OSDH.
14. The actions giving rise to this suit occurred in and have direct impact on Okmulgee County, State of Oklahoma.
15. The Court has subject matter jurisdiction over the claims alleged herein and may properly exercise personal jurisdiction over the Defendants.
16. Venue is proper in Okmulgee County.

FACTUAL BACKGROUND

17. On June 26, 2018, State Question 788 (hereinafter “SQ 788”) was approved by the citizens of the State of Oklahoma by more than fifty-seven percent (57%) of those voting.
18. SQ 788 was subsequently codified as the Act.
19. The Act requires OSDH to create regulations for implementation and oversight of the activities authorized by SQ 788 and subsequent amendments thereto.
20. The Act also requires business registration with the Oklahoma Bureau of Narcotics and Dangerous Drugs.
21. No other state entity is authorized, empowered, or directed to take any action with regard to implementation and regulation of the activities authorized under the Act.

22. As of March 5, 2021, the OMMA was responsible for the oversight of 10,587 licensed medical marijuana businesses. In Okmulgee County alone, there are at least 143 licensed grows, 23 processors, and 19 dispensaries.
23. OSDH, in the exercise of its authority, adopted regulations to govern the activities of these 10,587 businesses as authorized by the Act. *See* 310: 681-1-1 *et seq.* (hereinafter the “Regulations”).

STATUTES RELATED TO SEED-TO-SALE TRACKING

24. The Oklahoma Legislature’s directive to the OSDH/OMMA related to oversight of the medical marijuana program in Oklahoma is expressed by the Legislature in Oklahoma statutes.
25. As part of the medical marijuana program in Oklahoma, the Legislature laid out its policy regarding seed-to-sale.
26. For dispensaries, the Oklahoma Legislature mandated only that:

Retailers will be required to **complete a monthly sales report** to the Oklahoma Department of Health. This report will be due on the 15th of each month and provide reporting on the previous month. This report will detail the weight of marijuana purchased at wholesale and the weight of marijuana sold to card holders, and account for any waste. The report will show total sales in dollars, tax collected in dollars, and tax due in dollars.

63 O.S. § 421(C) (emphasis added).

27. Nothing in Oklahoma statute requires or directs any medical marijuana dispensary to engage in or participate in any *specific* seed-to-sale system.
28. Nothing in Oklahoma statute requires or directs any medical marijuana dispensary to purchase or use RFID tags or other systems to track inventory and sales.
29. For growers, the Oklahoma Legislature mandated only that:

A licensed commercial grower will be required to **complete a monthly yield and sales report** to the Oklahoma Department of Health. This report will be due on the 15th of each month and provide reporting on the previous month. This report will detail amount of marijuana harvested in pounds, the amount of dying or dried marijuana on hand, the amount of marijuana sold to processors in pounds, the amount of waste in pounds, and the amount of marijuana sold to retailers in lbs. Additionally, this report will show total wholesale sales in dollars. **The Oklahoma State Department of Health will have auditing responsibilities to ensure that all marijuana being grown is accounted for.**

63 O.S. § 422(C) (emphasis added).

30. Nothing in Oklahoma statute requires or directs any medical marijuana grower to engage in or participate in any *specific* seed-to-sale system.
31. Nothing in Oklahoma statute requires or directs any medical marijuana grower to purchase or use RFID tags or other systems to track plants or products.
32. The auditing responsibility of grower reports and accountability of marijuana being grown in Oklahoma is placed squarely and solely in the hands of OKDH/OMMA by the Oklahoma Legislature.
33. The Oklahoma Legislature, using express language, clearly set the policy that it shall be the responsibility of OSDH/OMMA, and not individual licensed growers, to review and audit reports filed by licensed businesses as the agency deems necessary.
34. For processors, the Oklahoma Legislature mandated only that:

Processors will be required to complete a **monthly yield and sales report** to the Oklahoma State Department of Health. This report will detail amount of marijuana purchased in pounds, the amount of marijuana cooked or processed in pounds, and the amount of waste in pounds. Additionally, this report will show total wholesale sales in dollars. **The Oklahoma State Department of Health will have oversight and auditing responsibilities to ensure that all marijuana being grown (sic) is accounted for.**

