No. 22A188

IN THE
SUPREME COURT OF THE UNITED STATES

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

v.

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

OPPOSITION TO EMERGENCY APPLICATION FOR INJUNCTION OR STAY PENDING RESOLUTION OF PETITION FOR CERTIORARI

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TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE TENTH CIRCUIT:

From the excited rhetoric of the motion, one might think the U.S. Marshals are about to seize $155 million from Sunoco's bank accounts or demand possession of an entire oilfield within a few days. But in fact—as the motion discloses when read closely—the only truly imminent action is Sunoco's obligation to comply with a discovery order requiring the production of asset information. *See* Mot. Ex. 2. Sunoco's August 31 letter lays bare that the supposedly "irreparable harm" requiring "emergency relief" is nothing more than its duty to answer post-judgment discovery. The idea that a member of this Court should interfere with a routine discovery order is difficult to take seriously; we are not talking about releasing the Pentagon Papers.

In the first place, Sunoco seeks a stay pending the disposition of a petition that is highly unlikely to be granted. Sunoco's petition does not ask the Court to resolve any important and open question of federal law or resolve a split among the circuits. Instead, Sunoco complains that its appeal was dismissed for failure to comply with Federal Rule of Appellate Procedure 28(a)(4), which requires an appellant to brief the basis of appellate jurisdiction. Here, Sunoco *disclaimed* appellate jurisdiction. The Tenth Circuit did not err, but followed its settled precedent on this issue:

> Where an appellant fails to lead, we have no duty to follow. It is the appellant's burden, not ours, to conjure up possible theories to invoke our legal authority to hear her appeal.

Raley v. Hyundai Motor Co., 642 F.3d 1271, 1275 (10th Cir. 2011) (Gorsuch, J.).

In any event, Sunoco is woefully unable to demonstrate the irreparable harm required to justify the extraordinary relief of a stay pending a decision on certiorari. Stays pending the disposition of a petition for certiorari are virtually never granted in private civil actions for money damages because payment of a money judgment almost never threatens irreparable harm. *See Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1301–02 (2014) (Roberts, C.J., in chambers). As a general rule, restitution is the remedy for a judgment that wrongly orders the payment of money. *Nelson v. Colorado*, 137 S. Ct. 1249, 1259 (2017); *Atl. Coast Line R. Co. v. Florida*, 295 U.S. 301, 309 (1935). There is a narrow exception for cases in which money is about to change hands and it will be impossible to recover the funds via restitution, but Sunoco cannot satisfy that exception for numerous reasons.

First, there is no risk that funds will be collected from Sunoco's bank accounts and distributed to class members before its petition is considered on September 28. Despite its excited rhetoric, Sunoco's only immediate obligation is to comply with a magistrate judge's order requiring it to disclose asset information and designate a witness for a hearing on the issue. *See* Mot. Ex. 2 at 4. There is no authority that answering post-judgment discovery is an irreparable harm, and no reason to believe Sunoco will confront any genuine irreparable harm in the brief window of time that remains before the petition is considered. Thus, there is no reason to interfere with the ordinary workings of the lower federal courts.

In fact, the process that will culminate in collection of Sunoco's funds remains in its preliminary stages. The district court has ordered a magistrate judge to conduct post-judgment discovery and hold a hearing to identify assets subject to collection—the proceeding Sunoco's motion seeks to interrupt—after which the magistrate judge will issue a report detailing her findings and recommendations. *See* Mot. Ex. 2 at 4. Sunoco will have an opportunity to contest the magistrate judge's recommendations, Fed. R. Civ. P. 72, and if history is any guide, it can be expected to do so vigorously. Presumably, the district court will rule on Sunoco's objections and—if it disagrees—enter an order specifying the assets subject to execution. At this preliminary stage, it is impossible to predict either the timing or substance of the district court's orders, but it is safe to say that execution will not occur before September 28.[1]

Second, the supposed emergency that gives rise to Sunoco's request for relief is entirely of its own making. Sunoco complains about post-judgment discovery to identify assets subject to execution, but it had the right to post a supersedeas bond under Federal Rule of Civil Procedure 62 and eliminate the need for asset discovery. Had Sunoco posted a supersedeas bond, the ongoing proceedings in the lower courts would have been unnecessary. There is no reason to grant a stay for the benefit of a litigant that voluntarily chose to forego the protections of a supersedeas bond.

[1] Sunoco's reference to the filing of judgment abstracts in the counties where it owns real property, Mot. 24, does not establish any emergency. Sunoco did not object when the judgments were filed, because such filings simply create judgment liens. *See* Okla. Stat. tit. 12 § 706.

Sunoco pretends it was powerless to post a supersedeas bond, but of course, that is false. Even if Sunoco believed the judgment was not final, it was well aware that the district court considered it final. That is the very nature of a protective appeal (the procedure Sunoco touts in its petition and motion). When it perfected its appeal, Sunoco had a right to post a bond. Fed. R. Civ. P. 62(b). It chose to waive that right for its own tactical and business reasons. The fact that it regrets that voluntary choice after its appellate strategy failed is no reason to stay enforcement proceedings.

True to form, Sunoco's approach to this motion has revealed—yet again—that it cares little for the orders of federal judges and prefers to make its own rules. Despite the fact that it was under a compliance deadline of August 31, and despite the fact that its deadline expired without an order granting it permission to withhold its compliance, Sunoco chose not to comply with the order. Instead—

- Sunoco withheld a great deal of information responsive to the order;
- Sunoco redacted the information it did produce so it is useless; and
- Sunoco declined Cline's offers of alternatives to avoid the alleged burdens, such as posting a sufficient amount of cash in the court registry or limiting its discovery responses to specific assets sufficient to satisfy the judgment.

Ex. M. This motion for a stay is essentially an after-the-fact request for forgiveness rather than permission. Granting the motion would send an unfortunate message that litigants can defy lower court orders in hopes that the members of this Court will forgive them after the fact. The motion should be denied.

PROCEDURAL HISTORY

This motion for a stay pending certiorari is an oddity. It was not filed until the petition and the brief in opposition had been on file for months, belying any claim that there is an "emergency" associated with the petition for certiorari. Moreover, Sunoco is now litigating the finality of the underlying judgment in the Tenth Circuit, and it filed a motion for a stay in that proceeding. It was only after that motion was denied that Sunoco chose to file a stay motion in support of its petition for certiorari, *see* Mot. 13, which is listed for conference on September 28, 2022.

Sunoco's Efforts to Obstruct Enforcement

The underlying case is a class action that was decided following a bench trial before U.S. District Judge John Gibney, who was appointed as the judge in this case by Tenth Circuit Chief Judge Timothy Tymkovich pursuant to 28 U.S.C. § 292(b). Judge Gibney entered a final judgment and a plan of allocation nearly two years ago. Sunoco appealed, but took the curious approach of disclaiming finality as a basis for appellate jurisdiction. The Tenth Circuit dismissed the appeal because Sunoco had disclaimed finality and failed to establish any other basis for appellate jurisdiction. Ex. P at 6-8. The Tenth Circuit denied both rehearing and rehearing en banc, Ex. A, then denied a mandamus petition grounded in Sunoco's mistaken contention that the judgment is not, in fact, final. Ex. B. Sunoco chose not to post a supersedeas bond, Fed. R. Civ. P. 62, and as a result, it is now facing enforcement proceedings.

Having failed to secure relief, Sunoco opposed all enforcement efforts in the district court. The district court made clear that its judgment is final and enforceable, ordering the parties to appear before a U.S. Magistrate Judge for hearings to identify assets subject to collection. Ex. C. The magistrate judge held such a hearing, Ex. D (Dkt.No.371), but Sunoco sought to obstruct the process by filing a motion to modify the district court's plan of allocation order and enter a new final judgment, Ex. D (Dkt.No.372), along with a motion to stay enforcement of the judgment. Ex. D (Dkt.No.376). After a full hearing, the district court denied the motion to modify, Ex. E, but stayed any enforcement proceedings for 60 days to facilitate mediation. Ex. Q. Sunoco appealed both rulings. Ex. F, R.

After 60 days, Respondent notified the district court that its stay had expired. Sunoco requested that the district court extend the stay, but the district court refused. Ex. G. Sunoco appealed again, Ex. H, and sought a stay from the Tenth Circuit pending resolution of its appeals.[2]

Importantly, while the district court refused to extend its stay, that ruling did *not* authorize any imminent transfer of property from Sunoco to the class members. It simply allowed the enforcement proceedings—which remain very preliminary—to "resume before United States Magistrate Judge Kimberly West." Ex. G.

[2] The Tenth Circuit has dismissed two of the three appeals for lack of appellate jurisdiction, Ex. I, but the third appeal remains pending. Sunoco's opening brief is due on September 13, 2022.

Thus, Sunoco's assets will not be distributed to class members anytime soon, and its opening salvo about "imminent execution of a nine-figure damages award," Mot. at 1, is unfounded. Under the orders now in effect, the magistrate judge plans to conduct the hearings contemplated by the district court to identify assets subject to execution and issue a report with findings and recommendations, Mot. Ex. 2 at 4, after which Sunoco will have a right to object. Fed. R. Civ. P. 72. The district court will presumably determine which assets are subject to execution and issue orders to that effect at some as-yet-to-be-determined date in the future. At this early stage, neither the timing nor the substance of those orders is knowable by anyone.

The simple truth is that Sunoco is pulling out all the stops to avoid compliance with lawful court orders. As the district court tartly noted on August 31, this motion is simply Sunoco's "latest attempt to delay enforcement of its judgment." Ex. L. And true to form, although the district court declined to stay the August 31 deadline, Sunoco still did not comply with it. *See* Ex. M (detailing Sunoco's noncompliance).

Sunoco's Current Effort to Frustrate Post-Judgment Discovery

Because the catalyst for this "emergency" motion was the August 31 deadline to comply with an order requiring Sunoco to disclose asset information, it is useful to examine the history of that discovery proceeding. The district court instructed the magistrate judge to hold an asset hearing and issue a report and recommendation. Mot. Ex. 2 at 1. The hearing is scheduled for September 12, 2022. *Id.* at 4.

In advance of the September 12 hearing, Sunoco has been ordered to produce documents identifying its assets and to designate a witness to appear at the hearing. *Id.* at 2-4. The magistrate judge considered Sunoco's objections to production and concluded that "[t]he 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(b)(3)." *Id*. at 2. "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. . . . Defendants are required to disclose possible assets from which the prevailing Plaintiff may recover his judgment." *Id*. Finding that "[a]ll of Plaintiff's requests pertain to the identification of Defendants' assets from which Plaintiff may recover on his judgment," *id*. at 3, the magistrate judge ordered Sunoco to respond to those requests "no later than **AUGUST 31, 2022**." *Id*. at 4.

This order was the catalyst for Sunoco's current motion, which was filed on August 29, 2022. On August 31, Sunoco advised the district court of this motion and sought a stay of the magistrate judge's order. Ex. J. Cline opposed the request, Ex. K, and the district court refused, explaining that it "will not grant a stay pending [Sunoco's] latest attempt to delay enforcement of its judgment." Ex. L. Undaunted, Sunoco unilaterally decided to defy the order—withholding much of the information covered by the order and redacting the produced information so it is useless. Ex. M. It now asks a member of this Court to intervene after the fact and ratify its conduct.

As the procedural history and Sunoco's August 31 letter make clear, it was the obligation to produce *asset information*—not an imminent threat of *execution* against Sunoco's assets—that prompted the instant "emergency" motion for a stay. But like Sunoco's decision to abdicate its burden to establish appellate jurisdiction, any hardship due to post-judgment discovery is a problem of Sunoco's own making. Had Sunoco posted a supersedeas bond under Federal Rule of Civil Procedure 62, there would be no need for discovery regarding Sunoco's assets—nor would there be any risk of execution against those assets. It is therefore Sunoco, not Respondent, that is "intent" on proceeding "in the most disruptive manner possible." Mot. 2. Sunoco's touted (but undocumented) "financial assurances," *see* Mot. 2, 10, 27—which were nothing but a promise to pay the judgment once it has no other choice—do not satisfy Rule 62 and do not grant Sunoco a unilateral right to avoid routine post-judgment discovery. Cline offered Sunoco the chance to offer true "assurance" by posting the necessary funds in the court registry, but Sunoco declined. Ex. M.

At bottom, Sunoco seeks a stay to avoid routine asset discovery—the first of many steps in the months-long process of implementing a class action judgment involving 53,000+ members. Sunoco's heated representations of irreparable harm, *see* Mot. 2, 9-10, are divorced from reality. There is no risk that Sunoco will pay a dime to any class member before this Court considers Sunoco's petition for certiorari on September 28. Sunoco's motion for emergency relief should be denied.

REASONS FOR DENYING THE APPLICATION

Sunoco seeks a stay to avoid post-judgment asset discovery until this Court resolves its petition for certiorari. "A single Justice has authority to enter such a stay . . . but the applicant bears a heavy burden." *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1302 (2010) (Scalia, J., in chambers). That burden is familiar:

> To obtain a stay pending the filing and disposition of a petition for a writ of certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the issue sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the judgment below; and (3) a likelihood that irreparable harm will result from the denial of a stay.

Hollingsworth v. Perry, 558 U.S. 183, 190 (2010). "In close cases the Circuit Justice or the Court will balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* Sunoco has not met this "heavy burden."

I. Sunoco has not shown a reasonable probability that certiorari will be granted or a significant possibility of reversal.

Sunoco's motion adds nothing to the arguments set forth in Sunoco's petition; indeed, much of the motion is taken verbatim (with light editing) from the petition. *Compare* Mot. 4-9 *with* Pet. 5-9, 11-14, 16-18 *and* Mot. 14-23 *with* Pet. 23-32. Because of the unusual timing of this motion, Respondent's brief in opposition is already on file with the Court. As such, there is no need to repeat the many reasons this case is not worthy of certiorari; a short summary will suffice.

First, certiorari is inappropriate because the issue presented in the petition—which concerns the viability of "protective appeals"—does not fairly reflect the grounds for decision below. The Tenth Circuit resolved the appeal based on a strict but sound application of well-settled briefing rules to the specific facts of this case. *See* BIO 13-17. Its decision was rooted in a leading Tenth Circuit case on the issue:

> Where an appellant fails to lead, we have no duty to follow. It is the appellant's burden, not ours, to conjure up possible theories to invoke our legal authority to hear her appeal.

Raley v. Hyundai Motor Co., 642 F.3d 1271, 1275 (10th Cir. 2011) (Gorsuch, J.).

The appellant's obligation to establish appellate jurisdiction is formalized in Federal Rules of Appellate Procedure 28(a)(4)(B) & (D), which require an appellant to both (1) state "the basis for the court of appeals' jurisdiction, with citations to applicable statutory provisions and stating relevant facts establishing jurisdiction" and (2) set forth "an assertion that the appeal is from a final order or judgment." Instead, the Tenth Circuit noted that "'Sunoco filed four briefs arguing or implying we lack jurisdiction" and "repeatedly argued that we lack jurisdiction.'" BIO 13 (quoting Ex. P at 7, 10). Thus, the appeal was dismissed "because Sunoco did not meet its burden to establish appellate jurisdiction." BIO 14 (quoting Ex. P at 5).

This mundane application of established briefing rules to the facts of this case is unremarkable and presents no important question of federal law. This case is not worthy of Supreme Court review, and there is no reasonable probability of a grant.

Second, the petition fails to establish (or even assert) any circuit split on the rule of decision below. It relies on a supposed "uniform and long-standing practice" requiring appellate courts to examine possible grounds for jurisdiction *sua sponte* when an appellant makes the tactical decision to disavow jurisdiction. *See* Pet. 23. This purportedly "uniform practice" does not exist. *See* BIO 21-25. On the contrary, the vast weight of authority—in every circuit—confirms that (1) an appellant has the burden to establish jurisdiction and (2) a circuit court is entitled to dismiss an appeal when an appellant fails to carry that burden. *See* BIO 17-20. There is no circuit split on the rule of decision applied below, and thus review is not reasonably probable.

Finally, the decision below, while admittedly strict, was technically sound. *See* BIO 25-35. Rule 28(a)(4) and a long line of decisions require the party seeking to invoke appellate jurisdiction, not the court of appeals, to establish jurisdiction. That rule is rooted in the fact that "[f]ederal courts are courts of limited jurisdiction" and "[i]t is to be presumed that a cause lies outside this limited jurisdiction." *Kokkonen v. Guardian Life Ins. Co. of Am.*, 511 U.S. 375, 377 (1994) (Scalia, J.). The Tenth Circuit was thus on solid ground when it held that appellate courts have "'discretion to decline to consider waived arguments that might have *supported* . . . jurisdiction.'" Ex. P at 7 n.6 (citation omitted). Sunoco's tactical choice to disavow appellate jurisdiction does not render the Tenth Circuit's legal analysis erroneous. Review is unlikely, and if it were granted, the decision below would be affirmed.

II. Sunoco cannot establish irreparable harm.

For now, it is unnecessary to dwell on the petition's lack of merit because there is no credible argument that failing to stay a post-judgment discovery order will cause Sunoco irreparable harm. Contrary to Sunoco's hyperbole, enforcing this post-judgment discovery order will not place the plaintiff "on the brink of collecting a $155 million class-action damages award." Mot. 23. It will simply allow the courts to continue the orderly process of implementing a class action judgment that will not (indeed, could not) be distributed to the class members for months. Sunoco faces no threat of irreparable harm between now and this Court's September 28 conference.

A judgment debtor's concern about the payment of money damages virtually never satisfies the test for irreparable harm. "Normally the mere payment of money is not considered irreparable," because "money can usually be recovered from the person to whom it is paid." *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304 (2010) (Scalia, J., in chambers); *see also Teva Pharm. USA, Inc. v. Sandoz, Inc.*, 572 U.S. 1301, 1302 (2014) (Roberts, C.J., in chambers). The exception for situations in which "expenditures cannot be recouped," *Philip Morris*, 561 U.S. at 1304, is not applicable here for (at least) two reasons. First, the post-judgment discovery order that was the catalyst for Sunoco's motion does not require the payment of money, but simply the disclosure of information. Second, the record establishes that it will be months before any funds will be distributed to class members.

Sunoco claims it faces "imminent execution," Mot. 1, on the premise that "Cline is on the brink of collecting a $155 million class-action damages award." Mot. 23. But to be precise, the target of its motion is an order requiring production of asset information. Mot. Ex. 2; *see also* Mot. 3, 12, 13, 24-25, 26-27. Indeed, avoiding this discovery is evidently so important that Sunoco was willing to defy the August 31 production deadline and ignore the orders of two federal judges. It now asks this Court to ratify its disregard for the district court's orders after the fact.

Sunoco cites no decision by this Court (or any other) holding that production of asset information in aid of post-judgment discovery poses an irreparable harm. Instead, it cites a handful of cases for the proposition that irreparable harm may be established when money is *actually collected* and cannot be recovered by restitution. Sunoco's own parentheticals make clear that irreparable harm can be established if it would be difficult to recover funds "once distributed," Mot. 14 (citing *Mori v. Int'l Bhd. of Boilermakers*, 454 U.S. 1301, 1303 (1981) (Rehnquist, J., in chambers)), such that they "'cannot be recouped.'" *Id.* (citing *Philip Morris*, 561 U.S. at 1304); *see also* Mot. 23 (citing these cases and *Forgay v. Conrad*, 47 U.S. 201, 204 (1848), which found irreparable harm where property would be "taken out of [defendants'] possession and sold, and the proceeds distributed" before appellate review occurred). Here, by contrast, Sunoco cannot show that its funds will be "irrevocably expended," *Philip Morris*, 561 U.S. at 1304, prior to the conference on September 28.

Sunoco tries to massage the facts to fit this test, asserting (without evidence) that "Cline is on the brink of collecting a $155 million class-action damages award," Mot. 23, which will be immediately distributed to "tens of thousands of recipients" and "virtually impossible" to recoup. Mot. 24. But in truth, there is no risk that Sunoco's funds will be paid to the class until *months* after its petition for certiorari is considered on September 28. The post-judgment discovery Sunoco seeks to avoid is just the first of many procedural and administrative steps that must take place before any class member will be in a position to receive a single penny. These steps generally fall along two tracks: (1) fund collection and (2) fund administration.

Track One, fund collection, requires both the identification of Sunoco assets subject to execution and the collection of such assets in a form and amount sufficient to satisfy the judgment. This process has barely even begun.

As explained above, *see* pp. 7-9, *supra*, the magistrate judge ordered Sunoco to identify the assets available to satisfy the judgment and set a hearing on that issue for September 12, 2022. Mot. Ex. 2. Even then, Sunoco faces no imminent risk of losing its assets—much less irreparably. After the hearing, the magistrate judge will issue findings and recommendations (to which Sunoco will have the right to object). *Id*. at 4; Fed. R. Civ. P. 72. Only then will the district court be in a position to issue an enforcement order that would permit execution from the identified assets. Thus, Sunoco is a long way from losing possession of any property.

Importantly, even after Sunoco's assets have been collected, they will be held in the registry of the court and will be subject to recovery by Sunoco (with interest) until the class action administration process is concluded. *See* Fed. R. Civ. P. 67. As a result, it will be several months before the funds are "very difficult to recover," *Mori*, 454 U.S. at 1303, "irrevocably expended," *Philip Morris*, 561 U.S. at 1304, and "cannot be recouped." *Id*. Sunoco completely ignores this part of the process because it forecloses any credible claim of "irreparable harm."

Track Two, fund administration, involves complex procedures for calculating final allocations of the judgment proceeds, providing notice to the class members, and distributing the judgment proceeds to the class. The first step in this process will require a determination of the total amount of funds available for allocation (which is called the "Net Class Award"). The district court's plan of allocation defines the Net Class Award as the Judgment Fund,[3] less any of the following:

(i) case contribution award to the Class Representative;
(ii) attorneys' fees, expenses, and costs awarded to Class Counsel;
(iii) compensation and expenses of the Judgment Administrator; and
(iv) additional approved administrative expenses.

Ex. N.

[3] The Judgment Fund is defined as "the sum of all actual and punitive damages awarded following the trial in this matter and allowed after any appeal (or after the expiration of time allowed for filing such appeal, if no appeal is filed within that time), inclusive of any attorneys' fees, expenses, costs, and pre- and post-judgment interests as have been or may be awarded to the class representative and the class, and inclusive of any interest earned through such investments as the Court may direct following the defendants' payment of the judgment." Ex. N.

In other words, before the district court can determine the amount of funds available for distribution, it must first rule on motions for attorneys' fees, expenses, and a case contribution award. No such motions have even been filed yet. Then, the district court will be required to send notices to the 53,000+ class members before it decides such motions. Fed. R. Civ. P. 23(h). Completion of these steps and determination of the Net Class Award is anything but "imminent."

It is only after these steps are finished and the Net Class Award is determined that the judgment administrator can apply the mathematical principles established in the plan of allocation to fix the amounts allocable to each class member. Ex. N. Those calculations will be subject to court approval and a "Final Distribution Order" before any funds can be distributed. *Id*.

Pursuant to the district court's request for an updated schedule, Ex. G, Respondent proposed a new schedule for much of this "Track Two" process. Ex. O. That proposed schedule is already out of date, as no new schedule has been entered. But it dispels any credible contention that Sunoco faces a risk of irreparable injury before its petition can be considered on September 28. Once the district court enters an order setting a schedule, the Track Two process will take at least 45 days. *Id.* Even under the schedule Respondent proposed, the fund administration process could not have concluded before mid-October—and because no schedule is in place, it is now certain that the process cannot be concluded until much later in 2022:

Event	Deadline
Postcard Notice to Class Members	45 days before hearing
Summary Notice published	10 days after mailing Postcard Notice
Documents posted on case website	10 days after mailing Postcard Notice
Deadline to file Class Counsel's Motion for Attorneys' Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award ("the Motions")	28 days before hearing
Deadline to object to the Motions	14 days before hearing
Deadline to file responses to such objections (if any)	7 days before hearing
Final Hearing on the Motions	45 days after mailing Postcard Notice

See id. Finally, once the Net Class Award is fixed and the judgment administrator applies the formulas set forth in the plan of allocation to calculate individual awards, it will take 45-60 days to print and physically mail the thousands of checks that will be distributed to class members. In short, it would be challenging to distribute funds to the class members before the end of 2022—even under the best of circumstances.

Given all these considerations—which Sunoco's motion essentially ignores—there is obviously no risk of irreparable harm before the September 28 conference. Sunoco's motion for a stay pending the resolution of its petition should be denied.

III. The balance of equities favors denying Sunoco's motion.

This is not a "close case," *Hollingsworth*, 558 U.S. at 190, but even if it were, the motion should fail because the balance of equities does not favor Sunoco.

First, Sunoco's alleged "unenviable position" is a problem of its own making. As the Tenth Circuit pointed out, Sunoco "did not pursue the options available to it to establish appellate jurisdiction." Ex. P at 6. It explained that "Sunoco had at least four ways to attempt to invoke our jurisdiction"—under its own theory of the case—but it "pursued none." *Id*. at 6 n.6. Instead, it made a tactical choice to deny finality by repackaging certain of its merits-based arguments as jurisdictional impediments. *See* BIO at 32-34. It must live with the consequences of its tactical choices.

