

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

TABATHA BARNES, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
vs.	)	NO. CIV-16-0184-HE
	)	
CITY OF OKLAHOMA CITY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

SHERRY ELLIS, <i>et al.</i> ,	)	
	)	
Plaintiffs,	)	
vs.	)	NO. CIV-16-0019-HE
	)	
DANIEL HOLTZCLAW, <i>et al.</i> ,	)	
	)	
Defendants.	)	

ADAIRA GARDNER,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-16-0349-HE
	)	
DANIEL HOLTZCLAW, <i>et al.</i> ,	)	
	)	
Defendants.	)	

ROSETTA GRATE,	)	
	)	
Plaintiff,	)	
vs.	)	NO. CIV-16-0349-HE
	)	
CITY OF OKLAHOMA CITY, <i>et al.</i> ,	)	
	)	
Defendants.	)	

**PLAINTIFFS' JOINT MOTION TO AMEND SCHEDULING  
ORDER TO EXTEND DEADLINES**

Pursuant to Local Rule 7.1 (h), Plaintiffs Shardayreon Hill, Carla Johnson, Jannie Ligons, Kala Lyles, and Terri Morris in *Barnes v. City of Oklahoma City*, No. CIV-16-0184-HE (W.D. Okla.), and Plaintiff Regina Copeland in *Ellis v. Holtzclaw*, No. CIV-16-0019-HE (W.D. Okla.) (collectively, "Plaintiffs"), jointly move for an order amending the revised scheduling orders in effect in the aforementioned cases to extend the deadlines by ninety (90) days. In support of their Motion, Plaintiffs submit as follows.

**EXPLANATION OF GOOD CAUSE FOR EXTENSION**

1. On April 27, 2021, the undersigned underwent a major open abdominal surgery and was unable to return to work for nearly two weeks. One week after returning to work was the undersigned's last day at her previous law firm, so most of the week of May 10 through May 14, 2021 was spent copying and transferring files, filing motions to withdraw and notices of changes of address, and tying up other various loose ends.

2. The undersigned did not start at Solomon Simmons Law, PLLC until Monday, May 24, 2021, but between her last day at Riggs Abney and her first day at Solomon Simmons Law, she filed a notice to take the deposition of the designated representative(s) of the City under Federal Rule of Civil Procedure 30(b)(6).

3. Still recovering from surgery, the undersigned has not been cleared to take long trips by car, and will not be cleared until her next post-operation follow-up in mid-June or later. Accordingly, because the undersigned is officed in Tulsa, the deposition was set to be conducted remotely, despite Plaintiffs' counsel's desire to conduct the deposition

in-person for all the reasons set forth in their previous Joint Motion to Amend Scheduling Order to Extend Deadlines [Docs. 318 (CIV-16-184-HE), 201 (CIV-16-019-HE)]. However, the undersigned sent an email to all counsel in the above-captioned cases [*see* Email from K. Heckenkemper to M. Hammons *et al.* (May 24, 2021 1:23 P.M.) (filed as **Exhibit 1**)] seeking their consent to another extension of the deadlines for the reasons set forth herein and explained that if the Court were to grant the request for another extension, Plaintiffs' counsel intended to postpone the 30(b)(6) deposition until after the undersigned is cleared to travel long distances by car.

4. On May 25, 2021, the undersigned received a response from Mr. Richard Mann, attorney for the City, expressing that the City would not be producing a witness for the 30(b)(6) deposition without a court order. [*See* Email fr. R. Mann to K. Heckenkemper, *et al.* (May 25, 2021 12:02 P.M.) (filed as **Exhibit 2**)].

5. Evidently, following the informal conference to resolve the City's objection to Plaintiff's initially filed 30(b)(6) notice last year, attorneys for the City and attorneys for the Plaintiffs walked away with different understandings of the agreement that had been reached.

6. The undersigned's understanding was that Plaintiffs' counsel would review the notice again to determine the extent to which any of the topics listed in the notice could be addressed by deposition by written questions rather than in front of a court reporter, in an effort to narrow the scope of topics that would need to be addressed in a 30(b)(6)

deposition.<sup>1</sup> [See Email from K. Heckenkemper to R. Mann, *et al.* (May 26, 2021 3:34 P.M.) (filed as **Exhibit 3**)].

7. Contrarily, Mr. Mann alleges that the City understood that Plaintiffs' counsel would "provid[e] a list of questions that the City would attempt to respond to in writing in lieu of a 30(b)(6) deposition." [See **Ex. 2**]. Mann continued, stating "I would remind you that we have never agreed to present anyone for such a deposition."<sup>2</sup> [See *id.*].

8. Given this discrepancy in understanding, it has become clear that the parties will need to involve the Court in this dispute and litigate a motion to compel.

