EXHIBIT 1

FILED
United States Court of Appeals
Tenth Circuit

August 25, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff - Appellee,

v.

SUNOCO, INC. (R&M); SUNOCO PARTNERS MARKETING & TERMINALS L.P.,

Defendants - Appellants.

No. 22-7018
(D.C. No. 6:17-CV-00313-JAG)
(E.D. Okla.)

ORDER

Before **EID** and **ROSSMAN**, Circuit Judges.

Appellants have filed a motion for a stay or injunction pending appeal. We consider (1) whether Appellants will likely succeed on appeal; (2) whether they will suffer irreparable harm without a stay or injunction; (3) whether a stay or injunction will harm opposing parties; and (4) whether a stay or injunction will harm the public interest. *See* 10th Cir. R. 8.1. Appellants have not shown that a stay or injunction is warranted under these factors, and we therefore deny their motion.

Appellants have also filed a separate motion for an "administrative" stay, which asks the court to temporarily halt execution efforts until this court resolves the above-referenced stay motion or, if the court denies the stay motion, to temporarily halt

execution efforts while Appellants renew their request for a stay in the Supreme Court. In light of our denial of the stay motion and Appellants' representation that "they are ready and willing [to seek relief from the Supreme Court] on an expedited basis," Mot. for Administrative Stay at 3, we also deny this motion.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

EXHIBIT 2

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

PERRY CLINE, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	Case No. CIV-17-313-JAG
SUNOCO, INC. (R&M) and SUNOCO PARTNERS MARKETING & TERMINALS, L.P.,	)	
Defendants.	)	

ORDER FOR PRODUCTION OF DOCUMENTS AND FOR ASSET HEARING

This matter comes before the Court on Plaintiff's Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets (Docket Entry #360). United States District Judge John A. Gibney, Jr. who presides over this case referred this Motion to the undersigned for the purpose of conducting the asset hearing in accordance with Fed. R. Civ. P. 69 and Okla. Stat. tit. 12 § 842. Judge Gibney also directed that the undersigned "will decide the remainder of the class representative's motion and will make findings and recommendations for this Court as to the 12 O.S. § 842 and Fed. R. Civ. P. 69 proceedings."

All issues concerning the appeals of Judge Gibney's Orders and the stay of the enforcement of his judgment have been resolved. Issues which Defendant continues to raise concerning the finality of Judge Gibney's judgment rendering asset discovery "premature

and impermissible" are no longer of any moment. This Court has received its instruction from Judge Gibney reflected in the Order entered June 14, 2022 to "resume" the "referred proceedings" meaning the asset hearing and associated discovery of assets.

Wading through the rhetoric and histrionic hyperbole in the briefing of both sides, Defendants object to pre-asset hearing production of documents which Plaintiff has served upon them. The document production does nothing more than require in written form that which Defendants will be required to provide at an asset hearing under Okla. Stat. tit. 12 § 842. It is clear from the statute that written inquiry as to the existence of assets sufficient to satisfy a judgment may be made by the judgment creditor. Okla. Stat. tit. 12 § 842(B)(3). This is not a case of general discovery governed by the Federal Rules of Civil Procedure. The case is well-beyond that point. Defendants are required to disclose possible assets from which the prevailing Plaintiff may recover his judgment. The purpose of the proceedings is clear - "At any time after judgment, any property of the judgment debtor . . . unless by law expressly excluded from being reached by creditors shall be subject to the payment of such judgment, by action, or as hereinafter provided." Okla. Stat. tit. 12 § 841. "The ultimate purpose of [Oklahoma's enforcement of judgment statutes, 12 O.S.2011 841 through 862] is to effect the application

