

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

DR. RACHEL TUDOR,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 5:15-CV-00324-C
	)	
SOUTHEASTERN OKLAHOMA	)	
STATE UNIVERSITY,	)	
	)	
and	)	
	)	
THE REGIONAL UNIVERSITY	)	
SYSTEM OF OKLAHOMA,	)	
	)	
	)	
Defendants.	)	

**PLAINTIFF DR. RACHEL TUDOR'S  
OPPOSED MOTION FOR EXTENSION OF TIME TO RESPOND TO  
DEFENDANTS' MOTION FOR JUDGMENT AS A MATTER OF LAW, OR  
IN THE ALTERNATIVE, NEW TRIAL**

Plaintiff Dr. Rachel Tudor, pursuant to Local Rule 7.1(h), respectfully requests this Court rule on her pending **MOTION TO STRIKE** (ECF No. 318) and, in the event that Motion is denied, that the Court grant Tudor 14-days extension of time to respond to Defendants' pending **MOTION FOR JUDGMENT AS A MATTER OF LAW, OR IN THE ALTERNATIVE, NEW TRIAL** (ECF No. 316). In support of this request, Dr. Tudor shows the Court as follows:

1. The jury returned its verdict in this case on November 20, 2017 (ECF No. 262), finding in Tudor's favor on three of four claims.
2. At a hearing immediately following the dismissal of the jury, this Court set deadlines for Tudor's motion seeking reinstatement and any motions challenging the jury's verdict. The deadline was the same for both—opening briefs were due on December 11, 2017.<sup>1</sup> (ECF No. 262).
3. Tudor filed a timely motion seeking reinstatement (ECF No. 268); Defendants did not file any motion challenging the jury verdict as was required by December 11, 2017.
4. Final judgment was entered by this Court on June 6, 2018 (ECF No. 293). Hours later, Tudor filed a Notice of Appeal to the U.S. Court of Appeals for the Tenth Circuit (ECF No. 294). Thereafter, deadlines were set for Tudor's appeal in the Tenth Circuit.
5. On June 5, 2018, Defendants filed a motion seeking to challenge the jury's verdict pursuant to Rule 50(b) and otherwise seeking a new trial (ECF No. 316), 159 days past the deadline for that motion specially set

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<sup>1</sup> See Trial Trans., ECF No. 262 at 873–74:

Ms. Coffey: Your Honor, is this the appropriate time, or do we submit it at some point later, for judgment notwithstanding the verdict on behalf of defendants?

The Court: I would say if you want to file a written motion, the same schedule would apply. Fourteen days from Monday would be your opening brief on that.

by this Court. Inexplicably, Defendants did not seek leave from this Court to file their motion out of time.

6. On July 18, 2018, the parties participated in a mandatory mediation with the Tenth Circuit's Mediation Office. Unfortunately, a settlement was not reached. Immediately thereafter, Tudor filed a Motion to Strike Defendants' Motion in this Court (ECF No. 318). Therein, Tudor argued Defendants' Motion is untimely and its untimeliness is inexcusable thus justifying that it be stricken.
7. Hours later, the Tenth Circuit entered a *sua sponte* order abating the July 30, 2018 deadline for Tudor to file her opening brief and appendix on the premise that a post-judgment motion filed by Tudor (ECF No. 311) and/or Defendants' Motion (ECF No. 316) tolled deadlines for appeal pursuant to Fed. R. App. P. 4(a)(4)(B). That Order is cross-docketed as ECF No. 319.
8. On July 19, 2018, Tudor filed a Motion to Vacate the Tenth Circuit's July 18 Order, wherein she argued that the untimeliness of Defendants' Motion precludes automatic tolling of the appeal under Rule 4(a)(4)(B) *and* she argued that her own post-verdict motion (ECF No. 311) does not trigger tolling. Given the foregoing, Tudor requested that the Tenth Circuit vacate the July 18 Order and restore the original filing deadlines for Tudor's appeal.

9. Hours later, the Tenth Circuit ordered Defendants to respond to Tudor's Motion to Vacate by no later than August 2, 2018. Tudor notified this Court of the aforementioned developments hours later. *See* ECF Nos. 320 (Tudor's Notice to this Court); 320-1 (Tudor's Motion to Vacate as filed in the Tenth Circuit); 320-2 (Tenth Circuit's July 19 Order).
10. In good faith, Tudor believes that Defendants' pending motion should be stricken as inexcusably untimely, as argued in her pending Motion to Strike (ECF No. 318).
11. On July 20, 2018 Defendants filed a response in opposition to Tudor's post-verdict motion (ECF No. 321) admitting that Tudor's post-verdict motions in this Court should not be ruled upon until the resolution of her appeal, which consequentially defeats one of the two grounds on which the Tenth Circuit premised the July 18 Order. Thus, in the event that either this Court strikes Defendants' Motion as untimely *or* the Tenth Circuit deems Defendants' Motion to not otherwise trigger the automatic tolling provision of Rule 4(a)(4)(B), proceedings in the Tenth Circuit will proceed with all deliberate speed threatening to overlap with deadlines in this Court.
12. Given the likelihood that the Tenth Circuit's July 18 Order will be vacated, Tudor's counsel continues to work full-speed on her merits

appeal brief and appendix as well as coordinate efforts for planned amicus briefs in that Court.

13. Currently, the deadline for Tudor to respond on the merits to Defendants' Motion is July 26, 2018.

14. In order to conserve resources of the respective parties and ensure an orderly resolution of the motions pending before this Court—Defendants' Motion and Tudor's Motion to Strike it—as well as Tudor's Motion to Vacate the Tenth Circuit's July 18 Order, Tudor respectfully requests that this Court grant scheduling relief as follows:

a. Tudor requests that this Court rule on Tudor's Motion to Strike (ECF No. 318) prior to requiring Tudor respond to Defendants' Motion (ECF No. 316).

b. In the event that this Court denies Tudor's Motion to Strike, she asks that she be given 14-days from that denial to respond to Defendant's Motion (ECF No. 316).

15. Tudor has not requested an extension for time to respond to Defendants' Motion previously. And grant of this extension will not impact any other scheduled deadlines in this Court if granted.

16. Tudor's counsel reached out to counsel for Defendants via email on July 23, 2018 requesting their position on this Motion for Extension.

Attorney Jeb Joseph responded that Defendants oppose the “proposed rearranging of deadlines.”

**RELIEF REQUESTED**

For the reasons set forth above, Tudor respectfully requests that this Court rule on Tudor’s pending **MOTION TO STRIKE** (ECF No. 318) Defendants’ **MOTION FOR JUDGMENT AS A MATTER OF LAW, OR IN THE ALTERNATIVE, NEW TRIAL** (ECF No. 316). In the event that Tudor’s Motion to Strike is denied, Tudor asks that the deadline for her response to Defendants’ Motion be set as 14-days after the Order issued denying her Motion to Strike.

Dated: July 23, 2018

/s/ Ezra Young  
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**CERTIFICATE OF SERVICE**

I hereby certify that on July 23, 2018, I electronically filed a copy of the foregoing with the Clerk of Court by using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Ezra Young  
Ezra Young (NY Bar No. 5283114)