63 O.S. § 423(C) (emphasis added).

35. Nothing in Oklahoma statute requires or directs any medical marijuana processors to engage in or participate in any specific seed-to sale-system.
36. Nothing in Oklahoma statute requires or directs any medical marijuana processor to purchase or use RFID tags or other systems to track inventory or products.
37. The auditing responsibility of processor reports and accountability of marijuana being processed in Oklahoma is placed squarely and solely in the hands of OKDH/OMMA by the Oklahoma Legislature.
38. The Oklahoma Legislature, using express language, clearly set the policy that it shall be the responsibility of OSDH/OMMA, and not individual licensed processors, to review and audit reports filed by licensed businesses as the agency deems necessary.
39. OSDH, in the performance of its duties, including those identified above, is authorized by the Legislature to “Contract with third-party vendors and other governmental entities in order to carry out the respective duties and functions as specified in this act” 63 O.S. § 427(D)(2).
40. As identified above, it is the responsibility of OSDH/OMMA to **audit** monthly reports filed by Oklahoma medical marijuana businesses.
41. OSDH is also tasked with having “oversight and auditing responsibilities that all marijuana being **grown** in Oklahoma is accounted for and shall implement an inventory tracking system.” 63 O.S. § 427.13(B)(1).
42. According to the Legislature, “[t]he inventory tracking system licensees use shall allow for integration of other seed-to-sale systems” 63 O.S. § 427.13(B)(2).
43. Medical marijuana businesses in Oklahoma are required to “use a seed-to-sale tracking system **or** integrate its own seed-to-sale tracking system with the seed-to-

sale tracking system established by the Authority.” 63 O.S. § 427.13(B)(3) (emphasis added).

44. Nothing in Oklahoma statute requires any medical marijuana business to use the seed-to-sale system selected by the State to carry out its auditing responsibilities, and certainly nothing in Oklahoma statute requires those companies to purchase RFID tags and pay monthly service fees to a company selected by OSDH/OMMA to carry out its auditing responsibility.
45. Nothing in Oklahoma law authorizes the OMMA to pass any costs related to its auditing and oversight obligations on to any medical marijuana business.
46. Nothing in Oklahoma law authorizes the OMMA to pass any costs related to the seed-to-sale system selected by OSDH/OMMA on to any medical marijuana business.

OSDH REGULATIONS RELATED TO SEED-TO-SALE

47. In the performance of its duties related to auditing and oversight of a seed-to-sale program, OSDH adopted very few regulations to direct activities related to the seed-to-sale system in Oklahoma.
48. In OSDH’s scant regulations on the subject, the agency provided that, “[e]ach business licensee shall use the seed-to-sale tracking system established by the Department **or** a seed-to-sale tracking system that integrates with the Department-established system at the time of its implementation.” 310:681-5-6(d) (emphasis added). This regulation appropriately mirrors the statute providing for the same.
49. In furtherance of its oversight authority, OSDH also provides that it may “perform on-site audits of all commercial licensees to ensure the accuracy of the monthly

reports and to ensure that all marijuana grown in Oklahoma is accounted for.”
310:681-5-6(d).

50. Nothing in any OSDH/OMMA regulation requires any Oklahoma medical marijuana business to: (1) participate in any Metrc training courses, (2) onboard with Metrc, (3) pay Metrc a \$40.00 monthly fee, (4) pay Metrc \$0.45 per plant tag, (5) pay Metrc \$0.25 per package tag, (6) hire additional staff to carry out the activities related to tagging all packages and plants, or (7) engage in any activity related to uploading any information to Metrc.
51. Despite the fact that nothing in Oklahoma statute or any regulation adopted by OSDH/OMMA requires any medical marijuana business to engage in the activities outlined above, OSDH/OMMA, via press releases and other improper activities not authorized by the OAPA, has demanded that businesses comply regardless.
52. Outside of and in direct contradiction to the OAPA, the OMMA has issued numerous directives to licensed medical marijuana businesses which purport to mandate actions not in conformity with Oklahoma statutes, legislative directives, and existing OSDH medical marijuana regulations.