9. Presently, the discovery cutoff in this case is June 1, 2021.

10. In order to allow sufficient time for Plaintiffs to move to compel the City to produce witnesses for a 30(b)(6) deposition, for the City to respond, for the Court to render a decision, and, if the Court should grant Plaintiffs' motion, for the deposition to occur and

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<sup>1</sup> Upon reviewing the notice again, Plaintiffs' counsel determined that any topics that could have been adequately addressed by written questions either (1) had already been sufficiently covered in prior discovery, or (2) did not necessarily require testimony from a 30(b)(6) witness. Moreover, prior to re-filing the notice, Plaintiffs' counsel cut nearly half of the previously listed topics from the notice, substantially narrowing the scope of topics the City would need to produce witnesses to address under oath. [Compare Doc. 267 (CIV-16-184-HE) with Doc. 326].

<sup>2</sup> The undersigned notes that this position is inconsistent with the Joint Motion to Amend Scheduling Order to Extend Remaining Deadlines filed in October 2020, which was joined by the City defendants and signed by Mr. Thomas Tucker, and which stated at paragraphs 1 and 2 that "***Counsel for the Plaintiffs and the City Defendants are still in the process of negotiating the appropriate scope of a 30(b)(6) deposition,***" and that "***[t]he 30(b)(6) deposition, regardless of what the parties can agree to with respect to scope, will likely require testimony from multiple designated witnesses.***" [Doc. 297 (CIV-16-184-HE), ¶¶ 1-2 (emphasis added)].

for the parties to conduct any necessary follow-up discovery, another extension of the deadlines is necessary.

11. Plaintiffs will suffer prejudice if they are unable to depose designated representative(s) for the City and conduct any necessary follow-up discovery.

12. Granting this Motion will not prejudice any of the parties, will not burden the Court, and will promote the interests of justice.

13. The proposed extension will impact the scheduled trial date. However, it will permit the parties to provide the Court with more thorough and organized presentations of proof at trial.

14. This Motion is neither intended to cause delay nor presented with any other improper purpose. Rather, Plaintiffs' intent is to complete the process of discovery and facilitate a thorough and efficient presentation of facts and arguments to the Court.

#### **PRIOR REQUESTS FOR EXTENSION**

15. On April 24, 2018, the Court entered an order [Doc. 107 (CIV-16-0184-HE)] granting Defendant Holtzclaw's unopposed motion to extend the deadlines in the case by 180 days. [Doc. 104 (CIV-16-0184-HE)].

16. On October 4, 2018, Plaintiffs Hill, Johnson, Ligons, Lyles, and Morris filed an unopposed motion to extend all deadlines by 90 days [Doc. 125 (CIV-16-0184-HE)]. The Court granted the motion on October 9, 2018. [Doc. 127 (CIV-16-0184-HE)].

17. On February 1, 2019, the Plaintiffs, in a motion joined by all Defendants but Bennett, who objected, moved for a 90-day extension, [Doc. 170 (CIV-16-0184-HE)], which the Court granted on February 8, 2019. [Doc. 173 (CIV-16-0184-HE)].

18. On April 19, 2019, the Plaintiffs in CIV-16-0184-HE moved to extend the deadlines, and it was opposed only by Defendant Bennett. [Doc. 186 (CIV-16-0184-HE)]. The Court granted the motion on May 7, 2019. [Doc. 192 (CIV-16-0184-HE)].

19. On August 1, 2019, Plaintiffs Hill, Johnson, Ligons, Lyles Morris, and Gardner moved to extend the deadlines by 90 days. [Doc. 203 (CIV-16-0184-HE)]. The motion, unopposed, was granted August 5, 2019. [Doc. 204 (CIV-16-0184-HE)].

20. On November 12, 2019, Plaintiffs Hill, Johnson, Ligons, Lyles, Morris, and Copeland moved for a one-month extension. [Docs. 231, (CIV-16-0184-HE); 118 (CIV-16-0019-HE)]. The motion, unopposed, was granted on December 5, 2019. [Docs. 102 (CIV-16-0019-HE); 241 (CIV-16-0184-HE)].

21. On February 21, 2020, Plaintiffs Hill, Johnson, Ligons, Lyles, Morris, and Copeland moved to extend the deadlines by one month. [Docs. 252 (CIV-16-0184-HE); 108 (CIV-16-0019-HE)]. Defendants did not object to the requested extension, provided that any extension be applied in all four cases: CIV-16-0184-HE, CIV-16-0019, CIV-16-0349-HE, and CIV-16-0349-HE. Mr. Mark Hammons, counsel for Plaintiffs Ellis and Raines, objected. [See Doc. 112 (CIV-16-0019-HE)]. The Court granted the Motion on February 24, 2020. [Docs. 114 (CIV-16-0019-HE); 255 (CIV-16-0184-HE)].

