

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ALBANY

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VETERANS HOLDINGS, INC. a/k/a  
VETERANS CHOICE CREATIONS,

Plaintiff-Petitioner,

Index No.

-against-

**VERIFIED PETITION  
AND COMPLAINT**

SUSAN FILBURN, as Chief Administrative Officer  
of the New York State Office of Cannabis Management,  
NEW YORK STATE OFFICE OF CANNABIS  
MANAGEMENT, NEW YORK STATE CANNABIS  
CONTROL BOARD, NEW YORK STATE LIQUOR  
AUTHORITY, DIVISION OF ALCOHOLIC BEVERAGE  
CONTROL, and METRC, LLC,

Defendants-Respondents.

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**PRELIMINARY STATEMENT**

1. This hybrid Article 78 proceeding and plenary action arises out of the Office of Cannabis Management’s (“OCM”) unconstitutional contravention of New York’s separation of powers doctrine.

2. By making up, from whole cloth, new requirements that cannabis industry licensees be required to purchase unique digital identifier tags from Metrc, LLC (“Metrc”) to be affixed to cannabis inventory and product *per unit*, rather than *per batch or lot* (the “New Requirements”), OCM exponentially raised the operating costs of licensees.

3. The New Requirements are not authorized by statute or regulation. OCM went well beyond its authority and improperly assumed the role of the Legislature to impose its own idea of policy.

4. OCM's unconstitutional overreach violates the separation of powers doctrine. *See* N.Y. CONST. art III, § 1.<sup>1</sup>

5. OCM's New Requirements, however, are more than just mere agency overreach. They defy the legislative intent of the Marihuana Regulation and Taxation Act ("MRTA")<sup>2</sup> and are harmful to its legislative purpose:

- The Legislature intended that the MRTA create new industries, increase employment and strengthen New York's agricultural sector. *See*, MRTA, Art. I, §2. The New Requirements, however, exponentially increase operating costs such that many licensees will be rendered insolvent or be forced to go out of business, employment will be stifled, and new agriculture disincentivized.
- The Legislature found that there existed an illicit market representing a threat to public health, and the intent was to reduce that illegal market. *See*, MRTA, Art. I, §2. The New Requirements, however, will necessarily require licensees to pass along the increased cost in an effort to maintain a viable business, driving the public back to illegal markets for cheaper product.
- The Legislature intended to regulate, control, and tax marihuana to generate revenue for significant public investment, with a particular focus in communities most impacted by cannabis criminalization. *See*, MRTA, Art. I, §2. The New Requirements exponentially raise the cost of the MRTA-mandated tracking program, but the extra revenue will accrue to Metrc, a Florida-based corporation, not to the people of the State.

6. Moreover, the New Requirements imposed by OCM were *ultra vires*, made without or in excess of lawful jurisdiction, not justified, made without foundation in fact, and arbitrary and capricious, all within the meaning of CPLR § 7803.

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<sup>1</sup> A governmental agency exceeds the scope of its delegated authority, and violates the separation of powers doctrine, when it engages in impermissible legislative policy-making as opposed to administrative rule-making. *See, e.g., In Re Fiore v. New York State Cannabis Control Bd.*, 2023 WL 11891131 (Sup. Ct. Albany Co. 2023), 2023 N.Y. Slip Op 34670(U), citing *Boreali v. Axelrod*, 71 N.Y.2d 1(1987), *Matter of Independent Ins. Agents & Brokers of N.Y., Inc. v. NYS Dept. of Fin. Servs.*, 39 N.Y.3d 56 (2022).

<sup>2</sup> Chapter 92 of the Laws of 2021, codified as "Cannabis Law."

7. Further, the New Requirements constitute rules within the meaning of the State Administrative Procedure Act (“SAPA”). Because OCM failed to promulgate those rules in accordance with SAPA, the New Requirements must be declared invalid and unenforceable.

