

DISTRICT COURT  
**FILED**

SEP 22 2022

DON NEWBERRY, Court Clerk  
STATE OF OKLA. TULSA COUNTY

IN THE DISTRICT COURT FOR TULSA COUNTY  
STATE OF OKLAHOMA

LESSIE BENNINGFIELD RANDLE <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	Case No. CV-2020-1179
	)	Division G
v.	)	The Hon. Caroline Wall
	)	
CITY OF TULSA <i>et al.</i>	)	
	)	
Defendants.	)	

**PLAINTIFFS’ OPPOSED MOTION FOR AN EMERGENCY TELEPHONIC HEARING**

Lessie Benningfield Randle, Viola Fletcher, and Hughes Van Ellis, Sr. (“Plaintiffs”), in support of their request for a telephonic hearing with this Court and City of Tulsa, Tulsa Regional Chamber, Board of County Commissioners for Tulsa County, Vic Regalado, in his official capacity as Sheriff of Tulsa County, and Oklahoma Military Department’s (“Defendants”), state as follows:

1. Notwithstanding the fact that the Court and the parties just spent *eighteen months* establishing that the remaining Plaintiffs have stated a claim against the remaining Defendants, the Defendants will use their additional time to file *another* round of motions to dismiss,<sup>1</sup> virtually ensuring additional lengthy delays in a case where the only remaining plaintiffs are 108, 107, and 101 years old respectively. For that reason and the reasons set forth below, Plaintiffs request that the Court hold a telephonic status conference at the Court’s earliest convenience to discuss this development and to determine a swift and efficient path forward for the case.

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<sup>1</sup> In Defendants’ motion for extension of time filed September 19, 2022 (“Extension Motion”), Defendants state that they are seeking additional time to file a “responsive pleading” but Defendants have expressly advised Plaintiff that Defendants are planning to file *motions to dismiss*. See Exhibit (“Ex.”) A. Motions, including motions to dismiss, are not “pleadings.” *Eaves v. Eaves*, 2000 CIV APP 90, ¶ 12, 14 P.3d 573, 575 (citing *Welch v. Simmons*, 1942 OK 181, ¶ 31, 126 P.2d, 89, 93).

2. On August 3, 2022, the Court resolved the Defendants' March 12, 2021 motions to dismiss that were the subject of multiple rounds of briefing and two separate oral arguments (which together constituted eleven hours of argument time). In the August 3, 2022 order (the "Order"), the Court granted in part and denied in part the motions to dismiss and directed that a Second Amended Petition ("SAP") be filed by September 2, 2022. Plaintiffs timely complied with the Order and filed the SAP on September 2, 2022.<sup>2</sup> The SAP, amended and filed in compliance with the Order, is significantly shorter than the First Amended Petition. Defendants filed their Extension Motion on September 19, 2022, and Your Honor granted that motion on September 20, 2022.

3. To use the extension this Court granted Defendants for yet another round of motions to dismiss is completely contrary to the spirit of the Order and the entire exercise the Court just devoted to hearing the original motions to dismiss. Indeed, Plaintiffs' objection to the Extension Motion was based primarily on the fact that Defendants intend to file motions to dismiss rather than the two-week extension itself. Lastly, the Defendants upcoming motions to dismiss is nothing but another delay tactic employed by Defendants over the last 101 years in with the goal that the Plaintiffs, die like every other victim of the Massacre, without justice or their day in court.

4. In light of Defendants' revelation that they intend to file motions to dismiss, again, Plaintiffs request that the Court hold an emergency telephonic scheduling conference so that the parties can discuss the most efficient path forward. In the meantime, Plaintiffs' have inquired with Defendants as to what the bases are for their anticipated motions to dismiss to

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<sup>2</sup> Defendants' statement that only two defendants of the five defendants were served with the SAP is incorrect. The five Defendants are represented by four counsel. As evidenced by the U.S. Postal Service Certified Mail receipts, copies of the SAP were sent to all four counsel via certified mail on September 2, 2022, with all four receiving it by September 6, 2022. *See* Ex. B.

explore whether whatever issues they may have can be resolved through technical amendments to the SAP or a conferral process.

**WHEREFORE**, Plaintiffs respectfully request a telephonic scheduling conference.

Dated this 22nd day of September, 2022.

Respectfully submitted,

SOLOMONSIMMONS LAW



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mckenzie.haynes@srz.com

*Attorneys for Plaintiffs.*

# EXHIBIT A

## Adams, Randall

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**From:** Damario Solomon-Simmons <dss@solomonsimmons.com>  
**Sent:** Friday, September 16, 2022 3:58 PM  
**To:** Gray, Kristina; Kym Heckenkemper  
**Cc:** Adams, Randall; Maynard; Miller, Eric; Spencer Bryan; Steven Terrill; Swartz, Michael; Solfanelli, Sara; Emma Weinberg; Lashandra Peoples-Johnson; Cordal Cephas  
**Subject:** RE: Randle v. COT, et al.

