

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF LOUISIANA

CATHERINE M. BERNARD, *et al.*,  
*plaintiff*

v.

JOSEPH GREFER, *et al.*,  
*defendant*

Civil Action No. 2:14-cv-00887

Section "L" (2)

Judge Eldon E. Fallon

Magistrate Judge Joseph C. Wilkinson, Jr.

Jury Trial Requested

**EXXON MOBIL CORPORATION'S**  
**ANSWER, AFFIRMATIVE DEFENSES AND DEMAND FOR TRIAL BY JURY**

Defendant Exxon Mobil Corporation ("ExxonMobil"), without waiving any objections, responds to Plaintiffs' Second Supplemental and Amending Complaint ("the Second Amended Complaint"),<sup>1</sup> as follows:

**ANSWER**

1.

In response to the first sentence of Paragraph 1 of Plaintiffs' Second Complaint, ExxonMobil admits it was named as a defendant in a lawsuit captioned as *Dottie Adams, et al. v. Joseph Grefer, et al.*, 24<sup>th</sup> Judicial District Court, Jefferson Parish, Louisiana, No. 624-278 (Fitzsimmons, J. *ad hoc*), which was filed on October 11, 2005 ("*Dottie Adams*").

In response to the last two sentences of Paragraph 1 of Plaintiffs' Second Complaint, ExxonMobil admits that on February 14, 2008 a written document, a true and correct copy of which ExxonMobil is seeking leave of court to file under seal with the Court as Exhibit "A," was signed by Glen M. Pilié, who was counsel for ExxonMobil, and was signed by Grover G.

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<sup>1</sup> Plaintiffs previously filed a Motion for Leave to File a First Amended Complaint on November 17, 2014. [Dkt. 59]. During a December 10, 2014 status conference, the Court denied as moot Plaintiffs' Motion for Leave to File a First Amended Complaint and ordered that Plaintiffs file a Second Amended Complaint on or before December 19, 2014. [Dkt. 71]. On December 19, 2014, Plaintiffs filed a Motion for Leave to File Second Amended Complaint. [Dkt. 74]. On December 23, 2014, the Court granted Plaintiffs leave to file the Second Supplemental and Amended Complaint to which ExxonMobil now responds. [Dkt. 75, 76].

Hankins, who was counsel of record for the named plaintiffs in *Dottie Adams* (hereinafter the “2008 Conditional Agreement to Settle”). At the time of the signing of the 2008 Conditional Agreement to Settle, roughly three thousand three hundred (~3,300) individuals were named as plaintiffs in *Dottie Adams* either in the original or amended petitions (hereinafter the “*Dottie Adams* plaintiffs”).

ExxonMobil admits that, in April 2008, counsel for the *Dottie Adams* plaintiffs provided to ExxonMobil a list or spreadsheet of roughly 2,650 claimants who counsel for *Dottie Adams* plaintiffs asserted could potentially meet the conditions precedent, criteria, and proof requirements established by the plain language of the 2008 Conditional Agreement to Settle. These claimants became known as the “Original” Clients.

ExxonMobil denies all remaining allegations in Paragraph 1 of Plaintiffs’ Second Complaint, and notes that the allegations in the last two sentences of Paragraph 1 primarily consist of Plaintiffs’ characterizations of the 2008 Conditional Agreement to Settle, a document that speaks for itself and provides the best evidence of its contents.

2.

ExxonMobil denies the allegations of Paragraph 2 of Plaintiffs’ Second Complaint as written. Responding further, ExxonMobil admits that, pursuant to the 2008 Conditional Agreement to Settle, ExxonMobil settled, executed closing documents, and paid settlement amounts to claimants who satisfied the condition precedent of being a *Dottie Adams* plaintiff either by original or amending petitions. ExxonMobil further admits that, after February 14, 2008, ExxonMobil voluntarily settled, executed closing documents, and paid settlement amounts to claimants who did not satisfy the condition precedent of being a *Dottie Adams* plaintiff either by original or amending petition – even though ExxonMobil was not obligated to settle with these additional claimants pursuant to the 2008 Conditional Agreement to Settle. These

voluntary settlements to claimants who were not *Dottie Adams* plaintiffs did not waive, modify, or void the conditions precedent, criteria, and proof requirements established by the 2008 Conditional Agreement to Settle, including but not limited to the threshold condition precedent that only *Dottie Adams* plaintiffs were entitled to enforce the terms and provisions of the 2008 Conditional Agreement to Settle.

3.