8. Accordingly, Plaintiff-Petitioner Veterans Holdings, Inc. a/k/a Veterans Choice Creations (“Veterans Choice”), a cannabis adult use processor licensee, is entitled to an order (i) declaring OCM’s New Requirements an *ultra vires* and unconstitutional act that violates the MRTA and contravenes New York’s separation of powers doctrine; (ii) annulling the New Requirements under CPLR Article 78 on the basis that OCM proceeded without or in excess of jurisdiction, violated lawful procedure and/or acted in an arbitrary and capricious manner; and (iii) enjoining OCM indefinitely from requiring cannabis industry licensees to purchase and tag inventory and product on a per-unit basis with unique digital identifiers.

**THE PARTIES**

9. Veterans Choice is a domestic corporation duly formed, and existing by virtue of, the laws of the State of New York.

10. At all times hereinafter mentioned, Veterans Choice maintains its principal executive office in Fulton County in the State of New York.

11. Veterans Choice holds an adult use processor license (OCM-PROC-24-000069) issued by OCM.

12. Respondent NEW YORK STATE CANNABIS CONTROL BOARD (“CCB”) is a body of the government of the State of New York, established by Article 2 of the Cannabis Law. It is comprised of five commissioners, appointed by the Governor (3 appointments), the President *pro tem* of the New York state Senate (1 appointment), and the Speaker of the New York state Assembly (1 appointment). Its powers and duties include, *inter alia*, the capacity to

“fix *by rule and regulation* the standards and requirements of cultivation, processing, packaging, marketing, and sale of medical cannabis, adult-use cannabis...”<sup>3</sup>

13. OCM was established as an independent agency within the Defendant-Respondent DIVISION OF ALCOHOLIC BEVERAGE CONTROL (“ABC”) in the Executive Department of the State of New York, and the Defendant-Respondent NEW YORK STATE LIQUOR AUTHORITY (“SLA”), by statute, is the head of the Division of Alcoholic Beverage Control.

14. Respondent NEW YORK STATE OFFICE OF CANNABIS MANAGEMENT (“OCM”) is a body of the government of the State of New York, established by Article 2 of the Cannabis Law. Its powers and duties include, *inter alia*, day-to-day administration and oversight of all aspects of the State’s cannabis program that are not specifically committed to CCB.

15. As of the date of this filing, Defendant-Respondent Susan Filburn is the interim or acting Chief Administrative Officer of OCM (Defendants-Respondents CCB, OCM, ABC, SLA, and Filburn, together, “the State Defendants-Respondents”).

16. Upon information and belief, Defendant-Respondent, Metrc, LLC (“Metrc”) is a foreign limited liability company, duly formed, and existing by virtue of, the laws of the State of Florida, and authorized to conduct business in the State of New York. Metrc is named a party herein because it is the vendor implementing the inventory tracking system for OCM and may be impacted by an Order or Judgment granting the relief sought herein.

**JURISDICTION AND VENUE**

17. This Court has jurisdiction over Defendants-Respondents pursuant to New York Civil Practice Law and Rules (“CPLR”) § 301 because Defendants-Respondents have their

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<sup>3</sup> Cannabis Law §10(4). Emphasis added.

principal places of business in New York and/or regularly transact business in the State of New York.

18. Venue lies in Albany County pursuant to CPLR § 505 because the principal offices of the State Defendants-Respondents are located in Albany, New York, and it is where said Defendants-Respondents failed to perform their legal duties and/or where the material events giving rise to this suit took place.

**FACTUAL ALLEGATIONS**

19. Cannabis Law § 78 states, in its entirety:

1. The board shall, by regulation, require each licensee pursuant to this article to adopt and maintain security, tracking, record keeping, record retention and surveillance systems, relating to all cannabis at every stage of acquiring, possession, manufacture, sale, delivery, transporting, testing or distributing by the licensee, subject to regulations of the board.

2. Every licensee shall keep and maintain upon the licensed premises, adequate books and records of all transactions involving the licensee and sale of its products, which shall include, but is not limited to, all information required by any rules promulgated by the board. Such regulations may require the utilization of an approved seed-to-sale tracking system compiling a licensee's cannabis inventory and transaction data.