of a judgment debtor's property to a judgment." Wells Fargo Bank, Nat. Ass'n v. Apache Tribe of Oklahoma, 360 P.3d 1243, 1262 (Okla. Civ. App. 2015) citing Ramco Operating Co. v. Gassett, 890 P.2d 941, 944 (Okla. 1995). "[P]ost-judgment discovery and collection provisions of Title 12 O.S.2011 §§ 841 through 862 . . . are supplemental proceedings in aid of execution and are equitable in nature. Stone v. Coleman, 1976 OK 182, ¶ 2, 557 P.2d 904; Treadway v. Collins, 1947 OK 98, ¶ 11, 178 P.2d 886, 889. '[T]he propriety of affording equitable relief, [pursuant to these provisions] rests in the sound discretion of the court, to be exercised according to the circumstances and exigencies of each particular case.' Mid-America Corp. v. Geismar, 1963 OK 65, ¶ 12, 380 P.2d 85, 88." Bowles v. Goss, 309 P.3d 150, 153-54 (Okla. Civ. App. 2013). As such, so long as the information sought is reasonably related to ascertaining assets from which Plaintiff's judgment may be satisfied, Defendants' claims of undue burden and overbreadth are unpersuasive. All of Plaintiff's requests pertain to the identification of Defendants' assets from which Plaintiff may recover on his judgment. Consequently, Defendants will be required to respond to the written requests attached to Plaintiff's Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets (Docket Entry #360).

Plaintiff also requests that one Matthew Ramsey be ordered to

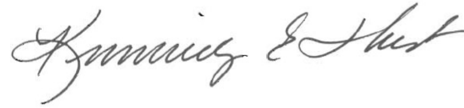
appear and answer as to Defendants' assets. While Defendants will be required to present a representative for the forthcoming asset hearing, this Court will permit Defendants to designate its corporate representative. Defendants are forewarned, however, that the representative shall have sufficient knowledge of the financial status of the Defendant entities to provide substantive information at the asset hearing.

Although not entirely clear, this Court interprets Judge Gibney's Order of February 7, 2022 (Docket Entry #360) as requiring Findings and Recommendations after conducting the asset hearing. Consequently, the production of the documents prior to the asset hearing will be ordered.

IT IS THEREFORE ORDERED that the Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets (Docket Entry #360) be **GRANTED**, in that Defendants will be required to produce the documentation and information requested in the document attached to the Motion as "Exhibit A" to Plaintiff's counsel no later than **AUGUST 31, 2022.**

IT IS FURTHER ORDERED that Defendants shall provide a representative with substantive knowledge regarding the assets available to satisfy to Plaintiff's judgment and to answer inquiry into the same on **SEPTEMBER 12, 2022 AT 10:00 A.M.**

IT IS SO ORDERED this 9th day of August, 2022.



KIMBERLY E. WEST
UNITED STATES MAGISTRATE JUDGE

EXHIBIT 3

FILED
United States Court of Appeals
Tenth Circuit

August 4, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff - Appellee,

v.

SUNOCO, INC. (R&M); SUNOCO PARTNERS MARKETING & TERMINALS L.P.,

Defendants - Appellants.

Nos. 22-7017 & 22-7018
(D.C. No. 6:17-CV-00313-JAG)
(E.D. Okla.)

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff - Appellee,

v.

SUNOCO, INC. (R&M); SUNOCO PARTNERS MARKETING & TERMINALS L.P.,

Defendants - Appellants.

No. 22-7030
(D.C. No. 6:17-CV-00313-JAG)
(E.D. Okla.)

ORDER

Before **BACHARACH**, **BRISCOE**, and **EID**, Circuit Judges.

On June 30, 2022, the court directed the parties to file memorandum briefs addressing in detail whether the court has jurisdiction over Appeal Nos. 22-7017 and

22-7030. These matters are before the court on the briefs filed by the parties. Upon careful consideration of the briefs, the applicable law, and district court docket, the court dismisses Appeal Nos. 22-7017 and 22-7030 for the reasons set forth below.