ExxonMobil admits the 2008 Conditional Agreement to Settle clearly states the following two statements, which have been revised due to typographical errors made in Paragraph 3 of Plaintiffs' Second Complaint to accurately reflect the precise language in the 2008 Conditional Agreement to Settle:

The application of the points system below will apply to pay individual settlement amounts to all *Dottie Adams* plaintiffs listed in the original and amended petitions filed in the 24th Judicial District Court for the Parish of Jefferson, Louisiana, that meet the criteria to receive a settlement as stated above.

\* \* \*

ExxonMobil agrees to pay additional claimants that become plaintiffs in the *Dottie Adams* case in the future using this point system, provided said claimants meet the settlement criteria set forth above . . .

ExxonMobil denies the allegations of the last sentence in Paragraph 3 of Plaintiffs' Second Complaint.

4.

ExxonMobil denies all of the allegations of Paragraph 4 of Plaintiffs' Second Complaint as written. Responding further, ExxonMobil admits that meetings were held at Higgins High School, and that ExxonMobil's counsel, paralegals, and other personnel were present for those meetings. ExxonMobil further admits that, in or around June 2008, Plaintiffs' counsel provided

to ExxonMobil a new and separate list of over 1,000 claimants, who they represented as being and who became known as the “New” Clients.

ExxonMobil admits that, by November 2008, the number of “New” Clients identified by Plaintiffs’ counsel had increased to over 1,700 claimants.

ExxonMobil admits that, by November 2008, Plaintiffs’ counsel sent correspondence claiming that the “New” Clients were entitled to enforce the terms of the 2008 Conditional Agreement to Settle *even if* they did not satisfy the condition precedent of being *Dottie Adams* plaintiffs; and demanded roughly \$4.2 million in settlement money for the “New” Clients, *even though* that \$4.2 million would have been new money, over-and-above the \$8.5 million expressly listed in the 2008 Conditional Agreement to Settle.

ExxonMobil asserts that it has repeatedly and in writing informed Plaintiffs’ counsel that any “New” Client who fails to satisfy the conditions precedent, criteria, and proof requirements of the 2008 Conditional Agreement to Settle is not entitled to enforce the 2008 Conditional Agreement to Settle. ExxonMobil specifically denies any remaining allegations of Paragraph 4 of Plaintiffs’ Second Complaint not otherwise responded to above.

5.

ExxonMobil denies the allegations of Paragraph 5 of Plaintiffs’ Second Complaint. Responding further, ExxonMobil admits that Plaintiffs’ counsel has filed motions for leave to amend and supplement the petition in the *Dottie Adams* case seeking to add *Bernard* Plaintiffs as named plaintiffs in *Dottie Adams*. The following is a list of Plaintiffs’ motions for leave filed in the *Dottie Adams* case:

- (a) November. 9, 2010 – Motion for leave to file a 2nd supplemental and amending petition;
- (b) April 1, 2013 – Motion for leave to file a 3rd supplemental and amended petition;

- (c) June 25, 2013 – Motion for leave to file a 4th supplemental and amending petition;
- (d) September 20, 2013 – Second Motion for leave to file a 4th supplemental and amending petition;
- (e) September 20, 2013 – Motion for leave to file a 5th supplemental and amending petition to 4th supplemental and amending petition;
- (f) October 9, 2013 – Motion for leave to file a 3rd supplemental and amending petition;
- (g) October 9, 2013 – Motion for leave to file a 4th supplemental and amending petition; and
- (h) October 9, 2013 – Motion for leave to file a 5th supplemental and amending petition

ExxonMobil admits that it opposed the Motions for Leave, as did the many other defendants in the *Dottie Adams* case. ExxonMobil admits that the 24<sup>th</sup> Judicial District Court for the Parish of Jefferson denied each of Plaintiffs’ Motions for Leave, and the proposed amended or supplemental pleadings were not filed into the *Dottie Adams* suit record.

ExxonMobil asserts that any “New” Client who fails to satisfy the conditions precedent, criteria, and proof requirements of the 2008 Conditional Agreement to Settle is not entitled to enforce the 2008 Conditional Agreement to Settle.

6.

Paragraph 6 of Plaintiffs’ Second Complaint purports to characterize language and provisions of the 2008 Conditional Agreement to Settle, a document that speaks for itself and provides the best evidence of its contents; any allegations contrary to its plain meaning are denied. To the extent the allegations in Paragraph 6 of Plaintiffs’ Second Complaint are conclusions of law, no response is required. If a response is deemed necessary, ExxonMobil denies the allegations of Paragraph 6 of Plaintiffs’ Second Complaint.