20. As contemplated by the statute, CCB, using the notice-and-comment procedure mandated by SAPA, promulgated a regulation, 9 NYCRR §125.8, “Inventory and Tracking.”

Section 125.8 mandated, in pertinent part:

(a) Licensees shall track all physical inventory of cannabis in an electronic real-time inventory tracking system as determined by the Office. The inventory tracking system shall be capable of showing any cannabis that has been released for sale, to allow for a total recall of all cannabis if necessary. The licensee shall:

(1) accurately record all inventory in the inventory tracking system, including identification of base or starting material(s) used to create each batch or lot of cannabis or cannabis products;

(2) maintain, in real-time, at a minimum, the following information, in the inventory tracking system:

- (i) *batch or lot unique identifiers* for cannabis and cannabis products.

(Emphasis added).

**A. The BioTrack Contract**

21. There is no definition of “batch” or “lot” in Part 125. On Part 114, 9 NYCRR §114.1(x), pertaining to cannaboid hemp, “Lot or batch means any cannabinoid hemp product produced during a period of time under similar conditions and identified by a specific code that allows traceability.” This is consistent with the usage of “lot” or “batch” in agriculture generally: a homogenous set of crops, produced together and harvested together for traceability and product control. There is no minimum or maximum size; commonality of environment and growing conditions, and harvesting and processing as a group, bis the hallmark of the “batch” or “lot.”

22. On or about December 8, 2022, pursuant to the State Finance Law, OCM awarded a contract to Bio-Tech Medical Software Inc. (“Bio-Tech”) to develop and implement a seed-to-sale (“STS”) tracking system, as per Cannabis Law §78 (contract C004549).

23. Bio-Tech Medical Software Inc.’s primary software product is named BioTrack.

24. After awarding the STS contract to Bio-Tech, licensees were notified to become educated on the steps that would be necessary to integrate their own inventory tracking with the BioTrack system.

25. Notably, licensees were informed that they would be required to purchase digital unique identifiers (“UIDs”) at a cost of \$0.10 each to affix to batches or lots of inventory and product.

26. Veterans Choice built its operational architecture around BioTrack, which included investments in systems, personnel, training and capital equipment.

27. Veterans Choice tailored its business to integrate with BioTrack because OCM directed it to do so.

28. Additionally, OCM provided reassurance that BioTrack would remain the system that would be utilized for STS tracking, and that the regulatory framework would be predictable, knowable and stable.

29. On June 12, 2025, OCM approved an amendment of its contract with Bio-Tech, which the Comptroller's website describes as a \$250,000 one-time purchase of plant identification tags.

***B. Assignment from BioTrack to Metrc***

30. On August 5, 2025, after significant delays in bringing the BioTrack STS inventory tracking system to full functionality, OCM announced to licensees that it had “learned that Metrc has entered into a partnership with BioTrack, the vendor New York selected to implement New York’s Seed-to-Sale (STS) system . . . OCM is temporarily suspending the deadline by which cultivators and other licensees must integrate, so that OCM can determine systems implications and communicate next steps to all licensees.”

31. On or about September 4, 2025, an “amendment/contract assignment” of the original STS inventory tracking contract was purportedly filed with OCM, to be effective on September 5, 2025.

32. Thereafter, on September 22, 2025, OCM reported to licensees that it was targeting full integration of licensees in the “Metrc system” by the end of December, 2025:<sup>4</sup>

**Integration Timeline**

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<sup>4</sup> See <https://cannabis.ny.gov/seed-to-sale>

OCM recognizes how essential a seed-to-sale (STS) system is to maintaining the integrity of New York’s cannabis industry and **has worked with Metrc to develop an integration deadline for all licensees of December 17, 2025.**

(Boldface emphasis in original).

33. Tellingly – and, it is respectfully submitted, dispositively - OCM does not inform licensees here that it has “worked with the Legislature to pass a new bill,” or “worked with the community, via the notice-and-comment process of SAPA, to craft new regulations.” Instead, OCM has worked with Metrc, a private company (and an out-of-state one, at that), unanswerable to New York State licensees or taxpayers, to “develop an integration deadline” – or, in other words, to turn the regulatory regime on its head in a few months, without authority.