Sunoco, Inc. (R&M), and Sunoco Partners Marketing & Terminals, L.P. (collectively "Sunoco"), has filed six appeals arising out of the same underlying district court proceeding. They are all related to Sunoco's disagreement with the district court's judgment and orders in favor of a plaintiff class that sued Sunoco for failure to pay interest on late oil proceed payments under Oklahoma law. The district court awarded the plaintiff class $155 million in actual and punitive damages. After its first three appeals were dismissed, Sunoco filed a motion to enjoin enforcement of the judgment "until the [district court] enters a judgment that the Tenth Circuit recognizes as final and appealable and affirms." Doc. No. 376. The district court held a hearing and entered an order granting the motion in part and staying all enforcement actions for 60 days. Doc. No. 405. Sunoco appealed, resulting in Appeal No. 22-7017.

The parties were instructed to engage in mediation while the stay was in place. However, mediation was ultimately unsuccessful, and Sunoco asked the district court to "extend its prior 60-day stay of enforcement actions . . . through resolution of the certiorari petition [related to the dismissal of two of its prior appeals]. . . and . . . the pending Tenth Circuit appeals." Doc. No. 419. The district court denied Sunoco's request and directed the parties to file pleadings to finalize the litigation. Sunoco appealed, resulting in Appeal No. 22-7030.

Generally, this court's jurisdiction is limited to final decisions of the district courts. 28 U.S.C. § 1291. However, § 1292(a)(1) sets forth an exception to the general rule for interlocutory orders "granting, continuing, modifying, refusing or dissolving injunctions, or refusing to dissolve or modify injunctions." 28 U.S.C. § 1292(a)(1). "[A] stay order 'by a federal court that relates only to the conduct or progress of litigation before that court ordinarily is not considered an injunction and therefore is not appealable under [28 U.S.C.] § 1292(a)(1).'" *UFCW Loc. 880-Retail Food Emps. Joint Pension Fund*, 276 F. App'x at 749 n.3 (quoting *Gulfstream Aerospace Corp. v. Mayacamas Corp.,* 485 U.S. 271, 279 (1988)).

The Supreme Court has explained:

> An injunction and a stay have typically been understood to serve different purposes. The former is a means by which a court tells someone what to do or not to do. When a court employs 'the extraordinary remedy of injunction,' it directs the conduct of a party, and does so with the backing of its full coercive powers.

Nken v. Holder, 556 U.S. 418, 428 (2009) (internal citation omitted). Conversely, "a stay operates upon the judicial proceeding itself" and "[i]t does so either by halting or postponing some portion of the proceeding, *or by temporarily divesting an order of enforceability*." *Id.* (emphasis added). Although "'in a general sense, every order of a court which commands or forbids is an injunction; … in its accepted legal sense, an injunction is a judicial process or mandate operating *in personam*,' whereas '[a] stay is an intrusion into the ordinary processes of administration and judicial review.'" *Id.* (citations omitted).

Here, Sunoco's motion to enjoin execution of the underlying monetary judgment sought only to suspend the ordinary course of proceedings before the district court, not enjoin the plaintiff's out-of-court conduct. It did not ask the court to use its coercive powers against a party; instead, it simply asked the court to pause enforcement of its own judgment until certain appellate issues are resolved. In other words, the relief actually sought by Sunoco—in both its original motion to enjoin execution of the judgment and its notice asking the district court to extend the 60-day stay—was a stay, not an injunction. *See Pimentel & Sons Guitar Makers, Inc. v. Pimentel*, 477 F.3d 1151, 1153 (10th Cir. 2007) (holding that this court looks "beyond the captions and vocabulary . . . to determine the actual, practical effect of an order before exercising appellate jurisdiction"). As a result, the district court orders challenged by Sunoco are not appealable under 28 U.S.C. § 1292(a)(1), and this court lacks jurisdiction to consider Appeal Nos. 22-7017 and 22-7030.

Sunoco's motion for an injunction or stay filed in Appeal No. 22-7017 is denied as moot. The court will decide the motion for an injunction or stay filed in Appeal No. 22-7018 by separate order.

Sunoco's motion to consolidate Appeal No. 22-7030 with Appeal Nos. 22-7017 and 22-7018 is denied as moot.

The briefing schedule in 22-7018 will be set by further order of the court.

APPEAL NOS. 22-7017 and 22-7030 DISMISSED.

