FLEESON, GOOING, COULSON & KITCH, L.L.C.
1900 EPIC Center
301 N. Main
P.O. Box 997
Wichita, Kansas 67201-0997
Telephone (316) 267-7361

IN THE TWENTY-SIXTH JUDICIAL DISTRICT
DISTRICT COURT, STEVENS COUNTY, KANSAS
CIVIL DEPARTMENT

WILLIE JEAN FARRAR and KEITH FARRAR, as Co-Trustees of the Keith Farrar Revocable Trust, dated October 22, 1999 and JOHN ELDON GREGG and KEITH THOMAS GREGG, as Co-Trustees of the Marie Gregg Trust u/A dated April 26, 1979, as amended, and THOMAS L. and PATRICIA A. LAHEY, individually and jointly, Plaintiffs, v. MOBIL OIL CORPORATION, Defendant.	Case No. 01 CV 12

Pursuant to K.S.A. Chapter 60.

PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOBIL'S MOTION TO ALTER AND AMEND

COME NOW the Plaintiffs and Plaintiff Class, and for their response to Mobil's motion to alter and amend, state as follows:

Mobil's motion appears to be a precautionary filing, designed to avoid any perceived risk of inadvertent waiver of any issues on appeal in connection with class certification. *See, e.g., Tucker v. Hugoton Energy Corp.*, 253 Kan. 373, Syl. ¶3, 855 P.2d 929 (1993) ("In the absence of an objection, omissions in findings will not be considered on appeal."). Otherwise, the motion serves

no purpose other than as a platform for Mobil to reargue what has already been considered and decided by the Court.

With the exception of some new findings that Mobil belatedly requests for the first time (Motion, at p. 2, New ¶¶33a, 33b, 33c), and a demand for explanations on various points (pp. 12-14), Mobil's motion to alter and amend is simply a rehash and reargument of items previously presented to, and considered and rejected by, the Court.

Mobil's new findings regarding the May 24, 1984 Memorandum Agreement are inaccurate and contrary to record. New Paragraph 33a is contrary to the express language of paragraph 4. m. of that agreement, which clearly states:

> Nothing in this Agreement shall result in payment of royalty in amounts less than those payable on the basis of proceeds received by Lessee for the sale of gas produced under the leases above mentioned.

(Plaintiffs' Exhibit 50, at F004303). New Paragraph 33b presumes that Mobil's proceeds were not the result of good faith sales, thereby concocting an imaginary dispute that no evidence in the record supports (and a curious position for Mobil to take). Mobil's suggestion in New Paragraph 33c that the language of the Memorandum Agreement is ambiguous and that counsel for the Plaintiff Class might be called as witnesses (presumably as a prelude to a motion for disqualification) is simply disingenuous and contrary to the unambiguous terms of the Memorandum Agreement. Mobil's new speculations are improper and warrant no further consideration. *See, e.g., Hagood v. Hall*, 211 Kan. 46, 52, 505 P.2d 736 (1973).

On March 30, 2009, following extensive briefing, the Court conducted an evidentiary hearing on Plaintiffs' Motion for Class Certification, where testimony and exhibits were presented by both parties, along with arguments of counsel. Thereafter, the Court received and considered extensive

proposed findings and conclusions from both parties. On August 18, 2009, the Court issued a twenty-page, written Journal Entry of the Court Certifying Class that embodies and reflects a rigorous analysis of the elements of class certification under *Dragon v. Vanguard Industries, Inc.*, 277 Kan. 776, 89 P.23d 908 (2004), including a thorough discussion of the controlling facts and the controlling legal principles regarding the parties' arguments.

Mobil misstates Kansas law concerning the Court's journal entry. Mobil incorrectly cites *Stewart v. State*, 30 Kan. App.2d 380, 382, 42 P.3d 205 (2002), for the proposition that "[m]ost importantly, a district court's findings and conclusion are insufficient if they fail to address each argument raised by the party contesting the decision." (Motion, at p. 3). *Stewart v. State* was a criminal case in which the defendant filed a habeas corpus motion under K.S.A. 60-1507 (which is entitled "prisoner in custody under sentence"). Accordingly, the Court of Appeals, following *State v. Bolden*, 28 Kan.App.2d 879, 24 P.3d 163 (2001), held that Supreme Court Rule 183 (which is entitled "Procedure Under K.S.A. 60-1507") controlled. Subsection (j) of that Rule states: "The court shall make findings of fact and conclusions of law on all issues presented." On its face, Rule 183(j) is limited to habeas corpus motions under K.S.A. 60-1507. The holding of *Stewart v. State* is likewise so limited.[1]