34. As a result of this September 22, 2025 announcement, and notwithstanding previous investment and training in learning the BioTrack system, licensees had to re-train to learn the Metrc system and implement it within a period of only three months.

35. According to the Office of the Comptroller, on October 14, 2025, the assignment of the STS inventory tracking contract to Metrc was approved.

### *C. The New Requirements*

36. The sudden assignment of the vendor contract to Metrc, and the requirement to shift gears to retrain on and implement a new system, was immediately harmful to Veterans Choice, among others.

37. As licensees, such as Veterans Choice, began their training and education to learn the Metrc system, they learned a harsh reality: BioTrack, as contemplated by Section 125.8, required only tracking by the batch or lot. It never required item-level UID tagging.

38. Unlike the BioTrack protocols, with Metrc licensees would be required to purchase UIDs for *each unit*, rather than for each batch or lot of inventory or product (the “New Requirements”).

39. The New Requirements would increase a factor of hundreds, or even thousands, the number of UIDs that licensees such as Veterans Choice would need to purchase from Metrc to be compliant with the new system – thus imposing an enormous economic burden.

40. But *OCM has never promulgated or adopted any regulation requiring processors to serialize or tag individual retail units.*

41. Moreover, in addition to being required to buy thousands of additional UIDs, Veterans Choice must also redesign every single SKU label, re-serialize all packaging, rebuild its printing workflows, and retrain its staff.

42. Disingenuously, OCM published on its website the following Question and Answer:<sup>5</sup>

**Will there be a price increase in tags (unique identifier) with Metrc?**

No, Metrc will charge \$0.10 per digital unique identifier (UIDs) per the terms of the existing contract with New York State. **Licensees must order Plant, Package, or Retail Item UIDs from the Metrc system based on their license type. Each UID represents a unique inventory item within Metrc.**

- **Plant UIDs:** Identify individual plants; each comes with a physical tag and strap.
- **Package UIDs:** Identify unique packages or lots; each comes with a physical tag.
- **Retail Item UIDs:** Identify individual retail units within a Finished Good Package UID; these are digital only in the form of a QR code.

43. Although the \$0.10 price per tag did not increase above what licensees expected with the BioTrack system, OCM downplayed the fact that it was now requiring an exponentially

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<sup>5</sup>See <https://cannabis.ny.gov/sts-faqs>.

greater number of tags to be purchased: *on a per-unit or per-item basis rather than on a batch or lot basis.*

44. OCM initially imposed a December 17, 2025 deadline for licensees to become fully operational on the Metrc system—less than three months after it announced the switch to Metrc in late September.

45. This time frame was grossly insufficient lead time for Veterans Choice to redesign its systems, retrain staff, rebuild its labeling process, reconfigure packaging workflows, and adapt its inventory management.

46. In addition, the announcement created a chain reaction: Dispensaries started to refuse orders from wholesalers like Veterans Choice that did not already have Metrc retail identification tags.

47. Even though, on December 15, 2025, the deadline for retail UIDs has now been pushed back by OCM to February 2026, retailers do not want to assume any compliance risks and will no longer accept product without the Metrc UIDs.

48. As a result, Veterans Choice has been unable to ship its inventory to dispensaries.

49. Veterans Choice will suffer irreparable harm if the New Requirements are imposed upon it:

- (a) Loss of shelf space: Shelf space with retailers, once lost is rarely regained. Retailers are avoiding compliance risks and only accepting product from vendors that meet Metrc's tagging requirements today. Out of state processors already using Metrc's system have a distinct advantage, while Veterans Choice and other New York processors—particularly smaller operations like Veterans Choice—are scrambling to meet onerous requirements. Once shelf space with retailers is lost, the monetary amount of damage is incapable of precise calculation.
- (b) Cash-flow collapse: If Veterans Choice cannot move its inventory, its receivables will halt; it will not be able to offer credit terms; orders will be scaled back; staff will need to be cut; and raw materials cannot be procured. In

short, the business will be stressed to the point where it may no longer be feasible to remain in operation.