Entered for the Court
CHRISTOPHER M. WOLPERT, Clerk

By: Olenka M. George
Counsel to the Clerk

EXHIBIT 4

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

PERRY CLINE, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	**Case No. 17-cv-313**
SUNOCO, INC. (R&M) and SUNOCO PARTNERS MARKETING & TERMINALS, L.P.,	)	
Defendants.	)	

ORDER

This matter comes before the Court on the plaintiff's notice to the Court, (ECF No. 418), and the defendants' response to that notice, (ECF No. 419). In his notice, the plaintiff observes that the sixty-day stay of enforcement proceedings, (ECF No. 405), has expired. In response, the defendants ask that the Court "extend its prior 60-day stay of enforcement actions . . . through resolution of the certiorari petition . . . and . . . the pending Tenth Circuit appeals." (ECF No. 419, at 3.) The Court DENIES the defendants' request. *See* Fed. R. Civ. P. 62.

The referred proceedings may, therefore, resume before United States Magistrate Judge Kimberly West. (ECF No. 370.) Further, this Court DIRECTS that the parties resume briefing on the plaintiff's motion for statutory costs and fees, (ECF No. 389), and the plaintiff's motion to approve form and manner of notice to the certified class and to approve the proposed schedule, (ECF No. 390). Because months have passed since the plaintiff filed these motions, the Court DIRECTS the plaintiff to file supplemental briefing with any necessary updates on or before June

22, 2022.[1] The defendants shall file any response to the motions, (ECF Nos. 389, 390), and to any supplemental briefing on or before July 6, 2022. The plaintiff shall file any reply on or before July 13, 2022.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 14 June 2022
Richmond, VA

/s/
John A. Gibney, Jr.
Senior United States District Judge

[1] Because of the delay, the proposed schedule for notice and filing of class counsel's motion for attorneys' fees and litigation expenses and the class representative's motion for case contribution award includes some dates that have passed and others that have become impracticable. (ECF No. 390, at 9.)

EXHIBIT 5

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

PERRY CLINE, on behalf of himself and all others similarly situated,	)	
Plaintiff,	)	
v.	)	**Case No. 17-cv-313-JAG**
SUNOCO, INC. (R&M) and SUNOCO PARTNERS MARKETING & TERMINALS, L.P.,	)	
Defendants.	)	

ORDER

This matter comes before the Court on a motion to enjoin the enforcement of the judgment and any actions in support thereof filed by Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, L.P. (collectively, "Sunoco"). (ECF No. 376.) To obtain an injunction, a party must establish "(1) actual success on the merits; (2) irreparable harm unless the injunction is issued; (3) [that] the threatened injury outweighs the harm that the injunction may cause the opposing party; and (4) [that] the injunction, if issued, will not adversely affect the public interest." *United States v. Uintah Valley Shoshone Tribe*, 946 F.3d 1216, 1222 (10th Cir. 2020) (quoting *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 822 (10th Cir. 2007)). The Court held a hearing on the motion on March 31, 2022. For the reasons stated from the bench and in consideration of the standard set forth above, the Court GRANTS the motion IN PART and STAYS all enforcement actions for sixty days after the date of this Order.

Further, the Court REFERS the parties to United States Magistrate Judge Mark R. Colombell of this Court for a settlement conference. Counsel shall be responsible for contacting

the Chambers of Judge Colombell within five days of the date of this Order to schedule the conference, which should occur at such time as Magistrate Judge Colombell shall approve.

Finally, the Court will lift this sixty-day stay upon its expiration unless the parties notify the Court that they believe that they have made progress towards settlement and Judge Colombell agrees that they have done so. The parties shall notify the Court by filing a notice—jointly, if possible—on the record.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 31 March 2022
Richmond, VA

/s/
John A. Gibney, Jr.
Senior United States District Judge

EXHIBIT 6

FILED
United States Court of Appeals
Tenth Circuit

November 1, 2021

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

PERRY CLINE, on behalf of himself and all others similarly situated,

Plaintiff - Appellee,

v.

