

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

**DISTRICT COURT
FILED**

(1) LESSIE BENNINGFIELD RANDLE,
et al.,

Plaintiffs,

v.

(1) CITY OF TULSA, a municipal
corporation, *et al.*,

Defendants.

AUG 12 2021

DON NEWBERRY, Court Clerk
STATE OF OKLA. TULSA COUNTY

Case No.: CV-2020-1179

**PLAINTIFFS' MOTION TO CONTINUE HEARING ON DEFENDANTS' MOTIONS
TO DISMISS AND TO RECONSIDER ORDER GRANTING DEFENDANTS' JOINT
MOTION FOR LEAVE TO FILE REPLIES & BRIEF IN SUPPORT**

COME NOW the Plaintiffs, and, by and through their undersigned counsel, submit this Motion to Continue Hearing on Defendants' Motions to Dismiss and to Reconsider Order Granting Defendants' Joint Motion for Leave to File Replies. In support this Motion, Plaintiffs submit as follows:

1. Plaintiffs filed their First Amended Petition on February 2, 2021 and served Defendants with process at various times thereafter.

2. On February 19, 2021, Defendants moved without objection from the Plaintiffs to extend their respective times to respond to Plaintiffs' First Amended Petition to a single, consolidated deadline of March 12, 2021. The Court granted the motion on February 22, 2021.

3. On or before March 12, 2021, each of the seven Defendants filed a motion to dismiss. Four (4) of the Defendants' briefs contained fewer than fifteen (15) pages, and the other two (2) briefs exceeded twenty (20) pages by only two (2) and four (4) pages, respectively.

4. On March 31, 2021, Plaintiffs filed a motion seeking a sixty (60)-day extension of time to respond to Defendants' motions to dismiss and asking for leave to file a single omnibus brief in response to the six motions to dismiss. Defendants objected to the request to file an omnibus brief, but they consented to the extension of time to respond.

5. On April 23, 2021, the Court granted Plaintiffs' request for additional time, but it denied their request to file an omnibus brief.

6. Plaintiffs' responses in opposition to Defendants' motions to dismiss combined for a total of approximately eighty-eight (88) pages, spread across five (5) separate briefs.

7. Defendants waited nearly a month and a half to seek leave to file replies. On July 16, 2021, Defendants filed a joint motion in which they sought leave to file replies and asked the Court to allow each Defendant twenty (20) pages each. In the motion, Defendants falsely advised the Court that Plaintiffs did not object. While there could have arguably been a misunderstanding with respect to Plaintiffs' stated position on the request to file replies, Defendants did not even notify Plaintiffs that they would be seeking to exceed the page limitation for replies set by LCvR 18 by fifteen (15) pages each, much less ask them whether they would object to such a significant deviation from the generally accepted norm.

8. The Court granted the motion the same day, before Plaintiffs could file an objection, and ordered Defendants to file the order, at which time the clock would begin to run on the thirty (30) days the Court allowed Defendants to file replies.

9. On July 19, 2021, Defendants filed a "corrected motion," after Plaintiffs' counsel confronted defense counsel about the false statement they included in their original motion. The "corrected motion" once again misrepresented the facts to the Court, making it appear as if Plaintiffs originally did not object but then changed their minds, which was not the case.

10. After Defendants once again misrepresented the facts to the Court, Plaintiffs filed a motion to vacate the Court's order granting each Defendant's request to file a reply of up to twenty (20) pages within thirty (30) days, pointing to the Defendants' dishonesty, their approximately forty-five (45)-day delay in seeking to file replies, and the unprecedented nature of permitting each of the seven (7) Defendants to file a twenty (20)-page reply brief.

11. Defendants waited nearly three (3) weeks to file the order granting leave to file replies, meaning that they actually had nearly a month and a half from the date the Court entered the order to file their replies, despite only asking for thirty (30) days.

12. In two orders entered August 5 and 6, 2021, the Court vacated the order filed by the Defendants on August 3, 2021 and entered a new order, which, in spite of Plaintiffs' adamant objections and Defendants' blatant dishonesty, granted all of the relief requested in Defendants' motion and set the deadline for Defendants to file their replies on August 26, 2021. The Court also set a hearing on the motions to dismiss on September 3, 2021, one week later.

13. Defendants waited over a month and a half to seek leave to file replies, and then asked for thirty (30) additional days to file them, without specifying the circumstances that would justify such a lengthy delay. When the Court granted their motion for leave to file replies, Defendants waited nearly three (3) weeks to file the order, which provided that the requested thirty (30)-day extension would begin upon the *filing* of the order. This delay effectively gave Defendants an additional three (3) weeks to prepare reply briefs in addition to the time they had already requested. The result is that Defendants will have had nearly **three (3) months** to seek leave and file replies, after Plaintiffs had a total of 60 days to file their opposition papers.

