

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF TEXAS  
HOUSTON DIVISION

AZMI ATTIA, MARK BARR, KEVIN  
CONROY, and all other individuals  
similarly situated,

Plaintiffs,

v.

EXXON MOBIL CORPORATION,  
SUZANNE McCARRON, MALCOLM  
FARRANT, BETH CASTEEL, DANIEL  
LYONS, and LEN FOX,

Defendants.

Case No. 4:16-cv-03484

Honorable Keith P. Ellison

**DEFENDANTS' MOTION TO DISMISS  
THE AMENDED CLASS ACTION COMPLAINT**

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Pursuant to Rule 12(b)(6) of the Federal Rules of Civil Procedure, defendants Exxon Mobil Corporation (“ExxonMobil”), Suzanne McCarron, Malcolm Farrant, Beth Casteel, Daniel Lyons, and Len Fox (the “Individual Defendants”) respectfully move to dismiss the Amended Complaint (“Complaint”) filed by plaintiffs in its entirety and with prejudice on the grounds that:

- (1) The Complaint, alleging breach of a fiduciary duty of prudence and loyalty under the Employee Retirement Income Security Act of 1974 (“ERISA”) in Count I, does not satisfy the exacting pleading standard set forth by the Supreme Court in *Fifth Third Bancorp v. Dudenhoeffer*, 134 S. Ct. 2459 (2014) and *Amgen Inc. v. Harris*, 136 S. Ct. 758 (2016), and by the Fifth Circuit in *Whitley v. BP, p.l.c.*, 838 F.3d 523 (5th Cir. 2016);
- (2) The Complaint does not plausibly allege the existence of material information that ExxonMobil misrepresented or improperly failed to disclose or that the Individual Defendants knew of any nonpublic information about the value of ExxonMobil’s assets;
- (3) The Complaint, alleging a failure to monitor the Individual Defendants in Count II, does not adequately plead a primary breach by the Individual Defendants or that ExxonMobil was a monitoring fiduciary and thus owed such a duty; and
- (4) There is no basis to conclude that the Complaint’s deficiencies can be cured, thus warranting dismissal with prejudice.

The grounds for this motion are fully set forth in the Memorandum of Law in Support of Defendants’ Motion to Dismiss the Amended Class Action Complaint, filed concurrently herewith.

Dated: April 4, 2017

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Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the above and foregoing Motion has been served by electronic CM/ECF filing, on this 4th day of April, 2017.

/s/ Daniel J. Kramer

Daniel J. Kramer