Responding further, ExxonMobil asserts that the plain language of the 2008 Conditional Agreement to Settle establishes a threshold condition precedent or suspensive condition that only named plaintiffs in the *Dottie Adams* case, either by original or amended petition, are entitled to enforce the 2008 Conditional Agreement to Settle. If an individual is not a named *Dottie Adams* plaintiff, they have no right or standing from which to invoke the terms of the 2008 Conditional Agreement to Settle.

ExxonMobil further responds that the terms and conditions of the 2008 Conditional Agreement to Settle are clear and explicit and lead to no absurd consequences; thus, no further interpretation may be made in search of the parties' intent and the scope of the transaction. ExxonMobil expressly denies that the 2008 Conditional Agreement to Settle was a contract of adhesion, and the doctrine of strict construction does not apply under the circumstances.

7.

ExxonMobil denies the allegations of Paragraph 7 of Plaintiffs' Second Complaint. To the extent the allegations in Paragraph 7 of Plaintiffs' Second Complaint are conclusions of law, no response is required. If a response is deemed necessary, ExxonMobil denies the allegations of Paragraph 7 of Plaintiffs' Second Complaint.

Responding further, ExxonMobil denies the allegation that ExxonMobil or its counsel promised to resolve the "New" Clients' claims on the same terms as those stated in the 2008 Conditional Agreement to Settle. ExxonMobil asserts that it has repeatedly and in writing informed Plaintiffs' counsel any "New" Client who fails to satisfy the conditions precedent, criteria, and proof requirements of the 2008 Conditional Agreement to Settle, is not entitled to enforce the 2008 Conditional Agreement to Settle.

8.

The allegations in Paragraph 8 of Plaintiffs' Second Complaint are conclusions of substantive and procedural law and, therefore, require no response from ExxonMobil. To the extent a response is deemed appropriate, ExxonMobil denies the allegations of Paragraph 8 of Plaintiffs' Second Complaint.

9.

The allegations in Paragraph 9 of Plaintiffs' Second Complaint are conclusions of substantive and procedural law and, therefore, require no response from ExxonMobil. To the extent a response is deemed appropriate, ExxonMobil denies the allegations of Paragraph 9 of Plaintiffs' Second Complaint.

10.

The allegations in Paragraph 10 of Plaintiffs' Second Complaint are conclusions of substantive and procedural law and, therefore, require no response from ExxonMobil. To the extent a response is deemed appropriate, ExxonMobil denies the allegations of Paragraph 10 of Plaintiffs' Second Complaint.

11.

The allegations of Paragraphs 11 through 25 of the Second Complaint, including any and all subparts of Paragraphs 21 and 25, are denied. ExxonMobil notes that the allegations contained in Paragraphs 11 through 25 of the Second Complaint, including the subparts of Paragraphs 21 and 25, are verbatim and correspond directly with Paragraphs I(14) through I(27) and I(29) of Plaintiffs' original Petition for Damage. [Dkt. 1-1, p.9-13]. ExxonMobil previously filed responsive pleadings to the original Petition for Damages, including denials and affirmative defenses. [Dkt. 51]. As such, ExxonMobil hereby adopts and incorporates herein the answers, denials, and affirmative defenses previously pled against these identical allegations.

12.

Any paragraphs or sub-parts not explicitly admitted or denied are hereby denied

13.

ExxonMobil requests trial by jury on all claims.

14.

ExxonMobil denies the allegations contained in the Prayer for Relief to the Petition

### **AFFIRMATIVE DEFENSES**

#### **First Affirmative Defense**

ExxonMobil hereby adopts and incorporates herein the affirmative defenses applicable to ExxonMobil that have been asserted in its previously-filed responsive pleadings to the allegations in the original Petition for Damages. [Dkt. 51 p. 6-18].

#### **Second Affirmative Defense**

Pursuant to FED. R. CIV. P. 12(b)(6), Plaintiffs' Second Complaint fails to state a claim for which relief can be granted and fails to state a cause of action and/or right of action against ExxonMobil, including, but not limited to, Plaintiffs' failure to state a valid claim for: (1) breach of contract; (2) breach of compromise or settlement agreement; (3) detrimental reliance; and (4) estoppel.

#### **Third Affirmative Defense**

Pursuant to FED. R. CIV. P. 12(b)(6), ExxonMobil asserts that the all or some of the remaining *Bernard* Plaintiffs have no standing or no right of action, the Louisiana procedural corollary set forth in La. Code Civ. Proc. 927(6), to assert a claim of breach of contract, breach of compromise or settlement agreement, detrimental reliance, and estoppel because they were not represented by the plaintiffs' counsel, Mr. Hankins, who signed the 2008 Conditional Settlement

Agreement on the date the agreement was signed, and they were not otherwise made a party to the agreement.