22. On March 18, 2020, Plaintiffs Hill, Johnson, Ligons, Lyles, Morris, and Copeland moved to extend the deadlines by one month. [Docs. 258 (CIV-16-0184-HE); 118 (CIV-16-0019-HE)]. The motion, which was unopposed, provided that any extension be applied in all four cases, was granted on March 24, 2020, [see Docs. 119-20 (CIV-16-0019-HE; 259-60 (CIV-16-00184-HE)] extending the deadlines by sixty (60) days.

23. On May 14, 2020, Plaintiffs Hill, Johnson, Ligons, Lyles, Morris, Copeland, and Gardner moved, without objection, to extend the deadlines by another thirty (30) days. [See Doc. 261 (CIV-16-0184-HE)]. The motion was granted and the Court entered revised scheduling orders on May 18, 2020. [See Doc. 263 (CIV-16-0184-HE)].

24. On July 22, 2020, Plaintiffs Hill, Johnson, Ligons, Lyles, Morris (CIV-16-0184-HE), Copeland (CIV-16-0019-HE), Gardner (CIV-16-0349-HE), and Rosetta Grate (CIV-16-0412-HE), and the City Defendants, jointly moved, without objection, for an order amending the revised scheduling orders entered May 18, 2020. [See Docs. 277 (CIV-0184-HE), 144 (CIV-16-0019-HE)]. The motion was granted and the Court entered revised scheduling orders on July 23, 2020. [See Docs 278-79 (CIV-16-0184-HE)].

23. On or before September 15, 2020, Plaintiff Gardner (CIV-16-0349-HE) moved, without objection, to extend the deadlines by thirty (30) days. The Court granted the motion and entered revised scheduling orders on September 24, 2020.

25. On October 14, 2020, Plaintiffs Hill, Johnson, Ligons, Lyles, and Morris in *Barnes v. City of Oklahoma City*, et al., No. CIV-16-0184-HE (W.D. Okla.), Plaintiff Copeland in *Ellis v. Holtzclaw*, et al., No. CIV-16-0019-HE (W.D. Okla.), Plaintiff Adaira Gardner in *Gardner v. Holtzclaw*, et al., No. CIV-16-0349-HE (W.D. Okla.) jointly moved, without objection, to extend the deadlines by thirty (30) days. [See Docs. 297 (CIV-16-0184-HE) and 175 (CIV-16-0019-HE)]. The Court granted the motion on October 15, 2020. [See Docs. 298 (CIV-16-0184-HE) and 176 (CIV-16-019-HE)].

26. On November 25, 2020, Defendant Holtzclaw moved, without objection, to extend the deadlines by sixty (60) days. [See Docs. 308 (CIV-16-0184-HE) and 184 (CIV-

16-0019-HE)]. The Court granted the motion in an order entered December 1, 2020. [See Docs. 309 (CIV-16-0184-HE) and 185 (CIV-16-0019-HE)].

27. On January 15, 2021, Defendant Holtzclaw moved, without objection, for another sixty (60) day extension of the deadlines. [See Docs. 312 (CIV-16-0184-HE) and 188 (CIV-16-0019-HE)]. The Court granted the motion on January 28, 2021. [See Docs. 314 (CIV-16-0184-HE) and 190 (CIV-16-0019-HE)].

28. On March 31, 2021, these Plaintiffs moved for another sixty (60) day extension of the deadlines. [See Docs. 318 (CIV-16-0184-HE) and 201 (CIV-16-0019-HE)]. Mr. Mark Hammons, attorney for Plaintiffs Carla Raines and Sherri Ellis in *Ellis v. Holtzclaw, et al.*, No. 5:16-cv-0019-HE (W.D. Okla.) objected to the motion via email to Plaintiff's counsel, but he did not file an objection in response to the Court's order requiring any party with an objection to the motion to file a response by April 5, 2021. [See Doc. 322]. There were no other objections. The Court granted the Plaintiffs' motion on April 12, 2021. [Docs. 323, 324 (CIV-16-0184-HE) and 204, 205 (CIV-16-0019-HE)].

#### **POSITIONS OF THE PARTIES REGARDING PROPOSED EXTENSION**

27. This Motion is filed jointly by Plaintiffs Hill, Johnson, Ligons, Lyles, and Morris in CIV-16-0184-HE (W.D. Okla.), and Plaintiff Copeland in CIV-16-0019-HE (W.D. Okla.).