**STATE OF OKLAHOMA CONTRACT WITH
METRC FOR SEED-TO-SALE TRACKING BY OSDH**

53. On September 18, 2020 the State of Oklahoma by and through the office of Office Management and Enterprise Services (“OMES”), entered into a contract with Metrc, LLC (“Metrc”) for the purpose of providing a supplier-hosted cannabis inventory tracking system solution, also called ‘seed-to-sale’, to assist OMMA in monitoring the cannabis supply chain lifecycle statewide.

54. According to the OMMA, in order for its selected system to work, all medical marijuana businesses in the state of Oklahoma must attach some form of tag (such as a barcode label, RFID (Radio-frequency Identification) tag, etc.) to each plant and every product they produce. Each tag (and thus plant or product) is then associated with a unique identifier number in the State's database.
55. The Final and Best Offer Sheet of the Contract calls for OMMA to pay Metrc only \$5,000 in the first year of the contract. In years 2-10, OMMA would pay Metrc \$40,000 per year. *See Metrc Contract attached hereto as Exhibit 1.*
56. The contract between OSDH/OMMA and Metrc also allows Metrc to directly charge the 10,587 Oklahoma licensees a reporting fee of \$40 dollars per month per license. Metrc stands to gain \$5,081,760.00 per year in monthly service subscription fees alone.
57. OMMA also contracted to allow Metrc to directly charge the 10,587 independent Licensees \$0.45 for each individual RFID plant tag and \$0.25 for each individual RFID package tag.
58. In the Final and Best Offer Sheet, Metrc stated an estimated average cost per Oklahoma Licensee of \$705.00 dollars per year for the plant and product tags. Based on Metrc's incredibly conservative and likely fraudulent estimations, it stands to receive \$7,463,835.00 in tag sales alone each year.
59. According to Metrc's own calculations, the OMMA contracted to allow Metrc to directly charge Oklahoma independent Licensees for the monthly reporting fee and plant and product Tags in an amount totaling more than \$12,545,595.00 per year.

60. The initial seed to sale contract term was for a period of one (1) year. There are nine (9) one-year options to renew the contract.

OSDH RULEMAKING CONCERNING METRC

61. On September 18, 2020, nearly seven (7) months ago, OMMA announced on Facebook and Twitter that it had signed a contract with Metrc for implementation of a statewide seed-to-sale tracking system.
62. Despite the fact that the contract was signed and announced 7 months ago, OSDH/OMMA has not adopted any regulations to direct businesses in the manner in which the agency expects businesses to use the state selected seed-to-sale program.
63. On October 30, 2020, OSDH/OMMA posted on its Twitter account an F.A.Q. asking “How much will it cost for the system?” The response listed prices for Metrc and stated “There are no hidden fees or large one-time costs to use Metrc.” The post contained a link directing consumers to the Metrc website.
64. On November 3 and November 20, 2020, OSDH/OMMA posted on its Facebook account that the “Metrc team” would be hosting an introductory presentation, with information about “the benefits of operating within our track-and-trace system,” and included a link to the Metrc website.
65. On November 4, 2020, OSDH/OMMA uploaded a post on its Twitter account with the following: “Does Metrc understand the medical marijuana industry? Yes. Metrc provides its track-and-trace solution for 13 other states and the District of Columbia and has been providing supply chain solutions since 1993.” The post included a link directing consumers to the Metrc website.

66. On February 23, 2021, OMMA uploaded a post to its Facebook account stating the following: “Seed to Sale timeline. Training is MANDATORY. Schedule training now at: [link],” along with a photograph of a timeline reflecting that inventory must be in the Metrc system by April 30, 2021.
67. On March 3, 2021, OMMA uploaded a post to its Facebook and Twitter accounts stating “Don’t get caught off guard, check out the Metrc timeline and sign up for training.” The post included a link directing consumers to the Metrc website.
68. On March 17, 2021, OMMA uploaded a post to its Facebook account for a “seed to sale sign-up reminder,” including a photograph of a seed to sale timeline reflecting that inventory must be in the Metrc system by April 30, 2021.
69. On March 24, 2021, OMMA uploaded a post to its Facebook and Twitter accounts stating: “Timing is everything! OMMA licensees need to be trained and credentialed in Metrc before they can put their inventory info into the system.” *See Id.*
70. On April 5, 2021, OMMA uploaded a post to its Facebook account stating: “All OMMA businesses are required to be fully operational in the Metrc system by the April 30th deadline.” The post also contained a photograph of an amended seed to sale timeline reflecting that inventory must be in the Metrc system by April 30, 2021. The photograph displayed text stating: “All inventory and transactions must be tracked in Metrc by **April 30th**”; and “Businesses **must complete Metrc training and credentialing prior to entering inventory.**”
71. The OMMA website contains a “Seed to Sale” page. The only seed-to-sale company listed on that page is Metrc. There is no mention of the ability of a third-party tracking company to integrate with Metrc on that page. The page includes the following