SUNOCO PARTNERS MARKETING & TERMINALS L.P.; SUNOCO, INC. (R&M),

Defendants - Appellants.

THE CHAMBER OF COMMERCE OF THE UNITED STATES OF AMERICA; PETROLEUM ALLIANCE OF OKLAHOMA; OKLAHOMA CHAPTER OF THE NATIONAL ASSOCIATION OF ROYALTY OWNERS,

Amici Curiae.

Nos. 20-7064 & 20-7072
(D.C. No. 6:17-CV-00313-JAG)
(E.D. Okla.)

ORDER[*]

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[*] This order is not binding precedent, except under the doctrines of law of the case, res judicata, and collateral estoppel. It may be cited, however, for its persuasive value consistent with Fed. R. App. P. 32.1 and 10th Cir. R. 32.1.

Before **TYMKOVICH**, Chief Judge, **MATHESON**, and **PHILLIPS**, Circuit Judges.[**]

Sunoco, Inc. (R&M), and Sunoco Partners Marketing & Terminals, L.P. (collectively "Sunoco"), appeal the district court's judgment and orders in favor of a plaintiff class that sued Sunoco for failure to pay interest on late oil proceeds payments under the Oklahoma Production Revenue Standards Act, Okla. Stat. tit. 52, § 570.1 *et seq*. The district court awarded the plaintiff class over $155 million in actual and punitive damages. It also issued a plan of allocation order to divide and distribute the damages. Sunoco appealed. We dismiss these consolidated appeals because Sunoco did not meet its burden to establish appellate jurisdiction.

I. BACKGROUND

A. *Legal Background*

"[T]he appellant . . . has the duty to establish the existence of this court's appellate jurisdiction." *Vette v. K-9 Unit Deputy Sanders*, 989 F.3d 1154, 1161 (10th Cir. 2021). "It is the appellant's burden, not ours, to conjure up possible theories to invoke our legal authority to hear [its] appeal." *Raley v. Hyundai Motor Co.*, 642 F.3d 1271, 1275 (10th Cir. 2011).

Further, under the Federal Rules of Appellate Procedure,

> [t]he appellant's brief must contain . . . a jurisdictional statement, including . . . the basis for the court of appeals'

[**] After examining the briefs and appellate record, this panel has determined unanimously that oral argument would not materially assist in the determination of these consolidated appeals. *See* Fed. R. App. P. 34(a)(2); 10th Cir. R. 34.1(G). The case is therefore ordered submitted without oral argument.

> jurisdiction . . . and . . . an assertion that the appeal is from a final order or judgment . . . or information establishing the court of appeals' jurisdiction on some other basis.

Fed. R. App. P. 28(a). "It is indisputably within our power as a court to dismiss an appeal when the appellant has failed to abide by the rules of appellate procedure . . . ." *MacArthur v. San Juan Cty.*, 495 F.3d 1157, 1161 (10th Cir. 2007).

B. ***Sunoco's Briefing***

Sunoco filed four briefs arguing or implying we *lack* jurisdiction.[1]

First, in November 2020, Sunoco argued "[t]he District Court's Plan of Allocation does not result in a final, appealable judgment." Aplt. Mem. Br. at 1.

Second, in December 2020, Sunoco argued "there is yet no final judgment." Aplt. First Suppl. Mem. Br. at 3.[2]

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[1] In a related earlier appeal (No. 20-7055) filed before the district court issued its plan of allocation order, Sunoco filed two briefs in response to this court's order to address the finality of the district court's judgment. Neither said we had jurisdiction.

First, in September 2020, Sunoco asserted "the District Court's Judgment Order is likely not a final judgment under 28 U.S.C. §[]1291, absent this Court revisiting *Strey* [*v. Hunt International Resources Corporation*, 696 F.2d 87 (10th Cir. 1982)] and *Cook* [*v. Rockwell International Corporation*, 618 F.3d 1127 (10th Cir. 2010)] in light of the Supreme Court's decision in *Tyson Foods*[*, Inc. v. Bouaphakeo*, 577 U.S. 442 (2016)]." Aplt. Mem. Br. at 9, *Cline v. Sunoco Partners Mktg. & Terminals L.P.*, 2020 WL 8632631 (10th Cir. 2020) (No. 20-7055), ECF No. 10771954.