Second, Sunoco could have avoided these enforcement proceedings entirely by posting a bond under Rule 62 when the district court originally entered judgment. *See* Fed. R. Civ. P. 62(b). Had it done so, there would be no need for asset discovery. It chose not to do so. The equities do not favor saving Sunoco from its own choices.

Finally, it is important to emphasize that Sunoco is holding money that does not belong to it—a fact Judge Gibney emphasized in his opinion entering judgment. *See* Ex. S at 1, 7-11, 43-47. Sunoco's appellate arguments no longer dispute liability, but simply dispute the number of class members it must repay and the total amount of damages it owes. The balance of equities does not favor staying enforcement when the question of liability is no longer in dispute.

In sum, Sunoco is not entitled to a stay because there is ample time to decide Sunoco's petition at the September 28 conference before any funds are distributed. Sunoco has not shown that its petition is meritorious, and it has not even approached the high burden of proof required to demonstrate irreparable harm on the theory that its funds are about to be "irrevocably expended." *Philip Morris*, 561 U.S. at 1304. Therefore, the motion for a stay should be denied.

CONCLUSION

The motion for a stay pending consideration of the petition for certiorari at the September 28 conference should be denied.

Respectfully submitted,

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September 6, 2022

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

CERTIFICATE OF SERVICE

I, Russell S. Post, a member of the Supreme Court Bar, hereby certify that three copies of the attached OPPOSITION TO EMERGENCY APPLICATION FOR INJUNCTION OR STAY PENDING RESOLUTION OF PETITION FOR CERTIORARI will be served on September 6, 2022 to the below service list. I also certify that an electronic copy was filed on September 6, 2022, and served electronically to the below email addresses:

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Exhibit A

FILED
United States Court of Appeals
Tenth Circuit

November 29, 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

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

Appellants' petition for rehearing is denied.

The petition for rehearing en banc was transmitted to all of the judges of the court who are in regular active service. As no member of the panel and no judge in regular active service on the court requested that the court be polled, that petition is also denied.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

Exhibit B

FILED
United States Court of Appeals
Tenth Circuit

February 2, 2022

Christopher M. Wolpert
Clerk of Court

UNITED STATES COURT OF APPEALS

FOR THE TENTH CIRCUIT

In re: SUNOCO, INC. (R&M), n/k/a Sunoco (R&M), LLC; SUNOCO PARTNERS MARKETING & TERMINALS L.P., Petitioners.	No. 21-7063 (D.C. No. 6:17-CV-00313-JAG) (E.D. Okla.)

ORDER

Before **MATHESON**, **McHUGH**, and **MORITZ**, Circuit Judges.

This matter comes before the court on the Petition for Writ of Mandamus ("Petition") Sunoco, Inc. (R&M), and Sunoco Partners Marketing & Terminals, L.P. (collectively "Sunoco") filed after this court dismissed Sunoco's consolidated appeals of the underlying judgment and post-judgment order for failure to establish appellate jurisdiction. *See Cline v. Sunoco Partners Mktg. & Terminals L.P.*, Nos. 20-7064 & 20-7072, 2021 WL 5858399, at *1, *3 (10th Cir. Nov. 1, 2021). The dismissal order expressly declined to decide whether the district court had entered a final, appealable judgment. *Id.* at *3 n.7. Sunoco now seeks a writ of mandamus directing the district court to enter final judgment.

"[A] writ of mandamus is a drastic remedy, and is to be invoked only in extraordinary circumstances." *In re Cooper Tire & Rubber Co.*, 568 F.3d 1180, 1186 (10th Cir. 2009) (internal quotation marks omitted). "Three conditions must be met

before a writ of mandamus may issue." *Id.* at 1187. First, the petitioner must show it has "no other adequate means to attain the relief [it] desires." *Id.* (internal quotation marks omitted). Second, the petitioner must show that its "right to the writ is clear and indisputable." *Id.* (internal quotation marks omitted). Third, the "court, in the exercise of its discretion, must be satisfied that the writ is appropriate under the circumstances." *Id.* (internal quotation marks omitted).

Under this test, "we will grant a writ only when the district court has acted wholly without jurisdiction or so clearly abused its discretion as to constitute usurpation of power." *Id.* at 1186 (internal quotation marks omitted). A court "necessarily abuses its discretion" when it errs in deciding a legal issue, *id.* (internal quotation marks omitted), but "[i]t is not appropriate to issue a writ when the most that could be claimed is that the district court[] . . . erred in ruling on matters within [its] jurisdiction," *id.* at 1187 (internal quotation marks omitted).

Having considered the Petition, the underlying orders, and the record, we conclude that Sunoco has not shown either that it has no other adequate means to obtain relief or that its right to the writ is clear and indisputable. We also conclude that issuance of the writ is not appropriate under the circumstances. Accordingly, we deny the Petition, including the request for oral argument.

We grant Sunoco's unopposed motion for leave to file bookmarked attachments to the Petition.

Entered for the Court

CHRISTOPHER M. WOLPERT, Clerk

Exhibit C

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 the class representative's motion for an order requiring the defendants to appear and answer concerning their property and assets. (ECF No. 360.) Upon due consideration, the Court GRANTS the motion IN PART and ORDERS the defendants to appear in person, through their designated representatives, and answer concerning their property and assets, pursuant to 12 O.S. § 842 and Federal Rule of Civil Procedure 69.

Further, in accordance with 28 U.S.C. § 636(b)(3), the Court ORDERS that the remainder of the class representative's motion, (ECF No. 360), and the 12 O.S. § 842 and Fed. R. Civ. P. 69 proceedings are referred to United States Magistrate Judge Kimberly West. Magistrate Judge West 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. Counsel shall be responsible for contacting the

Chambers of Magistrate Judge West within ten (10) days of the date of this Order to schedule the hearing, which should occur at such time as Magistrate Judge West shall approve.

It is so ORDERED.

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

Date: 7 February 2022
Richmond, VA

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

Exhibit D

CLASS,PROTO

U.S. District Court
Eastern District of Oklahoma (Muskogee)
CIVIL DOCKET FOR CASE #: 6:17-cv-00313-JAG

Cline et al v. Sunoco, Inc. (R&M) et al
Assigned to: Judge John A. Gibney, Jr
Demand: $5,000,000
Case in other court: Seminole County District Court, 17-CJ-75
10th Circuit, 20-07055
10th Circuit, 20-07064
10th Circuit, 20-07072
10th Circuit, 21-07063
10th Circuit, 22-07017
10th Circuit, 22-07018
10th Circuit, 22-07030
Cause: 28:1441 Petition for Removal- Breach of Contract

Date Filed: 08/14/2017
Date Terminated: 08/27/2020
Jury Demand: None
Nature of Suit: 190 Contract: Other
Jurisdiction: Diversity

Plaintiff

Perry Cline
on behalf of himself

represented by **Andrew G. Pate**
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on behalf of all others similarly situated

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V.

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Date Filed	#	Docket Text
07/07/2017		PETITION filed in State Court against Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (pjw, Deputy Clerk) (Entered: 08/15/2017)
08/14/2017	1	CIVIL COVER SHEET by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (pjw, Deputy Clerk) (Entered: 08/15/2017)
08/14/2017	2	NOTICE of Removal from Seminole County District Court, case number 17-CJ-75 by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) (pjw, Deputy Clerk) (Entered: 08/15/2017)
08/15/2017	3	MINUTE ORDER by Court Clerk. Defendants are directed to pay the $400 filing fee within 7 days. Failure to comply with this directive will subject this action to immediate dismissal by the Court without prejudice to refiling. Consent forms provided to filing party (Filing Fee due by 8/22/2017) (pjw, Deputy Clerk) (Entered: 08/15/2017)
08/15/2017		FILING FEES Paid in Full on 8/15/2017 in the amount of $400, receipt number 1086-1110002 (Re: 2 Notice of Removal) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Christiansen, Mark) (Entered: 08/15/2017)
08/15/2017	4	ATTORNEY APPEARANCE by Mark D. Christiansen on behalf of Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Christiansen, Mark) (Entered: 08/15/2017)
08/16/2017	5	CORPORATE DISCLOSURE STATEMENT (identifying: Corporate Parent Heritage Holdings, Inc., Corporate Parent Sunoco, Inc., Corporate Parent ETP Holdco Corporation for Sunoco, Inc. (R&M)), Other Affiliate Energy Transfer Partners L.P. by Sunoco, Inc. (R&M) (Christiansen, Mark) Modified on 8/17/2017 to add other affiliate(nsb, Deputy Clerk). (Entered: 08/16/2017)
08/16/2017	6	CORPORATE DISCLOSURE STATEMENT (identifying Other Affiliate Energy Transfer Partners L.P.) by Sunoco Partners Marketing & Terminals, LP (Christiansen,

		Mark) Modified on 8/17/2017 to add other affiliate (nsb, Deputy Clerk). (Entered: 08/16/2017)
08/16/2017	7	MOTION for Attorney Daniel Mead McClure to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number 1086-1110729) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 8/30/2017(Christiansen, Mark) (Entered: 08/16/2017)
08/16/2017	8	MOTION for Attorney Rebecca Jane Cole to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number 1086-1110733) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 8/30/2017(Christiansen, Mark) (Entered: 08/16/2017)
08/17/2017	9	ATTORNEY APPEARANCE by Patrick M. Ryan on behalf of Perry Cline(on behalf of himself) (Ryan, Patrick) (Entered: 08/17/2017)
08/17/2017	10	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 7 Motion for Admission Pro Hac Vice of attorney Daniel M. McClure for defendants Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, LP, provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (ndd, Deputy Clerk) (Entered: 08/17/2017)
08/17/2017	11	ATTORNEY APPEARANCE by Phillip G. Whaley on behalf of Perry Cline(on behalf of himself) (Whaley, Phillip) (Entered: 08/17/2017)
08/17/2017	12	ATTORNEY APPEARANCE by Jason A. Ryan on behalf of Perry Cline(on behalf of himself) (Ryan, Jason) (Entered: 08/17/2017)
08/17/2017	13	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 8 Motion for Admission Pro Hac Vice of attorney Rebecca J. Cole for defendants Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, LP, provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (ndd, Deputy Clerk) (Entered: 08/17/2017)
08/17/2017	14	ATTORNEY APPEARANCE by Paula M. Jantzen on behalf of Perry Cline(on behalf of himself) (Jantzen, Paula) (Entered: 08/17/2017)
08/17/2017	15	ATTORNEY APPEARANCE by Michael Burrage on behalf of Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Burrage, Michael) (Entered: 08/17/2017)
08/17/2017	16	ATTORNEY APPEARANCE by Lawrence R. Murphy, Jr on behalf of Perry Cline(on behalf of himself) (Murphy, Lawrence) (Entered: 08/17/2017)
08/17/2017	17	ORDER SETTING SCHEDULING CONFERENCE by Magistrate Judge Steven P. Shreder setting Scheduling Conference for 9/15/2017 at 11:00 a.m. in Chambers, Room 425, US Courthouse, 5th & Okmulgee, Muskogee, OK before Magistrate Judge Steven P. Shreder. Parties directed to file Joint Status Report by 9/11/2017. (Attachments: # 1 Consent or Reassignment Form) (ndd, Deputy Clerk) (Entered: 08/17/2017)
08/18/2017	18	ATTORNEY APPEARANCE by Daniel M. McClure on behalf of Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 08/18/2017)

08/18/2017	19	ATTORNEY APPEARANCE by Rebecca J. Cole on behalf of Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Cole, Rebecca) (Entered: 08/18/2017)
08/21/2017	20	ATTORNEY APPEARANCE by Bradley E. Beckworth on behalf of All Plaintiffs (Beckworth, Bradley) (Entered: 08/21/2017)
08/21/2017	21	ATTORNEY APPEARANCE by Jeffrey J. Angelovich on behalf of All Plaintiffs (Angelovich, Jeffrey) (Entered: 08/21/2017)
08/21/2017	22	ATTORNEY APPEARANCE by Andrew G. Pate on behalf of All Plaintiffs (Pate, Andrew) (Entered: 08/21/2017)
08/21/2017	23	ANSWER to Petition/Complaint filed in State Court (Re: State Court Petition/Complaint) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Christiansen, Mark) (Entered: 08/21/2017)
09/01/2017	24	MINUTE ORDER by Court Clerk: Pursuant to receipt of an election of the District Judge Option and in accordance with LCvR 40.1(c), this case is reassigned to District Judge Ronald A. White. Magistrate Judge Steven P. Shreder no longer assigned to case. All documents filed in this case in the future shall reflect the new case number CIV-17-313-RAW. The Scheduling Conference set 9/15/2017 at 11:00 a.m. before Magistrate Judge Steven P. Shreder, and all related deadlines, are STRICKEN. (ndd, Deputy Clerk) (Entered: 09/01/2017)
09/05/2017	25	MINUTE ORDER by Court Clerk : Pursuant to the recusal of Judge Ronald A. White and at the direction of the Court, this case is hereby randomly reassigned to District Judge James H. Payne. All documents filed in this case in the future shall reflect the new case number CIV-17-313-JHP.(lal, Deputy Clerk) (Entered: 09/05/2017)
09/27/2017	26	MINUTE ORDER by Court Clerk: Status and Scheduling Conference set for 10/12/2017 at 02:00 PM in Chambers, Room 201, US Courthouse, 5th & Okmulgee, Muskogee, OK before District Judge James H. Payne; Joint Status Report due by 10/11/2017 (cjt, Deputy Clerk) (Entered: 09/27/2017)
10/10/2017	27	ATTORNEY APPEARANCE by Patranell Lewis on behalf of All Plaintiffs (Lewis, Patranell) (Entered: 10/10/2017)
10/10/2017	28	ATTORNEY APPEARANCE by Robert N. Barnes on behalf of All Plaintiffs (Barnes, Robert) (Entered: 10/10/2017)
10/12/2017	29	JOINT STATUS REPORT by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(Christiansen, Mark) (Entered: 10/12/2017)
10/12/2017	30	MINUTES of Proceedings - held before District Judge James H. Payne: Status and Scheduling Conference held on 10/12/2017 (cjt, Deputy Clerk) (Entered: 10/13/2017)
10/23/2017	31	NOTICE Proposed Schedule (Re: 30 Minutes of Scheduling Conference) by Perry Cline(on behalf of himself) (With attachments)(Ryan, Jason) (Entered: 10/23/2017)
10/23/2017	32	NOTICE of Revised Proposed Scheduling Order (Re: 30 Minutes of Scheduling Conference) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 10/23/2017)
10/25/2017	33	SCHEDULING ORDER by District Judge James H. Payne: regarding class certification (cjt, Deputy Clerk) (Entered: 10/25/2017)
11/07/2017	34	Joint MOTION for Protective Order by All Defendants (With attachments) Responses due by 11/21/2017(McClure, Daniel) (Entered: 11/07/2017)
11/08/2017	35	AGREED PROTECTIVE ORDER by District Judge James H. Payne: granting 34 Joint

		Motion for Protective Order (cjt, Deputy Clerk) (Entered: 11/08/2017)
06/04/2018	36	MOTION to Amend Scheduling Order by Perry Cline(on behalf of himself) (With attachments) Responses due by 6/18/2018(Ryan, Patrick) (Entered: 06/04/2018)
06/18/2018	37	RESPONSE in Opposition to Motion (Re: 36 MOTION to Amend Scheduling Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments) (McClure, Daniel) (Entered: 06/18/2018)
06/26/2018	38	MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support by Perry Cline(on behalf of himself) (With attachments) Responses due by 7/10/2018(Ryan, Patrick) (Entered: 06/26/2018)
06/27/2018	39	MINUTE ORDER by District Judge James H. Payne: granting 36 Plaintiff's Motion to Amend Scheduling Order. Amended Scheduling Order to follow. (cjt, Deputy Clerk) (Entered: 06/27/2018)
06/27/2018	40	AMENDED SCHEDULING ORDER by District Judge James H. Payne: regarding class certification (cjt, Deputy Clerk) (Entered: 06/27/2018)
06/27/2018	41	MINUTE ORDER by District Judge James H. Payne: Pursuant to 28 U.S.C. Section 636(b)(1), the following motion is referred for disposition to Magistrate Judge Steven P. Shreder: 38 Plaintiff's MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege. (cjt, Deputy Clerk) (Entered: 06/27/2018)
06/27/2018	42	MINUTE ORDER by Magistrate Judge Steven P. Shreder directing Defendants to file an expedited Response to 38 Plaintiff's MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support by 7/9/2018 AND setting Motion Hearing for 7/10/2018 at 10:30 AM in Courtroom 4, Room 420, US Courthouse, 5th & Okmulgee, Muskogee, OK before Magistrate Judge Steven P. Shreder. (Re: 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support) (tls, Deputy Clerk) (Entered: 06/27/2018)
06/28/2018	43	NOTICE Request to Vacate July 10 Hearing and to Strike Plaintiff's Motion to Strike Defendants' Privilege Log and to Declare Defendants have Waived Privilege (Re: 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 06/28/2018)
06/28/2018	44	MINUTE ORDER by Magistrate Judge Steven P. Shreder: Plaintiffs are directed to provide supplemental briefing no later than Tuesday, 7/3/2018, certifying compliance with this Court's local rules, particularly Loc. Civ. R. 7.1(f). Defendants are instructed that their expedited Response remains due Monday, 7/9/2018. Additionally, the Motion Hearing remains set for Tuesday, 7/10/2018 at 10:30 a.m. (Re: 43 Notice, 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support) (tls, Deputy Clerk) (Entered: 06/28/2018)
06/28/2018	45	Unopposed MOTION for Leave to File Exhibits Under Seal (re Doc. No. 38) (Re: 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support) by All Plaintiffs Responses due by 7/12/2018(Ryan, Patrick) (Entered: 06/28/2018)
06/29/2018	46	ORDER by District Judge James H. Payne: granting 45 Motion for Leave to File Exhibits Under Seal (Re: 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support) (cjt, Deputy Clerk) (Entered: 06/29/2018)
06/29/2018	47	SEALED EXHIBITS 6-13 (Re: 38 MOTION to Strike Defendants' Privilege Log and to

		Declare Defendants Have Waived Privilege and Integrated Brief in Support) by Plaintiffs (cjt, Deputy Clerk) (Entered: 06/29/2018)
07/03/2018	48	Supplemental BRIEF in Support of Motion (Re: 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (With attachments)(Ryan, Patrick) (Entered: 07/03/2018)
07/09/2018	49	RESPONSE in Opposition to Motion (Re: 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 07/09/2018)
07/10/2018	50	MINUTES of Proceedings held before Magistrate Judge Steven P. Shreder: Motion Hearing held on 7/10/2018 (Re: 38 MOTION to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege and Integrated Brief in Support). (Court Reporter: Ken Sidwell) (ndd, Deputy Clerk) (Entered: 07/11/2018)
07/10/2018	51	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 38 Plaintiff's to Strike Defendants' Privilege Log and to Declare Defendants Have Waived Privilege, to the extent that the original privilege log produced by Defendant is stricken in light of the filing of the amended privilege log, and DENIED, to the extent Plaintiff seeks an order declaring the privilege has been waived. Plaintiff is granted an additional four witnesses to deal with "discovery on discovery" issues as discussed at the hearing before Magistrate Judge Steve P. Shreder held July 10, 2018. (ndd, Deputy Clerk) (Entered: 07/11/2018)
07/12/2018	52	MOTION for Reconsideration or Modification (Re: 51 Ruling on Motion to Strike) by All Defendants Responses due by 7/26/2018(McClure, Daniel) (Entered: 07/12/2018)
07/13/2018	53	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING IN PART and DENYING IN PART 52 Sunoco Defendants' Request for Reconsideration or Modification of Magistrate Judge Shreder's Minute Order of July 11, 2018 (Re: 51 Ruling on Motion to Strike). Said motion is GRANTED to the extent that the number of "discovery on discovery" depositions are reduced to two (in addition to the ten depositions permitted by Fed. R. Civ. P. 30(a)(2)(i) without leave of the Court), which additional depositions may only be utilized for purposes of "discovery on discovery," and are the only ones that may be utilized for this purpose. Said depositions are subject to the same rules governing any other depositions including, e. g., the assertion of privilege. The motion to reconsider is in all other respects DENIED. (ndd, Deputy Clerk) (Entered: 07/13/2018)
07/16/2018	54	TRANSCRIPT of Proceedings (Unredacted) of Motion Hearing held on 7/10/18 before Magistrate Judge Steven P. Shreder (Court Reporter: Ken Sidwell) (Pages: 1-34). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 50 Minutes of Motion Hearing,) (kns, Court Reporter) (Entered: 07/16/2018)
09/10/2018	55	MOTION to Compel by Perry Cline(on behalf of himself) (With attachments) Responses due by 9/24/2018(Ryan, Patrick) (Entered: 09/10/2018)
09/11/2018	56	MINUTE ORDER by District Judge James H. Payne: Pursuant to 28 U.S.C. Section 636(b)(1), the following motion is referred for disposition to Magistrate Judge Steven P. Shreder: 55 Plaintiff's MOTION to Compel. (cjt, Deputy Clerk) (Entered: 09/11/2018)

09/11/2018	57	Unopposed MOTION for Extension of Time to Respond to Motion to Compel and Integrated Brief in Support (Re: 55 MOTION to Compel) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) Responses due by 9/25/2018(McClure, Daniel) (Entered: 09/11/2018)
09/12/2018	58	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 57 Unopposed Motion for Extension of Time to Respond to Motion. Defendants' Response due by 10/1/2018. (Re: 55 MOTION to Compel). (ndd, Deputy Clerk) (Entered: 09/12/2018)
09/12/2018	59	MINUTE ORDER by Magistrate Judge Steven P. Shreder setting Motion Hearing for 10/5/2018 at 10:00 a.m. in Courtroom 4, Room 420, US Courthouse, 5th & Okmulgee, Muskogee, OK before Magistrate Judge Steven P. Shreder (Re: 55 MOTION to Compel by Perry Cline). (ndd, Deputy Clerk) (Entered: 09/12/2018)
09/12/2018	60	Unopposed MOTION for Leave to File Exhibits Under Seal (Re: 55 MOTION to Compel) by Perry Cline(on behalf of himself) Responses due by 9/26/2018(Ryan, Patrick) (Entered: 09/12/2018)
09/12/2018	61	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 60 Unopposed Motion for Leave to File Exhibits Under Seal. (ndd, Deputy Clerk) (Entered: 09/12/2018)
09/12/2018	62	SEALED EXHIBITS 4, 5, 6, 7, 9, 18, 19 to 55 Plaintiff's MOTION to Compel. (ndd, Deputy Clerk) (Attachment 5 - Exhibit 9 replaced on 9/13/2018. Exhibit 9 was missing final page - page 114) (ndd, Deputy Clerk). (Entered: 09/12/2018)
09/21/2018	63	MOTION for Attorney Kevin William Yankowsky to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number 1086-1208861) by All Defendants (With attachments) Responses due by 10/5/2018(Christiansen, Mark) (Entered: 09/21/2018)
09/24/2018	64	MINUTE ORDER by District Judge James H. Payne: granting 63 Motion for Admission Pro Hac Vice of attorney Kevin W. Yankowsky for Sunoco Partners Marketing & Terminals, LP and Sunoco, Inc. (R&M), provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (cjt, Deputy Clerk) (Entered: 09/24/2018)
09/25/2018	65	ATTORNEY APPEARANCE by Kevin W. Yankowsky on behalf of Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Yankowsky, Kevin) (Entered: 09/25/2018)
09/26/2018	66	NOTICE of Change of Address by Bradley E. Beckworth by on behalf of Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 09/26/2018)
09/28/2018	67	MOTION for Leave to File Motion for Leave to File Brief in Excess of Page Limitations (Re: 55 MOTION to Compel) by All Defendants Responses due by 10/12/2018(McClure, Daniel) (Entered: 09/28/2018)
10/01/2018	68	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 67 Unopposed Motion for Leave to File Brief in Excess of Page Limitations (Re: 55 MOTION to Compel). (ndd, Deputy Clerk) (Entered: 10/01/2018)
10/01/2018	69	RESPONSE in Opposition to Motion (Re: 55 MOTION to Compel) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 10/01/2018)
10/01/2018	70	Unopposed MOTION to Seal Document *Exhibits G and H* (Re: 69 Response in Opposition to Motion) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc.

