

EXHIBIT 1

YetterColeman LLP

August 30, 2022

Hon. John A. Gibney, Jr.
United States District Judge
Federal Courthouse
701 East Broad Street
Richmond, Virginia 23219

Re: *Cline v. Sunoco, Inc. (R&M)*, No. Civ-17-313 JAG,
U.S. District Court, E.D. Okla.

Judge Gibney:

On behalf of the Sunoco defendants, we write to advise the Court of a recent development in the U.S. Supreme Court that Sunoco believes warrants consideration as to a brief stay of asset discovery pending here.

Yesterday, August 29, 2022, Sunoco filed an application for stay pending certiorari in *Sunoco Partners & Term., et al. v. Cline* (U.S. Supreme Court). The application was submitted to Hon. Neil Gorsuch, Circuit Justice of the Tenth Circuit. This afternoon, Justice Gorsuch requested that the class representative submit a response to Sunoco's application for stay by noon on September 6, 2022. *See* Dkt. in No. 22A188 (attached).

Pending before this Court are Sunoco's objections to the Magistrate Judge's order requiring Sunoco to produce each document in its possession that touches on its every asset and debt by tomorrow, August 31, 2022. *See* Dkt. 430 (Order), 431 (Objections). Considering the request by Justice Gorsuch on Sunoco's application for stay and its pending Objections to the Order, Sunoco respectfully submits that a brief stay of asset discovery until such time as both the Objections and the request for a stay in the Supreme Court are resolved is warranted, will conserve judicial resources, and would prevent irreparable harm to Sunoco in having to respond to discovery that is facially overbroad, being subject to premature enforcement proceedings, and during consideration by the Tenth Circuit and U.S. Supreme Court of Sunoco's requests for a merits appeal.

Should the Court require additional discussion of these recent events, Sunoco counsel is available at the Your Honor's convenience.

Respectfully submitted,




R. Paul Yetter

YetterColeman LLP

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August 30, 2022

Cc: Bradley E. Beckworth, Nix Patterson (via electronic service)

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No. 22A188		
Title:	Sunoco Partners & Term., et al., Applicants v. Perry Cline	
Docketed:	August 29, 2022	
Linked with 21-1404		
Lower Ct:	United States Court of Appeals for the Tenth Circuit	
Case Numbers:	(20-7064, 20-7072)	

DATE	PROCEEDINGS AND ORDERS
Aug 29 2022	Application (22A188) for a stay, submitted to Justice Gorsuch. Main Document Proof of Service Lower Court Orders/Opinions
Aug 30 2022	Response to application (22A188) requested by Justice Gorsuch, due September 6, 2022 at Noon (EDT).

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Party name: Sunoco Partners Marketing & Terminals L.P., et al.		

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

Case No. 17-cv-313-JAG

**CLASS REPRESENTATIVE’S RESPONSE TO DEFENDANTS’
NOTICE OF RECENT DEVELOPMENT**

Last night, Sunoco filed a “Notice of Recent Development” with this Court. The “Notice” was in reference to a document Sunoco filed with the Supreme Court in which Sunoco takes the remarkable and unprecedented step of attempting to preempt this Court from ruling on an objection to a Magistrate Judge’s post-judgment discovery ruling. A ruling that merely required the production of documents and the appearance of a witness that Sunoco itself admitted is required under the law. Although our courts rarely, if ever, allow prior restraint on free speech, Sunoco has brazenly sought to get an order amounting to prior restraint barring this Court from doing its most fundamental tasks. The last time we had a hearing with this Court, Class Counsel offered the Court a preview of exactly what Sunoco was trying to do—evade a judgment at every step. Sunoco’s most recent conduct demonstrates that Counsel wasn’t engaged in hyperbole. Quite the contrary, Sunoco will do and say anything to avoid paying a debt it owes.

If this is how justice now works in this country, God help us all.