Second, in November 2020, shortly after the district court issued its plan of allocation order, Sunoco asserted that the plan of allocation order "may not result in a final, appealable judgment." Aplt. Suppl. Mem. Br. at 4, *Cline*, 2020 WL 8632631 (No. 20-7055), ECF No. 10782938.

[2] Sunoco also stated that language from the district court's opinion denying its post-judgment motions "creates uncertainty on the finality-of-judgment question." Aplt. First Suppl. Mem. Br. at 3.

Third, in March 2021, Sunoco filed its merits brief with the following jurisdictional statement:

> There was jurisdiction for this class action. 28 U.S.C. §1332(d). This Court ordered the parties to file memoranda on whether there is a final, appealable judgment. After those memoranda were filed, this Court ordered that the finality-of-judgment issue will be carried with the appeal.

Aplt. Br. at 15.

Fourth, in October 2021, after reviewing the parties' filings, this court ordered the parties to address: (1) "[w]hether the Sunoco appellants have met their burden to show why the court has appellate jurisdiction?" and (2) "[i]f Sunoco has failed to meet this burden, what action should the court take?" Doc. 10865486 at 2. In response, Sunoco argued "there is appellate jurisdiction if this Court takes the actions requested . . . to ensure finality of the judgment." Aplt. Second Suppl. Mem. Br. at 10.[3]

II. DISCUSSION

Sunoco has not met its burden to establish our jurisdiction. Indeed, it has argued the opposite. Sunoco filed four briefs arguing or implying we *lack*

That same day, Sunoco filed a status report, which asserted that "the appeal should continue to be abated until this Court rules on whether there is a final, appealable judgment in this case." Doc. 10792010 at 1.

[3] Sunoco also said that, "[u]pon further reflection," the district court had clarified the plan of allocation order's principles for distributing unclaimed funds, and this was "adequate for a final judgment." Aplt. Second Suppl. Mem. Br. at 5-6. But, Sunoco said, this clarification does not extend to the division of damages for unidentifiable class members, which, it contends, is a finality requirement that has not been met. *See id.* at 6-9.

jurisdiction because the district court's plan of allocation order does not result in a final, appealable judgment. *See* Aplt. Mem. Br. at 1; Aplt. First Suppl. Mem. Br. at 3; Aplt. Second Suppl. Mem. Br. at 10. Nor does the jurisdictional statement in Sunoco's opening merits brief invoke a basis for our appellate jurisdiction. *See* Aplt. Br. at 15.

Sunoco's latest brief, rather than argue we have appellate jurisdiction, suggests we resolve the remaining finality issue regarding unidentifiable class members by (1) determining first, before addressing finality, that unidentifiable class members lack standing; or (2) directing the district court to modify its orders. *See* Aplt. Second Suppl. Mem. Br. at 9-10. Neither suggestion states we have appellate jurisdiction and neither has merit.

<u>First</u>, as to the standing of unidentifiable class members, "[o]n every . . . appeal, the first and fundamental question is that of jurisdiction, first, of this court, and then of the court from which the record comes." *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 94 (1998) (quotations omitted). "Thus, the question of this Court's jurisdiction (i.e., our appellate jurisdiction) is *antecedent* to all other questions, including the question of the subject matter [jurisdiction] of the District Court." *In re Lang*, 414 F.3d 1191, 1195 (10th Cir. 2005) (quotations omitted); *see also United States v. Springer*, 875 F.3d 968, 973 (10th Cir. 2017).[4] We cannot address questions of standing if we lack appellate jurisdiction.