28. When the undersigned asked the other attorneys in the above-captioned cases whether they would object to an extension on May 24, 2021, only a sixty (60) day extension was requested. Mr. Cody Gilbert, attorney for Plaintiff Tabatha Barnes in CIV-16-0184-HE, Mr. James Hankins, attorney for Defendant Holtzclaw, and Mr. Mann, attorney for the



City defendants, each indicated that he did not object to these Plaintiffs' request for a sixty (60) day extension.<sup>3</sup>

29. Mr. Mark Hammons, attorney for Plaintiffs Carla Raines and Sherri Ellis in CIV-16-0019-HE, Mr. Nkem House, attorney for Plaintiff Rosetta Grate in CIV-16-0412-HE, and Mr. Andrew Casey, attorney for Plaintiff Adaira Gardner in CIV-16-0349-HE, did not respond to the undersigned's emailed inquiry regarding whether they had any objection to an extension of the deadlines, which was sent the afternoon of May 24, 2021.

29. Mr. Mark Hammons, counsel for Plaintiffs Sherry Ellis and Carla Raines in CIV-16-019-HE (W.D. Okla.), objects to this Motion.

30. Mr. Nkem House, counsel for Plaintiff Rosetta Grate in CIV-16-0412-HE (W.D. Okla.) did not respond to an email sent March 23, 2021, requesting his position on the proposed extension.

### **CURRENT & REQUESTED DEADLINES**

Plaintiffs ask the Court to enter an order extending the deadlines in the above-captioned cases as follows:

1. Motions to join additional parties to be filed by **10/6/17** (no change);
2. Motions to amend pleadings to be filed by **10/6/17** (no change);
3. Plaintiff(s) to file a final list of expert witness(es) in chief and submit expert reports to defendant(s) by: **7/15/21** (currently 4/15/21); Defendants to file a final list of expert witness(es) in chief and submit expert reports to plaintiff(s) by: **08/1/2021** (currently 5/1/21);

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<sup>3</sup> After learning from Mr. Mann's response that these Plaintiffs and the City will need to litigate Plaintiffs' request for a 30(b)(6) deposition, and that this would be the last time the City would agree to an extension, Plaintiffs' counsel has determined that a ninety (90) day extension would be more appropriate.

4. Plaintiff(s) to file a final list of witnesses together with addresses and brief summary of expected testimony where a witness has not already been deposed by: **8/1/21** (currently 5/1/21); Defendant(s) to file a final list of witnesses by: **8/15/21** (currently 8/15/21);
5. Plaintiff(s) to file a final exhibit list by: **8/1/21** (currently 5/1/21) Defendant(s) to file objections to plaintiff(s) final exhibit list by: **8/15/21**; (currently 5/15/21); Defendant(s) to file a final exhibit list and any exhibits not previously submitted by: **9/1/21**; (currently 6/1/21) Plaintiff(s) to file objections to Defendant(s) final exhibit list, under Fed. R. Civ. P. 26(a)(3)(B) by: **9/15/2021** (currently 6/15/21);
6. Discovery to be completed by: **9/1/21** (currently 6/1/21);
7. All dispositive and Daubert motions to be filed by: **9/15/21** (currently 6/15/21);
8. Trial Docket: \_\_\_\_\_ (currently September, 2021);
9. Designations of deposition testimony to be used at trial to be filed by: **11/1/21** (currently 8/1/21); Objections and counter designations to be filed by: **11/15/21** (currently 8/15/21);
10. Motions in limine to be filed by: **11/15/21** (currently 8/15/21);
11. Requested voir dire to be filed by: **11/15/21** (currently 8/15/21);
12. Trial briefs (optional unless otherwise ordered) to be filed by: **11/15/21** (currently 8/15/21).
13. Requested jury instructions to be filed on or before: **11/15/21** (currently 8/15/21);
14. Proposed findings and conclusions of law are to be filed not later than \_\_\_\_\_;
15. Responses to motions in limine shall be filed within **fourteen (14) days**; Any objection or response to the trial submissions referenced in 11, 12, 13, or 14 shall be filed within **seven (7) days**;
16. The Final Pretrial Report, approved by all counsel, and in full compliance with Local Rules (*See Appendix IV*), together with a proposed order

approving the report, to be submitted to the court by: **11/15/21** (currently 8/15/21).

WHEREFORE, Plaintiffs respectfully move the Court for an order extending the deadlines by ninety (90) days as requested herein.

Respectfully submitted,

*s/Kymerli J. M. Heckenkemper*

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**CERTIFICATE OF SERVICE**

I hereby certify that on May 28, 2021, I filed the above document with the Clerk of Court. Based on the records currently on file in this case, the Clerk of Court will transmit a Notice of Electronic Filing to those registered participants of the Electronic Case Filing System.

*s/Kyberli J. M. Heckenkemper* \_\_\_\_\_