Notably absent in Sunoco's "Notice" is an actual copy of the Emergency Application for Injunction or Stay Pending Resolution of Petition for Certiorari to the Supreme Court ("Application" or "App."). So that this Court has the benefit of complete transparency, the Class hereby provides a copy of the Application, which contains several material omissions and misstatements, all of which are designed to obstruct the valid enforcement proceedings this Court has ordered to commence.¹ Class Representative, in response, accordingly submits the following detailed recitation of the relevant facts, many of which are provided to correct the incomplete and inaccurate narrative set forth in Sunoco's filing:

- Sunoco's Application begins with a literal falsity—that Sunoco “has been placed in this unenviable position *through no fault of its own*.” App. at 1 (emphasis added). Sunoco has deliberately chosen not to pursue the remedies afforded by Rule 62(b)(which include a stay of enforcement) and waived posting a supersedeas bond. Sunoco could have saved this Court and the parties a considerable amount of time had it simply followed the Rules and posted a bond.² Instead, Sunoco has doubled down on its position in recent filings before this Court and the Tenth Circuit. Sunoco's protestation that “there is nothing normal or ordinary about this case” (App. at 9) rings hollow. The Federal Rules of Civil Procedure exist for a reason; strict adherence to the Rules expedite the litigation process, which benefits both the parties and the Court. Accordingly, this matter really comes down to Sunoco's failure to—once again—obey the law. To the extent Sunoco has been placed in an “unenviable position,” it is as a result of its own gamesmanship and choosing.

¹ Sunoco's Application, and its numerous accusations against this Court, is attached hereto as Exhibit 1.

² Had it complied with Oklahoma law to begin with, Sunoco could have saved significant time and resources and avoided this litigation altogether. However, it kept royalty owners' money for its own use, “knowing two things: that most owners will not request interest, and that eventually the owners' potential claims will die at the hands of the statute of limitations. And when that happens, Sunoco will have irrevocably pocketed the money.” *Cline v. Sunoco, Inc. (R&M)*, 479 F. Supp. 3d 1148, 1155 (E.D. Okla. 2020).

- As previously briefed, the Tenth Circuit never “sent a clear signal that the district court’s order was not final.” App. at 1. To the contrary, the Tenth Circuit held Sunoco failed to establish appellate jurisdiction and sent a “clear signal” that Sunoco had several legal avenues with which to challenge finality—but failed to do so—to which the Court held it would not exercise its discretion to revive Sunoco’s waived procedural options.
- Sunoco contends it “has exhausted every possible avenue to try to get th[e] execution efforts put on hold, but the lower courts [i.e., this Court and the Tenth Circuit] seem bound and determined to allow execution to move forward” without allowing Sunoco time to appeal. App. at 2. To the contrary, Sunoco intentionally gambled on waiving the bond requirement under Rule 62(b) and proceeded to embark on a series of procedural missteps while vulnerable to execution. Indeed, despite not having posted a bond, the Court has been exceedingly patient and generous to Sunoco, granting a 60-day stay of execution and directing the parties to conduct mediation in lieu of enforcement.
- Class Representative has not been “intent on executing in the most disruptive manner possible,” nor has it proffered “sweeping” discovery and refused to narrow the scope of its requests, as Sunoco alleges. App. at 2, 10. Rather, Class Representative has simply recorded Judgment Liens in the counties where, upon information and belief, Sunoco possesses assets and property. Such safeguards *are required by Oklahoma law to protect the Judgment*, see 12 O.S. § 706 *et seq.*, and to that end, Class Representative has sought document discovery pertaining to Sunoco’s assets, which, as Judge West recently noted, “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.” See Dkt. No. 430 at 2.
- To that end, in an effort to expedite production, Class Counsel offered to, *inter alia*, limit the scope of its document requests to Sunoco’s Oklahoma assets; however, Sunoco rejected this offer. See Dkt. No. 432 at 7. Instead, Sunoco has opted to be obstructive and dilatory. Despite its recognition it was required to produce some information and (apparently withdrawn) agreement to produce some documents, Sunoco has never contacted Class Counsel to discuss any proposal for a lesser production.
- Sunoco also mischaracterizes Class Representative’s efforts at collecting the Judgment as “aggressive,” “wreaking havoc,” “disruptive” and done “to force a settlement” (App. at 13, 22 and 26) when, as this Court is well aware, Class Representative has been highly conciliatory in its efforts at enforcing the Judgment, despite Sunoco not following the proper procedure to obtain the relief it requests before the Supreme Court. All Class Representative has requested is that Sunoco identify sufficient available assets against which Class Representative could execute

