

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF OKLAHOMA**

MILLER MENDELL, INC., a Washington)
Corporation; TYLER MILLER, an Oregon)
state resident,)
)
Plaintiff,)
)
vs.) Case No. CIV-18-990-HE
)
THE CITY OF OKLAHOMA CITY, a)
municipal corporation,)
)
Defendant.)

**DEFENDANT CITY OF OKLAHOMA CITY'S
RESPONSE IN OPPOSITION TO PLAINTIFFS' MOTION
FOR LEAVE TO FILE SECOND AMENDED COMPLAINT**

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October 18, 2019

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INTRODUCTION

OKC opposes Plaintiffs' request for leave to amend their First Amended Complaint to add claims against Guardian Alliance Technologies, Inc. for patent infringement, defamation, and a declaration of no inequitable conduct or patent fraud. [*See*, Dkt. Nos. 55-1 and 57-1].¹ The Court should deny Plaintiffs' motion because the patent infringement claim at the heart of Plaintiffs' proposed amended complaint would be subject to dismissal for improper venue thus making amendment futile.

Under 28 U.S.C. § 1400(b), venue in a patent infringement action is only proper where the defendant (1) resides, or (2) has committed acts of infringement and has a regular and established place of business. *TC Heartland LLC v. Kraft Foods Group Brands LLC*, 137 S. Ct. 1514 (2017). Guardian neither resides in Oklahoma, nor has a regular and established place of business in Oklahoma.

Recognizing the lack of patent infringement venue over Guardian in Oklahoma, Plaintiffs argue that Guardian waived its right to object to improper patent venue. However, Plaintiffs' patent venue waiver theory fails as a matter of law. Plaintiffs were not a party to the Subscription Agreement between OKC and Guardian, they are not third-party

¹ OKC files this response outside of the 21-day response period of LCvR7.1(g). OKC does so pursuant to an agreement between counsel that OKC would be afforded an additional seven calendar days to respond Plaintiffs' Motion for Leave, *see*, Exhibit 1 hereto, and at the direction of the Court. Even though the Court has already granted Plaintiffs' request for leave [Dkt. No. 60], based on communications between the Court and counsel for all parties on October 18, 2019, it is OKC's understanding that, upon filing of this Response, the Court's previous order granting Plaintiffs leave will be stricken.

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