		(R&M) Responses due by 10/15/2018(McClure, Daniel) (Entered: 10/01/2018)
10/02/2018	71	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 70 Unopposed Motion to Seal Document Exhibits G and H (Re: 69 Response in Opposition to Motion). (ndd, Deputy Clerk) (Entered: 10/02/2018)
10/03/2018	72	SEALED EXHIBITS G and H to 69 Defendants' Response in Opposition to Motion. (ndd, Deputy Clerk) (Entered: 10/04/2018)
10/05/2018	75	MINUTES of Proceedings held before Magistrate Judge Steven P. Shreder: Motion Hearing held on 10/5/2018 (Re: 55 MOTION to Compel by Perry Cline) (Court Reporter: Karla McWhorter) (ndd, Deputy Clerk) (Entered: 10/09/2018)
10/08/2018	73	ATTORNEY APPEARANCE by Brooke A. Churchman on behalf of All Plaintiffs (Churchman, Brooke) (Entered: 10/08/2018)
10/08/2018	74	MOTION Approval of Confidential Designations by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 10/22/2018(McClure, Daniel) (Entered: 10/08/2018)
10/09/2018	76	ORDER by Magistrate Judge Steven P. Shreder GRANTING IN PART and DENYING IN PART 55 Motion to Compel by Perry Cline. (ndd, Deputy Clerk) (Entered: 10/09/2018)
10/11/2018	77	MINUTE ORDER by District Judge James H. Payne: Pursuant to 28 U.S.C. Section 636(b)(1), the following motion is referred for disposition to Magistrate Judge Steven P. Shreder: 74 MOTION for Approval of Confidential Designations. (cjt, Deputy Clerk) (Entered: 10/11/2018)
10/22/2018	78	RESPONSE in Opposition to Motion (Re: 74 MOTION Approval of Confidential Designations) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (With attachments)(Ryan, Patrick) (Attachment 2 replaced on 10/23/2018 to add sealed exhibit per docket entry no. 80) (ndd, Deputy Clerk). (Entered: 10/22/2018)
10/22/2018	79	Unopposed MOTION Motion for Leave to File Exhibit Under Seal (Re: 78 Response in Opposition to Motion) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) Responses due by 11/5/2018(Ryan, Patrick) (Entered: 10/22/2018)
10/23/2018	80	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 79 Unopposed Motion for Leave to File Exhibit Under Seal (Re: 78 Response in Opposition to Motion). (ndd, Deputy Clerk) (Entered: 10/23/2018)
10/24/2018	81	MINUTE ORDER by Magistrate Judge Steven P. Shreder GRANTING 74 MOTION for Approval of Confidential Designations. Any issues regarding admissibility will be addressed by the Court at a later date. (ndd, Deputy Clerk) (Entered: 10/24/2018)
10/31/2018	82	Unopposed MOTION to Extend Scheduling Order Dates by Perry Cline(on behalf of himself) Responses due by 11/14/2018(Ryan, Patrick) (Entered: 10/31/2018)
11/01/2018	83	SECOND AMENDED SCHEDULING ORDER by District Judge James H. Payne: granting 82 Plaintiff's Unopposed Motion to Modify Amended Scheduling Order (cjt, Deputy Clerk) (Entered: 11/01/2018)
01/11/2019	84	Unopposed MOTION to Extend Scheduling Order Dates by Perry Cline(on behalf of himself) Responses due by 1/25/2019(Ryan, Patrick) (Entered: 01/11/2019)
01/14/2019	85	THIRD AMENDED SCHEDULING ORDER by District Judge James H. Payne: granting 84 Unopposed Motion to Modify Second Amended Scheduling Order (cjt,

		Deputy Clerk) (Entered: 01/14/2019)
04/26/2019	86	MOTION to Extend Deadlines by Plaintiff (With attachments) Responses due by 5/10/2019(Burrage, Michael) (Entered: 04/26/2019)
05/02/2019	87	MINUTE ORDER by District Judge James H. Payne: Directing an expedited response by 5/6/2019 (Re: 86 Plaintiff's MOTION for Extension of Time) (cjt, Deputy Clerk) (Entered: 05/02/2019)
05/06/2019	88	RESPONSE to Motion (Re: 86 MOTION to Extend Deadlines) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) Modified on 5/9/2019 to edit event and text (dma, Deputy Clerk). (Entered: 05/06/2019)
05/06/2019	89	Amended RESPONSE in Opposition to Motion (Re: 86 MOTION to Extend Deadlines) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 05/06/2019)
05/06/2019	90	FOURTH AMENDED SCHEDULING ORDER by District Judge James H. Payne: granting in part 86 Plaintiff's Motion for Extension of Time of Third Amended Scheduling Order (cjt, Deputy Clerk) (Entered: 05/06/2019)
06/14/2019	91	MOTION to Certify Class, To Appoint Class Representative, and to Appoint Class Counsel and Brief in Support by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments) Responses due by 6/28/2019(Ryan, Patrick) (Entered: 06/14/2019)
06/14/2019	92	Unopposed MOTION for Leave to File Exhibits Under Seal (Re: 91 MOTION to Certify Class, To Appoint Class Representative, and to Appoint Class Counsel) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) Responses due by 6/28/2019(Ryan, Patrick) (Entered: 06/14/2019)
06/17/2019	93	MINUTE ORDER by District Judge James H. Payne: Pursuant to 90 Fourth Amended Scheduling Order, the Response is due by 8/14/2019, and Reply is due by 9/16/2019. (Re: 91 MOTION to Certify Class, To Appoint Class Representative, and to Appoint Class Counsel) (cjt, Deputy Clerk) (Entered: 06/17/2019)
06/17/2019	94	MINUTE ORDER by District Judge James H. Payne: granting 92 Plaintiff's Unopposed Motion for Leave to File Exhibits Under Seal. (Re: 91 MOTION to Certify Class, To Appoint Class Representative, and to Appoint Class Counsel) (cjt, Deputy Clerk) (Entered: 06/17/2019)
06/18/2019	95	SEALED EXHIBITS 2, 3, 4, 11, 12, 13, 15, 16, 18 and 19 (Re: 91 MOTION to Certify Class, to Appoint Class Representative, and to Appoint Class Counsel) by Perry Cline (cjt, Deputy Clerk) Modified on 6/20/2019 to reflect CD received for EXHIBIT 15.1 (Re: 96 Notice of Conventional Filing) and stored in file cabinet in vault on 2nd floor Court Clerk's Office (cjt, Deputy Clerk). (Entered: 06/18/2019)
06/19/2019	96	NOTICE of Conventional Filing (Re: 91 MOTION to Certify Class, 95 Sealed Exhibit(s) in Support of Document(s)) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Ryan, Patrick) Modified on 6/20/2019 to reflect CD received for EXHIBIT 15.1 and stored in file cabinet in vault on 2nd floor Court Clerk's Office (cjt, Deputy Clerk). (Entered: 06/19/2019)
07/18/2019	97	MINUTE ORDER by Court Clerk: At the direction of the Court, this case is reassigned to United States District Judge John A. Gibney, Jr. of the Eastern District of Virginia, serving in this case be designation pursuant to 28 U.S.C. 292(d). All documents filed in this case in the future shall reflect the new case number CIV-17-313-JAG. (tls, Deputy Clerk) (Entered: 07/18/2019)

07/31/2019	98	MINUTE ORDER by Judge John A. Gibney, Jr. setting hearing: Telephonic Status Conference set for 8/5/2019 at 2:30 PM **EASTERN TIME** before Judge John A. Gibney Jr. (tls, Deputy Clerk) (Entered: 07/31/2019)
07/31/2019	99	MOTION for Leave to File Sunoco Defendants' Motion for Leave to File Brief in Excess of Page Limitations (Re: 91 MOTION to Certify Class) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 8/14/2019(McClure, Daniel) (Entered: 07/31/2019)
08/05/2019	100	ATTORNEY APPEARANCE by Emily Nash Kitch on behalf of All Plaintiffs (Kitch, Emily) (Entered: 08/05/2019)
08/05/2019	101	ORDER by Judge John A. Gibney, Jr granting in part 99 Defendants' Motion for Leave to File Brief in Excess of Page Limitations. (tls, Deputy Clerk) (Entered: 08/06/2019)
08/05/2019	102	PRETRIAL ORDER by Judge John A. Gibney, Jr. amending 90 Fourth Amended Scheduling Order and setting scheduling order dates: Discovery due by 10/18/2019; Motions for Summary Judgment due by 11/1/2019; Plaintiff's Exhibit List due by 11/6/2019; Defendants' Exhibit List due by 11/16/19; Plaintiff's Witness List due by 11/6/2019; Defendants' Witness List due by 11/16/19; Voir Dire & Proposed FFCL due by 12/11/2019; Non-Jury Trial set for 12/16/2019 at 9:00 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before Judge John A. Gibney Jr.) Additionally, Plaintiff's deadline to file a reply brief regarding class certification is now set for 8/28/2019. (Re: 91 MOTION to Certify Class) (tls, Deputy Clerk) (Entered: 08/06/2019)
08/08/2019	103	MOTION to Dismiss for Lack of Jurisdiction and Brief in Support by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 8/22/2019(McClure, Daniel) (Entered: 08/08/2019)
08/14/2019	104	Unopposed MOTION for Leave to File Appendix of Exhibits Under Seal by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 8/28/2019(McClure, Daniel) (Entered: 08/14/2019)
08/14/2019	105	RESPONSE to Motion (Re: 91 MOTION to Certify Class) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ;(McClure, Daniel) (Entered: 08/14/2019)
08/14/2019	106	EXHIBIT(S) (Re: 105 Response to Motion) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 08/14/2019)
08/14/2019	107	MOTION to Exclude Plaintiff's Expert Barbara Ley by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) Responses due by 8/28/2019(McClure, Daniel) (Entered: 08/14/2019)
08/16/2019	108	ORDER by Judge John A. Gibney, Jr directing defendants to file a response within fourteen (14) days as to why the selected exhibits should be filed under seal (Re: 104 Unopposed MOTION for Leave to File Appendix of Exhibits Under Seal) (dma, Deputy Clerk) (Entered: 08/16/2019)
08/22/2019	109	RESPONSE in Opposition to Motion (Re: 103 MOTION to Dismiss for Lack of Jurisdiction) by Perry Cline(on behalf of himself) ; (With attachments)(Beckworth, Bradley) Modified on 8/27/2019 to add link: See 110 for Exhibits B and D) (cjt, Deputy Clerk). (Entered: 08/22/2019)
08/23/2019	110	NOTICE to the Court by Perry Cline(on behalf of himself) (With attached Exhibits B and D to 109 Plaintiff's Response in Opposition to Motion to Dismiss (Re: 103 Defendants' Motion to Dismiss) (Beckworth, Bradley) Modified on 8/27/2019 to add links to documents (cjt, Deputy Clerk). (Entered: 08/23/2019)

08/27/2019	111	Unopposed MOTION for Leave to Exceed Page Limitation *to File Oversized Reply Brief* by All Plaintiffs Responses due by 9/10/2019(Ryan, Patrick) (Entered: 08/27/2019)
08/28/2019	112	ORDER by Judge John A. Gibney, Jr. GRANTING 111 Plaintiff's Unopposed Motion for Leave to File an Oversized Reply Brief. (tls, Deputy Clerk) (Entered: 08/28/2019)
08/28/2019	113	RESPONSE to Motion (Re: 107 MOTION to Exclude Plaintiff's Expert Barbara Ley) by Perry Cline(on behalf of himself) ; (With attachments)(Beckworth, Bradley) (Entered: 08/28/2019)
08/28/2019	114	REPLY to Response to Motion (Re: 91 MOTION to Certify Class) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (With attachments)(Ryan, Patrick) (Entered: 08/28/2019)
08/30/2019	115	RESPONSE in Support of Motion (Re: 104 Unopposed MOTION for Leave to File Appendix of Exhibits Under Seal) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 08/30/2019)
09/03/2019	116	NOTICE to the Court by Perry Cline (on behalf of himself) (With attachments) (Beckworth, Bradley) (Entered: 09/03/2019)
09/05/2019	117	REPLY to Response to Motion (Re: 103 MOTION to Dismiss for Lack of Jurisdiction) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ;(McClure, Daniel) Modified on 9/6/2019 to edit event (tls, Deputy Clerk). (Entered: 09/05/2019)
09/10/2019	118	REPLY to Response to Motion (Re: 107 MOTION to Exclude Plaintiff's Expert Barbara Ley) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ;(McClure, Daniel) (Entered: 09/10/2019)
09/11/2019	119	MOTION for Leave to File Sur-Reply to Plaintiff's Reply Brief in Support of Motion to Certify Class by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 9/25/2019(McClure, Daniel) (Entered: 09/11/2019)
09/12/2019	120	RESPONSE in Opposition to Motion (Re: 119 MOTION for Leave to File Sur-Reply to Plaintiff's Reply Brief in Support of Motion to Certify Class) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (With attachments) (Ryan, Patrick) (Entered: 09/12/2019)
09/16/2019	121	REPLY to Response to Motion (Re: 119 MOTION for Leave to File Sur-Reply to Plaintiff's Reply Brief in Support of Motion to Certify Class) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ;(McClure, Daniel) (Entered: 09/16/2019)
10/03/2019	122	OPINION by Judge John A. Gibney, Jr. (Re: 103 MOTION to Dismiss) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/03/2019	123	ORDER by Judge John A. Gibney, Jr denying 103 Motion to Dismiss. (Re: 122 Opinion) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/03/2019	124	OPINION by Judge John A. Gibney, Jr. (Re: 107 MOTION to Exclude Plaintiff's Expert Barbara Ley) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/03/2019	125	ORDER by Judge John A. Gibney, Jr. denying 107 Motion to Exclude the Reports and Opinions of Plaintiff's Proposed Expert, Barbara A. Ley. (Re: 124 Opinion) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/03/2019	126	OPINION by Judge John A. Gibney, Jr. (Re: 91 MOTION to Certify Class) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/03/2019	127	ORDER by Judge John A. Gibney, Jr. granting 91 Plaintiff's Motion to Certify Class

		AND 119 Defendants' Motion to File Sur-Reply. (Re: 126 Opinion) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/03/2019	128	Defendant's SUR-REPLY to Plaintiff's Reply Brief in Support of Motion to Certify Class, to Appoint Class Representative and to Appoint Class Counsel by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M). (Re: 91 MOTION to Certify Class) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/03/2019	129	ORDER by Judge John A. Gibney, Jr. directing Plaintiff to submit a proposed Notice Form by 10/11/2019. (Re: 91 Motion for Class Certification) (tls, Deputy Clerk) (Entered: 10/03/2019)
10/04/2019	130	MINUTE ORDER by Judge John A. Gibney, Jr.: Telephone Conference set for 10/9/2019 at 2:00 PM **EASTERN TIME** before Judge John A. Gibney Jr. (Re: 129 Order) (tls, Deputy Clerk) (Entered: 10/04/2019)
10/08/2019	131	MOTION to Stay Case Pending Rule 23(f) Appeal by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 10/22/2019(McClure, Daniel) (Entered: 10/08/2019)
10/10/2019	132	ATTORNEY APPEARANCE by Susan R. Whatley on behalf of Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Whatley, Susan) (Entered: 10/10/2019)
10/10/2019	133	ORDER by Judge John A. Gibney, Jr: directing counsel to confer no later than 10/14/2019. (Re: 130 Minute Order setting teleconference) (tls, Deputy Clerk) (Entered: 10/10/2019)
10/10/2019	134	ORDER by Judge John A. Gibney, Jr directing parties to file briefs about the proposed class notification process by 10/15/2019. Briefs may not exceed seven (7) pages. (Re: 130 Minute Order setting Telephone Conference) (tls, Deputy Clerk) (Entered: 10/10/2019)
10/11/2019	135	RESPONSE in Opposition to Motion (Re: 131 MOTION to Stay Case Pending Rule 23(f) Appeal) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (With attachments)(Beckworth, Bradley) (Entered: 10/11/2019)
10/11/2019	136	MOTION to Approve the Form and Manner of Class Notice by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (With attachments) Responses due by 10/25/2019(Beckworth, Bradley) (Entered: 10/11/2019)
10/14/2019	137	Status Report Regarding Class Notice (Re: 133 Order) by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 10/14/2019)
10/14/2019	138	REPLY to Response to Motion (Re: 131 MOTION to Stay Case Pending Rule 23(f) Appeal) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (McClure, Daniel) (Entered: 10/14/2019)
10/15/2019	139	BRIEF Regarding Proposed Class Notification Process and Necessary Data (Re: 134 Order) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 10/15/2019)
10/15/2019	140	BRIEF Regarding Class Member Data in Response to Court Order of October 10, 2019 (Re: 134 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 10/15/2019)
10/17/2019	141	Petition by Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, LP filed in Circuit Court (case number 19-608) for Permission to Appeal Class Certification. (Re:

		127 Ruling on Motion to Certify Class 126 Opinion and Order) (tls, Deputy Clerk) (Entered: 10/18/2019)
10/18/2019	142	MOTION for Partial Summary Judgment and Brief in Support by All Plaintiffs (With attachments) Responses due by 11/1/2019(Ryan, Patrick) (Entered: 10/18/2019)
10/18/2019	143	MOTION for Leave to File to File Exhibits Under Seal (Re: 142 MOTION for Partial Summary Judgment *and Brief in Support*) by All Plaintiffs Responses due by 11/1/2019(Ryan, Patrick) (Entered: 10/18/2019)
10/25/2019	144	RESPONSE to Motion (Re: 136 MOTION to Approve the Form and Manner of Class Notice) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 10/25/2019)
10/28/2019	145	STATUS REPORT and MOTION for Status Conference by Perry Cline(on behalf of himself); Response due by 11/12/2019 (Beckworth, Bradley) Modified on 10/29/2019 to edit event (dma, Deputy Clerk). (Entered: 10/28/2019)
10/29/2019	146	MOTION to Strike Document or Continue Class Representative's (Re: 142 MOTION for Partial Summary Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 11/12/2019(McClure, Daniel) (Entered: 10/29/2019)
10/30/2019	147	MOTION for Attorney Ross Leonoudakis to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1313269) by All Plaintiffs (With attachments) Responses due by 11/13/2019(Burrage, Michael) (Entered: 10/30/2019)
10/30/2019	148	MINUTE ORDER by Judge John A. Gibney, Jr. GRANTING 145 Motion for Status Conference. Accordingly, Telephone Conference set for 10/31/2019 at 11:00 AM **EASTERN TIME** before Judge John A. Gibney Jr. (Re: 136 MOTION to Approve the Form and Manner of Class Notice) (tls, Deputy Clerk) (Entered: 10/30/2019)
10/30/2019	149	OPINION by Judge John A. Gibney, Jr. (Re: 131 Defendants' MOTION to Stay Case Pending Rule 23(f) Appeal) (tls, Deputy Clerk) (Entered: 10/30/2019)
10/30/2019	150	ORDER by Judge John A. Gibney, Jr denying 131 Defendants' Motion to Stay Pending Rule 23(f) Appeal (Re: 149 Opinion) (tls, Deputy Clerk) (Entered: 10/30/2019)
10/30/2019	151	MOTION for Attorney Robert D. Woods to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1313348) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 11/13/2019(Christiansen, Mark) (Entered: 10/30/2019)
10/30/2019	152	MOTION for Attorney R. Paul Yetter to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1313350) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 11/13/2019(Christiansen, Mark) (Entered: 10/30/2019)
10/30/2019	153	ORDER by Judge John A. Gibney, Jr denying 146 Defendants' Motion to Strike or Continue Class Representative's Motion for Partial Summary Judgment. (tls, Deputy Clerk) (Entered: 10/30/2019)
10/30/2019	154	MINUTE ORDER by Judge John A. Gibney, Jr. GRANTING 147 Motion for Admission Pro Hac Vice of attorney Ross Leonoudakis for Plaintiff, Perry Cline, provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (tls, Deputy Clerk) (Entered: 10/30/2019)

10/31/2019	155	MINUTE ORDER by Judge John A. Gibney, Jr.: GRANTING 151 Motion for Admission Pro Hac Vice of attorney Robert D. Woods for Defendants Sunoco Partners Marketing & Terminals, LP and Sunoco, Inc. (R&M), provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (tls, Deputy Clerk) (Entered: 10/31/2019)
10/31/2019	156	MINUTE ORDER by Judge John A. Gibney, Jr.: GRANTING 152 Motion for Admission Pro Hac Vice of attorney R. Paul Yetter for Defendants Sunoco Partners Marketing & Terminals, LP, and Sunoco, Inc. (R&M), provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (tls, Deputy Clerk) (Entered: 10/31/2019)
10/31/2019	157	ATTORNEY APPEARANCE by Ross Leonoudakis on behalf of All Plaintiffs (Leonoudakis, Ross) (Entered: 10/31/2019)
10/31/2019	158	ORDER by Judge John A. Gibney, Jr. (Re: 136 Plaintiff's MOTION to Approve the Form and Manner of Class Notice; 148 Minute Order setting 10/31/2019 Telephone Conference) (tls, Deputy Clerk) (Entered: 10/31/2019)
11/01/2019	159	ORDER by Judge John A. Gibney, Jr granting 136 Motion to Approve the Form and Manner of Class Notice. Accordingly, Plaintiff is directed to file the revised class notice form, notice plan, and exclusion request form electronically by 11/05/2019. (tls, Deputy Clerk) (Entered: 11/01/2019)
11/01/2019	160	RESPONSE in Opposition to Motion (Re: 142 MOTION for Partial Summary Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) (McClure, Daniel) (Entered: 11/01/2019)
11/05/2019	161	Supplemental NOTICE Regarding Motion to Approve the Form and Manner of Class Notice (Re: 159 Ruling on Motion for Miscellaneous Relief) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments) (Beckworth, Bradley) (Entered: 11/05/2019)
11/06/2019	162	Proposed EXHIBIT LIST by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Ryan, Patrick) (Entered: 11/06/2019)
11/06/2019	163	Initial WITNESS LIST by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Ryan, Patrick) (Entered: 11/06/2019)
11/07/2019	164	ORDER by Judge John A. Gibney, Jr. (Re: 158 Order) (tls, Deputy Clerk) (Entered: 11/07/2019)
11/07/2019	165	REPLY to Response to Motion (Re: 142 MOTION for Partial Summary Judgment) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (With attachments)(Beckworth, Bradley) (Entered: 11/07/2019)
11/11/2019	166	Agreed MOTION to Modify Pretrial Order (Re: 102 Scheduling Order) by All Plaintiffs; Responses due by 11/25/2019(Beckworth, Bradley) Modified on 11/12/2019 to edit text and event. (tls, Deputy Clerk). (Entered: 11/11/2019)
11/11/2019	167	ATTORNEY APPEARANCE by Robert D. Woods on behalf of Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Woods, Robert) (Entered: 11/11/2019)
11/12/2019	168	ORDER by Judge John A. Gibney, Jr. granting 166 Plaintiff's Agreed Motion to Modify Pretrial Order for the limited purpose of modifying the dates on which the parties must

		exchange demonstrative exhibits and lists of demonstrative exhibits. (tls, Deputy Clerk) (Entered: 11/12/2019)
11/13/2019	169	ATTORNEY APPEARANCE by Richard Paul Yetter on behalf of All Defendants (Yetter, Richard) (Entered: 11/13/2019)
11/13/2019	170	ORDER from Circuit Court (case number 19-608) DENYING 141 Petition by Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, LP for Permission to Appeal Class Certification. (With attachments)(tls, Deputy Clerk) (Entered: 11/14/2019)
11/15/2019	171	Joint MOTION to Relocate Trial by All Plaintiffs; Responses due by 12/2/2019 (Beckworth, Bradley) (Entered: 11/15/2019)
11/15/2019	172	MOTION to Clarify Class Definition by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 12/2/2019(McClure, Daniel) (Entered: 11/15/2019)
11/16/2019	173	Initial WITNESS LIST by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 11/16/2019)
11/16/2019	174	Proposed EXHIBIT LIST by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 11/16/2019)
11/16/2019	175	STIPULATION of Facts by Perry Cline(on behalf of himself) (Ryan, Patrick) (Entered: 11/16/2019)
11/18/2019	176	ORDER by Judge John A. Gibney, Jr. directing Plaintiff to file a Response to 172 MOTION to Clarify the Class Definition by 11/22/2019. (tls, Deputy Clerk) (Entered: 11/18/2019)
11/19/2019	177	RESPONSE in Opposition to Motion (Re: 172 MOTION to Clarify Class Definition) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 11/19/2019)
11/19/2019	178	MOTION for Leave to File Exhibits Under Seal (Re: 177 Response in Opposition to Motion) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) Responses due by 12/3/2019(Beckworth, Bradley) (Entered: 11/19/2019)
11/20/2019	179	NOTICE of Filing Response to Defendant's Motion to Clarify or Decertify the Class (Re: 177 Response in Opposition to Motion, 178 MOTION for Leave to File Exhibits Under Seal) AND Motion for Telephonic Hearing by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) Modified on 11/20/2019 to add Motion for Hearing and edit text. (tls, Deputy Clerk). (Entered: 11/20/2019)
11/21/2019	180	MINUTE ORDER by Judge John A. Gibney, Jr. granting 179 Motion for Hearing AND setting Telephonic Hearing for 11/25/2019 at 1:30 PM **EASTERN TIME** before Judge John A. Gibney Jr. (Re: 172 MOTION to Clarify Class Definition) (tls, Deputy Clerk) (Entered: 11/21/2019)
11/21/2019	181	Class Representative's Proposed Rebuttal EXHIBIT LIST by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Pate, Andrew) (Entered: 11/21/2019)
11/22/2019	182	MOTION for Leave to File Defendants' Reply in Support of Motion to Clarify That Class Definition Does Not Include Escheat Payments to States, Or Alternatively, to Decertify the Class or Exclude Escheat Payments from Class by Sunoco Partners Marketing &

		Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 12/6/2019(McClure, Daniel) (Entered: 11/22/2019)
11/25/2019	183	ORDER by Judge John A. Gibney, Jr: granting 182 Sunoco Defendants' Motion for Leave to File Brief in Excess of Page Limitations in Reply (Re: 172 MOTION to Clarify Class Definition) (cjt, Deputy Clerk) (Entered: 11/25/2019)
11/25/2019	184	REPLY to Response to Motion (Re: 172 MOTION to Clarify Class Definition) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments) (McClure, Daniel) (Entered: 11/25/2019)
11/26/2019	185	TRANSCRIPT of Proceedings (Unredacted) of Motions Hearing held on October 5, 2018 before Magistrate Judge Steven P. Shreder (Court Reporter: Karla McWhorter) (Pages: 1-56). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 75 Minutes of Motion Hearing) (ksm, Court Reporter) (Entered: 11/26/2019)
11/26/2019	186	ORDER by Judge John A. Gibney, Jr: denying 172 Sunoco Defendants' Motion to Clarify. Court clarifies that it considers escheat payments, as defined by Sunoco, as part of the class definition. Court declines to decertify the class. (cjt, Deputy Clerk) (Entered: 11/26/2019)
11/26/2019	187	OBJECTION to Exhibit List by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) Modified on 12/2/2019 to edit event (dma, Deputy Clerk). (Entered: 11/26/2019)
11/26/2019	188	OBJECTION to Deposition Designations re: depo of Holland, Warren, Lanceslin, Redding, Oakley by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 11/26/2019)
11/26/2019	189	Class Representative's Objections to Witness List by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) Modified on 12/2/2019 to edit event (dma, Deputy Clerk). (Entered: 11/26/2019)
11/26/2019	190	OBJECTION to Exhibits by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 11/26/2019)
11/26/2019	191	OBJECTION to Proposed Exhibit List by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 11/26/2019)
11/26/2019	192	OBJECTION to Deposition Designations re: depo of Demi Lanceslin, Alice Holland and Kathy Lynn Warren by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Ryan, Patrick) (Entered: 11/26/2019)
11/26/2019	193	OBJECTIONS to Witness List (Re: 163 Witness List) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) Modified on 12/2/2019 to edit event (dma, Deputy Clerk). (Entered: 11/26/2019)
12/02/2019	194	SUBPOENA returned Executed as to Eric Koelling by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Ryan, Jason) (Entered: 12/02/2019)
12/02/2019	195	MINUTE ORDER by Judge John A. Gibney, Jr: At the Telephonic Hearing held on 11/25/2019 (Re: 172 MOTION to Clarify Class Definition) Plaintiff offered into evidence

		a PRSA Compliance Summary Chart (Plaintiffs Exhibit 1). Defendants did not object; Plaintiffs Exhibit 1 was ADMITTED. (tls, Deputy Clerk) (Entered: 12/02/2019)
12/02/2019	196	MOTION for Leave to File Defendants' Sur-Reply to Class Representative's Reply in Support of Motion for Partial Summary Judgment (Re: 142 MOTION for Partial Summary Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 12/16/2019(McClure, Daniel) (Entered: 12/02/2019)
12/03/2019	197	MINUTE ORDER by Judge John A. Gibney, Jr. setting Telephonic Motion Hearing for 12/6/2019 at 10:30 AM **EASTERN TIME** before Judge John A. Gibney Jr. (Re: 142 MOTION for Partial Summary Judgment) (tls, Deputy Clerk) (Entered: 12/03/2019)
12/03/2019	198	ORDER by Judge John A. Gibney, Jr: DENYING 171 Joint Motion to Relocate Trial. (tls, Deputy Clerk) (Entered: 12/03/2019)
12/03/2019	199	RESPONSE to Motion (Re: 196 MOTION for Leave to File Defendants' Sur-Reply to Class Representative's Reply in Support of Motion for Partial Summary Judgment) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (Beckworth, Bradley) (Entered: 12/03/2019)
12/04/2019	200	REPLY to Response to Motion (Re: 196 MOTION for Leave to File Defendants' Sur-Reply to Class Representative's Reply in Support of Motion for Partial Summary Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (McClure, Daniel) (Entered: 12/04/2019)
12/04/2019	201	MOTION for Attorney Winn Cutler to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1322166) by All Plaintiffs (With attachments) Responses due by 12/18/2019(Burrage, Michael) (Entered: 12/04/2019)
12/05/2019	202	MOTION for Attorney Emma W. Perry to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1322479) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 12/19/2019(Christiansen, Mark) (Entered: 12/05/2019)
12/05/2019	203	MOTION for Attorney Emma W. Perry to be Admitted Pro Hac Vice *(CORRECTED)* (paid $50 filing fee; receipt number AOKEDC-1322566) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 12/19/2019(Christiansen, Mark) (Entered: 12/05/2019)
12/05/2019	204	MINUTE ORDER by Judge John A. Gibney, Jr: GRANTING 201 Motion for Admission Pro Hac Vice of attorney Robert Cutler for Plaintiff, Perry Cline, provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (tls, Deputy Clerk) (Entered: 12/05/2019)
12/05/2019	205	MINUTE ORDER by Judge John A. Gibney, Jr: finding as MOOT 202 Motion for Admission Pro Hac Vice and GRANTING 203 Motion for Admission Pro Hac Vice of attorney Emma W. Perry for Defendants Sunoco Partners Marketing & Terminals, LP, and Sunoco, Inc. (R&M), provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (tls, Deputy Clerk) (Entered: 12/05/2019)
12/05/2019	206	ATTORNEY APPEARANCE by Robert Cutler on behalf of All Plaintiffs (Cutler,

		Robert) (Entered: 12/05/2019)
12/05/2019	207	MOTION to Strike Sunoco's Expert Eric Krause by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (With attachments) Responses due by 12/19/2019(Beckworth, Bradley) (Entered: 12/05/2019)
12/05/2019	208	PRETRIAL BRIEF Regarding the Burden of Proof on Applicable Interest Rate by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 12/05/2019)
12/06/2019	209	ATTORNEY APPEARANCE by Emma W. Perry on behalf of All Defendants (Perry, Emma) (Entered: 12/06/2019)
12/06/2019	210	ATTORNEY APPEARANCE by Lisa P. Baldwin on behalf of Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Baldwin, Lisa) (Entered: 12/06/2019)
12/06/2019	211	ORDER by Judge John A. Gibney, Jr: Defendants directed to file their opposition brief by 12/9/2019. If the plaintiff intends to file a reply brief, he must do so by 12/10/2019 (Re: 207 Class Representative's MOTION to Strike Sunoco's Expert, Eric Krause). (ndd, Deputy Clerk) (Entered: 12/06/2019)
12/06/2019	212	MINUTE ORDER by Judge John A. Gibney, Jr: At the Telephonic Motion Hearing held on 12/6/2019 (Re: 142 MOTION for Partial Summary Judgment) the Court heard argument and took the motion under advisement; the Court also set a final pretrial conference date. Accordingly, a Final Pretrial Conference is now set for 12/11/2019 at 9:00 a.m. **EASTERN TIME** before Judge John A. Gibney Jr. The hearing will be conducted by telephone. (ndd, Deputy Clerk) (Entered: 12/06/2019)
12/06/2019	213	PRETRIAL BRIEF on Burden of Proof by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	214	PRETRIAL BRIEF on Individual Liability Issues by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	215	PRETRIAL BRIEF of Interest on Interest by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	216	PRETRIAL BRIEF on Punitive Damages by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	217	PRETRIAL BRIEF on Fraud by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	218	DESIGNATIONS (DEPOSITION) re: Deposition Testimony and COUNTER-DESIGNATIONS of Deposition Testimony of Alice Holland, Demi Lanceslin, Terry Oakley, Patricia Redding, and Kathy Lynn Warren by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Ryan, Patrick) (Entered: 12/06/2019)
12/06/2019	219	Amended OBJECTION to Deposition Designations re: depo of Demi Lanceslin and Kathy Lynn Warren by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Ryan, Patrick) (Entered: 12/06/2019)
12/06/2019	220	Amended OBJECTION to Deposition Designations re: depo of Alice Holland, Kathy Warren, Demi Lanceslin and Terry Oakley by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	221	DESIGNATIONS (DEPOSITION) re: deposition of Alice Holland, Kathy Warren, Demi Lanceslin, Patricia Redding, Terry Oakley, Eric Koelling and Perry Cline by Sunoco

		Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	222	PRETRIAL BRIEF on Standing, Ripeness and Prohibitions Against Fluid Recovery of Damages by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	223	PRETRIAL BRIEF Regarding Plaintiff's Claims on Behalf of Owners of Unclaimed Proceeds Paid to the States by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 12/06/2019)
12/06/2019	224	PRETRIAL BRIEF Regarding Compounding Interest by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (With attachments) (Beckworth, Bradley) (Entered: 12/06/2019)
12/06/2019	225	PRETRIAL BRIEF Regarding Plaintiff's Certified Fraud Claim by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 12/06/2019)
12/06/2019	226	PRETRIAL BRIEF Regarding the Amount of Statutory Interest Sunoco is Required to Pay on Unclaimed Proceeds by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 12/06/2019)
12/06/2019	227	PRETRIAL BRIEF Regarding Punitive Damages by Perry Cline (on behalf of himself), Perry Cline (on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 12/06/2019)
12/09/2019	228	TRANSCRIPT of Proceedings (Unredacted) of Telephonic Motion Hearing held on 12/6/19 before Judge John A. Gibney, Jr (Court Reporter: Gilbert Frank Halasz) (Pages: 35). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 212 Minute Order re: Motion Hearing) (tls, Deputy Clerk) (Entered: 12/09/2019)
12/09/2019	229	Amended Proposed EXHIBIT LIST by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 12/09/2019)
12/09/2019	230	RESPONSE to Motion (Re: 207 MOTION to Strike Sunoco's Expert Eric Krause) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) (McClure, Daniel) (Entered: 12/09/2019)
12/09/2019	237	LETTER from Betty Loraine Oakes Muka (With attachments)(tls, Deputy Clerk) (Entered: 12/11/2019)
12/10/2019	231	OPINION by Judge John A. Gibney, Jr (Re: 142 MOTION for Partial Summary Judgment) (tls, Deputy Clerk) (Entered: 12/10/2019)
12/10/2019	232	ORDER by Judge John A. Gibney, Jr granting 142 Plaintiff's Motion for Partial Summary Judgment AND Defendants' Motion for Leave to File Sur-Reply. (tls, Deputy Clerk) (Entered: 12/10/2019)
12/10/2019	233	Amended Trial WITNESS LIST by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/10/2019)
12/10/2019	234	REPLY to Response to Motion (Re: 207 MOTION to Strike Sunoco's Expert Eric Krause

		) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ;(Beckworth, Bradley) (Entered: 12/10/2019)
12/11/2019	235	MINUTES of Proceedings held before Judge John A. Gibney, Jr: At the Final Pretrial Conference held on 12/11/2019 the Court discussed various pretrial matters with the parties and advised counsel that each side may have up to 45 minutes for opening statements. Accordingly, the Non-Jury Trial is date certain of 12/16/2019, beginning at 9:00 a.m., to last 5 days. Parties shall report by 8:30 a.m. on the day of trial. (Court Reporter: Gilbert F. Halasz) (tls, Deputy Clerk) Modified on 10/2/2020 to add court reporter; NEF regenerated (tls, Deputy Clerk) (Entered: 12/11/2019)
12/11/2019	236	TRANSCRIPT of Proceedings (Unredacted) of Telephonic Hearing held on 11/25/19 before Judge John A. Gibney, Jr (Court Reporter: Gilbert F. Halasz) (Pages: 37). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 195 Minute Order re: Telephonic Hearing) (tls, Deputy Clerk) Modified on 12/13/2019 to reflect correct docket entry no. (tls, Deputy Clerk). (Entered: 12/11/2019)
12/11/2019	238	ORDER by Judge John A. Gibney, Jr (Re: 237 Letter) (tls, Deputy Clerk) (Entered: 12/11/2019)
12/11/2019	239	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/11/2019)
12/11/2019	240	PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by Perry Cline(on behalf of himself) (Ryan, Patrick) (Entered: 12/11/2019)
12/13/2019	241	MOTION for Attorney Mark Thomas Emery to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1324766) by All Defendants (With attachments) Responses due by 12/27/2019(Christiansen, Mark) (Main Document 241 replaced on 12/13/2019) (pjw, Deputy Clerk). (Entered: 12/13/2019)
12/13/2019	242	MOTION for Attorney Matthew Alexander Dekovich to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1324772) by All Defendants (With attachments) Responses due by 12/27/2019(Christiansen, Mark) (Main Document 242 replaced on 12/13/2019) (pjw, Deputy Clerk). (Entered: 12/13/2019)
12/13/2019	243	MINUTE ORDER by Judge John A. Gibney, Jr: GRANTING 241 Motion for Admission Pro Hac Vice of attorney Mark T. Emery for Defendants Sunoco Partners Marketing & Terminals, LP and Sunoco, Inc. (R&M), provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (tls, Deputy Clerk) (Entered: 12/13/2019)
12/13/2019	244	ORDER by Judge John A. Gibney, Jr. granting 104 Defendants' Unopposed Motion for Leave to File Appendix of Exhibits Under Seal. (tls, Deputy Clerk) (Entered: 12/13/2019)
12/13/2019	245	ORDER by Judge John A. Gibney, Jr DENYING 143 Class Representative's Motion for Leave to File Exhibits Under Seal. (tls, Deputy Clerk) (Entered: 12/13/2019)
12/13/2019	246	ORDER by Judge John A. Gibney, Jr. DENYING 178 Plaintiff's Motion for Leave to File Exhibits Under Seal. (tls, Deputy Clerk) (Entered: 12/13/2019)

12/13/2019	247	Joint Trial Calendar by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 12/13/2019)
12/15/2019	248	DECLARATION of Jennifer M. Keough Regarding Notice Administration by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 12/15/2019)
12/16/2019	249	ATTORNEY APPEARANCE by Trey Duck on behalf of All Plaintiffs (Duck, Trey) (Entered: 12/16/2019)
12/16/2019	250	MINUTE ORDER by Judge John A. Gibney, Jr granting 242 Motion for Admission Pro Hac Vice of attorney Matthew A. Dekovich for Defendants Sunoco Partners Marketing & Terminals, LP, and Sunoco, Inc. (R&M), provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (tls, Deputy Clerk) (Entered: 12/16/2019)
12/16/2019	251	MINUTES of Proceedings held before Judge John A. Gibney, Jr: Nonjury Trial (Day 1) held on 12/16/2019. (Court Reporter: Ken Sidwell) (tls, Deputy Clerk) (Entered: 12/16/2019)
12/16/2019	252	MINUTE ORDER by Judge John A. Gibney, Jr. setting continuation of Non-Jury Trial for 12/17/2019 at 8:30 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before Judge John A. Gibney Jr. (tls, Deputy Clerk) (Entered: 12/16/2019)
12/16/2019	253	ATTORNEY APPEARANCE by Mark T. Emery on behalf of Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Emery, Mark) (Entered: 12/16/2019)
12/17/2019	254	MINUTES of Proceedings held before Judge John A. Gibney, Jr: Non-jury Trial held on 12/17/2019. (Court Reporters: Ken Sidwell and Karla McWhorter) (tls, Deputy Clerk) (Entered: 12/17/2019)
12/17/2019	255	MINUTE ORDER by Judge John A. Gibney, Jr. setting continuation of Non-Jury Trial for 12/18/2019 at 8:30 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before Judge John A. Gibney Jr.(tls, Deputy Clerk) (Entered: 12/17/2019)
12/18/2019	256	MINUTES of Proceedings held before Judge John A. Gibney, Jr: Non-jury Trial (Day 3) held on 12/18/2019. (Court Reporter: Ken Sidwell) (tls, Deputy Clerk) (Entered: 12/18/2019)
12/18/2019	257	MINUTE ORDER by Judge John A. Gibney, Jr. setting continuation of Non-Jury Trial for 12/19/2019 at 8:30 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before Judge John A. Gibney Jr. (tls, Deputy Clerk) (Entered: 12/18/2019)
12/18/2019	258	ATTORNEY APPEARANCE by Matthew A. Dekovich on behalf of All Defendants (Dekovich, Matthew) (Entered: 12/18/2019)
12/19/2019	259	Offer of Objected-To Trial Exhibits on EXHIBIT LIST by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/19/2019)
12/19/2019	260	MINUTES of Proceedings held before Judge John A. Gibney, Jr: Non-jury Trial completed on 12/19/2019. (Court Reporter: Ken Sidwell) (Attachments: # 1 Class Rep Initial Witness List, # 2 Defendants' Amended Trial Witnesses List, # 3 Class Rep Exhibit List, # 4 Defs Amended Prop Exh List, # 5 Defs Offer of Obj-To Trial Exhs)(tls, Deputy Clerk) (Entered: 12/19/2019)

12/30/2019	261	ORDER by Judge John A. Gibney, Jr: In the parties' proposed findings of facts and conclusions of law, the parties shall support each proposed finding of fact and, if necessary, conclusion of law by citing to the relevant portion of the trial record. This includes citations to both the deposition transcripts introduced at trial and the trial transcript. (ndd, Deputy Clerk) (Entered: 12/30/2019)
01/07/2020	262	NOTICE of Change of Address by Jason A. Ryan by on behalf of Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Ryan, Jason) (Entered: 01/07/2020)
01/14/2020	263	MINUTE ORDER by Judge John A. Gibney, Jr. setting Joint Telephone Conference for 1/15/2020 at 1:30 PM **EASTERN TIME** before Judge John A. Gibney Jr. (tls, Deputy Clerk) (Entered: 01/14/2020)
01/15/2020	264	MINUTES of Proceedings held before Judge John A. Gibney, Jr: At the Joint Telephone Conference held on 1/15/2020 the Court discussed dates for Oral Closing Argument with the parties. Accordingly, Oral Closing Arguments are set for 3/31/2020 at 9:00 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before Judge John A. Gibney Jr. (Court Reporter: Gail Halasz) (tls, Deputy Clerk) (Entered: 01/15/2020)
01/24/2020	265	NOTICE of Filing of Exhibits (Re: 244 Ruling on Motion for Leave to File Document) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Additional attachment(s) added on 1/27/2020: #(1) Exhibit 39, #(2) Exhibit 40, #(3) Exhibit 41, #(4) Exhibit 42, #(5) Exhibit 43, #(6) Exhibit 44, #(7) Exhibit 45, #(8) Exhibit 51, #(9) Exhibit 55, #(10) Exhibit 59, #(11) Exhibit 65, #(12) Exhibit 67, #(13) Exhibit 72) (tls, Deputy Clerk). (Entered: 01/24/2020)
01/27/2020	266	TRANSCRIPT of Proceedings (Unredacted) of Nonjury Trial, Volume I of V held on 12/16/19 before Judge John A. Gibney, Jr (Court Reporter: Ken Sidwell) (Pages: 1-317). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 251 Minutes of Nonjury Trial) (kns, Court Reporter) (Entered: 01/27/2020)
01/27/2020	267	TRANSCRIPT of Proceedings (Unredacted) of Nonjury Trial, Volume II of V held on 12/17/19 before Judge John A. Gibney, Jr (Court Reporter: Ken Sidwell) (Pages: 318-483). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 254 Minutes of Nonjury Trial) (kns, Court Reporter) (Entered: 01/27/2020)
01/27/2020	268	TRANSCRIPT of Proceedings (Unredacted) of Nonjury Trial, Volume III of V held on December 17, 2019 before Judge John A. Gibney, Jr (Court Reporter: Karla McWhorter) (Pages: 484-596). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 254 Minutes of Nonjury Trial) (ksm, Court Reporter) (Entered: 01/27/2020)

01/27/2020	269	TRANSCRIPT of Proceedings (Unredacted) of Nonjury Trial, Volume IV of V held on 12/18/19 before Judge John A. Gibney, Jr (Court Reporter: Ken Sidwell) (Pages: 597-916). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 256 Minutes of Nonjury Trial) (kns, Court Reporter) (Entered: 01/27/2020)
01/27/2020	270	TRANSCRIPT of Proceedings (Unredacted) of Nonjury Trial, Volume V of V held on 12/19/19 before Judge John A. Gibney, Jr (Court Reporter: Ken Sidwell) (Pages: 917-1021). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 260 Minutes of Nonjury Trial,) (kns, Court Reporter) (Entered: 01/27/2020)
02/18/2020	271	Supplemental DECLARATION of Jennifer M. Keough Regarding Notice of Administration by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 02/18/2020)
02/18/2020	272	Class Representative's Post-Trial Brief by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 02/18/2020)
02/18/2020	273	Amended PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 02/18/2020)
02/18/2020	274	Defendants' Post-Trial Brief by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 02/18/2020)
02/18/2020	275	Amended PROPOSED FINDINGS OF FACT AND CONCLUSIONS OF LAW by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 02/18/2020)
02/20/2020	276	MINUTE ORDER by Judge John A. Gibney, Jr advising parties that Briefs in response to the Post Trial Briefs may not exceed twenty-five (25) pages. (Re: 274 Brief, 272 Brief) (tls, Deputy Clerk) (Entered: 02/20/2020)
02/28/2020	277	TRANSCRIPT of Proceedings (Unredacted) of Phone Conference held on 12/11/2019 before Judge John A. Gibney, Jr (Court Reporter: Gilbert F. Halasz) (Pages: 26). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 235 Minutes of Final Pretrial Conference) (tls, Deputy Clerk) (Entered: 02/28/2020)
02/28/2020	278	RESPONSE (Re: 274 Brief) by Perry Cline(on behalf of himself) (Ryan, Patrick) (Entered: 02/28/2020)
02/28/2020	279	RESPONSE (Re: 272 Brief) by Sunoco Partners Marketing & Terminals, LP, Sunoco,

		Inc. (R&M) (McClure, Daniel) Modified on 3/2/2020 to edit text (dma, Deputy Clerk). (Entered: 02/28/2020)
03/10/2020	280	Unopposed MOTION for Leave to File Sunoco Defendants' Supplemental Post-Trial Brief by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 3/24/2020(McClure, Daniel) (Entered: 03/10/2020)
03/11/2020	281	ORDER by Judge John A. Gibney, Jr granting 280 Sunoco Defendants' Unopposed Motion for Leave to File Supplemental Post-Trial Brief. (tls, Deputy Clerk) (Entered: 03/11/2020)
03/11/2020	282	Supplemental BRIEF (Re: 274 Brief) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 03/11/2020)
03/16/2020	283	MINUTE ORDER by Judge John A. Gibney, Jr resetting hearing: Oral Closing Arguments previously set for 3/31/2020 at 9:00 am are hereby RESET for 6/17/2020 at 9:00 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before Judge John A. Gibney Jr. (tls, Deputy Clerk) (Entered: 03/16/2020)
03/17/2020	284	Unopposed MOTION for Leave to File Response to Sunoco's Supplemental Post-Trial Brief by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments) Responses due by 3/31/2020(Ryan, Patrick) (Entered: 03/17/2020)
03/23/2020	285	ORDER by Judge John A. Gibney, Jr granting 284 Class Representative's Unopposed Motion for Leave to File a Response to Sunoco's Supplemental Post-Trial Brief. (tls, Deputy Clerk) (Entered: 03/23/2020)
03/23/2020	286	RESPONSE (Re: 282 Brief) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Ryan, Patrick) (Entered: 03/23/2020)
05/05/2020	287	NOTICE Regarding Reconsideration and Reversal of Opinion in the Case Sunoco Relied Upon for Its Supplemental Post-Trial Brief (Re: 282 Brief) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments) (Beckworth, Bradley) (Entered: 05/05/2020)
05/05/2020	288	MINUTE ORDER by Judge John A. Gibney, Jr: Telephonic Conference set for 5/6/2020 at 10:00 AM **EASTERN TIME** before Judge John A. Gibney Jr. (tls, Deputy Clerk) (Entered: 05/05/2020)
05/06/2020	289	MINUTES of Proceedings held before Judge John A. Gibney, Jr: At the Telephone Conference held on 5/6/2020 the Court discussed the current setting date for Oral Closing Argument with the parties. Accordingly, Oral Closing Arguments previously set for 6/17/2020 at 9:00 AM in Courtroom 1, Room 230, US Courthouse, 5th & Okmulgee, Muskogee, OK before Judge John A. Gibney Jr. will proceed as scheduled. (Court Reporter: Gil Halasz) (tls, Deputy Clerk) (Entered: 05/06/2020)
05/14/2020	290	RESPONSE to Class Representatives Notice of Reconsideration and Reversal of Opinion (Re: 287 Notice) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) Modified on 5/15/2020 to edit text and add link (dma, Deputy Clerk). (Entered: 05/14/2020)
05/27/2020	291	ORDER by Judge John A. Gibney, Jr. (tls, Deputy Clerk) (Entered: 05/27/2020)
06/15/2020	292	MINUTE ORDER by Judge John A. Gibney, Jr. providing the below dial in information to all interested parties that wish to attend via teleconference, the Closing Oral Argument hearing set in this case on Wednesday, 6/17/2020 at 9:00 a.m.: Phone Number: 669-254-5252 OR 646-828-7666, Meeting ID: 160 609 9750, Participant ID: #, Password: 546899. (tls, Deputy Clerk) (Entered: 06/15/2020)