[4] Although "a federal court has leeway to choose among threshold grounds for denying audience to a case on the merits," *Sinochem Int'l Co., Ltd. v. Malaysia Int'l*

Second, Sunoco attempts to shift the burden of establishing appellate jurisdiction to this court by asking us to "give directions to the District Court." Aplt. Second Suppl. Mem. Br. at 10. It cites no authority to support this approach.[5] Instead, Sunoco asserts "there is appellate jurisdiction *if* this Court takes the actions requested . . . to ensure finality of the judgment." *Id.* at 10 (emphasis added). But that conditional assertion does not show we have jurisdiction. Sunoco, not us or Appellee Cline, must "conjure up possible theories to invoke our legal authority to hear [its] appeal." *Raley*, 642 F.3d at 1275. Sunoco did not pursue the options available to it to establish appellate jurisdiction.[6] "Where an appellant fails to lead, we have no duty to follow." *Id.*

Shipping Corp., 549 U.S. 422, 431 (2007) (quotations omitted), as *Steel Co.*, 523 U.S. at 94, *Lang*, 414 F.3d at 1195, and *Springer*, 875 F.3d at 973, explain, an appellate court must first consider appellate jurisdiction.

[5] Earlier in its brief, Sunoco quotes *Pritchett v. Office Depot, Inc.*, 420 F.3d 1090, 1093 (10th Cir. 2005), for the rule that "federal courts always have jurisdiction to consider their own jurisdiction." Aplt. Second Suppl. Mem. Br. at 6. But that rule does not explain how we have authority to direct the district court to address finality concerns about our appellate jurisdiction.

[6] If, as Sunoco repeatedly argues, the district court has not issued a final, appealable judgment, Sunoco had at least four ways to attempt to invoke our jurisdiction. It pursued none and fails to explain why not. Sunoco could have:

(1) Asked the district court to certify an interlocutory appeal under 28 U.S.C. § 1292(b);
(2) Attempted to invoke the collateral order doctrine exception to 28 U.S.C. § 1291's final judgment rule, *see, e.g.*, *Henderson v. Glanz*, 813 F.3d 938, 947 (10th Cir. 2015);
(3) Filed a petition for a writ of mandamus for the district court to enter final judgment, *see, e.g.*, *United States v. Clearfield State Bank*, 497 F.2d 356, 358 (10th Cir. 1974) ("Appellant . . . filed a notice of appeal, and, on the theory that the court's orders were not final and

III. **CONCLUSION**

Sunoco has repeatedly argued that we lack jurisdiction. It has not therefore met its burden to establish appellate jurisdiction. We thus dismiss these consolidated appeals. *See Stephens v. Jones*, 494 F. App'x 906, 908 (10th Cir. 2012) (unpublished) (cited for persuasive value under 10th Cir. R. 32.1 and Fed. R. App. P. 32.1) (dismissing appeal of two orders for failure to prosecute where appellant "presented no argument, in either his jurisdictional brief or his merits briefs, regarding our jurisdiction over" two of the three orders he appealed); *see also E.E.O.C. v. PJ Utah, LLC*, 822 F.3d 536, 542-43 & n.7 (10th Cir. 2016) (dismissing

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therefore non-appealable, also filed an application for a writ of mandamus . . . to require entry of final judgment."); or

(4) Asked us to "constru[e] the appeal as a petition for a writ of mandamus," *Boughton v. Cotter Corp.*, 10 F.3d 746, 748, 750-51 (10th Cir. 1993); *see also, e.g.*, Opening Br. of Aplts. & Cross Aplees. at 4, *Cook*, 618 F.3d 1127 (Nos. 08-1224, 08-1226, 08-1239), ECF No. 9640935 ("[I]f this Court were to conclude that it lacks appellate jurisdiction here, [appellants] respectfully urge this Court to treat these fully briefed appeals as petitions for mandamus . . . .").

