

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF KANSAS**

ISOKE N. JENKINS-DYER,

Plaintiff,

vs.

Case No. 13-cv-2489-JAR-DJW

ANITA L. DRAYTON, et al.,

Defendants.

MEMORANDUM AND ORDER

Pending before the Court is Defendant Exxon Mobil Corporation's Motion for Leave to File Surreply in Opposition to Plaintiff's Motion for Leave to Amend Plaintiff's Complaint (ECF No. 31). In support of its motion, Defendant argues that Plaintiff's Reply (ECF No. 29) includes factual allegations not yet raised in this action by Plaintiff. Defendant seeks leave to address only to the newly raised factual allegation, and has attached a copy of its proposed surreply.

Plaintiff opposes the motion, arguing that the motion is untimely filed. Specifically, she argues that her reply was filed on December 24, 2013 and that D. Kan Rule 6.1(d) allows 14 days to file responses and replies. She further argues that the present motion was filed on January 13, 2014, which is 20 days after her reply and therefore untimely.

There is no provision in the local rules for filing a surreply absent leave of court.¹ Only under special circumstances, such as when a party improperly raises new arguments in a reply, will the court grant leave to file a surreply.² The Court has considered the parties' arguments and determines that Defendant should be granted leave to file its proposed surreply in opposition, so as to respond to the newly raised factual allegations of Plaintiff.

¹ *Flohrs v. Eli Lilly & Co.*, No. 12-2439-SAC, 2012 U.S. Dist. LEXIS 175088 at *3 (D. Kan. Dec. 11, 2012) (citation omitted).

² *Franklin v. City of Merriam*, No. 06-2421-CM, 2007 U.S. Dist. LEXIS 41711 at *2 (D. Kan. June 7, 2007) (citation omitted).

IT IS THEREFORE ORDERED that Defendant Exxon Mobil Corporation's Motion for Leave to File Surreply in Opposition to Plaintiff's Motion for Leave to Amend Plaintiff's Complaint (ECF No. 31) is granted. **Within seven (7) days of the date of this Order**, Defendant shall electronically file and serve its surreply to Plaintiff's Motion for Leave to Amend Plaintiff's Complaint.

IT IS SO ORDERED.

Dated in Kansas City, Kansas on this 5th day of February, 2014.

s/ David J. Waxse
David J. Waxse
United States Magistrate Judge