to satisfy the outstanding Judgment. In his effort to do so, Class Representative has proposed the least intrusive path, and the Court has endorsed it. Quite the opposite, Sunoco's endless string of appeals have wrought havoc on these proceedings and disrupted Class Representative's legitimate efforts at enforcement. Fortunately, the Tenth Circuit has rebuffed Sunoco's attempts at obfuscation and delay.

- Sunoco claimed that it was ordered to produce “every single document in its possession that touches on any of its more than 18,000 physical assets.” App. at 24. In reality, the Order only requires production of “*certain* books, records, and other matters” that would “*identify* all physical assets.” See Dkt. No. 360 at 3, 360-1 at 4 (emphasis added). Requesting documents identifying all physical assets is a far cry from requesting every document about every asset.
- Lastly, Sunoco, for the first time, alleges it is unable to post a bond “[b]ecause the verdict is not final and the Tenth Circuit refuses to consider a protective notice of appeal.” App. at 9-10. Apparently, Sunoco has so little respect for this Court that it now just ignores this Court's own orders and mandates. Sunoco has always known of its requirement to post a bond, and was willing to do so at one point. It made a big gamble, to claim the judgment wasn't final in order to try to bootstrap its failed (twice) class certification defense. And, now it is too late to post a bond. If Sunoco wished to forestall enforcement proceedings pending the outcome of its appeal, the mechanism for doing so was obvious: post a supersedeas bond staying the enforcement of the Judgment. Sunoco steadfastly rejected the clear requirement that it post such a bond, giving the green light to enforcement. Having taken that position, Sunoco now seeks to enact a legal remedy to which it has no legal entitlement and likely would have been granted at the onset had Sunoco actually posted a supersedeas bond—as it knew it was required to do. By electing not to stay enforcement by posting such a bond, Sunoco assumed the risk that it would be held accountable on the approximately \$155 million Judgment against it.

Justice Gorsuch has requested Class Representative to file a response by noon, September 6, in which it will substantively address the Application's merits-based arguments.

DATED: August 31, 2022.

Respectfully submitted,

/s/Bradley E. Beckworth

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CLASS COUNSEL

CERTIFICATE OF SERVICE

I hereby certify that I authorized the electronic filing of the foregoing with the Clerk of the Court using the CM/ECF system, which will send email notification of such filing to all registered parties.

I certify under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

DATED: August 31, 2022.

/s/ Bradley E. Beckworth

Bradley E. Beckworth

EXHIBIT 3

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.

ORDER

This matter comes before the Court on the defendants' August 30, 2022, letter (ECF No. 435). The Court treats this letter as a renewed motion to stay enforcement of the Court's orders, in this instance pending the resolution of the defendants' application for stay pending certiorari.

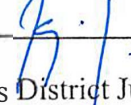
The Court entered judgment in the above-captioned case on August 17, 2020, (ECF No. 299). The Court entered its Plan of Allocation Order, (ECF No. 339), on October 30, 2020. In the intervening years, the defendants have filed multiple appeals. The Court will not grant a stay pending this latest attempt to delay enforcement of its judgment.

Accordingly, the Court DENIES the renewed motion for stay pending resolution of the defendants' application for stay pending certiorari.

It is so ORDERED.

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

Date: 31 August, 2022
Richmond, VA

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