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Ok, thanks for clarification. Please note our objection.

---

**From:** Gray, Kristina <kgray@cityoftulsa.org>  
**Sent:** Friday, September 16, 2022 7:30 AM  
**To:** Damario Solomon-Simmons <dss@solomonsimmons.com>; Kym Heckenkemper <kheckenkemper@solomonsimmons.com>  
**Subject:** RE: Randle v. COT, et al.

The Defendants intend to file motions.

Thanks,

Kristina

**Kristina L. Gray | Litigation Division Manager**

City of Tulsa Legal Department  
175 E. 2<sup>nd</sup> Street, Suite 685. Tulsa, OK 74103

**T:** 918-596-7717

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**E:** [kgray@cityoftulsa.org](mailto:kgray@cityoftulsa.org)

[www.cityoftulsa.org](http://www.cityoftulsa.org)

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**From:** Damario Solomon-Simmons <[dss@solomonsimmons.com](mailto:dss@solomonsimmons.com)>  
**Sent:** Thursday, September 15, 2022 3:52 PM  
**To:** Gray, Kristina <[kgray@cityoftulsa.org](mailto:kgray@cityoftulsa.org)>; Kym Heckenkemper <[kheckenkemper@solomonsimmons.com](mailto:kheckenkemper@solomonsimmons.com)>  
**Subject:** Re: Randle v. COT, et al.

Good afternoon Kristina,

Will you please clarify whether you all are planning to file individual answers or MTDs? Once I have this information I will visit with my team and get back with you tomorrow?

Thanks!

Damario Solomon-Simmons, Esq., M.Ed.  
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918-582-6106 Fax  
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[www.solomonsimmons.com](http://www.solomonsimmons.com)

"Law is my Ministry, Justice is My Passion!"

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**From:** Gray, Kristina <[kgray@cityoftulsa.org](mailto:kgray@cityoftulsa.org)>  
**Sent:** Thursday, September 15, 2022 12:19:56 PM  
**To:** Damario Solomon-Simmons <[dss@solomonsimmons.com](mailto:dss@solomonsimmons.com)>; Kym Heckenkemper <[kheckenkemper@solomonsimmons.com](mailto:kheckenkemper@solomonsimmons.com)>  
**Subject:** Randle v. COT, et al.

Good afternoon.

The Defendants intend to file a joint motion asking for an additional two weeks to file a responsive pleading to the Plaintiffs' Second Amended Complaint. We presently have the deadline for responsive pleadings due September 22 and this request would move that deadline to October 6. Would you please advise if you object to this request so we may include that in our motion.

Thank you,

Kristina

**Kristina L. Gray | Litigation Division Manager**  
City of Tulsa Legal Department  
175 E. 2<sup>nd</sup> Street, Suite 685. Tulsa, OK 74103  
**T:** 918-596-7717  
**F:** 918-596-9700  
**E:** [kgray@cityoftulsa.org](mailto:kgray@cityoftulsa.org)  
[www.cityoftulsa.org](http://www.cityoftulsa.org)

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1. Article Addressed to:

**Kristina Gray**  
**City of Tulsa Legal Department**  
**175 E. 2<sup>nd</sup> Street, Ste. 685**  
**Tulsa, OK 74103**



9590 9402 7597 2098 6084 63

2. Article Number (Transfer from service label)

7020 1810 0001 7113 2127

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

x *Vickie Herron*  Agent  
 Addressee

B. Received by (Printed Name)

*Vickie Herron*

C. Date of Delivery

*9-6-22*

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)

- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

PS Form 3811, July 2020 PSN 7530-02-000-9053

Domestic Return Receipt

**U.S. Postal Service™**  
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*930381.0001*  
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For delivery information, visit our website at [www.usps.com](http://www.usps.com)®.

**OFFICIAL USE**

Certified Mail Fee

\$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ \_\_\_\_\_
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage

\$

Total

\$

Sent

Street

City



**Kristina Gray**  
**City of Tulsa Legal Department**  
**175 E. 2<sup>nd</sup> Street, Ste. 685**  
**Tulsa, OK 74103**

7020 1810 0001 7113 2127

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Keith Wilkes  
Hall Estill  
320 S. Boston Ave., Ste. 200  
Tulsa, OK 74103**



9590 9402 7597 2098 6084 56

2. Article Number (Transfer from...)

**7017 1450 0001 1726 7195**

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  
*X [Handwritten Signature]*