- (c) Increased costs: Margins for a wholesale business like Veterans choice are already compressed by regulatory costs. Metrc tagging, especially without sufficient lead time, will result in increased packaging costs, labor hours, equipment needs, and administrative load, again stressing the business to the point of failure.

50. Accordingly, Veterans Choice now comes before the Court, seeking relief from these burdensome, financially ruinous, intrusive, and extra-legal requirements.

**FIRST CAUSE OF ACTION**  
**(Declaratory Judgment)**

51. Plaintiff-Petitioner repeats and realleges the allegations set forth in the above paragraphs as if fully set forth herein.

52. The separation of powers is a core tenet of the New York State Constitution which serves to preclude administrative agencies from engaging in unauthorized policymaking based on complex value judgments which should otherwise fall under the purview of the Legislature.

53. MRTA, Art. 4, § 78 (Cannabis Law §78) authorizes the CCB to “adopt and maintain security, tracking, record keeping, record retention and surveillance systems” and permits regulations that “may require the utilization of an approved seed-to-sale tracking system compiling a licensee’s cannabis inventory and transaction data.”

54. Section 125.8, promulgated via SAPA, requires licensees to record batch or lot unique identifiers for cannabis and cannabis products and to physically tag or label cannabis and cannabis products with the unique identifier generated by an inventory tracking system.

55. Nothing in the statute or the regulation authorizes tracking at the per-unit level rather than at the batch or lot level.

56. The New Requirements, which mandate that licensees purchase and affix UIDs for each individual unit, rather than for each batch or lot, exceeds the authority conferred by both Cannabis Law § 78 and 9 NYCRR § 125.8 and is thus *ultra vires*.

57. Through OCM's *ultra vires* policymaking, it has usurped the Legislature's authority.

58. Accordingly, Plaintiff-Petitioner respectfully requests that this Court issue a declaratory judgment pursuant to CPLR 3001 finding Defendant-Respondent OCM's *ultra vires* policymaking unconstitutional under the separation of powers doctrine.

**SECOND CAUSE OF ACTION**  
**(Violation of Lawful Procedure CPLR 7803(3);**  
**State Administrative Procedure Act)**

59. Plaintiff-Petitioner repeats and realleges the allegations set forth in the above paragraphs as if fully set forth herein.

60. Defendants-Respondents adopted and are enforcing new seed-to-sale tracking requirements that mandate the purchase and affixation of unique identifiers (UIDs) at the per-unit level, rather than at the batch or lot level, on a generally applicable basis to all cannabis licensees.

61. These New Requirements constitute a "rule" within the meaning of the State Administrative Procedure Act (SAPA § 102(2)(a)) because they are statements of general applicability that implement and apply law and prescribe practice requirements and fees.

62. Defendants-Respondents failed to promulgate the New Requirements in accordance with SAPA § 202's mandatory notice-and-comment procedures, including publication in the State Register, identification of statutory authority, opportunity for public comment, and assessment of comments, followed by adoption and codification.

63. Defendants-Respondents acted in violation of lawful procedure by enforcing an unpromulgated rule, and affected the determination by an error of law within the meaning of CPLR 7803(3).

64. Plaintiff-Petitioner is entitled to annulment of the New Requirements and injunctive relief barring their enforcement against Plaintiff-Petitioner, and such other relief as the Court deems just.

**THIRD CAUSE OF ACTION**  
**(Ultra Vires Act – CPLR 7803(2))**

65. Plaintiff-Petitioner repeats and realleges the allegations set forth in the above paragraphs as if fully set forth herein.

66. Cannabis Law § 78 authorizes the Cannabis Control Board to adopt and maintain security and tracking systems and permits regulations that may require utilization of an approved seed-to-sale tracking system compiling licensees' inventory and transaction data.