#### **Fourth Affirmative Defense**

ExxonMobil asserts that the 2008 Conditional Agreement to Settle does not meet the requisites for a compromise or settlement under LA CIV. CODE arts. 3071, *et seq.* Under Louisiana law, “a suspensive condition is the civil law analog of a condition precedent.”<sup>2</sup> When an obligation is dependent upon a condition, “[t]he right to enforce the obligation does not arise until fulfillment of the suspensive condition, and the obligation may not be enforced until the condition is met.”<sup>3</sup> “When it has become certain that the suspensive condition will not occur . . . the obligations are broken and the contract is null.”<sup>4</sup> In this instance, being a named plaintiff in the *Dottie Adams* case, either by original or amended petition, is clearly and explicitly a threshold condition precedent or suspensive condition to having a right to enforce the 2008 Conditional Agreement to Settle.

Any *Bernard* Plaintiff who does satisfy the threshold condition precedent or suspensive condition of becoming a plaintiff in the *Dottie Adams* lawsuit, which was established by the 2008 Conditional Agreement to Settle, is not entitled to enforce the 2008 Conditional Agreement to Settle. The various motions for leave to supplement or amend the pleadings to add certain *Bernard* Plaintiffs were denied by the Louisiana state court in the *Dottie Adams* matter. Thus, no compromise or settlement exists between ExxonMobil and the remaining *Bernard* Plaintiffs who failed to satisfy the threshold condition precedent or suspensive condition of being *Dottie Adams*

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<sup>2</sup> *Foster v. United of Omaha Life Ins. Co.*, No. Civ.A. 08-1170, 2010 WL 3834047, at \*6 (W.D. La. Sept. 24, 2010) *aff'd*, 442 F. App'x 922 (5th Cir. 2011) (citing *In re Myles*, (Bkrcty. M.D. La. 2008), 395 B.R. 599, 604).

<sup>3</sup> *Hampton v. Hampton, Inc.*, 97-1779 (La. App. 1 Cir. 1998), 713 So. 2d 1185, 1190 (citing *Washington Nat. Ins. Co. v. Brown*, 94-1346 (La. App. 1st Cir. 4/7/95); 654 So. 2d 724, 728 n. 4, *writ denied*, 95-1699 (La. 10/13/95); 661 So. 2d 497).

<sup>4</sup> *Guichard v. Greenup*, 259 So. 2d 93, 94 (La. App. 1 Cir. 1972).

plaintiffs. Further, ExxonMobil has no obligation to settle with non-*Dottie Adams* plaintiffs under the 2008 Conditional Agreement to Settle.

#### **Fifth Affirmative Defense**

ExxonMobil asserts that the words of the 2008 Conditional Agreement to Settle are clear and explicit and lead to no absurd consequences; thus, no further interpretation may be made in search of the parties' intent and the scope of the transaction. Contracts, subject to interpretation only from the instrument's four corners without the necessity of extrinsic evidence, are to be interpreted as a matter of law, and the meaning and intent of the parties to the written contract cannot be explained or contradicted by parol evidence.

#### **Sixth Affirmative Defense**

Some or all of the *Bernard* Plaintiffs in this matter have previously asserted claims identical to those being made in this matter against ExxonMobil in other Louisiana state and federal courts.

#### **Seventh Affirmative Defense**

Some or all of the *Bernard* Plaintiffs in this matter have previously settled their claims with ExxonMobil and are in direct breach of the settlement closing documents executed between those individual *Bernard* Plaintiffs and ExxonMobil.

#### **Eighth Affirmative Defense**

ExxonMobil alleges that Plaintiffs and the alleged proposed class of similarly situated individuals fail to meet the substantive and legal requirements to maintain a class action as set forth in Fed. R. Civ. P. 23.

WHEREFORE, Exxon Mobil Corporation respectfully prays that its Answer and Affirmative Defenses be deemed good and sufficient and that after due proceedings are had,

judgment be rendered in ExxonMobil's favor and against Plaintiffs at Plaintiffs' sole and exclusive costs.

Respectfully submitted,

**ADAMS AND REESE LLP**

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**CERTIFICATE OF SERVICE**

The undersigned certifies that on the 6th day of January 2015, the above and foregoing pleading Exxon Mobil Corporation's Answer, Affirmative Defenses and Demand for Trial by Jury was electronically filed with the Clerk of Court by using the CM/ECF system pursuant to the rules and procedures of the United States District Court, Eastern District of Louisiana and a copy of same has been served on all parties through their attorneys via the court's CM/ECF system.

/s/ Roland M. Vandenweghe, Jr.

Roland M. Vandenweghe, Jr.