statements: “Over the next few months, businesses will be trained on the use of the system, begin using Metrc plant and package tags, and use the Metrc system to track inventory, transfers, and sales. The Metrc system will replace the mandatory monthly reports businesses have been sending to OMMA.”

72. According to Metrc, who set up a site specifically for implementation of OSDH seed-to-sale in Oklahoma, when it relates to use of Metrc in Oklahoma:

“Q: Do I have to use Metrc? What if I want to use my own inventory control system?”

A: You **must use Metrc** to track your marijuana. A licensee can input sales data directly into Metrc through the user interface, but licensees who prefer to use third-party POS providers using the Metrc Application Programming Interface (API) or by uploading Comma-Separated Values (CSV) file will be able to do so. Metrc will provide an API key to customers who wish to use a third-party inventory management system. Each licensee is responsible for ensuring their ability to interface with the state procured system. **All licensees will be required to use the tags supplied by Metrc.** Licensees without a third party POS system may opt to input sales directly into Metrc.” (emphasis added).

73. Each of the aforementioned posts by OSDH/OMMA constitute rulemaking by OSDH/OMMA using press releases in violation of the OAPA.

STATUTES RELATED TO COSTS INCURRED FOR SEED-TO-SALE

74. Pursuant to 63 O.S. § 426, (SQ 788 Tax), the tax on retail medical marijuana sales will be established at seven percent (7%) of the gross amount received by the seller.
75. According to 63 O.S. § 426(B), “Tax proceeds will be applied primarily to finance the regulatory office.”
76. OSDH/OMMA has failed to apply taxes generated to finance the regulatory office, including but not limited to, OSDH/OMMA’s obligation to audit the monthly reporting by Oklahoma medical marijuana growers, processors, and dispensaries.

77. From January 1, 2019 through March 31, 2021, the 7% Excise Tax generated over \$97,041,008.00.
78. When including the \$2,500 application fee paid by each business and the individual patient license fees paid to OSDH/OMMA, over \$161,000,000.00 has been generated for the benefit of OSDH/OMMA to finance the regulatory office and to pay for its obligations related to implementation of the Seed to Sale tracking system's monthly reporting fees and for the individual plant and product RFID tags.
79. The OK.Gov website dealing with revenue and expenses of marijuana sales shows that the OMMA regulatory office expenses were only \$5,346,753 for calendar year 2020 meaning that approximately 156 million dollars was collected by but not spent by the OMMA.

COUNT I: DECLARATORY RELIEF—OMMA VIOLATED THE OKLAHOMA ADMINISTRATIVE PROCEDURES ACT BY NOT ADOPTING REGULATIONS AND BY ADOPTING POLICY IN EXCESS OF ITS STATUTORY AUTHORITY

80. The Plaintiffs adopt and incorporate Paragraphs 1-79 of this Petition as if fully set out herein.
81. The Metrc contract and the requirements of compliance dictated by OSDH/OMMA are inconsistent with the legislative policy of the State of Oklahoma.
82. As laid out above, OSDH/OMMA failed to properly adopt any regulations pursuant to the OAPA to govern the implementation of the Metrc system contracted by the State of Oklahoma.
83. The OSDH/OMMA press releases related to Metrc clearly constitute a directive by OSDH/OMMA designed to implement or prescribe law and dictate agency policy to licensed Oklahoma medical marijuana businesses.