B. Received by (Printed Name)  
**Justin [Handwritten]**

C. Date of Delivery  
**SEP 2 2022**

D. Is delivery address different from item label?  Yes  
 If YES, enter delivery address below:  No



3. Service Type
- Adult Signature
  - Adult Signature Restricted Delivery
  - Certified Mail®
  - Certified Mail Restricted Delivery
  - Collect on Delivery
  - Collect on Delivery Restricted Delivery
  - Insured Mail
  - Insured Mail Restricted Delivery (over \$500)
  - Priority Mail Express®
  - Registered Mail™
  - Registered Mail Restricted Delivery
  - Signature Confirmation™
  - Signature Confirmation Restricted Delivery

7017 1450 0001 1726 7195

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 \$ \_\_\_\_\_

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ \_\_\_\_\_
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_



Postage  
 \$ \_\_\_\_\_

Total P.  
 \$ \_\_\_\_\_

Sent To  
**Keith Wilkes  
Hall Estill**

Street a  
**320 S. Boston Ave., Ste. 200**

City, St  
**Tulsa, OK 74103**

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**Kevin McClure  
State of Oklahoma  
Office of the Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73104**



9590 9402 7597 2098 6084 49

2. Article Number (Transfer from service label)

7017 1450 0001 1726 7201

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

- Agent
- Addressee

B. Received by (Printed Name)

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
If YES, enter delivery address below:  No

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
- Priority Mail Express®
- Registered Mail™
- Registered Mail Restricted Delivery
- Signature Confirmation™
- Signature Confirmation Restricted Delivery

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Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$ \_\_\_\_\_
- Return Receipt (electronic) \$ \_\_\_\_\_
- Certified Mail Restricted Delivery \$ \_\_\_\_\_
- Adult Signature Required \$ \_\_\_\_\_
- Adult Signature Restricted Delivery \$ \_\_\_\_\_

Postage

\$

Total P

\$

Sent To

Street

City, St



**Kevin McClure  
State of Oklahoma  
Office of the Attorney General  
313 NE 21<sup>st</sup> Street  
Oklahoma City, OK 73104**

7017 1450 0001 1726 7201

**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

**John H. Tucker**  
**Rhodes, Hieronymus, Jones,**  
**Tucker & Gable, PLLC**  
**P.O. Box 21100**  
**Tulsa, OK 74121**



9590 9402 7597 2098 6084 32

7017 1450 0001 1726 7218

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature

X

*[Handwritten Signature]*

- Agent
- Addressee

B. Received by (Printed Name)

*[Handwritten Name]*

C. Date of Delivery

D. Is delivery address different from item 1?  Yes  
 If YES, enter delivery address below:  No

SEP 2 2022

3. Service Type

- Adult Signature
- Adult Signature Restricted Delivery
- Certified Mail®
- Certified Mail Restricted Delivery
- Collect on Delivery
- Collect on Delivery Restricted Delivery
- Insured Mail
- Insured Mail Restricted Delivery (over \$500)
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- Signature Confirmation Restricted Delivery

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\$

Extra Services & Fees (check box, add fee as appropriate)

- Return Receipt (hardcopy) \$
- Return Receipt (electronic) \$
- Certified Mail Restricted Delivery \$
- Adult Signature Required \$
- Adult Signature Restricted Delivery \$

Postage

\$

Total

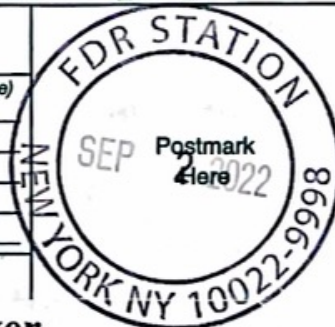
\$

Sent

Street

City

**John H. Tucker**  
**Rhodes, Hieronymus, Jones,**  
**Tucker & Gable, PLLC**  
**P.O. Box 21100**  
**Tulsa, OK 74121**



7017 1450 0001 1726 7218

**CERTIFICATE OF SERVICE**

I hereby certify that on the 22nd day of September 2022, I served the foregoing by email  
and U.S. Mail to the following:

Kristina Gray  
City of Tulsa Legal Department  
175 E. 2<sup>nd</sup> Street, Ste. 685  
Tulsa, OK 74103  
kgray@cityoftulsa.org

Keith Wilkes  
Hall Estill  
320 S. Boston Ave., Ste. 200  
Tulsa, OK 74103  
kwilkes@hallestill.com

Kevin McClure  
State of Oklahoma, Office of the Attorney  
General  
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Oklahoma City, OK 73104  
Kevin.mcclure@oag.ok.gov

John H. Tucker  
Rhodes, Hieronymus, Jones,  
Tucker & Gable, PLLC  
P.O. Box 21100  
Tulsa, OK 74121-1100  
jhtucker@rhodesokla.com

*/s/ Kymberli J. M. Heckenkemper*