06/17/2020	293	MINUTES of Proceedings held before Judge John A. Gibney, Jr: Oral Closing Arguments Hearing held on 6/17/2020. (Court Reporter: Shelley Ottwell) (tls, Deputy Clerk) (Entered: 06/17/2020)
06/18/2020	294	NOTICE of Filing of Demonstratives by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 06/18/2020)
06/19/2020	295	NOTICE of Filing Demonstratives by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 06/19/2020)
07/06/2020	296	TRANSCRIPT of Proceedings (Unredacted) of Closing Arguments held on June 17, 2020 before Judge John A. Gibney, Jr (Court Reporter: Shelley Ottwell) (Pages: 1 - 214). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 293 Minutes of Miscellaneous Hearing) (Ottwell, Shelley) (Entered: 07/06/2020)
08/07/2020	297	Second NOTICE of Filing of Exhibits (Re: 106 Exhibits in Support of Documents) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) (McClure, Daniel) (Entered: 08/07/2020)
08/17/2020	298	OPINION by Judge John A. Gibney, Jr. (tls, Deputy Clerk) (Entered: 08/17/2020)
08/17/2020	299	ORDER by Judge John A. Gibney, Jr. (tls, Deputy Clerk) (Entered: 08/17/2020)
08/24/2020	300	NOTICE Regarding Total Updated Damages Pursuant to Court Order (Dkt. No. 299) (Re: 299 Order) by Perry Cline (on behalf of himself and on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 08/24/2020)
08/24/2020	301	NOTICE and Objections Regarding Post-Trial Damages Claim (Re: 299 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) (McClure, Daniel) (Entered: 08/24/2020)
08/25/2020	302	MINUTE ORDER by Judge John A. Gibney, Jr. setting hearing: Video Conference Hearing set for 8/27/2020 at 10:00 AM (EST) by Zoom before Judge John A. Gibney Jr. The Court will send invitations to Counsel for their participation and will publish dial-in information on the Court's website for the public. Counsel are directed to submit their email addresses for this hearing to Teka_Stephens@oked.uscourts.gov no later than 3:00 p.m on 8/26/2020. (Re: 300 Notice, 301 Notice) (tls, Deputy Clerk) (Entered: 08/25/2020)
08/25/2020	303	ORDER by Judge John A. Gibney, Jr. (tls, Deputy Clerk) (Entered: 08/25/2020)
08/26/2020	304	Supplemental NOTICE and Objections Regarding Post-Trial Damages Claim (Re: 303 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 08/26/2020)
08/27/2020	305	MINUTES of Proceedings held before Judge John A. Gibney, Jr: Video Conference Hearing held on 8/27/2020 (Court Reporter: Shelley Ottwell) (tls, Deputy Clerk) (Entered: 08/27/2020)
08/27/2020	306	NOTICE OF APPEAL to Circuit Court (paid $505 appeal fee; receipt number COKEDC-1395879) (Re: 299 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 08/27/2020)

08/27/2020	307	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals (Re: 306 Notice of Appeal - Final Judgment) (With attachments)(jcb, Deputy Clerk) (Entered: 08/27/2020)
08/27/2020	308	JUDGMENT by Judge John A. Gibney, Jr entering judgment against Defendants as to Count One. (terminates case) (tls, Deputy Clerk) (Entered: 08/27/2020)
08/27/2020	309	Amended NOTICE OF APPEAL (Re: 308 Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 08/27/2020)
08/27/2020	310	Transmission of Amended Notice of Appeal and Docket Sheet to U.S. Court of Appeals (Re: 309 Amended/Subsequent Notice of Appeal, 306 Notice of Appeal - Final Judgment) (With attachments)(jcb, Deputy Clerk) (Entered: 08/27/2020)
08/27/2020	311	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 20-7055 (Re: 309 Amended/Subsequent Notice of Appeal, 306 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 08/27/2020)
08/28/2020	312	Joint MOTION to Prepare Additional Trial Transcript to Reflect Deposition Testimony (Re: 305 Minutes of Miscellaneous Hearing) by All Defendants (With attachments) Responses due by 9/11/2020(McClure, Daniel) (Entered: 08/28/2020)
09/02/2020	313	Joint MOTION Approve Stipulation Regarding Deposition Testimony Played at Trial by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 9/16/2020(McClure, Daniel) (Entered: 09/02/2020)
09/02/2020	314	ORDER by Judge John A. Gibney, Jr. GRANTING 313 Joint Motion to Approve Stipulation Regarding Deposition Testimony Played at Trial and finding as MOOT 312 Joint Motion to Prepare Additional Trial Transcript to Reflect Deposition Testimony. (tls, Deputy Clerk) (Entered: 09/02/2020)
09/04/2020	315	TRANSCRIPT of Proceedings (Unredacted) of Miscellaneous held on August 27, 2020 before Judge John A. Gibney, Jr (Court Reporter: Shelley Ottwell) (Pages: 1-12). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 305 Minutes of Miscellaneous Hearing) (Ottwell, Shelley) (Entered: 09/04/2020)
09/08/2020	316	Joint MOTION to Stay Proceedings on Attorney Fees and Costs Pending Appeal by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) Responses due by 9/22/2020(Beckworth, Bradley) (Entered: 09/08/2020)
09/08/2020	317	Class Counsel's Proposed Plan for Distribution of Damages Award Pursuant to Court Order (Re: 299 Order) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 09/08/2020)
09/10/2020	318	ORDER by Judge John A. Gibney, Jr granting 316 Joint Motion to Stay Proceedings on Attorneys' Fees and Costs. (tls, Deputy Clerk) (Entered: 09/10/2020)
09/11/2020	319	TRANSCRIPT ORDER FORM (Transcripts are not necessary or are already on file) (Re: 309 Amended/Subsequent Notice of Appeal) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 09/11/2020)
09/11/2020	320	Notice advising the record is complete for the purposes of appeal (re: Circuit Appeal No. 20-7055). A Transcript Order Form has been filed stating no transcripts are necessary

		(Re: 309 Amended/Subsequent Notice of Appeal, 306 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 09/11/2020)
09/22/2020	321	RESPONSE (Re: 317 Brief) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 09/22/2020)
09/24/2020	322	MOTION for New Trial and Brief in Support by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 10/8/2020(McClure, Daniel) (Entered: 09/24/2020)
09/24/2020	323	MOTION to Alter Order/Judgment and Brief in Support (Re: 308 Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 10/8/2020(McClure, Daniel) (Entered: 09/24/2020)
09/28/2020	324	REPLY (Re: 321 Response) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 09/28/2020)
09/28/2020	325	MOTION for Leave to File Under Seal Exhibit 5 to Class Representatives Reply in Further Support of the Proposed Plan for Distribution of Damages Award (Re: 324 Reply) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) Responses due by 10/13/2020(Beckworth, Bradley) (Entered: 09/28/2020)
09/29/2020	326	ORDER by Judge John A. Gibney, Jr granting 325 Motion to Seal Exhibit 5 to Class Representative's Reply in Further Support of the Proposed Plan for Distribution of Damages Award. (tls, Deputy Clerk) (Entered: 09/29/2020)
09/30/2020	327	SEALED EXHIBIT 5 to Class Representatives Reply in Further Support of the Proposed Plan for Distribution of Damages Award (Re: 324 Reply) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 09/30/2020)
10/01/2020	328	MOTION for Leave to File Defendants' Sur-Reply to Plaintiffs' Reply in Further Support of Plan for Distribution of Damages by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 10/15/2020(McClure, Daniel) (Entered: 10/01/2020)
10/01/2020	329	RESPONSE to Motion (Re: 328 MOTION for Leave to File Defendants' Sur-Reply to Plaintiffs' Reply in Further Support of Plan for Distribution of Damages) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (With attachments)(Beckworth, Bradley) (Entered: 10/01/2020)
10/02/2020	330	ORDER by Judge John A. Gibney, Jr granting 328 Defendant's Motion for Leave to File Sur-Reply. (tls, Deputy Clerk) (Entered: 10/02/2020)
10/02/2020	331	REPLY (Re: 324 Reply) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 10/02/2020)
10/08/2020	332	RESPONSE to Motion (Re: 322 MOTION for New Trial) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ;(Beckworth, Bradley) (Entered: 10/08/2020)
10/08/2020	333	RESPONSE to Motion (Re: 323 MOTION to Alter Order/Judgment) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ;(Beckworth, Bradley) (Entered: 10/08/2020)
10/13/2020	334	ORDER by Judge John A. Gibney, Jr directing the Parties to file a statement no later than 10/16/2020. (tls, Deputy Clerk) (Entered: 10/13/2020)
10/16/2020	335	RESPONSE by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With

		attachments)(McClure, Daniel) (Entered: 10/16/2020)
10/16/2020	336	Class Representative's Statement Pursuant to Court Order (Dkt. No. 334) (Re: 334 Order) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 10/16/2020)
10/22/2020	337	REPLY to Response to Motion (Re: 323 MOTION to Alter Order/Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) Modified on 10/27/2020 to edit event (dma, Deputy Clerk). (Entered: 10/22/2020)
10/22/2020	338	REPLY to Response to Motion (Re: 322 MOTION for New Trial) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) Modified on 10/27/2020 to edit event (dma, Deputy Clerk). (Entered: 10/22/2020)
10/30/2020	339	PLAN OF ALLOCATION ORDER by Judge John A. Gibney, Jr (tls, Deputy Clerk) (Entered: 10/30/2020)
10/30/2020	340	NOTICE OF APPEAL to Circuit Court (paid $505 appeal fee; receipt number AOKEDC-1420483) (Re: 339 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 10/30/2020)
10/30/2020	341	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals (Re: 340 Notice of Appeal - Final Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(jcb, Deputy Clerk) (Main Document 341 replaced on 11/3/2020) (jcb, Deputy Clerk). (Entered: 10/30/2020)
10/30/2020	342	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 20-7064 (Re: 340 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 10/30/2020)
11/03/2020	343	DECISION from Circuit Court dismissing the Appeal (No. 20-7055) (Re: 309 Amended/Subsequent Notice of Appeal, 306 Notice of Appeal - Final Judgment) (With attachments)(tls, Deputy Clerk) (Entered: 11/03/2020)
11/18/2020	344	TRANSCRIPT ORDER FORM (Transcripts are not necessary or are already on file) (Re: 340 Notice of Appeal - Final Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 11/18/2020)
11/18/2020	345	Notice advising the record is complete for the purposes of appeal (re: Circuit Appeal No. 20-7064). A Transcript Order Form has been filed stating the necessary transcripts are already on file (Re: 340 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 11/18/2020)
11/24/2020	346	ORDER from Circuit Court proceedings in the appeal (20-7064) are ABATED (Re: 340 Notice of Appeal - Final Judgment) (tls, Deputy Clerk) (Entered: 11/24/2020)
11/25/2020	347	MOTION for New Trial by Sunoco Partners Marketing & Terminals, LP (With attachments) Responses due by 12/9/2020(McClure, Daniel) (Entered: 11/25/2020)
11/25/2020	348	MOTION to Alter Order/Judgment (Re: 308 Judgment) by All Defendants (With attachments) Responses due by 12/9/2020(McClure, Daniel) (Entered: 11/25/2020)
12/09/2020	349	OPINION by Judge John A. Gibney, Jr (Re: 348 MOTION to Alter Order/Judgment, 322 MOTION for New Trial, 347 MOTION for New Trial, 323 MOTION to Alter Order/Judgment) (tls, Deputy Clerk) (Entered: 12/09/2020)
12/09/2020	350	ORDER by Judge John A. Gibney, Jr. DENYING 322 Motion for New Trial, 323 Motion to Alter Order/Judgment, 347 Motion for New Trial and 348 Motion to Alter Order/Judgment. (tls, Deputy Clerk) (Entered: 12/09/2020)

12/09/2020		***Remark: Copies of 350 Ruling on Motion for New Trial, Ruling on Motion to Alter Order/Judgment and 349 Opinion and Order forwarded to 10th Circuit Court of Appeals electronically. (jcb, Deputy Clerk) (Entered: 12/09/2020)
12/09/2020	351	NOTICE OF APPEAL to Circuit Court (paid $505 appeal fee; receipt number AOKEDC-1435258) (Re: 350 Ruling on Motion for New Trial, Ruling on Motion to Alter Order/Judgment, 349 Opinion and Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/09/2020)
12/09/2020	352	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals (Re: 351 Notice of Appeal - Final Judgment) (With attachments)(jcb, Deputy Clerk) (Entered: 12/09/2020)
12/09/2020	353	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 20-7072 (Re: 351 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 12/09/2020)
12/21/2020	354	TRANSCRIPT ORDER FORM (Transcripts are not necessary or are already on file) (Re: 351 Notice of Appeal - Final Judgment,) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 12/21/2020)
12/21/2020	355	Notice advising the record is complete for the purposes of appeal (re: Circuit Appeal No. 20-7072). A Transcript Order Form has been filed stating no transcripts are necessary (Re: 351 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 12/21/2020)
03/23/2021	356	Joint STIPULATION Regarding Interest Payments by Sunoco Partners Marketing & Terminals, LP (McClure, Daniel) (Entered: 03/23/2021)
11/01/2021	357	DECISION from Circuit Court dismissing the Appeal (Re: 340 Notice of Appeal - Final Judgment, 351 Notice of Appeal - Final Judgment) (kch, Deputy Clerk) (Entered: 11/02/2021)
12/01/2021	358	LETTER from Circuit Court attaching Petition for Writ of Mandamus filed with the USCA on 12/1/2021 and assigning Case Number 21-7063. (kch, Deputy Clerk) Modified on 12/8/2021 to edit file date (dma, Deputy Clerk). Modified on 12/27/2021 to include info on Writ (sms, Deputy Clerk). (Entered: 12/03/2021)
12/13/2021	359	Opposed MOTION Class Representative's Opposed Motion to Set January 12, 2022 as the Deadline for Class Representative and Class Counsel to File Motions for Attorneys' Fees and Costs by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) Responses due by 12/27/2021(Beckworth, Bradley) (Entered: 12/13/2021)
12/13/2021	360	MOTION for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets by All Plaintiffs (With attachments) Responses due by 12/27/2021(Beckworth, Bradley) Modified on 12/15/2021 to edit event (dma, Deputy Clerk). Added MOTION for Hearing per Chambers direction on 2/7/2022 (adw, Deputy Clerk). (Entered: 12/13/2021)
12/21/2021	361	ORDER from Circuit Court directing Plaintiff in the underlying lawsuit to respond to the Petition by Friday, January 7, 2022. (Re: 358 Letter from Circuit Court) (adw, Deputy Clerk) (Entered: 12/27/2021)
12/27/2021	362	RESPONSE in Opposition to Motion (Re: 360 MOTION for Leave to Appear) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments) (McClure, Daniel) (Entered: 12/27/2021)
12/27/2021	363	RESPONSE in Opposition to Motion (Re: 359 Opposed MOTION Class Representative's Opposed Motion to Set January 12, 2022 as the Deadline for Class Representative and

		Class Counsel to File Motions for Attorneys' Fees and Costs) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 12/27/2021)
01/10/2022	364	REPLY to Response to Motion (Re: 359 Opposed MOTION Class Representative's Opposed Motion to Set January 12, 2022 as the Deadline for Class Representative and Class Counsel to File Motions for Attorneys' Fees and Costs) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ;(Beckworth, Bradley) (Entered: 01/10/2022)
01/10/2022	365	REPLY to Response to Motion (Re: 360 MOTION for Leave to Appear) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (Beckworth, Bradley) (Entered: 01/10/2022)
01/11/2022	366	ORDER by Judge John A. Gibney, Jr deferring disposition of the Plaintiff's Motions 359 Opposed MOTION Class Representative's Opposed Motion to Set January 12, 2022 as the Deadline for Class Representative and Class Counsel to File Motions for Attorneys' Fees and Costs ; 360 MOTION for Leave to Appear until the Tenth Circuit rules on the Petition. (kch, Deputy Clerk) (Entered: 01/11/2022)
02/02/2022	369	ORDER from Circuit Court denying the Petition for Writ of Mandamus (Re: 358 Letter from Circuit Court) (jcb, Deputy Clerk) Modified on 2/8/2022 to edit file date (dma, Deputy Clerk). (Entered: 02/04/2022)
02/03/2022	367	NOTICE to the Court (Re: 359 Opposed MOTION Class Representative's Opposed Motion to Set January 12, 2022 as the Deadline for Class Representative and Class Counsel to File Motions for Attorneys' Fees and Costs , 360 MOTION for Leave to Appear) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 02/03/2022)
02/03/2022	368	ORDER by Judge John A. Gibney, Jr. granting 359 MOTION for Class Representative's Opposed Motion to Set January 12, 2022 as the Deadline for Class Representative and Class Counsel to File Motions for Attorneys' Fees; Class Representative and Class Counsel shall file motions (set forth in Order) on or before March 7, 2022. (kch, Deputy Clerk) (Entered: 02/03/2022)
02/07/2022	370	ORDER by Judge John A. Gibney, Jr. granting IN PART 360 Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets by All Plaintiffs. In accordance with 21 U.S.C. § 636(b)(3), the Court ORDERS that the remainder of the class representative's motion, (ECF No. 360), and the 12 O.S. § 842 and Fed. R. Civ. P. 69 proceedings are referred to US Magistrate Judge Kimberly West. Magistrate Judge West will decide the remainder of the class representative's motion and will make findings and recommendation for this Court as to the 12 O.S. § 842 and Fed. R. Civ. P. 69 proceedings. (adw, Deputy Clerk) (Entered: 02/07/2022)
02/09/2022	371	MINUTE ORDER by Magistrate Judge Kimberly E. West: In accordance with the referral by the presiding United States District Judge, this Court will conduct a telephonic status conference with counsel of record in regard to the Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets (Docket Entry 360) on FEBRUARY 10, 2022 AT 3:30 P.M. The Court will initiate the telephone call utilizing the telephone numbers which are of record for counsel. Should counsel wish to be reached at a different number, they should e-mail the information to Rachel_Keeling@oked.uscourts.gov by the close of business on February 9, 2022. (rak, Deputy Clerk) (Entered: 02/09/2022)
02/10/2022	372	Opposed MOTION to Modify the Plan of Allocation Order and Issue a Rule 58 Judgment and Brief in Support (Re: 339 Order) by Sunoco Partners Marketing & Terminals, LP,

		Sunoco, Inc. (R&M) (With attachments) Responses due by 2/24/2022(McClure, Daniel) (Entered: 02/10/2022)
02/10/2022	373	MINUTES of Proceedings held before Magistrate Judge Kimberly E. West: Telephonic Status Conference held on 2/10/2022. (rak, Deputy Clerk) (Entered: 02/10/2022)
02/10/2022	374	MINUTE ORDER by Magistrate Judge Kimberly E. West: In accordance with the discussions at the telephonic status conference conducted on this date, Defendant shall file its brief in opposition to the production of the documents attached as "Exhibit A" to Plaintiff's Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets (Docket Entry 360) no later than FEBRUARY 17, 2022. Thereafter, Plaintiff shall file its responsive brief by FEBRUARY 22, 2022. (rak, Deputy Clerk) (Entered: 02/10/2022)
02/16/2022	375	SUPPLEMENT (Re: 372 MOTION to Alter Order/Judgment, 339 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 02/16/2022)
02/16/2022	376	MOTION to Enjoin Enforcement of the Judgment and any Actions in Support Thereof and Brief in Support by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 3/2/2022(McClure, Daniel) (Entered: 02/16/2022)
02/17/2022	377	RESPONSE to Motion (Re: 360 MOTION for Leave to Appear MOTION for Hearing) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 02/17/2022)
02/22/2022	378	Response BRIEF Regarding the Production of Documents for the Hearing on Defendants' Assets (Re: 377 Response to Motion) by Plaintiff (With attachments) (Burrage, Michael) (Entered: 02/22/2022)
02/24/2022	379	MOTION to Strike Document(s) (Re: 372 MOTION to Alter Order/Judgment) by All Plaintiffs (With attachments) Responses due by 3/10/2022(Beckworth, Bradley) (Entered: 02/24/2022)
02/28/2022	380	Opposed MOTION for Leave to File Reply in Opposition to Document Discovery Concerning Defendants' Property and Assets (Re: 378 Brief,) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 3/14/2022(McClure, Daniel) (Entered: 02/28/2022)
03/01/2022	381	MINUTE ORDER by Magistrate Judge Kimberly E. West: Defendant's Opposed Motion for Leave to File Reply Brief (Docket Entry 380) is hereby GRANTED. Defendant shall file its reply on an expedited basis on MARCH 4, 2022. (rak, Deputy Clerk) (Entered: 03/01/2022)
03/02/2022	382	MOTION to Strike Document and Brief in Support (Re: 376 MOTION for Preliminary Injunction) by All Plaintiffs (With attachments) Responses due by 3/16/2022(Beckworth, Bradley) (Entered: 03/02/2022)
03/02/2022	383	ORDER by Judge John A. Gibney, Jr: Court DIRECTS the defendants to file any response to 379 MOTION to Strike Document(s) (Re: 372 MOTION to Alter Order/Judgment) on or before March 7, 2022. (kch, Deputy Clerk) (Entered: 03/03/2022)
03/04/2022	384	MOTION to Withdraw Attorney Rebecca J. Cole by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 3/18/2022(McClure, Daniel) (Entered: 03/04/2022)
03/04/2022	385	ORDER by Judge John A. Gibney, Jr. granting 384 Motion to Withdraw and deeming Attorney Rebecca J. Cole withdrawn as counsel of record for Defendants, Sunoco, Inc.

		(R&M) and Sunoco Partners Marking & Terminals, L.P. (kch, Deputy Clerk) (Entered: 03/04/2022)
03/04/2022	386	ORDER by Judge John A. Gibney, Jr. Court DIRECTS the defendants to file any response to 382 MOTION to Strike Document and Brief in Support (Re: 376 MOTION for Preliminary Injunction) on or before March 8, 2022. (kch, Deputy Clerk) (Entered: 03/04/2022)
03/04/2022	387	RESPONSE in Opposition to Motion (Re: 360 MOTION for Leave to Appear MOTION for Hearing) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 03/04/2022)
03/07/2022	388	REPLY to Response to Motion (Re: 372 MOTION to Alter Order/Judgment) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ;(McClure, Daniel) (Entered: 03/07/2022)
03/07/2022	389	MOTION for Statutory Costs and Fees Pursuant to 52 O.S. Section 570.14 in the Stipulated Amount of $5,000,000.00 by All Plaintiffs (With attachments) Responses due by 3/21/2022(Beckworth, Bradley) Modified on 3/8/2022 to edit event (dma, Deputy Clerk). (Entered: 03/07/2022)
03/07/2022	390	MOTION to: (1) Approve Form and Manner of Notice to the Certified Class of Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award Pursuant to Rule 23(H); and (2) Approve Proposed Schedule by All Plaintiffs (With attachments) Responses due by 3/21/2022(Beckworth, Bradley) Modified on 3/8/2022 to edit event (dma, Deputy Clerk). (Entered: 03/07/2022)
03/07/2022	391	RESPONSE to Motion (Re: 379 MOTION to Strike Document(s)) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 03/07/2022)
03/07/2022	392	RESPONSE to Motion (Re: 379 MOTION to Strike Document(s)) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 03/07/2022)
03/08/2022	393	REPLY to Response to Motion (Re: 376 MOTION for Preliminary Injunction) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ;(McClure, Daniel) (Entered: 03/08/2022)
03/08/2022	394	RESPONSE to Motion (Re: 382 MOTION to Strike Document(s)) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) ; (With attachments)(McClure, Daniel) (Entered: 03/08/2022)
03/08/2022	395	REPLY to Response to Motion (Re: 379 MOTION to Strike Document(s)) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (Beckworth, Bradley) (Entered: 03/08/2022)
03/09/2022	396	REPLY to Response to Motion (Re: 382 MOTION to Strike Document(s)) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) ; (Beckworth, Bradley) (Entered: 03/09/2022)
03/22/2022	397	MINUTE ORDER by Judge John A. Gibney, Jr.: Motion Hearing set for 3/31/2022 at 2:00 PM **(3:00 PM EASTERN TIME)** via Video Conference before Judge John A. Gibney Jr. A separate email with the Zoom link access will be sent to counsel prior to the Motion Hearing. (Re: 372 MOTION to Alter Order/Judgment, 376 MOTION for Preliminary Injunction, 379 MOTION to Strike Document(s) , 382 MOTION to Strike Document(s)) (kch, Deputy Clerk) Modified on 3/24/2022 to add text(kch, Deputy Clerk). (Entered: 03/22/2022)