We do not address whether any of these options would have established our jurisdiction. Nor do we address whether we have sua sponte authority to construe this appeal as a petition for a writ of mandamus. Moreover, we have "discretion to decline to consider waived arguments that might have *supported* . . . jurisdiction." *Tompkins v. United States Dep't of Veterans Affs.*, — F. 4th —, 2021 WL 4944641 at *1 n.1 (10th Cir. 2021) (quotations omitted); *see also Colorado Outfitters Ass'n v. Hickenlooper*, 823 F.3d 537, 544 (10th Cir. 2016) (same).

part of appeal for lack of jurisdiction and declining to address collateral order doctrine because appellant had burden to, and did not, invoke the doctrine).[7]

Entered for the Court
Per Curiam

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[7] We do not address whether the district court's plan of allocation order resulted in a final, appealable judgment.

EXHIBIT 7

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

PERRY CLINE, on behalf of himself
and all others similarly situated,
Plaintiff,

v. Civil Action No. 6:17-cv-313-JAG

SUNOCO, INC. (R&M), and,
SUNOCO PARTNERS MARKETING
& TERMINALS, L.P.,
Defendants.

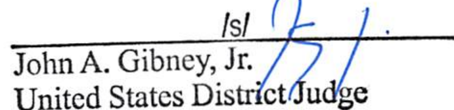
JUDGMENT ORDER

This matter comes before the Court following a bench trial. The Court held a trial in this case on December 16-19, 2019, and heard closing arguments on June 17, 2020. For the reasons stated in the Court's August 17, 2020 Opinion, pursuant to Federal Rule of Civil Procedure 58, the Court ENTERS JUDGMENT against the defendants as to Count One. The Court AWARDS damages in the amount of $80,691,486.00 in actual damages and $75,000,000.00 in punitive damages.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 27 August 2020



/s/
John A. Gibney, Jr.
United States District Judge

EXHIBIT 8

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

PERRY CLINE, on behalf of himself
and all others similarly situated,
Plaintiff,

v. Civil Action No. 6:17-cv-313-JAG

SUNOCO, INC. (R&M), et al.,
Defendants.

ORDER

This matter comes before the Court following a bench trial. The Court held a trial in this case on December 16-19, 2019, and heard closing arguments on June 17, 2020. For the reasons stated in the accompanying Opinion, the Court ORDERS as follow:

1. The Court GRANTS the plaintiff's motion to strike Eric Krause (Dk. No. 207) and SUSTAINS the plaintiff's objections to Krause's testimony at trial.

2. The Court ENTERS JUDGMENT against the defendants as to Count One in the amount of $74,763,113.00 as of December 16, 2019, plus any additional interest that has accrued on each payment at a rate of 12 percent, compounding annually, from December 17, 2019, to the date of this Order, subject to the modifications as set forth below. The Court, however, withholds entering a final judgment order pursuant to Federal Rule of Civil Procedure 58 until counsel has provided the Court with an updated damages calculation.

3. The Court AWARDS punitive damages in the amount of $75,000,000, pursuant to Okla. Stat. tit. 23, § 9.1(B).

4. The Court CONCLUDES that the defendants have not committed fraud as alleged in Count Two.

5. The Court DENIES the requests for an accounting, disgorgement, and a permanent injunction set forth in Counts Three and Four.

6. Except as otherwise indicated, the Court OVERRULES all outstanding objections to the exhibits, witnesses, deposition designations, and other evidence.

7. Within seven (7) days of this Order, counsel shall confer and file a notice that sets forth the following calculations:

a. The total amount of actual damages, to include the total additional interest that has accrued on each payment between the date of trial and the date of this Order. Counsel shall subtract the interest due for any timely exclusion requests not accounted for in the plaintiff's trial calculations, and add the interest due to the class members who timely withdrew their exclusion requests. (*See* Dk. No. 271.)

b. The combined total of the updated damages calculation plus $75,000,000.00 in punitive damages.

8. Within fourteen (14) days of filing the updated calculations, class counsel shall file a brief setting forth its proposed plan for distribution of the damages award. The defendants shall respond within fourteen (14) days after class counsel files the proposed plan. Class counsel may file a reply six (6) days thereafter.

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record.

Date: 17 August 2020
Richmond, VA

/s/
John A. Gibney, Jr.
United States District Judge