14. Moreover, the order entered by the Court on August 6, 2021 will provide Plaintiffs just a few **days** between the filing of Defendants' replies and the hearing on the motions to

dismiss—a timeline that will substantially prejudice Plaintiff. Since Defendants’ replies are not due until August 26, 2021, and the hearing is set for 1:30 p.m. on September 3, 2021, Plaintiffs will have a *maximum* of five (5) business days to read, digest, and evaluate the merits of potentially 140 pages of briefing from seven (7) different Defendants and to prepare for the hearing on the motions to dismiss.

Such an onerous timeline is not only unjust, but it threatens to deprive Plaintiffs of their right to due process under the law and to have reasonable notice and a meaningful opportunity to be heard on the issues Defendants may raise in their forthcoming briefs. The Court’s order will have an even greater detrimental effect if Defendants serve their reply briefs by mail, in which case Plaintiffs would have virtually no time at all to digest an amount of briefing that could very well exceed the total number of pages contained in Defendants’ initial motions by as much as *fifty percent (50%)*. Plaintiffs will need substantially more time to digest Defendants’ arguments, review and analyze any cited cases and adequately prepare for a critical hearing that will decide the fate of Plaintiffs’ entire case.

Although Plaintiffs generally object to delays in this case due to the advanced age of the three (3) centenarian living Massacre survivors, in order to competently and diligently represent Plaintiffs at the hearing, Plaintiffs’ counsel believes a continuance is necessary to ensure there is a sufficient amount of time for Plaintiffs’ counsel to prepare. Accordingly, Plaintiffs request that this honorable Court continue the hearing on Defendants’ motions to dismiss to September 24, 2021 or later.

15. Plaintiffs’ counsel asked counsel for the Defendants in an email sent Thursday, August 12, 2021 about whether they had any objection to Plaintiffs’ requested continuance. TDA is the only Defendant that responded, and they have no objection to the continuance.

16. Finally, Plaintiffs respectfully ask the Court to reconsider the decision to grant each Defendant an additional twenty (20) pages of briefing. Of the seventeen (17) Oklahoma state courts whose local rules specifically address page limitations for reply briefs, **all seventeen (17)** limit reply briefs to five (5) pages or less. This generally accepted requirement of conciseness and brevity for reply briefs reflects the notion that the “purpose of a reply brief [is] to address the opposing party’s arguments raised in a response brief,” *Liberty Legal Found. v. Nat’l Democratic Party of the USA, Inc.*, 875 F. Supp. 2d 791, 797-98 (W.D. Tenn. 2012), and “**not** to file new arguments that could have been raised” in the initial brief in support, *Schuster v. Harbor*, 471 F. Supp. 3d 411, 424 (D. Mass. 2020) (emphasis added). Moreover, motions to exceed page limitations “are not favored” and should only be granted “in exceptional circumstances.” *Prudential Ins. Co. of Am. V. Sipula*, 776 F.2d 157, 161 n.1 (7th Cir. 1985).

17. Defendants asserted in their joint motion for leave to file replies that “[r]eply briefs are necessary to address the multitude of new and complex issues and arguments raised by Plaintiffs in their Responses to Defendants’ Motions to Dismiss,” (though they could not specify where in Plaintiffs’ Responses such new and complex issues and arguments were raised) and that their request for twenty (20) pages was warranted by “the amount of information pled in Plaintiffs’ Amended Petition, the breadth of law implicated in this action, and the arguments and counter-arguments made by the parties.” [Defs.’ Jt. Unopposed Mot. for Leave to File Replies in Support of their Mots. To Dismiss, ¶1-2]. This is not an exceptional circumstance, much less one that warrants allowing all seven (7) Defendants to file briefs that deviate from the limit of five (5) pages set forth in the local rules by as much as 300% each.


CONCLUSION

Plaintiffs have only asserted two claims against each of the Defendants, both of which are governed by well-settled law. Allowing the Defendants to file twenty (20) pages of *additional* briefing under these circumstances, over Plaintiffs' objections, is excessive and oppressive and places a substantial and undue burden on Plaintiffs and their counsel. Moreover, under the circumstances, in which the Court has determined that the issues are substantial and complex enough both to warrant reply briefs and to depart substantially from Oklahoma practice with regard to the length of reply briefs by allowing them to be four times their usual length, it would deprive Plaintiffs of a full and fair opportunity to be heard to require them to prepare for and attend oral argument on dispositive motions in less than a week's time.

WHEREFORE, premises considered, Plaintiffs respectfully request that the Court reconsider its order granting Defendants' request for leave to exceed the page limitation for reply briefs and allowing them until August 26, 2021 to submit their replies. Moreover, regardless of the Court's decision on the permissible page limitation for Defendants' reply briefs, Plaintiffs ask that the Court provide them an adequate opportunity to review and digest the material in Defendants' reply briefs and prepare for oral argument. Plaintiffs' requested continuance of the hearing to September 24, 2021 or later will accomplish that objective. Moreover, it will leave sufficient time for Plaintiffs to seek leave to file sur-replies, if necessary, and for Defendants to review and evaluate any sur-replies that may be filed with adequate time to prepare for the hearing.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on this ²¹ 12 day of August, 2021, I submitted a true and correct copy of the foregoing document via U.S. Mail, postage prepaid, to the following:

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