03/23/2022	398	MOTION to Withdraw Attorney Emma W. Perry by All Defendants Responses due by 4/6/2022(Woods, Robert) (Entered: 03/23/2022)
03/24/2022	399	ORDER by Judge John A. Gibney, Jr. granting 398 Motion to Withdraw Attorney; Emma W. Perry is withdrawn as counsel of record for Defendants Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, L.P. (kch, Deputy Clerk) (Entered: 03/24/2022)
03/28/2022	400	MOTION for Attorney Erin E. Murphy to be Admitted Pro Hac Vice (paid $50 filing fee; receipt number AOKEDC-1637256) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) Responses due by 4/11/2022(McClure, Daniel) (Entered: 03/28/2022)
03/29/2022	401	ORDER by Judge John A. Gibney, Jr. granting 400 Motion for Admission Pro Hac Vice of attorney Erin E. Murphy for Sunoco Partners Marketing & Terminals, LP and Sunoco, Inc. (R&M), provided that local counsel is present at all proceedings, unless otherwise ordered by the Court. This is conditioned on the filing of an entry of appearance and registration for electronic case filing by the applicant within seven (7) days from entry of this Order. See LCvR 83.4 and CM/ECF Administrative Guide of Policies and Procedures. (kch, Deputy Clerk) (Entered: 03/29/2022)
03/29/2022	402	LETTER from United States Court of Appeals for the Tenth Circuit (Re: 342 Appeal Number Information from Circuit Court assigning Case Number 20-7064 (Re: 340 Notice of Appeal - Final Judgment); 353 Appeal Number Information from Circuit Court assigning Case Number 20-7072 (Re: 351 Notice of Appeal - Final Judgment)) (kch, Deputy Clerk) (Entered: 03/30/2022)
03/30/2022	403	ATTORNEY APPEARANCE by Erin E. Murphy on behalf of Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Murphy, Erin) (Entered: 03/30/2022)
03/31/2022	404	MINUTES of Proceedings held before Judge John A. Gibney, Jr: Based on the Motion Hearing held on 3/31/2022 372 Motion to Alter Order/Judgment is DENIED; 376 Motion for Preliminary Injunction is GRANTED IN PART; 379 Motion to Strike Document(s) is DENIED ; 382 Motion to Strike Document(s) is DENIED. (Court Reporter: Karla McWhorter) (kch, Deputy Clerk) (Entered: 03/31/2022)
03/31/2022	405	ORDER by Judge John A. Gibney, Jr: The Court GRANTS IN PART 376 Motion to Enjoin Enforcement of the Judgment and any Actions in Support and STAYS all enforcement actions for sixty days after the date of this Order. (kch, Deputy Clerk) (Entered: 03/31/2022)
04/04/2022	406	TRANSCRIPT of Proceedings (Unredacted) of Video Conference Motion Hearing held on March 31, 2022 before Judge John A. Gibney, Jr (Court Reporter: Karla McWhorter) (Pages: 1-33). A party must file a Transcript Redaction Request within 21 calendar days. If a party fails to request redaction, this unredacted transcript may be made electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or may view the transcript at the court public terminal. There is no charge to view the transcript at the court public terminal. (Re: 404 Minutes of Motion Hearing) (ksm, Court Reporter) (Entered: 04/04/2022)
04/06/2022	407	ORDER by Judge John A. Gibney, Jr. denying 372 Motion to Modify the Plan of Allocation Order and Issue a Rule 58 Judgment; 379 Motion to Strike Document(s); 382 Motion to Strike Document(s) (kch, Deputy Clerk) (Entered: 04/06/2022)
04/29/2022	408	NOTICE OF APPEAL to Circuit Court (Interlocutory) (paid $505 appeal fee; receipt number AOKEDC-1651853) (Re: 405 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 04/29/2022)

04/29/2022	409	NOTICE OF APPEAL to Circuit Court (paid $505 appeal fee; receipt number AOKEDC-1651874) (Re: 407 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 04/29/2022)
04/29/2022	410	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals (Re: 408 Notice of Appeal - Interlocutory) (With attachments) (jls, Deputy Clerk) (Entered: 04/29/2022)
04/29/2022	411	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals (Re: 409 Notice of Appeal - Final Judgment) (With attachments) (jls, Deputy Clerk) (Entered: 04/29/2022)
04/29/2022	412	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 22-7017 (Re: 408 Notice of Appeal - Interlocutory) (jcb, Deputy Clerk) (Entered: 04/29/2022)
04/29/2022	413	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 22-7018 (Re: 409 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 05/02/2022)
05/03/2022	414	LETTER from Circuit Court stating that the Petition for Writ of Certiorari has been (U.S. Supreme Court Case Number: 21-1404) (Re: 340 Notice of Appeal - Final Judgment, 351 Notice of Appeal - Final Judgment,) (jcb, Deputy Clerk) (Entered: 05/04/2022)
05/16/2022	415	TRANSCRIPT ORDER FORM (Transcripts are not necessary or are already on file) (Re: 409 Notice of Appeal - Final Judgment, 408 Notice of Appeal - Interlocutory) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments) (Murphy, Erin) (Entered: 05/16/2022)
05/16/2022	416	Notice advising the record is complete for the purposes of appeal (re: Circuit Appeal No. 22-7017). A Transcript Order Form has been filed stating the necessary transcripts are already on file (Re: 408 Notice of Appeal - Interlocutory) (jcb, Deputy Clerk) (Entered: 05/16/2022)
05/16/2022	417	Notice advising the record is complete for the purposes of appeal (re: Circuit Appeal No. 22-7018). A Transcript Order Form has been filed stating the necessary transcripts are already on file (Re: 409 Notice of Appeal - Final Judgment) (jcb, Deputy Clerk) (Entered: 05/16/2022)
06/03/2022	418	NOTICE to the Court by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 06/03/2022)
06/09/2022	419	RESPONSE (Re: 418 Notice (Other)) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 06/09/2022)
06/14/2022	420	ORDER by Judge John A. Gibney, Jr.: 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. (kch, Deputy Clerk) (Entered: 06/14/2022)
06/21/2022	421	SUPPLEMENT (Re: 390 MOTION for Attorney Fees) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 06/21/2022)
06/24/2022	422	NOTICE OF APPEAL to Circuit Court (Interlocutory) (paid $505 appeal fee; receipt number AOKEDC-1674066) (Re: 420 Order) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 06/24/2022)
06/24/2022	423	Transmission of Notice of Appeal and Docket Sheet to U.S. Court of Appeals (Re: 422

		Notice of Appeal - Interlocutory) (With attachments) (jls, Deputy Clerk) (Entered: 06/24/2022)
06/24/2022	424	APPEAL NUMBER INFORMATION from Circuit Court assigning Case Number 22-7030 (Re: 422 Notice of Appeal - Interlocutory). (jls, Deputy Clerk) (Main Document 424 replaced on 6/28/2022) (jls, Deputy Clerk). (Entered: 06/24/2022)
07/06/2022	425	RESPONSE (Re: 421 Supplement, 389 MOTION for Costs, 390 MOTION for Attorney Fees) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 07/06/2022)
07/08/2022	426	TRANSCRIPT ORDER FORM (Transcripts are not necessary or are already on file) (Re: 422 Notice of Appeal - Interlocutory) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (Murphy, Erin) (Entered: 07/08/2022)
07/11/2022	427	Notice advising the record is complete for the purposes of appeal (re: Circuit Appeal No. 22-7030). A Transcript Order Form has been filed stating the necessary transcripts are already on file (Re: 422 Notice of Appeal - Interlocutory) (jcb, Deputy Clerk) (Entered: 07/11/2022)
07/13/2022	428	REPLY (Re: 421 Supplement, 389 MOTION for Costs, 390 MOTION for Attorney Fees) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 07/13/2022)
08/04/2022	429	DECISION from Circuit Court dismissing the Appeal (Re: 422 Notice of Appeal - Interlocutory, 408 Notice of Appeal - Interlocutory). (adw, Deputy Clerk) (Entered: 08/05/2022)
08/09/2022	430	ORDER FOR PRODUCTION OF DOCUMENTS AND FOR ASSET HEARING by Magistrate Judge Kimberly E. West: Motion for Order Requiring Judgment Debtor to Appear and Answer Concerning Property and Assets (Docket Entry 360) be GRANTED. Defendants shall provide a representative with substantive knowledge regarding the assets available to satisfy Plaintiff's judgment and to answer inquiry into the same on 9/12/2022 at 10:00 AM in Courtroom 3, Room 432, US Courthouse, 5th & Okmulgee, Muskogee, OK before Magistrate Judge Kimberly E. West. (rak, Deputy Clerk) (Entered: 08/09/2022)
08/23/2022	431	OBJECTION to Defendants' Objections to Magistrate Judge's Order for Production of Documents and Asset Hearing (Re: 430 Ruling on Motion to Appear) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (With attachments)(McClure, Daniel) (Entered: 08/23/2022)
08/24/2022	432	RESPONSE (Re: 431 Brief) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (Beckworth, Bradley) (Entered: 08/24/2022)
08/25/2022	433	NOTICE to Court by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 08/25/2022)
08/26/2022	434	REPLY in Support of Objections to Magistrate Judge's Order for Production (Re: 431 Brief) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 08/26/2022)
08/30/2022	435	NOTICE - Recent development in Sunoco Partners & Term., et al v. Cline (U.S. Supreme Court) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (McClure, Daniel) (Entered: 08/30/2022)
08/31/2022	436	RESPONSE (Re: 435 Notice (Other)) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 08/31/2022)

08/31/2022	437	ORDER by Judge John A. Gibney, Jr. (Re: 435 Notice Recent development in Sunoco Partners & Term., et al v. Cline (U.S. Supreme Court) by Sunoco Partners Marketing & Terminals, LP, Sunoco, Inc. (R&M) (kch, Deputy Clerk) (Entered: 08/31/2022)
09/02/2022	438	NOTICE of Non-Compliance With Court Order (Re: 430 Ruling on Motion to Appear,,, Setting/Resetting Hearing(s),,, Setting/Resetting Motion and R&R Deadline(s)/Hearing(s),,) by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments)(Beckworth, Bradley) (Entered: 09/02/2022)
09/02/2022	439	MOTION for Leave to File Sealed Document by Perry Cline(on behalf of himself), Perry Cline(on behalf of all others similarly situated) (With attachments) Responses due by 9/16/2022(Beckworth, Bradley) (Entered: 09/02/2022)

PACER Service Center			
Transaction Receipt			
09/04/2022 13:23:26			
PACER Login:	rspost606	**Client Code:**	
Description:	Docket Report	**Search Criteria:**	6:17-cv-00313-JAG
Billable Pages:	30	**Cost:**	3.00

Exhibit E

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 three motions: a motion to modify the Plan of Allocation Order and issue a Rule 58 judgment filed by Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, L.P. (collectively, "Sunoco"), (ECF No. 372), and two motions to strike filed by the class representative, (ECF Nos. 379, 382). The Court held a hearing on these motions on March 31, 2022.

Regarding Sunoco's motion, the Court finds that its Plan of Allocation, (ECF No. 339), complies with the standard set forth in *Strey v. Hunt International Resources Corp.*, 696 F.2d 87 (10th Cir. 1982), and applied in *Cook v. Rockwell International Corp.*, 618 F.3d 1127 (10th Cir. 2010). *See also Moya v. Schollenbarger*, 465 F.3d 444, 449 (10th Cir. 2006) ("In evaluating finality, therefore, we look to the *substance* and *objective intent* of the district court's order, not just its terminology." (emphases in original)); (ECF No. 339, at 13 n.10.) Further, the Court has satisfied Federal Rule of Civil Procedure 58(a). (*See* ECF Nos. 308, 339.)

As for the class representative's motions to strike, at this time the Court will neither strike Sunoco's motions nor will it issue sanctions against Sunoco's counsel.

Thus, for the reasons stated from the bench and those set forth above, the Court DENIES Sunoco's motion to modify the Plan of Allocation Order and issue a Rule 58 judgment and the class representative's motions to strike. (ECF Nos. 372, 379, 382.)

It is so ORDERED.

Let the Clerk send a copy of this Order to all counsel of record and United States Magistrate Judge Kimberly West.

Date: 6 April 2022
Richmond, VA

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

Exhibit F

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), et al., Defendants.	No. 6:17-cv-313-JAG

DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that Defendants Sunoco, Inc. (R&M) (now Energy Transfer (R&M), LLC) and Sunoco Partners Marketing & Terminals L.P. (now Energy Transfer Marketing & Terminals L.P.), by counsel, appeal to the United States Court of Appeals for the Tenth Circuit from this Court's April 6, 2022 Order (Dkt.407) and accompanying oral ruling (Dkt.406), denying Defendants' motion to modify the Plan of Allocation Order and issue a Rule 58 judgment (Dkt.372). The statutory basis for Defendants' appeal is 28 U.S.C. §1291.

Dated: April 29, 2022

Respectfully submitted,

/s/ Daniel M. McClure

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Attorneys for Defendants Sunoco, Inc. (R&M), et al.

CERTIFICATE OF SERVICE

I certify that today I electronically filed the foregoing with the Clerk of Court using the CM/ECF filing system, which will automatically send an electronic copy to all counsel of record.

Dated: April 29, 2022

/s/ Daniel M. McClure
Daniel M. McClure

Exhibit G

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 H

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), et al., Defendants.	No. 6:17-cv-313-JAG

DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that Defendants Sunoco, Inc. (R&M) (now Energy Transfer (R&M), LLC) and Sunoco Partners Marketing & Terminals L.P. (now Energy Transfer Marketing & Terminals L.P.), by counsel, appeal to the United States Court of Appeals for the Tenth Circuit from this Court's June 14, 2022 Order (Dkt.420) denying Defendants' motion to enjoin enforcement of the judgment and any actions in support (Dkt.376). The statutory basis for Defendants' appeal is 28 U.S.C. §1292(a)(1).

Dated: June 24, 2022

Respectfully submitted,

/s/ Daniel M. McClure

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Attorneys for Defendants Sunoco, Inc. (R&M), et al.

CERTIFICATE OF SERVICE

I certify that today I electronically filed the foregoing with the Clerk of Court using the CM/ECF filing system, which will automatically send an electronic copy to all counsel of record.

Dated: June 24, 2022

/s/ Daniel M. McClure
Daniel M. McClure

Exhibit I

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 J

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

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phone 713.632.8000 fax 713.632.8002

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

Search documents in this case: Search

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).

NAME	ADDRESS	PHONE
Attorneys for Petitioners		
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Party name: Sunoco Partners Marketing & Terminals L.P., et al.		

Exhibit K

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.	)	

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 1

IN THE
SUPREME COURT OF THE UNITED STATES

No. 21-1404

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

Applicants,

v.

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

Respondent.

EMERGENCY APPLICATION FOR INJUNCTION OR STAY PENDING RESOLUTION OF PETITION FOR CERTIOARI

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TO THE HONORABLE NEIL M. GORSUCH, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE TENTH CIRCUIT:

Sunoco faces imminent execution of a nine-figure damages award that it has never been allowed to appeal. Sunoco has been placed in this unenviable position through no fault of its own. When faced with a sizable class-action damages award that purported to be a final and appealable judgment but did not comply with applicable Tenth Circuit law on finality, Sunoco took the sensible course of filing a protective notice of appeal. In doing so, Sunoco did not abandon its good-faith belief that there was no final judgment, but rather forthrightly told the Tenth Circuit that the district court's orders were not final and thus not appealable (and are also infirm on the merits). The first time Sunoco did so, the Tenth Circuit did what other circuits do under comparable circumstances: It dismissed the appeal for lack of jurisdiction and sent a clear signal that the district court's order was not final. But when the district court subsequently tried and failed to fix the finality problem and Sunoco followed the same course, the Tenth Circuit inexplicably faulted Sunoco for failing to carry its burden of establishing appellate jurisdiction. In a break from its own prior practice and that of its sister circuits, the court faulted Sunoco for forthrightly articulating its view that the appellate court lacked jurisdiction because the district court has not yet issued a final judgment. That misguided view disregards a court's jurisdiction to decide its own jurisdiction, guts the well-established practice of protective notices of appeal, and puts appellants in the impossible position of forever losing their rights to a merits appeal if they have the temerity to insist that the district court is wrong in its view that it has issued a final judgment.

The Tenth Circuit's erroneous decision is the subject of a fully briefed petition for certiorari, but the lower courts are intent on allowing execution of the $155 million award to proceed before this Court can address that petition. Sunoco has exhausted every possible avenue to try to get those execution efforts put on hold, but the lower courts seem bound and determined to allow execution to move forward without giving this Court time to resolve the petition and without giving Sunoco the opportunity that every other litigant enjoys: the right to appeal a decision on the merits before execution proceeds. Sunoco is thus left with no other choice but to ask this Court for emergency relief to protect Sunoco from this irreparable injury and to protect this Court's own jurisdiction.

That relief is readily warranted. There is at least a fair prospect that the Court will grant the petition and reverse, as the Tenth Circuit's decision is plainly wrong and poses a direct threat to protective appeals. Unless the Court intervenes now, Sunoco will suffer irreparable injury, as there is neither any realistic prospect that it could recover $155 million once it has been distributed to the more than 53,000 class members nor any prospect that the Tenth Circuit will address the merits of this nine-figure damages award before execution proceeds. Making matters worse, the class representative seems intent on executing in the most disruptive manner possible, as he declined Sunoco's offers of full financial assurance in favor of sweeping asset discovery that he apparently plans to deploy to inflict unnecessary costs, impose liens, frustrate business operations, and perhaps even seize physical property. Those are classic forms of irreparable injury, and they are as unnecessary as they are

irreparable, as no one doubts that Sunoco is good for the money and will pay promptly if and when the underlying order is affirmed on appeal as both final under Tenth Circuit law and correct on the merits. The Court should put a stop to all of these ongoing and irreparable efforts to enforce a judgment that is not final, appealable, or executable. A stay will prevent irreparable injury, preserve Sunoco's right to appeal, and ensure that this Court can resolve Sunoco's petition without having to worry that any relief it may grant could prove illusory.

OPINIONS AND ORDERS BELOW

The Tenth Circuit's August 25 order denying Sunoco's motion for a stay or injunction of the enforcement proceedings is attached as Exhibit 1. The magistrate judge's August 9 order setting deadlines for production of documents and for asset hearing is attached as Exhibit 2. The Tenth Circuit's August 4 order denying Sunoco's motion for a stay or injunction of the enforcement proceedings is attached as Exhibit 3. The district court's June 14 order denying Sunoco's request to extend the stay of the enforcement proceedings is attached as Exhibit 4. The district court's March 31 order denying Sunoco's motion to enjoin the enforcement proceedings is attached as Exhibit 5. The Tenth Circuit's November 1, 2021 order dismissing Sunoco's appeals is attached as Exhibit 6. The district court's August 27, 2020 "Judgment Order" is attached as Exhibit 7. The district court's August 17, 2020 order is reported at 479 F.Supp.3d 1148 and attached as Exhibit 8.[1]

[1] The remaining orders of the Tenth Circuit and the district court are reproduced in the Appendix (hereinafter "App."), filed in conjunction with Sunoco's pending petition

JURISDICTION

This Court has jurisdiction under 28 U.S.C. §1254(1), 28 U.S.C. §2101(f), and 28 U.S.C. §1651(a).

STATEMENT OF CASE

A. Legal Background

The federal courts of appeals have jurisdiction over appeals from "all final decisions of the district courts of the United States." 28 U.S.C. §1291. "A final decision is typically one by which a district court disassociates itself from a case." *Mohawk Indus., Inc. v. Carpenter*, 558 U.S. 100, 106 (2009) (quotation marks and alterations omitted). The "finality requirement" is "jurisdictional in nature," so if a court of appeals "finds that the order from which a party seeks to appeal" is not final, its "inquiry is over," and it must dismiss the appeal for lack of jurisdiction. *Firestone Tire & Rubber Co. v. Risjord*, 449 U.S. 368, 379 (1981). The "effect" of the finality rule is to "disallow appeal from any decision which is tentative, informal or incomplete." *Cohen v. Beneficial Indus. Loan Corp.*, 337 U.S. 541, 546 (1949). As officers of the court, lawyers are obligated to apprise a court of their good-faith belief that the court lacks jurisdiction, *Bd. of License Comm'rs of Town of Tiverton v. Pastore*, 469 U.S. 238, 240 (1985), and in the appellate context often do so by filing protective notices of appeal, Fed. Ct. App. Manual §1:9 (7th ed.).

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for certiorari, *Sunoco Partners Mrkg. & Terminals L.P., et al. v. Cline*, No. 21-1404 (Apr. 28, 2022).

With certain exceptions not relevant here, Federal Rule of Civil Procedure 58 requires "[e]very judgment and amended judgment" to be "set out in a separate document." Fed. R. Civ. P. 58(a). Thus, when a district court directs entry of judgment under Rule 58, that ordinarily signifies that the court views the judgment as final, and that the jurisdictional clock for filing an appeal has started running. "The label used by the District Court, however, cannot control an order's appealability." *Riley v. Kennedy*, 553 U.S. 406, 419 (2008) (quotation marks and alterations omitted). When faced with a purportedly final judgment, a court of appeals must look behind the label to the substance and determine whether the order truly ends the litigation on the merits and leaves nothing for the district court to do but execute the judgment. *See id.*; *Sullivan v. Finkelstein*, 496 U.S. 617, 627-28 n.7 (1990). It is well established that "an order that determines liability but leaves damages to be calculated is not final." Wright & Miller, 16B Fed. Prac. & Proc. Juris. §4009 (3d ed.); *see Liberty Mut. Ins. Co. v. Wetzel*, 424 U.S. 737, 744 (1976) (orders that leave "assessment of damages" to be resolved "have never been considered to be 'final' within the meaning of" §1291). In the class-action context, courts have understood that rule to mean that a "determination of damages that does not allocate an aggregate sum among claimants" is "not final." Wright & Miller, 15B Fed. Prac. & Proc. Juris. §3915.2 (2d ed.).

In keeping with that understanding, in a pair of cases known as *Strey* and *Cook* the Tenth Circuit has established two requirements that must be satisfied for an order awarding damages to a class to qualify as final and appealable. First, the

district court must establish "the formula that will determine the division of damages among class members." *Strey v. Hunt Int'l Res. Corp.*, 696 F.2d 87, 88 (10th Cir. 1982). Second, the district court must establish "the principles that will guide the disposition of any unclaimed funds." *Id. See Cook v. Rockwell Int'l Corp.*, 618 F.3d 1127, 1138 (10th Cir. 2010). Thus, in the Tenth Circuit, if a district court fails to address the allocation and disposition of all damages, even in a judgment that purports to be final, there is no valid final judgment. Such a non-final order should not be subject to execution or the basis of an appeal on the merits.

B. Factual and Procedural Background

1. In 2017, respondent Perry Cline filed a class-action lawsuit against Sunoco under Oklahoma's Production Revenue Standards Act (PRSA). Cline alleged that Sunoco failed to pay statutory interest on late payments to a class of owners of interests in oil wells in Oklahoma. Dkt.2-2.2.[2] The district court certified a 53,000-member class despite serious doubts that many of the class members could be identified, and the case proceeded to a bench trial. On August 17, 2020, the court found Sunoco liable for failing to pay PRSA interest and awarded the class damages. Ex.8; Dkt.298.at.25; Dkt.231.at.13. On August 27, the court issued a "Judgment Order" awarding the class roughly $80 million in actual damages and $75 million in punitive damages. Ex.7. Although the court expressly designated it a Rule 58 judgment, the Judgment Order did not allocate the damages among class members

[2] "Dkt." refers to the district court docket, No. 17-cv-313-JAG (E.D. Okla.).

or provide any plan for the disposition of unclaimed funds, despite both being prerequisites for a final judgment under *Strey* and *Cook*.

Because the Judgment Order nonetheless purported to be a Rule 58 final judgment, Sunoco filed a protective notice of appeal, while forthrightly explaining why the "Judgment Order" was not actually final and appealable. Dkt.306; CA10.No.20-7055.09.21.20.Br. The Tenth Circuit agreed and dismissed the appeal for lack of jurisdiction, stating that the district court "had not yet issued a plan to allocate the damages it awarded," and so had not yet issued a final judgment. App.13.

2. In the meantime, Cline filed a proposed "Plan of Allocation" in the district court. Dkt.317. Sunoco objected that the proposed plan still did not meet the finality requirements of *Strey* and *Cook*. Dkt.321. Over Sunoco's objections, the court issued a "Plan of Allocation Order" adopting Cline's proposal and failing to remedy the finality defects Sunoco identified. App.31. Although the court did not issue a new Rule 58 judgment, it appeared to be of the view that the Plan of Allocation Order sufficed to render the combination of its orders a final judgment, so Sunoco filed a (second) protective notice of appeal. Dkt.340. Meanwhile, Sunoco filed motions for a new trial and to amend the "judgment," Dkt.322, 323, 347, 348, which the district court denied, App.14. At that point, Sunoco filed another protective notice of appeal, Dkt.351, and its second and third appeals were consolidated.

3. In those appeals, Sunoco forthrightly explained to the Tenth Circuit, as it had done with its first protective appeal, that the district court still had not issued a final judgment and thus the Tenth Circuit lacked jurisdiction over the merits.

CA10.20-7064.11.17.20.Appellant.Br.; CA10.20-7064.10.20.21.Appellant.Br.2-6. Sunoco invoked the Tenth Circuit's jurisdiction to determine its own jurisdiction and suggested that the court remedy the problem by instructing the district court to make modest changes to the Plan of Allocation Order. Notwithstanding both parties' pleas that it resolve the finality dispute, identify any additional steps the district court might need to take, and decide the appeals on the merits once finality was resolved, the Tenth Circuit again dismissed the appeals.

In stark contrast to its order dismissing Sunoco's first appeal, however, the court expressly refused to "address whether the district court's plan of allocation order resulted in a final, appealable judgment." Ex.6.at.8.n.7. Instead, the court maintained that it was Sunoco's "burden" to "establish our jurisdiction," and then faulted Sunoco for "arguing or implying we lack jurisdiction because the district court's plan of allocation order does not result in a final, appealable judgment." *Id.* at 4-5. The court further faulted Sunoco for not pursuing other purported "options available to it to establish appellate jurisdiction," including mandamus. *Id.* at 6 & n.6. The Tenth Circuit made no effort to reconcile its opinion with the fact that it had just resolved the finality dispute in Sunoco's first protective appeal, even though Sunoco had affirmatively argued there, too, that the court lacked jurisdiction to resolve the merits of the appeal. The Tenth Circuit then dismissed the appeal not for lack of finality, but on the ground that Sunoco "did not meet its burden to establish appellate jurisdiction." *Id.* at 2. The court denied rehearing and rehearing en banc. App.11.