84. Pursuant to the OAPA, “[n]o agency rule is valid or effective against any person or party, or may be invoked by the agency for any purpose, until it has been promulgated as required by the [OAPA].” 75 OS. §308.2(A).
85. The press release directives by OSDH/OMMA related by Metrc constitute improperly adopted agency rules in violation of Section 250.3(17)(f) of the OAPA.
86. Even if OSDH/OMMA adopted regulations pursuant to the OAPA that contained the same directives as those in the OSDH/OMMA press releases addressed above, such regulations would clearly exceed the authority granted to OSDH/OMMA by the Oklahoma Legislature.
87. The Oklahoma Legislature did not authorize OSDH/OMMA to adopt regulations authorizing them to establish a single seed-to-sale program for use by all Oklahoma medical marijuana businesses.
88. The Oklahoma legislature did not authorize OSDH/OMMA to adopt regulations passing along the costs of the OSDH/OMMA seed-to-sale tracking program to Oklahoma medical marijuana businesses.
89. The Oklahoma legislature did not authorize OSDH/OMMA to require all medical marijuana plants grown in the State of Oklahoma to contain a Metrc RFID tag, or any other tag for that matter.
90. The Oklahoma legislature did not authorize OSDH/OMMA to require that all medical marijuana products created in the State of Oklahoma contain a Metrc RFID tag.
91. The requirements now mandated by OSDH/OMMA exceed the legislative requirements placed on Oklahoma growers who are only required to complete a monthly yield and sales report. *See* 63 O.S. § 422(C).

92. It is the responsibility of OSDH/OMMA to **AUDIT** reports from growers to ensure accuracy, and nothing in Oklahoma statute authorizes OSDH/OMMA to shift its auditing and oversight activities to Oklahoma growers using the labor paid for by those growers. *See Id.*
93. The requirements by OSDH/OMMA exceed the legislative requirements placed on Oklahoma processors who are only required to complete a monthly yield and sales reports. *See Id.*
94. It is the responsibility of OSDH/OMMA to **AUDIT** reports from processors to ensure accuracy, and nothing in Oklahoma statute authorizes OSDH/OMMA to shift its auditing and oversight activities to Oklahoma processors using the labor paid for by those processors. *See Id.*
95. The Metrc system does not allow for integration with existing seed-to-sale programs utilized by Oklahoma medical marijuana businesses because the contract requires that Oklahoma businesses use and pay for the Metrc system and use the Metrc proprietary RFID tags. As such, any requirement by OSDH/OMMA to use Metrc exceeds legislative authority.
96. The requirement that Oklahoma businesses use the Metrc proprietary tags is contrary to the statutory requirement that Metrc integrate with other seed-to-sale programs. *See 63 O.S. § 427.13(B)(2).*
97. A mandatory requirement by OSDH/OMMA that Oklahoma businesses use Metrc directly violates even the existing regulations of OSDH/OMMS.
98. The current regulations of OSDH/OMMA provide that Oklahoma businesses must have a choice when it comes to seed-to-sale.

99. Specifically, the OSDH/OMMA used the word OR when it noted that businesses can use their own seed to sale program **OR** “a seed-to-sale tracking system that integrates with the Department established system at the time of its implementation.” *See* 310:681-5-6(d).
100. As the seed-to-sale contract is effective May, 1, 2021, no time exists for any of the licensees to be informed of the possible rules and requirements that OMMA may contemplate.
101. Pursuant to the aforementioned facts and allegations, the Plaintiffs are entitled to declaratory judgment determining that OSDH/OMMA wholly failed to timely and properly draft and promulgate rules to ensure the effective administration of provisions in accordance with the OAPA.
102. Plaintiffs hereby request and are entitled to declaratory judgment that any attempt by OSDH/OMMA to now adopt regulations does not constitute an emergency as the Metrc contract was executed more than 7 months ago.
103. Plaintiffs hereby request and are entitled to declaratory judgment that any attempt by OSDH/OMMA to now adopt regulations must follow the normal procedures of the OAPA excluding those procedures which allow for emergency adoption.
104. Plaintiffs are entitled to declaratory judgment that no Oklahoma law requires them to purchase or use the Metrc system or Metrc RFID tags.
105. Plaintiffs are entitled to declaratory judgment that no OSDH/OMMA statute or regulation requires them to purchase or use the Metrc system at a cost of \$40.00 per month per licensee.

