



J. Kevin Stitt  
Office of the Governor  
State of Oklahoma

January 12, 2024

**Via email**

Gentner Drummond, Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73105

Re: Request to prosecute pursuant to 74 O.S. § 18b(A)(3)

General Drummond:

The Office of the Attorney General, on behalf of the State of Oklahoma *ex rel.* Office of Management and Enterprise Services and State of Oklahoma *ex rel.* Office of Educational Quality and Accountability, filed a detailed lawsuit against KLEO, Inc. d/b/a ClassWallet, on August 5, 2022. Claims against ClassWallet included breach of contract, fraud and/or negligent misrepresentation, and a request for declaratory and injunctive relief. Those claims were viable at the time of filing and remain viable today.

While I recognize that you have expressed a belief that some facts are disputed and that the State may have some level of culpability, I also know we agree that our obligations are to the State, and in this case, that must manifest as advocacy. Of course, litigation such as the lawsuit against ClassWallet does not exist without an opposing party presenting to a judge and potentially a jury competing facts and legal theories. In other words, the existence of disputed facts or legal positions does not render a lawsuit fruitless or anything nearing frivolous; it simply highlights the need for litigation and zealous advocacy. And, this, like other contested litigation, is a legitimate case, necessitating action by the State.

The following statements are supported by indisputable evidence and support the refiling of the lawsuit: 1) The State entered the contract only after ClassWallet had guaranteed in writing that federal funds would not be fraudulently expended; 2) ClassWallet then breached several terms of the Contract; and 3) As a direct result of ClassWallet's acts and omissions, the State has suffered and/or will suffer monetary damages.

As for the contract, ClassWallet was obligated to create an online platform that had the "[a]bility for [parents and legal guardians] to purchase educational resources other than tuition such as technology, supplies, books, etc. with approved ecommerce vendors integrated into the Fiscal Management and Payment Systems."<sup>1</sup> Put differently, and consistent with ClassWallet's representations (i.e. that its services would virtually eliminate the risk of fraud or misuse of funds),

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<sup>1</sup> See Section V of Attachment C to the Contract.

the system was not supposed to allow purchases other than for educational resources.<sup>2</sup> The terms of the Contract also explicitly required ClassWallet to retain records the State has since desperately needed to address issues raised by the United States Department of Education.<sup>3</sup> ClassWallet did not fulfill those and other contractual obligations, and its purported justifications lack legal merit.<sup>4</sup> Unfortunately, the State has suffered and will likely continue to suffer damages as a direct result of ClassWallet's behavior.

Although the breach of contract and fraud claims alone necessitate action against ClassWallet, there is more. As a subrecipient, ClassWallet had unique obligations tied to federal law and regulations.<sup>5</sup> Disappointingly, and to the State's detriment, ClassWallet failed to comply with certain of those obligations. When confronted about its noncompliance, ClassWallet simultaneously denied its subrecipient status and conceded that it did not comply with the reporting obligations of a subrecipient. The denial has since been contradicted by even the State Auditor<sup>6</sup> who found that ClassWallet "met all of the characteristics that support the classification of [ClassWallet] as a subrecipient and not as a contractor."<sup>7</sup> ClassWallet's failure to satisfy its subrecipient obligations has cost the State real monetary loss, just as the contractual breaches and fraud have. Fortunately, the federal code entitles the State to relief against ClassWallet.<sup>8</sup>

Given the legitimacy of claims and entitlement to recourse, the State urges you to reconsider your prior position that the State's claims were "wholly without merit."<sup>9</sup> I suspect that statement may have been a byproduct of full information not having been provided to or available to you. As you may know, ClassWallet, through counsel, initiated settlement discussions prior to the lawsuit even having been served. In other words, ClassWallet, the defendant, recognized the exposure caused by its wrong acts. There is simply no doubt that ClassWallet is culpable.

As Governor, and for the benefit of the State, I am requesting that the Attorney General's Office, pursuant to 74 O.S. § 18b(A)(3), refile the lawsuit styled *Office of Management and Enterprise Services and Office of Educational Quality and Accountability v. Kleo, Inc., d/b/a ClassWallet*, which was dismissed without prejudice, on January 31, 2023. If your office declines

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<sup>2</sup> ClassWallet contends it was advised to turn off controls, thereby allowing expenditures for purposes unrelated to education. Of course, for ClassWallet to have followed through on any such instruction, the contracting parties would have had to amend the contract according to its terms. That did not occur, and ClassWallet was never relieved of its contractual duties.

<sup>3</sup> See Section 10.2 of the Contract.

<sup>4</sup> To be clear, ClassWallet has not even attempted to justify its failure to have maintained records in accordance with clear contractual terms.

<sup>5</sup> See Section 9.1 to the Contract.

<sup>6</sup> This Office is not suggesting that the Auditor is positioned to make conclusions of law or that any such conclusions are binding.

<sup>7</sup> Cindy Byrd, *State of Oklahoma Single Audit Report for the Fiscal Year Ended June 30, 2021*, OKLA. ST. AUDITOR & INSPECTOR, (June 27, 2023), <https://www.sai.ok.gov/Search%20Reports/database/2021SingleAudit.pdf>.

<sup>8</sup> When a subrecipient has not complied with federal regulations, a pass-through entity can pursue any remedy legally available. 2 C.F.R. § 200.339 (f).

<sup>9</sup> *Drummond Dismisses ClassWallet Lawsuit, Vows Accountability for Responsible Parties*, OFF. OF THE OKLA. ATT'Y GEN. (Jan. 31, 2023), <https://www.oag.ok.gov/articles/drummond-dismisses-classwallet-lawsuit-vows-accountability-responsible-parties>.

to do so, please advise. Given that the lawsuit must be refiled by January 31, 2024, alternative options will be pursued, if necessary to protect the State of Oklahoma's interests.

If you would like to discuss, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "Kevin Stitt". The signature is stylized, with a large "K" and "S".

Kevin Stitt  
Governor