Sunoco then filed a mandamus petition asking the Tenth Circuit to order the district court to make modest modifications to its orders to render them final. CA10.21-7063.01.14.22.Reply. Without opining on finality, the Tenth Circuit denied the petition on the ground that "Sunoco has not shown either that it has no other adequate means to obtain relief or that its right to the writ is clear and indisputable," and further "conclude[d] that issuance of the writ is not appropriate under the circumstances." App.2. Sunoco then filed a petition for a writ of certiorari in this Court seeking review of the Tenth Circuit's order dismissing Sunoco's second and third protective appeals. *Sunoco Partners Mrkg. & Terminals L.P., et al. v. Cline*, No. 21-1404 (Apr. 28, 2022). After Cline initially waived his right to respond, this Court called for a response, and Cline then sought a 30-day extension. The petition is now fully briefed and remains pending.

4. Mere days after the Tenth Circuit denied Sunoco's petition for rehearing, Cline began pressing full speed ahead with efforts to collect the $155 million damages award. *See* Dkt.360. If Cline is able to collect and distribute that money to the tens of thousands of class members (or at least those who can actually be identified, which many cannot), it will be virtually impossible for Sunoco to get all of it back should this Court grant relief. In normal circumstances, Sunoco could protect itself and preserve this Court's ability to address Sunoco's petition in the ordinary course by obtaining a supersedeas bond to forestall those efforts until its petition for certiorari is resolved. But there is nothing normal or ordinary about this case. Because the verdict is not final and the Tenth Circuit refuses to consider a protective notice of

appeal, Sunoco cannot obtain a supersedeas bond. And while Sunoco has offered to provide Cline with some other form of financial assurance of his choosing if he will just hold off on executing until Sunoco has exhausted its appellate rights, Cline has flatly refused, and instead appears intent on proceeding to begin executing in the most disruptive manner possible. To that end, Cline issued a sweeping discovery request demanding every single document in Sunoco's possession that touches on any of Sunoco's assets and liabilities, "including but not limited to, pipelines, plants, terminals, tankage, rights of way, etc.," Dkt.360.at.3, with apparent plans to start imposing liens, disrupting business transactions, and perhaps even seizing physical assets. The lower courts have steadfastly refused to enjoin those enforcement efforts, and Sunoco has exhausted every conceivable avenue to halt such efforts before turning to this Court for extraordinary relief to protect Sunoco and this Court's jurisdiction.

First, because the Tenth Circuit's mandamus denial suggested that "other adequate means to obtain" a final and appealable judgment might exist, Sunoco went back to the district court and filed a motion trying to obtain just that. Invoking Federal Rules of Civil Procedure 58 and 60(b)(6), Sunoco asked the court to make two modest amendments to its orders to resolve the finality problems and to issue a new Rule 58 judgment. Dkt.372. While Cline did not and could not claim that making either modification would cause him or the class any prejudice, he opposed the relief nonetheless—precisely because to grant it would ensure that Sunoco could appeal. Dkt.379-2. Sunoco also filed a motion to enjoin enforcement proceedings until the

district court reduces the money damages award to a judgment that the Tenth Circuit recognizes as final and affirms. Dkt.376. While Cline has acknowledged that executing now only to discover later that there is not yet a final judgment would put him and the other class members at serious financial risk, he opposed that relief as well. Dkt.382-2. The district court denied both motions, Ex.5; Dkt.405, 407, although it purported to grant Sunoco's motion to enjoin "in part" by staying execution efforts for 60 days and ordering the parties into mediation, Ex.5.at.2. The court promised to lift the stay unless the parties made progress toward settlement during that period, and it subsequently did just that.

Sunoco timely appealed both orders. Dkt.408, 409. And when the 60-day stay lapsed, Sunoco asked the district court to extend it until the Tenth Circuit resolves its pending appeals and this Court acts on Sunoco's pending petition for certiorari. Dkt.419. Instead, the district court denied Sunoco's request without comment and ordered execution proceedings to resume. Ex.4.at.1. In an abundance of caution given the district court's failure to acknowledge that it had denied the injunctive relief Sunoco sought, Sunoco noticed an appeal from that order as well and moved to consolidate that appeal with its pending appeals. And at the same time, Sunoco filed a motion asking the Tenth Circuit for an injunction against or stay of execution efforts pending resolution of its pending appeals and petition for certiorari. CA10.22-7017.06.24.2022.Motion; CA10.22-7018.06.24.2022.Motion.

Instead, the Tenth Circuit sua sponte ordered briefing on whether it had jurisdiction over the two appeals from the (implicit) denial of Sunoco's motion for an

injunction and then proceeded to dismiss them both. According to the Tenth Circuit, while Sunoco asked the district court to enjoin the class from executing rather than to stay the operation of a final judgment (because there is no final judgment to stay), Sunoco was still really seeking "a stay, not an injunction," and hence the order denying Sunoco's motion is not appealable. Ex.3.at.4. And while the court did not dismiss Sunoco's appeal from the denial of its motion to alter or amend the "judgment," it ordered the parties to brief jurisdiction in that appeal too, faulting Sunoco for having "filed six appeals" from the same district court case even though the Tenth Circuit has so far refused to entertain any of those appeals on the merits. *Id.*at.2. The court further stated that it would resolve the stay/injunction motion associated with that appeal in a separate order. *See id.*at.4.

Despite that pending motion and Sunoco' pending petition for certiorari, the magistrate judge proceeded to order Sunoco to produce *all* of the exceedingly wide-ranging asset information that Cline has requested by August 31, 2022, and to then appear through a designated representative for an asset hearing on September 12, 2022. *See* Ex.2.at.4. Sunoco filed objections to the magistrate's order, in which (among other things) it asked the district court to at least hold off until the Tenth Circuit resolved the pending motion for an injunction or stay. *See* Dkt.431. Cline vehemently opposed those objections and refused to delay execution or narrow the scope of these sweeping requests at all. *See* Dkt.432.

Meanwhile Sunoco's motion for a stay of or injunction against execution had been pending with the Tenth Circuit for more than two months with no sign of

resolution in sight. Accordingly, given the impending August 31 deadline, on August 25 Sunoco filed a motion asking the Tenth Circuit to enter an administrative stay of execution efforts at least until it resolved the stay/injunction motion. CA10-7018.08.25.2022.Motion. And in the event the Tenth Circuit denied the motion, Sunoco asked the court to grant a brief administrative stay to give Sunoco time to promptly seek relief from this Court, so that this Court would not have to deal with a highly expedited emergency application for emergency relief. *See id.* Instead, mere hours later, the Tenth Circuit denied Sunoco's underlying stay/injunction motion, offering no explanation other than that Sunoco has "not shown that a stay or injunction is warranted." Ex.1.at.1. And the Tenth Circuit refused to grant any stay whatsoever to give Sunoco time to seek relief from this Court, claiming that no reprieve was warranted notwithstanding the fast-approaching August 31 deadline because Sunoco represented that it was "ready and willing [to seek relief from the Supreme Court] on an expedited basis." *Id.* at 2. The Tenth Circuit thus left Sunoco with a grand total of three business days in which to seek relief from this Court before it will be forced to hand over all manner of asset information that will enable Cline to begin disrupting Sunoco's operations in service of his efforts to collect a $155 million damages award that has never been subject to appellate review.

REASONS FOR GRANTING THE APPLICATION

To obtain an order preserving the status quo pending resolution of a petition for certiorari, an applicant must show (1) a reasonable probability that four Justices will consider the petition sufficiently meritorious to grant certiorari; (2) a fair prospect that a majority of the Court will vote to reverse the decision below; and (3)

a likelihood that irreparable harm will result from the denial of a stay. *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010). In close cases, the Court will also "balance the equities and weigh the relative harms to the applicant and to the respondent." *Id.* This Court routinely grants stays in cases where it would be nearly impossible for the applicant to recover a large sum of money if it is distributed pursuant to an award that is subsequently invalidated. *See, e.g.*, *Mori v. Int'l Bhd. of Boilermakers*, 454 U.S. 1301, 1303 (1981) (Rehnquist, J., in chambers) (irreparable harm where funds held in escrow "would be very difficult to recover" once distributed); *Philip Morris USA Inc. v. Scott*, 561 U.S. 1301, 1304-05 (2010) (Scalia, J., in chambers) ("If expenditures cannot be recouped, the resulting loss may be irreparable."). That relief is readily warranted here to prevent the impending havoc that Cline intends to wreak by trying to collect and distribute to 53,000 class members a $155 million class-action damages award that has never been tested on appeal. Whether through a stay, an injunction, or a writ of mandamus, the Court should halt Cline's execution efforts and preserve the status quo pending the disposition of Sunoco's petition for certiorari.

I. There Is A Reasonable Probability That This Court Will Grant Certiorari And Reverse The Judgment Below.

This case plainly satisfies the first two factors in this Court's stay analysis, as there is both "a reasonable probability" that the Court will grant certiorari and a "fair prospect" that the Court will vacate or reverse the decision below. The Tenth Circuit's profoundly flawed decision below not only is incredibly inequitable, but marks a stark departure from uniform and long-settled practice, places attorneys and clients in an impossible position, and deprives the protective appeal practice of much of its utility.

1. It is blackletter law that "a federal court always has jurisdiction to determine its own jurisdiction." *United States v. Ruiz*, 536 U.S. 622, 628 (2002). It is equally elementary that "when a federal court has jurisdiction, it also has a 'virtually unflagging obligation ... to exercise' that authority." *Mata v. Lynch*, 576 U.S. 143, 150 (2015). As Chief Justice Marshall explained long ago, federal courts "have no more right to decline the exercise of jurisdiction which is given, than to usurp that which is not given." *Cohens v. Virginia*, 19 U.S. (6 Wheat.) 264, 404 (1821). Together, those foundational principles mean that a federal court of appeals always has both the power and the duty to determine definitively whether it possesses jurisdiction over an appeal.

Indeed, so foundational is that duty that a federal court must address jurisdiction sua sponte if the parties fail to raise it. *See FW/PBS, Inc. v. City of Dallas*, 493 U.S. 215, 230-31 (1990) ("The federal courts are under an independent obligation to examine their own jurisdiction," "even if the parties fail to raise the issue."); *Mitchell v. Maurer*, 293 U.S. 237, 244 (1934) ("An appellate federal court must satisfy itself" of "its own jurisdiction[.]"). And as officers of the court, counsel for the parties have a professional obligation to alert the court to, and be candid with the court about, concerns that jurisdiction may be lacking. *See Pastore*, 469 U.S. at 240; *BEM I, LLC v. Anthropologie, Inc.*, 301 F.3d 548, 551 (7th Cir. 2002) ("As officers of the court, lawyers who practice in federal court have an obligation to assist the judges to keep within the boundaries fixed by the Constitution and Congress.").

Simply put, a lawyer with a good-faith belief that an order is not final and appealable is duty-bound to forthrightly share that view with the court.

Protective notices of appeal play an essential part in that process by preserving appellate rights when a would-be appellant faces an order the district court believes to be final, but the would-be appellant believes lacks the finality necessary for proper appellate jurisdiction. In those cases, litigants are not forced to suppress good-faith objections to appellate jurisdiction in order to pursue an appeal on the merits. Instead, it has long been common practice to notice an appeal, forthrightly raise the jurisdictional qualms, and ask the court of appeals to resolve that jurisdictional question at the threshold and reach the merits only if the appellate court concludes it has jurisdiction. Since the deadline for noticing an appeal is itself jurisdictional, courts and commentators strongly encourage the filing of protective appeals as the best way to avoid inadvertently forfeiting appellate rights in a broad range of cases where appellate jurisdiction is questionable. *See, e.g.*, Fed. Ct. App. Manual §1:9 (7th ed.) (recommending filing protective notice of appeal when there is "[u]ncertainty" about "whether the district court has entered final judgment"); *United States v. Owen*, 553 F.3d 161, 165 (2d Cir. 2009) ("[A] 'protective' notice of appeal is a useful litigation tool where, as here, the timeliness of a subsequent appeal could be called into question."); *cf. In re FCC*, 217 F.3d 125, 141 (2d Cir. 2000) (party filed two protective notices of appeal and asked court to "dismiss whichever appeal is improper"); *United States v. Poindexter*, 859 F.2d 216, 222 n.5 (D.C. Cir. 1988) (declining to "fault" counsel for pursuing protective appeals of non-final district court orders "[i]n light of

the unsettled caselaw" on finality). And nowhere is the importance of filing protective notices of appeal greater than when it comes to an adverse money judgment that the district court believes is final, but that the would-be appellant believes is non-final. In that scenario, the would-be appellant has no choice but to file a protective notice of appeal, because if a notice of appeal is not filed, the district court will authorize execution of the judgment that it believes (perhaps incorrectly) is final. Moreover, if the would-be appellant does not file a protective notice of appeal and raise the finality issue, it risks losing its appellate rights if it ultimately turns out to be mistaken in its good-faith belief that the judgment is not final. A protective notice of appeal invoking the court of appeals' jurisdiction to determine its own jurisdiction eliminates this dilemma.

Accordingly, courts of appeals have frequently resolved jurisdictional disputes in the context of protective appeals, even when the appellant is the one asserting that the court lacks jurisdiction to resolve the merits. *See, e.g., United States v. Sunset Ditch Co.*, 472 F.App'x 472, 473 (9th Cir. 2012) (resolving finality issue where appellant argued that there was "no appellate jurisdiction to hear any part of its protective appeal"); *Nat'l Assoc. of Gov't Emps. v. City Pub. Serv. Bd. of San Antonio*, 40 F.3d 698, 705 (5th Cir. 1994) (resolving appellate jurisdiction where appellant moved to dismiss its own appeal on basis of non-finality); *Arnold v. Indianapolis Airport Auth.*, 7 F.3d 238 (7th Cir. 1993) (deciding finality and appellate jurisdiction when appellants took protective appeals and then argued that there was no final judgment); *Truesdale v. DOJ*, 2012 WL 3791281, at *1 (D.C. Cir. Aug. 15, 2012)

(deciding finality and appellate jurisdiction where appellant argued that the court "lacks jurisdiction over the appeal because the district court has not entered a final judgment"). Indeed, *Cook*, one of the Tenth Circuit cases that Sunoco believes renders the orders here non-final, fits the pattern. *See* 618 F.3d at 1137-38 (resolving appellate jurisdiction where appellants moved to dismiss appeal on basis of non-finality). That practice is both unremarkable and consistent with the jurisdictional constraints of the courts of appeals because the jurisdiction the appellant is invoking when it asks the court to resolve such a dispute is not the court's jurisdiction to resolve the appeal on the merits. It is the court's "jurisdiction to determine its own jurisdiction," *Ruiz*, 536 U.S. at 628—jurisdiction that federal courts not only always possess, but have a "virtually unflagging ... obligation ... to exercise," *Mata*, 576 U.S. at 150.

2. When Sunoco was faced with a "Judgment Order" that purported to be a final Rule 58 judgment and awarded the class $155 million, Sunoco did what any rational litigant would do and noticed an appeal to protect its appellate rights. At the same time, Sunoco wished to preserve its finality objections and fulfilled its duty to the court by candidly alerting the Tenth Circuit to what it believed was a jurisdictional defect. In so doing, Sunoco explicitly invoked the Tenth Circuit's jurisdiction to determine its own jurisdiction to resolve whether the district court had issued a final and appealable judgment.

None of this struck the Tenth Circuit as problematic the first time this case came before it. To the contrary, the court agreed with Sunoco that the "Judgment

Order" failed to meet the *Strey* and *Cook* requirements for finality and dismissed the appeal for lack of jurisdiction, thus making clear to all that the district court still had work to do. Unsurprisingly, then, when the district court modified its order in an effort to render it final, but Sunoco still disagreed that the order qualified as such, Sunoco followed the same course. It noticed an appeal to protect its appellate rights while also bringing the unresolved finality problem to the Tenth Circuit's attention. Once again, Sunoco asked the court to resolve that dispute, pursuant to its jurisdiction to determine its own jurisdiction. And Cline did the same; indeed, he all but begged the Tenth Circuit to resolve the finality dispute.

One would have thought (as both parties did) that the Tenth Circuit would follow the same course as the first time around. Yet this time, the Tenth Circuit inexplicably changed course and dismissed the appeal on the ground that Sunoco failed to meet its "burden" to establish appellate jurisdiction, while expressly refusing to determine whether the district court's order was final. Ex.6.at.7 & n.7. Despite possessing both the power and the obligation to determine its own jurisdiction, the Tenth Circuit decided not to decide. The court did not purport to dismiss the appeal for lack of prosecution—for good reason, as the parties had submitted voluminous briefing on both jurisdiction and the merits, and had even proposed ways for the court to efficiently resolve any lingering finality concerns in order to reach the merits. Nor did the court dismiss the appeal for lack of jurisdiction because it found that the orders were non-final. Instead, the Tenth Circuit charted a novel third course, dismissing the appeal on the ground that Sunoco failed to meet its "burden" to

"establish our jurisdiction," while expressly refusing to "address whether the district court's plan of allocation order resulted in a final, appealable judgment." *Id.* at 4, 8 & n.7. In doing so, the court repeatedly emphasized that Sunoco had affirmatively argued the Tenth Circuit lacked jurisdiction over the merits because there is no final judgment. *Id.* at 4-8. In other words, the court dismissed the appeal and refused to resolve either finality or the merits solely because Sunoco preserved and asserted its good-faith belief that the orders were not final (as the obligations of officers of the court require).

That result is not only misguided, but inequitable in the extreme. When a party files an appeal to protect its right to appeal the substance of an order as to which it believes appealability is uncertain or lacking, the principal jurisdiction it is invoking is not the court's jurisdiction to review the underlying order. It is invoking first and foremost the court's "jurisdiction to determine its own jurisdiction"—jurisdiction that "a federal court always has." *Ruiz*, 536 U.S. at 628. The appellant thus need not "conjure up possible theories," Ex.6.at.6, as to how the court might have the very jurisdiction that the appellant believes is lacking. At most, all the appellant needs to do is point to the undisputed rule that courts always have jurisdiction to determine their own jurisdiction even when jurisdiction over the merits is lacking—which, as the Tenth Circuit acknowledged, is precisely what Sunoco did. *Id.* at 6 n.5.

The Tenth Circuit's contrary view not only flouted its unflagging obligation to exercise the jurisdiction it possesses, but renders protective appeals an exercise in futility whenever the would-be appellant thinks that appellate jurisdiction might be

lacking. In those circumstances an appellant files a protective appeal precisely because it has doubts about finality and appellate jurisdiction; otherwise, it would simply invoke the court's jurisdiction and prosecute the merits appeal. Yet the Tenth Circuit's decision eliminates the possibility that a party in Sunoco's position can preserve its appellate rights by pursuing a protective appeal, as the only way to preserve such rights would be to "forfeit" an objection to finality. And because finality goes to jurisdiction, a party cannot really forfeit the objection; it can only suppress it, contrary to its lawyer's obligations to the court. That cannot be the law. The price of a protective appeal cannot be the breach of a professional obligation.

3. This case provides a clear illustration of the untenable results the Tenth Circuit's nonsensical approach inevitably produces. For the past two years, Sunoco has been tirelessly trying to protect its right to secure its appellate day in court on the merits at every turn. After the Tenth Circuit agreed with Sunoco that the district court's initial "Judgment Order" was not final, and (in Sunoco's view) the district court failed to remedy the defects, Sunoco noticed two more appeals in which it invoked the Tenth Circuit's jurisdiction to determine its own jurisdiction, explained the finality problem no fewer than four times, and suggested various ways to fix it. When that failed, Sunoco sought rehearing and mandamus. And when that failed, Sunoco went back to the district court asking for exceptionally modest relief that would have produced a judgment that all could agree was final—only to have the district court insist yet again that it already has issued a final judgment.

With a judgment that the district court believes is final and the Tenth Circuit seems uninterested in reviewing, Sunoco is left trying to fend off aggressive efforts to collect a $155 million "judgment" that it has been unable to appeal, all because the Tenth Circuit refused to exercise its unquestioned jurisdiction to decide whether that "judgment" is final and appealable. None of that is remotely consistent with this Court's admonishment that procedural rules surrounding appeals are supposed to "facilitate a proper decision on the merits," not trap parties in some intractable "game of skill" where foot-faults "may be decisive to the outcome." *Forman v. Davis*, 371 U.S. 178, 181-82 (1962). The Tenth Circuit's bizarre treatment of protective appeals has no counterpart in other circuits or this Court's practice. No other court of appeals treats the rule that the party invoking the court's appellate jurisdiction bears the burden of establishing jurisdiction as an excuse for dismissing protective appeals without resolving the very jurisdictional issues that they are brought to tee up. Instead, every other court recognizes that protective appeals are just an unremarkable exercise of their jurisdiction to determine their own jurisdiction. *See, e.g., Sunset Ditch*, 472 F.App'x at 473; *Nat'l Assoc. of Gov't Emps.*, 40 F.3d at 705; *Arnold*, 7 F.3d 238; *Truesdale*, 2012 WL 3791281, at *1.

In short, the Tenth Circuit's decision leaves Sunoco stuck between a district court that believes that it has issued a final judgment that is ready for execution and a court of appeals that refuses to say whether it agrees, let alone consider a merits appeal or even stay the execution process pending this Court's review. Left standing, that decision threatens to have devastating consequences, both for Sunoco and for

other parties seeking to protect their appellate rights in the face of jurisdictional uncertainties. There is thus at the very least a reasonable probability that this Court will grant certiorari (or mandamus), break the impasse, and direct the Tenth Circuit to exercise the jurisdiction it plainly possesses to resolve protective notices of appeal.

II. Sunoco Will Suffer Irreparable Harm Absent Relief From This Court, And The Balance Of Equities Favors Preserving The Status Quo.

Unless this Court grants relief, irreparable injury is all but certain, as Cline is on the brink of collecting a $155 million class-action damages award that may not have been reduced to a final judgment, definitely has not been subject to appellate review, and would be exceedingly difficult to get back. An applicant can establish irreparable harm by showing "a significant risk that he or she will experience harm that cannot be compensated after the fact by money damages." *Fish v. Kobach*, 840 F.3d 710, 751 (10th Cir. 2016). In the context of money judgments and property transfers, courts have long recognized that immediate execution before a defendant may be "heard" on appeal constitutes "irreparable injury" when recovering money or property after the fact would be nearly impossible. *Forgay v. Conrad*, 47 U.S. 201, 204 (1848); *see also Philip Morris*, 561 U.S. at 1304-05 ("If expenditures cannot be recouped, the resulting loss may be irreparable."); *Mori*, 454 U.S. at 1303 (irreparable harm where funds held in escrow "would be very difficult to recover" once distributed).

That is precisely the case here. Cline is aggressively attempting to collect the $155 million damages award, despite knowing that Sunoco is still trying to get its one bite at the appellate apple and still waiting to hear from this Court on its pending

petition. Cline has told the district court that he has "already filed the [purported] Judgment and required paperwork" in a county where he has identified "significant assets" held by Sunoco. Dkt.378.at.5. And he insists that there is "nothing" to "prevent" him "from collecting" on the damages award save his professed desire "to be careful to identify the correct assets." *Id.* Cline has also conspicuously refused to represent that he will hold off on distributing to the 53,0000 class members any assets he manages to collect. And if Cline were to collect and distribute $155 million of Sunoco's assets only to have a court later conclude that there was no final judgment to execute, it would be virtually impossible for Sunoco to unscramble the egg—to track down tens of thousands of recipients of relatively small damages awards and recover the money that it should never have had to pay in the first place.

Yet absent this Court's intervention, that is exactly the situation that will come to pass in a matter of days. The magistrate judge has ordered Sunoco to produce by August 31 a shockingly broad amount of asset information that will enable Cline to start imposing liens, disrupting all manner of transactions, and perhaps even trying to seize Sunoco's physical property. *See* Ex.2. The magistrate judge did so at the district court's behest, *see* Ex.4; Dkt.370, 389, 390, even though the district court acknowledged the risks for both sides if Cline were to execute only to have the Tenth Circuit later conclude that there is no final judgment, Dkt.406.at.29-30. Thus, as things presently stand, Sunoco must produce in 48 hours every single document in its possession that touches on any of its more than 18,000 physical assets. Dkt. 360 at 3; *see* Dkt. 377, Hamilton Decl. ¶3. Cline's demand, which the magistrate judge

blithely granted in full, is so broad that it could require production of invoices or contracts supporting each and every receivable. *See* Dkt. 377, Hayse. Decl. ¶4. And if all of that were not enough, Sunoco must produce by September 12 someone who can speak, to the court's and Cline's satisfaction, to every single one of Sunoco's assets and liabilities.

Sunoco thus stands to suffer irreparable injury even apart from the problems with trying to recover any money that is wrongly distributed to the 53,000 class members. Cline is targeting "pipelines, plants, terminals, tankage, rights of way," and "all oil and Natural Gas Liquids" owned by Sunoco. Dkt.360-1.at.4. Seizing or placing a lien on those assets, as Cline apparently intends to do, would irreparably harm Sunoco by depriving it of its assets and dissipating the proceeds. *See Forgay*, 47 U.S. (6 How.) at 204; *United States v. Hodges*, 684 F.App'x 722, 726 (10th Cir. 2017) (order of sale constituted irreparable harm). It could also disrupt Sunoco's supply contracts and contractual relationships with numerous third parties, not to mention the end-user consumers that Sunoco's operations serve—and all on the basis of a non-final damages award that has never been subject to appellate review. That is classic imminent and irreparable harm, *see Husky Ventures, Inc. v. B55 Invs., Ltd.*, 911 F.3d 1000, 1012-13 (10th Cir. 2018), and it readily warrants this Court's intervention, *see e.g.*, *Mori*, 454 U.S. at 1303; *Philip Morris*, 561 U.S. at 1304-05.