106. Plaintiffs are entitled to declaratory judgment that no OSDH/OMMA statute or regulation requires the business to purchase and use RFID tags from Metrc at the cost of \$0.45 per plant tag and \$0.25 per package tag.
107. Plaintiffs are entitled to declaratory judgment that their reporting obligations consist of monthly reports that must be filed with OSDH/OMMA, and that such reports are not synonymous with using the Metrc system.
108. Plaintiffs are entitled to declaratory judgment that any requirement by OSDH/OMMA to force businesses to use Metrc exceeds the legislative authority granted OSDH/OMMA.
109. Plaintiffs are entitled to declaratory judgment that, even if OSDH/OMMA is authorized to require Oklahoma businesses to use Metrc, OSDH/OMMA lacks the authority to require any Oklahoma business to pay Metrc for its service or pay Metrc for any RFID tags.
110. Plaintiffs are entitled to declaratory judgment that, even if OSDH/OMMA is authorized to require Oklahoma businesses to use Metrc tags and the Metrc system, it is the responsibility of OSDH/OMMA to supply all tags and labor required to affix all tags to all plants and products in the State of Oklahoma.

**COUNT II: DECLARATORY RELIEF—THE METRC CONTRACT
CONSTITUTES AN UNLAWFUL TAX AND OSDH/OMMA IS IMPROPERLY
UTILIZING TAXES COLLECTED**

111. The Plaintiffs adopt and incorporate Paragraphs 1-110 of this Petition as if fully set out herein.

112. Plaintiffs seek declaratory judgment in accordance with Title 12, Okla. Stat. § 1651-1657 as the matters addressed herein constitute an actual, justifiable controversy existing between the parties.
113. According to Article 10, Section 19, of the Oklahoma Constitution, “[e]very act enacted by the Legislature . . . levying a tax shall specify distinctly the purpose for which said tax is levied, and no tax levied and collected for one purpose shall ever be devoted to another purpose.
114. Article 10, Section 5(A), of the Oklahoma Constitution further provides that, “the power of taxation shall never be surrendered, suspended, or contracted away.”
115. Only the Legislature has the “power to provide for the levy and collection of license [and] franchise . . . taxes . . . or other specific taxes.” Oklahoma Constitution Article 10, Section 12.
116. The Oklahoma Legislature set the license fee for all Oklahoma medical marijuana businesses at \$2,500.00 per annum.
117. Additionally, 63 O.S. § 426 provides for a seven percent (7%) excise tax on the sale of all medical marijuana to patients in Oklahoma.
118. As provided by 420 O.S. § 426(B), the primary and chief purpose of the excise tax is to finance the regulatory office and fund OSDH/OMMA so that it may carry out its obligations to oversee and regulate the Oklahoma medical marijuana program.
119. OMMA has failed to regulate in accordance with the ‘clear plain meaning’ of the intent of the legislature that tax proceeds from licensing fees and excise taxes will be applied primarily and chiefly to finance the regulatory office.

120. As addressed above, it is clearly the responsibility of OSDH/OMMA to implement seed-to-sale and audit monthly reporting. The license and excise taxes collected must be used for that purpose.
121. OSDH/OMMA is intentionally diverting tax revenue to purposes other than the regulatory activity of the agency, and are trying to shift the burden of those expenses improperly to Oklahoma medical marijuana business owners.
122. Importantly, 63 O.S. § 426 (C) allows for any surplus funds to be apportioned for education and for drug and alcohol rehabilitation. However, it only allows use of **surplus funds** that exceed the amount needed for financing the regulatory office.
123. OSDH/OMMA may not intentionally or unintentionally divert funds away from their intended purpose to other purposes as such would be both a violation of the Oklahoma Constitution and in direct contradiction to the statutory directives of the Oklahoma Legislature.
124. Upon information and belief, the OSDH/OMMA improperly diverted in excess of thirty million dollars (\$30,000,000.00) collected as a result of the seven percent medical marijuana excise tax to cover costs and agency expenses in no way related to the OMMA and/or seed-to-sale.
125. Upon information and belief, in an effort to hide its diversion of funds, OSDH/OMMA is attempting to now pass the costs of seed-to-sale on to Oklahoma businesses so that it is not responsible for covering those expenses with funds it no longer possesses due to improper diversion.