Rule 183(j) simply does not apply to a civil case such as this. Instead, Supreme Court Rule 165 (entitled "Reasons for Decisions") applies. Rule 165 states:

---

[1]Mobil's reliance on *Moll v. State*, 41 Kan. App.2d 677, 204 P.3d 659 (2009), is similarly misplaced. Like *Stewart v. State*, *Moll* involved a habeas corpus proceeding under K.S.A. 60-1507. Applying Rule 183, the Court of Appeals found that the district court did not set forth the basis of its ruling that the prisoner was denied effective assistance of counsel, and remanded "for specific factual findings and legal conclusions as required by Rule 183(j)." 41 Kan. App.2d at 686. It is in that context that the comments about "missing pieces" were made.

> In all contested matters submitted to a judge without a jury including motions for summary judgment, the judge shall state the controlling facts required by K.S.A. 60-252, and the legal principles controlling the decision. If evidence was admitted over proper objections, and in the reasons for the decision the judge does not state that such evidence, specifying the same with particularity, was not considered, then it shall be presumed that in all subsequent proceedings that the evidence was considered by the judge and did not enter into the judge's decision.

By setting forth the controlling facts and the controlling legal principles, the Journal Entry of the Court Certifying Class fully satisfies the requirements of Rule 165. The Court is not obligated to address in writing each and every concoction that Mobil serves up in its desperate effort to avoid class certification. Mobil wastes the Court's time by suggesting otherwise.

This Court has already considered Mobil's arguments and evidence, and has rendered its decision in writing. Mobil has had its day in court and has been heard. There is no reason to rehash this matter any further. The record is clear. The Court's ruling is clear. The bases for that ruling are clearly set forth in the written journal entry. Mobil's motion to alter and amend should be denied.

WHEREFORE, for all of the foregoing reasons, Plaintiffs and Plaintiff Class respectfully request that Mobil's Motion to Alter and Amend be denied.

Respectfully submitted,

FLEESON, GOOING, COULSON & KITCH, L.L.C.
Thomas D. Kitch, #07034
Gregory J. Stucky, #09674
Charles E. Millsap, #09692
David G. Seely, #11397
1900 Epic Center,
301 North Main
P.O. Box 997
Wichita, Kansas 67201-0997
Telephone: (316) 267-7361
FAX: (316) 267-1754

–and–

KRAMER, NORDLING & NORDLING, LLC

By: _____

Erick E. Nordling, #12302
209 East Sixth Street
Hugoton, Kansas 67951
Telephone: (620) 544-4333
Attorneys for Plaintiffs and Plaintiff Class

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on the 8th day of September, 2009, a true and correct copy of the above and foregoing PLAINTIFFS' MEMORANDUM IN OPPOSITION TO MOBIL'S MOTION TO ALTER AND AMEND was placed in the United States Mail, postage fully pre-paid thereon, to the following counsel for Defendant:

Richard C. Hite
Arthur S. Chalmers
HITE, FANNING & HONEYMAN L.L.P.
100 North Broadway, Suite 950
Wichita, Kansas 67202

Brian S. Engel
BARRETT DAFFIN FRAPPIER TURNER & ENGEL, LLP
610 W. 5th St., Suite 602
Austin, TX 78701-2872

Shannon Ratliff
RATLIFF LAW FIRM, PLLC
600 Congress Avenue
Suite 3100
Austin, TX 78701

Patton G. Lochridge
McGINNIS, LOCHRIDGE & KILGORE, LLP
600 Congress Avenue
Suite 2100
Austin, TX 78701

Ty Snelling
Counsel
Exxon Mobil Corporation
800 Bell Street, Room 1503K
Houston, TX 77002

Harold L. Hensley, Jr.
HINKLE, HENSLEY, SHANOR & MARTIN, L.L.P.
508 W. Wall, Suite 444
P. O. Box 3580
Midland, TX 79702