67. The implementing regulation, 9 NYCRR § 125.8, anchors tracking at the batch or lot level and requires recording and tagging with batch or lot unique identifiers.

68. Nothing in the Cannabis Law or 9 NYCRR § 125.8 authorizes Defendants-Respondents to mandate per-unit UID tagging or to bind all licensees to a single vendor's proprietary system.

69. The per-unit UID mandate imposes onerous obligations not found in the governing statute or regulation.

70. Defendants-Respondents therefore exceeded their lawful authority and acted *ultra vires*.

71. Questions of pure statutory and regulatory interpretation do not warrant deference, and agency action that runs counter to the clear text is unlawful.

72. The New Requirements should be declared void and unenforceable and annulled as beyond Defendants-Respondents' authority, with such further relief as is just and proper.

**FOURTH CAUSE OF ACTION**  
**(Arbitrary and Capricious and Abuse of Discretion - CPLR 7803(3))**

73. Plaintiff-Petitioner repeats and realleges the allegations set forth in the above paragraphs as if fully set forth herein.

74. Defendants-Respondents' per-unit UID mandate is arbitrary and capricious because it lacks a rational basis in the record, departs from the batch/lot framework of 9 NYCRR § 125.8 without reasoned explanation, and fails to consider obvious, less burdensome alternatives or the economic and operational impacts on licensees.

75. Defendants-Respondents' have not articulated any findings that batch/lot-level identifiers fail to ensure traceability, security, or diversion prevention, nor have they explained the shift from prior practice or addressed reliance interests created by earlier guidance.

76. By multiplying required tags by orders of magnitude while focusing only on per-tag price, Defendants-Respondents disregarded material facts and imposed disproportionate burdens without sound reasoning.

77. The New Requirements should be vacated and annulled as arbitrary and capricious and/or an abuse of discretion, with appropriate remedial directions to Defendants-Respondents.

**FIFTH CAUSE OF ACTION**  
**(Article 78 to Compel FOIL Production)**

78. Plaintiff-Petitioner repeats and realleges the allegations set forth in the above paragraphs as if fully set forth herein.

79. Plaintiff-Petitioner submitted Freedom of Information Law (“FOIL”) requests seeking, among other records, contracts and related documents concerning the seed-to-sale tracking system, including the BioTrack contract, the assignment of that contract to METRC, and all amendments to the contract.

80. The requested documents are of significant relevance with respect to the Plaintiff-Petitioner’s challenge of the New Requirements, particularly since many questions are raised about whether the amendments or assignment of the contract comport with the requirements of the State Finance Law, and whether proper procedure was followed.

81. Defendants-Respondents failed to timely respond, thereby effecting a constructive denial.

82. Defendants-Respondents have a clear, non-discretionary duty under Public Officers Law § 89 to respond to FOIL requests within the statutory timeframes or articulate specific exemptions.

83. Defendants-Respondents’ failure to respond is an unlawful withholding of agency action.

84. Plaintiff-Petitioner has no adequate remedy at law and has exhausted administrative remedies or is excused from doing so by Defendants-Respondents’ constructive denial.

85. Said constructive denial is hereby challenged under Article 78 as per Public Officers Law § 89(d)(i).

86. Pursuant to Public Officers Law § 89(4)(c), Plaintiff-Petitioner is entitled to an award of reasonable attorneys’ fees and litigation costs upon substantially prevailing, particularly

where the agency lacked a reasonable basis for denial or failed to respond to the request or appeal within statutory time limits.

87. Accordingly, Plaintiff-Petitioner is entitled to an Order compelling Defendants-Respondents to fulfill Plaintiff-Petitioner's FOIL requests.

**SIXTH CAUSE OF ACTION**  
**(Injunctive Relief)**

88. Plaintiff-Petitioner repeats and realleges the allegations set forth in the above paragraphs as if fully set forth herein.

89. As set forth above, Defendants-Respondents have engaged in unconstitutional policymaking in violation of New York's separation of powers doctrine by mandating the New Requirements; have acted ultra vires and in excess of their lawful authority; have acted arbitrarily and capriciously; and have abused their discretion.