126. Upon information and belief, OSDH improperly diverted funds from the OMMA and used those funds to cover OSDH expenses related to office remodeling and COVID-19.
127. Pursuant to the aforementioned facts and allegations, the Plaintiffs are entitled to and hereby request declaratory judgment determining that: (1) the taxes and license fees collected by OSDH/OMMA from medical marijuana licenses and the seven percent excise tax must be used to cover all costs of the Metrc, (2) that OSDH/OMMA failed to properly use the taxes collected related to medical marijuana to cover the costs of the regulatory oversight performed by the agency, (3) that such action clearly violates the intent of the legislature for OMMA to primarily and chiefly finance the regulatory office and fully pay for the seed-to-sale inventory tracking system with those funds, including any monthly monitoring fees and plant and product RFID tags required by the Metrc contract, and (4) that OSDH must return all improperly diverted funds back to their intended purpose immediately.

COUNT III: DECLARATORY RELIEF: THE OSDH CONTRACT WITH METRC CREATES AN UNLAWFUL MONOPOLY

128. The Plaintiffs adopt and incorporate Paragraphs 1-127 of this Petition as if fully set out herein
129. Plaintiffs seek declaratory judgment in accordance with Title 12, Okla. Stat. § 1651-1657 as the matters addressed herein constitute an actual, justifiable controversy existing between the parties.
130. The contract between the State of Oklahoma via OSDH/OMMA and Metrc violates the Oklahoma Antitrust Reform Act. 79 O.S. §§ 201 *et seq.*

131. 79 O.S. §203 provides that, “[e]very act, agreement, contract, or combination in the form of a trust, or otherwise, or conspiracy in restraint of trade or commerce within this state is hereby declared to be against public policy and illegal.”
132. For purposes of defining a monopoly, Oklahoma law declares that to monopolize means: “a. the possession of monopoly power in the relevant market, and b. the willful acquisition or maintenance of that power by exclusionary conduct as distinguished from growth or development as a consequence of a superior product and/or service, business acumen, or historic accident”
133. In this instance, the contract at issue gives all power and authority related to the seed-to-sale system to Metrc.
134. The Metrc contract further requires that Oklahoma businesses only use, at their own expense, the products and services of Metrc, including but not limited to the Metrc RFID tags.
135. The Metrc contract does not allow for any other company to provide the RFID tags, and it does not allow any Oklahoma business to exclusively use another company’s seed-to-sale tracking program.
136. There is nothing proprietary as it relates to the Metrc RFID tags, and RFID tags are commonly available on the market.
137. Despite the fact that there is nothing proprietary or unique about the Metrc RFID tags, the State of Oklahoma via OSDH/OMMA created a monopoly for Metrc by contracting to require that all Oklahoma medical marijuana businesses only use the Metrc RFID tags at costs set by Metrc.

138. The monopoly created provides a financial windfall for Metrc at the direct harm of all Oklahoma medical marijuana businesses because it allows Metrc, and only Metrc, to directly charge the 10,587 Oklahoma Licensees a minimum of \$12,545,595 for the first year of the contract for use of the Metrc system and Metrc RFID tags.
139. Plaintiffs requested that OSDH/OMMA allow other companies to provide the RFID tags, but OSDH/OMMA refused to allow any other manufactures to supply Oklahoma businesses with RFID tags.
140. Pursuant to the aforementioned facts and allegations, the Plaintiffs are entitled to declaratory judgment determining that the seed-to-sale contract entered into between the State of Oklahoma and Metrc constitutes the creation of a monopoly and that such monopoly is unlawful in the State of Oklahoma.

**COUNT: IV: DECLARATORY RELIEF: VIOLATION OF DUE PROCESS
OF LAW BY OSDH/OMMA**

141. The Plaintiffs adopt and incorporate Paragraphs 1-140 of this Petition as if fully set out herein.
142. Plaintiffs seek declaratory judgment in accordance with Title 12, Okla. Stat. § 1651-1657 as the matters addressed herein constitute an actual, justifiable controversy existing between the parties.
143. The Oklahoma Constitution provides specifically that, “no person shall be deprived of life, liberty, or property, without due process of law.”
144. State licensed medical marijuana business have a property right in their licenses and the proceeds of their business.

145. OSDH/OMMA has, via the actions described herein, violated the Due Process Clause of the Oklahoma Constitution by forcing licensees to turn over their business proceeds to Metrc in order to continue operating their businesses.

146. Pursuant to the aforementioned facts and allegations, the Plaintiffs are entitled to declaratory judgment determining that the contract between OSDH/OMMA and Metrc violates the Due Process of Law of the licensees.

**COUNT V: DECLARATORY RELIEF: THE METRC CONTRACT WITH OMMA
FORBIDS SHIPPING CHARGES**

147. The Plaintiffs adopt and incorporate Paragraphs 1-146 of this Petition as if fully set out herein.

148. Plaintiffs seek declaratory judgment in accordance with Title 12, Okla. Stat. § 1651-1657 as the matters addressed herein constitute an actual, justifiable controversy existing between the parties.

149. The Metrc contract states, “the price of a product offered under the Contract shall include and Supplier shall prepay all shipping, packaging, delivery and handling fees.” *See* Metrc Contract, Exhibit 1, at p. 17, § 5 “Pricing”.

150. The contract further states “No additional fees shall be charged by Supplier for standard shipping and handling.” *See id* at § 5.3.

151. Despite these provisions, Metrc has been improperly charging additional Shipping costs to licensees for shipping plant and product tags in violation of the seed to sale contract.

152. Pursuant to the aforementioned facts and allegations, Plaintiffs are entitled to a declaratory judgement determining that Metrc breached its contract with the State of Oklahoma.

153. Plaintiffs are further entitled to declaratory judgment that the contract between OSDH/OMMA and Metrc prohibits Metrc from charging additional fees for shipping charges concerning the plant and product tags.

COUNT VI: INJUNCTIVE RELIEF

154. The Plaintiffs adopt and incorporate Paragraphs 1-153 of this Petition as if fully set out herein.

155. Based on the foregoing, and in addition to the declaratory relief sought herein, Plaintiff seeks entry of an emergency and permanent injunction compelling the Defendants to comply with Oklahoma law related all subjects addressed herein.

156. Plaintiff is not seeking an *ex parte* emergency temporary injunction, despite the fact that such relief is appropriate, so that OSDH may appear and respond at any hearing regarding an emergency injunction prior to it issuing.

157. Plaintiff hereby requests that this Court set a hearing for an emergency temporary injunction within ten (10) days of the filing of this Petition so that Plaintiff may file its Application for Emergency Injunctive Relief, and the OSDH may appear and respond before said injunction issues.

158. No adequate remedy at law exists for Plaintiffs to remedy the harms done by the named Defendants by their failure to comply with the Oklahoma Constitution, Oklahoma Statutes, and specifically, the Oklahoma Administrative Procedure Act.

159. Substantial threat exists that the Plaintiffs will suffer permanent and irreparable injury in the absence of the requested injunctive relief.

160. The public policy of the State of Oklahoma requires that OSDH/OMMA comply with the Oklahoma Constitution, the laws of the State of Oklahoma, and the regulations adopted properly by OSDH/OMMA.
161. The interests of the public are served by the issuance of injunctive relief as the injunctions sought would undo actions taken by the named Defendants which violate the public's rights.
162. The Plaintiffs are entitled to an emergency and permanent injunction: (i) prohibiting OSDH/OMMA from requiring Oklahoma businesses to operate in conformity with the Metrc contract, (ii) enjoining OSDH/OMMA from entering into any future monopolistic and illegal contracts for a seed-to-sale tracking program, (iii) ordering OSDH/OMMA to pay all expenses, including business expenses, related to implementation of the Oklahoma seed-to-sale program, and (iv) prohibiting OSDH/OMMA from implementing a seed-to-sale program without proper rulemaking under the Oklahoma Administrative Procedures Act.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs pray that the Court enter judgment against all Defendants as follows:

- (a) Declaratory Judgment and Injunction as requested above;
- (b) Award Plaintiffs their costs and attorney's fees incurred herein; and
- (c) Such other relief as this Court deems proper under law and equity.

Respectfully submitted,

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