90. Accordingly, this Court should respectfully issue (i) a temporary restraining order and preliminary injunction enjoining the Defendants-Respondents from implementing and enforcing the New Requirements; and (ii) a permanent injunction enjoining the implementation and enforcement of the New Requirements.

91. New York courts have found that an alleged violation of New York's constitutional principles constitutes irreparable harm.

92. Moreover, permitting the implementation and enforcement of the New Requirements will present clear irreparable harm to Veterans Choice because compliance is overly burdensome, not economically viable, will take market share and potential shelf space with retailers away from Veterans Choice and cause other public harms.

93. Defendants-Respondents will not suffer any harm as a result of the injunction requested.

94. A balancing of the equities militates in favor of granting injunctive relief, as the harm to Plaintiff-Petitioner, and other licensees similarly situated, significantly outweighs any prejudice to the Defendants-Respondents.

95. No prior request for the relief sought herein has been made to this, or any other, court.

**PRAYER FOR RELIEF**

**WHEREFORE**, Plaintiff-Petitioner Veterans Choice respectfully requests that this Honorable Court enter an Order and Judgment against the Defendants-Respondents as follows:

- (a) On its first cause of action, declaring that the New Requirements mandated by Defendant-Respondent OCM constitutes an unconstitutional violation of the separation of powers doctrine;
- (b) On its second cause of action, annulling and vacating the New Requirements pursuant to CPLR § 7803(3) for failure to promulgate rules pursuant to SAPA, and otherwise follow lawful procedure;
- (c) On its third cause of action, annulling and vacating the New Requirements pursuant to CPLR § 7803(2) for proceeding without or in excess of jurisdiction;
- (d) On its fourth cause of action, annulling and vacating the New Requirements pursuant to CPLR 7803(3) as being arbitrary and capricious and an abuse of discretion;
- (e) On its fifth cause of action, pursuant to CPLR § 7801(1) and Public Officers Law § 89, compelling Defendants-Respondents to fulfill the FOIL requests heretofore submitted by Plaintiff-Petitioner by producing the non-exempt records forthwith together with an award of reasonable attorney's fees and litigation costs;

(f) On its sixth cause of action, granting a temporary restraining order, preliminary injunction and permanent injunction, restraining and enjoining the Defendants-Respondents from implementing and enforcing the New Requirements; and

(g) Granting such other and further relief as this Honorable Court deems just, equitable and proper.

Dated: New York, New York  
December 14, 2025

Yours, etc.,

FALCON RAPPAPORT & BERKMAN, LLP



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By: David Simon,, Esq.  
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**STATEMENT OF COMPLIANCE**

I, David Simon, hereby certify that the above Verified Petition and Complaint complies with the word limit set by Rule 202.8-b of the Uniform Rules of this Court. I hereby further certify that, according to the word count feature of Microsoft Word, this document is 4,285 words, excluding the caption and signature block.



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David Simon

VERIFICATION

STATE OF NEW YORK            )  
  ) ss.:  
COUNTY OF WESTCHESTER    )

DAVID SIMON, being duly sworn, deposes and says:

I have read the foregoing PETITION AND COMPLAINT and know the contents thereof; and the same is true to my own knowledge, except as to the matters therein stated to be alleged on information and belief, and as to those matters I believe them to be true.

I make this Verification pursuant to CPLR § 3020(d)(3) in that the Plaintiff-Petitioner does maintain a place of business in any county in which my law firm has an office.

The source of my knowledge is based upon discussions with the Plaintiff-Petitioner and a review of the files maintained by my law office relative to the subject matter of the within proceeding.



\_\_\_\_\_  
DAVID SIMON

I affirm this 15<sup>th</sup> day of December, 2025, under the penalties of perjury under the laws of New York, which may include a fine or imprisonment, that the foregoing is true, and I understand that this document may be filed in an action or proceeding in a court of law.

Dated: Mount Kisco, New York  
December 15, 2025



\_\_\_\_\_  
David Simon