Indeed, the Federal Rules recognize these ways in which premature execution of a money judgment can cause irreparable harm, and they ordinarily protect defendants against "the risk of satisfying the judgment only to find that restitution

is impossible after reversal on appeal." *Poplar Grove Planting & Ref. v. Bache Halsey Stuart*, 600 F.2d 1189, 1191 (5th Cir. 1979). To that end, Rule 62 allows appellants to post a bond or other security for a stay of execution "to protect" themselves "from execution of an adverse judgment during an appeal, as well as to provide assurance to the appellee if thus prevented from collecting on the judgment." *Niemi v. Lasshofer*, 770 F.3d 1331, 1343 (10th Cir. 2014); *see* Fed. R. Civ. P. 62(b), (d). Thus, the Federal Rules of Appellate Procedure reflect the common-sense judgment that allowing execution efforts to proceed before a final judgment is affirmed on appeal puts the cart before the horse and inflicts injury that often cannot be undone if the judgment is reversed. Ordinarily, Sunoco would have availed itself of that protection, but it cannot do so here—precisely because there is no final damages judgment and the Tenth Circuit has expressed a steadfast unwillingness to consider any merits appeal. *See* Wright & Miller, 11 Fed. Prac. & Proc. Civ. §2901 (Rule 62 "does not govern stays in proceedings other than to enforce a judgment"); *id.* n.3 ("As used in this rule, 'judgment' means 'a decree and any order from which an appeal lies.' Rule 54(a).").

The injuries to Sunoco are as unnecessary as they are irreparable. There is no serious question about Sunoco's ability to pay the award or its willingness to do so without controversy (or need for any of this discovery or enforcement efforts) if it is given an opportunity to air its merits arguments on appeal and does not prevail. Cline nonetheless seems intent on forcing the most costly and disruptive execution process possible in an effort to force a settlement, and Sunoco must resist in order to

protect its appellate rights. Indeed, while Sunoco has offered other forms of financial assurance, Cline refuses to accept them, presumably in hopes of using inordinately disruptive execution tactics to try to coerce Sunoco into settling and giving up its appellate rights before this Court can even resolve its pending petition for certiorari. This Court should not allow Cline to leverage the Tenth Circuit's patently erroneous decision to try to preempt any review of a deeply flawed $155 million class-action damages award.

The remaining equitable factors strongly favor Sunoco. Cline and the class will suffer no harm from waiting to collect their damages until this Court resolves Sunoco's petition, as there has never been any dispute that Sunoco will be able to pay the damages award if and when the time comes to do so. And money judgments are enforceable only upon entry of an appealable final judgment, so it would make little sense to treat the mere fact of having to wait for that requirement to be satisfied as a cognizable harm. Thus, the balance of equities—irreparable harm to Sunoco on the one hand, and no harm to the class on the other hand—plainly favors Sunoco. In fact, Sunoco and the class would both benefit from pausing enforcement proceedings and maintaining the status quo while this Court considers Sunoco's petition, as any writ of execution would be invalid until there is a final and appealable judgment. And should liability or damages ultimately be reversed, Cline and the class would be obligated to return any money Sunoco was forced to pay due to premature enforcement—a process that would prove expensive and time-consuming for all parties while almost certainly guaranteeing that Sunoco paid out unwarranted

damages that cannot be feasibly recovered. *Baltimore & Ohio R.R. v. United States*, 279 U.S. 781, 786 (1929). Thus, this is the rare situation where preserving the status quo not only would cause no harm, but would actually benefit both sides in the long run.

The public interest also favors preserving the status quo, as the rule that money judgments may not be executed until appellate rights have been exhausted exists precisely to protect defendants' appellate rights. Preserving that ordinary order of operations here would also serve the interests of this Court, as maintaining the status quo would protect this Court's ability to consider Sunoco's petition free of concerns that execution may be a *fait accompli* before the Court can rule on it. And "maintain[ing] the status quo" for the few more weeks it will take to resolve threshold issues that will dictate whether Cline has a judgment to lawfully execute would not "harm the public interest in any capacity." *Keirnan v. Utah Transit Auth.*, 339 F.3d 1217, 1221 (10th Cir. 2003). At a minimum, the Court should grant an administrative stay to give it time to fully consider this application, as there is simply no need for execution to go into full swing in a matter of days.

CONCLUSION

For the foregoing reasons, Sunoco respectfully request that this Court grant this emergency application and halt enforcement proceedings pending resolution of Applicants' petition of certiorari.

Respectfully submitted,

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Counsel for Applicants

August 29, 2022

IN THE
SUPREME COURT OF THE UNITED STATES

No. 21-1404

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

Applicants,

v.

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

Respondent.

CERTIFICATE OF SERVICE

I, Paul D. Clement, a member of the Supreme Court Bar, hereby certify that three copies of the attached EMERGENCY APPLICATION FOR INJUNCTION OR STAY PENDING RESOLUTION OF PETITION FOR CERTIORARI will be served on August 30, 2022 to the below service list. I also certify that an electronic copy was filed on August 29, 2022 and served electronically to the below email addresses:

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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

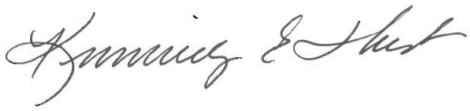
appear and answer as to Defendants' assets. While Defendants will be required to present a representative for the forthcoming asset hearing, this Court will permit Defendants to designate its corporate representative. Defendants are forewarned, however, that the representative shall have sufficient knowledge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

First, 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

[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

Exhibit L

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.

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

Date: 31 August, 2022
Richmond, VA

Exhibit M

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.	)	

CLASS REPRESENTATIVE'S NOTICE OF NON-COMPLIANCE WITH COURT ORDER

On August 9, 2022, Magistrate Judge West ordered Sunoco to produce documents by August 31, 2022, as part of post-judgment discovery proceedings and in anticipation of an asset hearing set for September 12. *See* Dkt. No. 430 at 4. What Class Representative received on August 31 does not comply and, instead, reveals Sunoco's intent to obstruct basic discovery. There exists a straightforward procedure for discovery related to assets subject to execution to satisfy a judgment under Fed. R. Civ. P. 69 and 12 O.S. §842. This Court and Judge West have ordered that process to proceed, and Sunoco is willfully ignoring those orders.

Rule 69 provides:

> In aid of the judgment or execution, the judgment creditor or a successor in interest whose interest appears of record ***may obtain discovery*** from any person—including the judgment debtor—as provided in these rules or by the procedure of the state where the court is located.

Fed. R. Civ. P. 69(a)(2).

Section 842 provides, among other things:

> At any time after a final judgment, order, or decree is filed, on application of the judgment creditor, a judge of the court in which the final judgment, order, or decree was rendered ***shall order*** the judgment debtor to appear before the judge, or a referee appointed by the judge, at a time and place specified in the order, ***to answer concerning the judgment debtor's property***."

12 O.S. §842(A).

As explained below, Sunoco seems intent on frustrating the legitimate discovery of information set out by rule and statute.

Sunoco originally objected to Judge West's Order but repeatedly stated it would nevertheless produce documents on August 31. *See, e.g.*, Dkt. No. 431 at 1-2 ("Sunoco diligently is gathering information responsive to plaintiff's narrower requests to make a substantial production by August 31 absent a stay issued by the appellate courts or an order by this Court sustaining these objections."); *see also* Dkt. No. 434 at 1, 4. Importantly, courts in this circuit have held objections to a Magistrate Judge's orders do not automatically stay compliance absent an order from the District Court Judge. *See, e.g., White v. Burt Enters.*, 200 F.R.D. 641, 642-43 (D. Colo. 2000). Thus, Sunoco is under a continuing obligation to comply with Judge West's Order.

On the evening of August 31, Sunoco indicated it intended to seek emergency relief to prevent it from providing the documents to Class Representative. *See* Exhibit 24. Instead, Sunoco proposed providing the documents to the Court *in camera*, thereby blocking asset discovery from Class Representative, while Sunoco's objection and motion to stay with the United States Supreme Court remain pending. *Id.*

Class Counsel conferred with Sunoco's Counsel that evening regarding the proposed emergency motion. *Id.* During that discussion, Class Counsel proposed multiple solutions to alleviate any perceived burden on Sunoco from the discovery.

Class Counsel first proposed that Sunoco simply pay the amount of the judgment into an interest-bearing account with the Court's registry to avoid any need for asset discovery. Sunoco has repeatedly stated it would have no issue paying the judgment when it decides the time has come. *See* Emergency Application for Injunction or Stay Pending Resolution of Petition for Certiorari at 3 ("no one doubts that Sunoco is good for the money and will pay promptly if and when the underlying order is affirmed on appeal as both final under Tenth Circuit law and correct on the merits"). In the Court's registry, the money would be protected, earn interest, and neither party would have custody. Only in the event Sunoco lost its petition for writ of certiorari with the Supreme Court, could Class Counsel request that the Court proceed with the next phase of distribution, a process that would take at least 90 days from that point, because the Court has not set deadlines for notice to the Class regarding fees or expenses.

If Sunoco would not do that, then Class Counsel proposed (again) making the discovery process regarding assets as easy as possible. Specifically, Class Counsel requested Sunoco: (1) provide the fewest number of documents necessary to identify $160 million worth of assets in Oklahoma; and (2) appear at the asset hearing on September 12 with a prepared witness. Class Counsel proposed delaying any enforcement until after the September 12 hearing. That time frame would likely permit the Supreme Court to rule on Sunoco's Motion to Stay, as the Supreme Court requested a response by September 6.

Instead of those options and instead of filing the "emergency motion," Sunoco produced a batch of less than twenty-five documents and redacted the most important information in those documents. *See* Exhibits 1 – 23 (filed under seal).[1] Among the twenty-five documents are bank account statements that redact the precise information Class Representative would need to know what assets are available and from where. Specifically, Sunoco produced nine checking account statements. *See* Exhibits 10, 11, 12, 14, 15, 16, 18, 19, and 20. The account statements are designated "Confidential." *See id.* And yet, every single statement also redacts the information about the source of each transaction based on confidentiality. *See id.* The redactions prevent Class Representative from identifying sources that the Class could garnish, particularly in Oklahoma.

Sunoco has no basis for these redactions. Sunoco is aware of the governing Protective Order; they even designated these materials as Confidential. The Protective Order does not permit redaction of confidential material. *See* Dkt. No. 35 at ¶C (providing that "Confidential" material "shall be stamped" with the designation "in such a manner that it does not obscure or make illegible the wording or content of the information produced."). Sunoco should produce the documents unredacted prior to the asset hearing.

Moreover, Judge West ordered Sunoco to produce the documents identified in Exhibit A to Plaintiff's Motion. Dkt. No. 430 at 4. Exhibit A requests much more information identifying Sunoco's assets (both personal and real). *See* Dkt. No. 360-1.

[1] Pursuant to the Court's *CM/ECF Administrative Guide* at 7 (Revised ed. Feb. 2022), Class Representative will seek leave of Court to file the aforementioned documents under seal due to Sunoco's designation.

Sunoco did not even try to comply with Exhibit A (*i.e.* Judge West's Order). Instead, Sunoco claimed it would provide *some* of the information set forth in Plaintiff's "Exhibit 1." *See, e.g.*, Dkt. No. 434 at 1. But Sunoco's production is non-compliant even if Judge West had only ordered the information in "Exhibit 1." For example, Sunoco did not provide documentation: "For oil and NGL volumes, month-end inventories by general location (in Oklahoma)"; "All communications, agreements, promises, commitments, or other materials regarding Defendants' request for Energy Transfer to pay the Final Judgment entered against Defendants and/or Energy Transfer's offer or agreement to pay the Final Judgment entered against Defendants"; "Documents identifying…short term bond assets[,] long term bonds having maturities longer than one year[, and] publicly traded securities"; or "liens, mortgages, or similar documents which burden any of Defendants' physical assets in Oklahoma." *See* Dkt. No. 378 at Ex. 1.

One thing is clear from Sunoco's conduct. This was never about burdensome document requests. The handful of documents Sunoco produced would take less than a day to gather. Sunoco is hiding the ball to avoid compliance with Rule 69 and §842 even though Sunoco could have avoided this entire process by posting a bond. That it chose not to do so does not entitle Sunoco to special treatment just because Sunoco assures us that it "is good for the money." Sunoco may be good for it, but they've been keeping money that does not belong to them for years without any sign of remorse. *See* Dkt. No. 298 at 1 ("Sunoco simply keeps the 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."); Dkt. No. 298 at 43 ("This myopic group-think does not excuse keeping millions of dollars of other people's money.").

DATED: September 2, 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: September 2, 2022.

/s/ Bradley E. Beckworth
Bradley E. Beckworth

EXHIBITS 1 - 23
FILED UNDER SEAL

EXHIBIT 24

Subject: Fwd: Documents
Date: Wednesday, August 31, 2022 at 6:22:46 PM Central Daylight Time
From: Brad Beckworth
To: Drew Pate

Bradley E. Beckworth
Partner
Nix Patterson L.L.P.
bbeckworth@nixlaw.com (e-mail)

8701 Bee Caves Road
Building 1, Suite 500
Austin, Texas 78746
512-328-5333

Begin forwarded message:

From: "Yetter, Paul" <pyetter@yettercoleman.com>
Date: August 31, 2022 at 6:13:02 PM CDT
To: Brad Beckworth <bbeckworth@nixlaw.com>
Subject: RE: Documents

Brad:

Under the circumstances, Sunoco intends to seek emergency leave to produce its asset discovery production today to the Court in camera, for a brief period while its objections to the production order and stay application remain pending for decision. The parties have discussed these discovery issues at some length, and we assume plaintiffs oppose this relief. In addition, Sunoco intends to provide a corporate guarantee of payment of the judgment once the appeal process ends. I'm available to confer further by phone if you think it would be productive.

Paul

From: Brad Beckworth <bbeckworth@nixlaw.com>
Sent: Wednesday, August 31, 2022 5:28 PM
To: Yetter, Paul <pyetter@yettercoleman.com>
Subject: Documents

Hi Paul:
We haven't received the documents Sunoco is required to produce. Please send me a link or share file this afternoon.

Brad

Bradley E. Beckworth
Partner
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Exhibit N

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.

PLAN OF ALLOCATION ORDER

This matter comes before the Court on class counsel's proposed plan of allocation of the damages award. (ECF No. 317.) The Court, being fully advised on the issues before it, hereby ORDERS as follows:

A. Definitions of Terms

1. For purposes of this Order:

a. The term "Judgment Fund" means the sum of all actual and punitive damages awarded following the trial in this matter and allowed after any appeal (or after the expiration of time allowed for filing such appeal, if no appeal is filed within that time), inclusive of any attorneys' fees, expenses, costs, and pre- and post-judgment interest as have been or may be awarded to the class representative and the class, and inclusive of any interest earned through such investments as the Court may direct following the defendants' payment of the judgment.

b. The term "Judgment Administrator" means the officer appointed by the Court pursuant to this Order to execute the Plan of Allocation and to perform such incidental and additional duties as are set forth in this Order or as the Court may subsequently direct.

c. The term "Net Class Award" means the Judgment Fund, less any: (i) case contribution award to Class Representative; (ii) attorneys' fees, expenses, and costs awarded from the Judgment Fund to counsel for the class Representative and the class; (iii) compensation and expenses paid or reimbursed to the Judgment Administrator; and (iv) any additional administrative expenses that may be charged against the Judgment Fund at the Court's direction.

d. The term "Residual Unclaimed Funds" means the amount of the Net Class Award remaining as a result of uncashed distribution checks, inability to locate class members, and/or other such reasons after the Judgment Administrator distributes the Net Class Award to all class members using commercially reasonable efforts according to the Final Distribution Order.

B. The Formula That Will Determine the Division of Damages

2. The Court adopts the proposed allocation found in Exhibit 1 to the Declaration of Barbara Ley (Class Representative's damages expert), (ECF No. 317-1), as the Court's Plan of Allocation of the Net Class Award. The methodology Ms. Ley used to prepare the proposed allocation was derived from, and consistent with, the methodology that this Court previously approved in support of the plaintiff's motion to certify the class, (ECF No. 91), and admitted into evidence at the trial in this matter in order to determine the total amount of actual damages.[1] Ms. Ley calculated the amount of damages owed to each individual class member, and then summed

[1] Ms. Ley's methodology here is also consistent with the methodology that has been approved by this Court and used to distribute tens-of-millions of dollars to settlement class members. *See Reirdon v. XTO Energy*, No. 6:16cv87, Final Plan of Allocation Order, ECF No. 141 (E.D. Okla. June 12, 2018); *Reirdon v. Cimarex Energy Co.*, No. 6:16cv113, Final Plan of Allocation Order, ECF No. 114 (E.D. Okla. Apr. 25, 2019); *Chieftain Royalty Co. v. Marathon Oil Co.*, No. 6:17cv334, Final Plan of Allocation Order, ECF No. 127 (E.D. Okla.. June 11, 2019); *Chieftain Royalty Co. v. Newfield Expl. Mid-Continent Inc.*, No. 6:17cv336, Final Plan of Allocation Order, ECF No. 75 (June 4, 2020); *DASA Invs., Inc. v. EnerVest Operating*, No. 6:18cv83, Final Plan of Allocation Order, ECF No. 124 (E.D. Okla. June 25, 2020); *McClintock v. Continuum Producer Servs, L.L.C.*, No. 6:17cv259, Initial Plan of Allocation Order, ECF No. 64 (E.D. Okla. June 4, 2020).

those figures to determine the amount of damages owed to the class. Ms. Ley then updated those amounts, at the Court's direction, to reflect the time that had elapsed and the interest that had accrued since her original calculation. Ms. Ley then divided the updated damage figure for each class member by the total amount of damages awarded to the class, and thereby determined each class member's proportional share of the Judgment. The result of this formulaic approach is a list containing each class member's fractional share of the total amount of damages. The Judgment Administrator need only multiply the fractional share for each class member expressed in Ms. Ley's Declaration by the Net Class Award in order to arrive at the exact dollar amount that each class member shall be paid.

C. Procedures for Distribution

3. The Court appoints JND Legal Administration to serve as "Judgment Administrator" in this matter. At such time as the Court directs, the Judgment Administrator, in consultation with class counsel, shall be responsible for applying the mathematical principles established in the Plan of Allocation to ascertain the precise amounts of the Net Class Award allocable to each class member. The result of the Judgment Administrator's calculations shall be submitted to the Court for approval as the Final Plan for Distribution.

4. Prior to any disbursement to Class Members, the Court will establish appropriate procedures for approval of the Final Plan for Distribution. Upon approval, the Court will enter a Final Distribution Order establishing the allocation for purposes of disbursements to Class Members.

5. The Judgment Administrator will also be responsible for distributing the Net Class Award pursuant to such further orders as the Court shall issue.

6. The Judgment Administrator shall report to the Court from time to time to advise the Court of its progress in discharging its responsibilities under this Order, on such occasions and at such intervals as the Judgment Administrator may deem appropriate or as the Court may direct. The Judgment Administrator is authorized to make reasonable expenditures to secure the resources and assistance reasonably necessary to the performance of its duties. Such expenses, and the compensation of the Judgment Administrator at its usual and customary hourly rates, will be paid and reimbursed from the Judgment Fund periodically, as incurred.

7. The Judgment Administrator shall not commence the performance of its duties under this Order until such time as the case is remanded to this Court from any appeal (or until after the expiration of the time allowed for filing such appeal, if no appeal is filed within that time).

D. Procedures and Principles for the Distribution of any Unclaimed Funds

8. The distribution of any residual unclaimed funds, if any, shall be determined by the Court following the completion of the distribution process outlined in the Final Distribution Order and upon the submissions by any interested parties. The Court concludes that that determination is most appropriately made at that time, as the amount of any residual unclaimed funds may bear on the Court's determination. Consistent with the Court's prior statements on the matter, (*see* ECF No. 298, at 42), the Court anticipates that any residual unclaimed funds will be sent to the same place that Sunoco remitted the underlying proceeds payments, including the appropriate state accounts for unclaimed property. But the Court retains discretion to select a different method of distribution that best serves the interests of the class once all relevant information is available. To facilitate that determination, after the Judgment Administrator has used commercially reasonable efforts to complete the distribution process outlined in the Final Distribution Order, class counsel shall file a motion stating the amount of any residual unclaimed funds and recommending a method

of distribution of those funds, with due consideration given to the Court's anticipated method described above. The Court will then set a deadline for any responses or comments from interested parties.

It is so ORDERED.

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

Date: 30 October 2020
Richmond, VA

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

Exhibit O

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.	)	

CLASS REPRESENTATIVE'S SUPPLEMENTAL BRIEF REGARDING MOTION TO: (1) APPROVE FORM AND MANNER OF NOTICE TO THE CERTIFIED CLASS OF CLASS COUNSEL'S MOTION FOR ATTORNEY'S FEES AND LITIGATION EXPENSES, AND CLASS REPRESENTATIVE'S MOTION FOR CASE CONTRIBUTION AWARD PURSUANT TO RULE 23(H); AND (2) APPROVE PROPOSED SCHEDULE (DKT. NO. 390)

Pursuant to the Court's Order dated June 14, 2022 (Dkt. No. 420), Perry Cline ("Class Representative" or "Plaintiff"), on behalf of the Certified Class, files this Supplemental Brief Regarding his Motion to: (1) Approve Form and Manner of Notice to the Certified Class of Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award Pursuant to Rule 23(h); and (2) Approve Proposed Schedule, which was filed on March 7, 2022. Dkt. No. 390 (the "Notice and Fee Briefing Motion"). No response or objection to the Notice and Fee Briefing Motion was filed by Defendants.

On March 31, 2022, the Court stayed the enforcement proceedings for 60 days. Dkt. No. 405. On June 14, 2022, the Court denied Defendants' request to extend the 60-day stay of enforcement actions through resolution of the certiorari petition and the pending Tenth Circuit appeals. Dkt. No. 420. In the same Order, the Court noted that because of the delay in the proceedings, the proposed schedule for notice and filing of Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award as set forth in the Notice and Fee Briefing Motion included "some dates that have passed and others that have become impracticable." Dkt. No. 420 at n.1. Therefore, the Court directed Class Representative to file this Supplemental Brief with any necessary updates on or before June 22, 2022. *Id*. at 2.

As such, Class Representative proposes the following updated schedule with respect to Notice and filing of Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award:

Event	**Deadline**
Postcard Notice to be Mailed	August 26, 2022 (45 days prior to Hearing)
Summary Notice to be Published	Ten (10) days after mailing the Postcard Notice
Documents to be Posted on Website	Ten (10) days after mailing the Postcard Notice

Deadline to File Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award	September 13, 2022 (28 days prior to Hearing)
Deadline to Object to Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award	September 27, 2022 (14 days prior to Hearing)
Deadline to File Class Counsel's and Class Representative's Response to Any Objections	October 4, 2022 (7 days prior to Hearing)
Final Hearing on Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award	October 11, 2022 at a time to be set by the Court

Accordingly, for the foregoing reasons, Class Representative respectfully requests the Court enter the amended proposed Notice and Fee Briefing Order submitted herewith, which will, *inter alia*, (1) approve the form and manner of notice to the Certified Class of Class Counsel's Motion for Attorney's Fees and Litigation Expenses, and Class Representative's Motion for Case Contribution Award; and (2) approve the proposed notice and briefing schedule for such motions.

DATED: June 21, 2022.

Respectfully submitted,

/s/ Bradley E. Beckworth

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CLASS COUNSEL AND ATTORNEYS FOR CLASS REPRESENTATIVE

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: June 21, 2022.

/s/ Bradley E. Beckworth
Bradley E. Beckworth

Exhibit P

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.

First, 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

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

Exhibit Q

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 R

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), et al., Defendants.	No. 6:17-cv-313-JAG

DEFENDANTS' NOTICE OF APPEAL

Notice is hereby given that Defendants Sunoco, Inc. (R&M) (now Energy Transfer (R&M), LLC) and Sunoco Partners Marketing & Terminals L.P. (now Energy Transfer Marketing & Terminals L.P.), by counsel, appeal to the United States Court of Appeals for the Tenth Circuit from this Court's March 31, 2022 Order (Dkt.405) and accompanying oral ruling (Dkt.406), granting in part and denying in part Defendants' motion to enjoin enforcement of the judgment and any actions in support (Dkt.376). The statutory basis for Defendants' appeal is 28 U.S.C. §1292(a)(1).

Dated: April 29, 2022

Respectfully submitted,

/s/ Daniel M. McClure

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CERTIFICATE OF SERVICE

I certify that today I electronically filed the foregoing with the Clerk of Court using the CM/ECF filing system, which will automatically send an electronic copy to all counsel of record.

Dated: April 29, 2022

/s/ Daniel M. McClure
Daniel M. McClure

Exhibit S

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.

OPINION

Sunoco owes millions of dollars in interest on late payments for crude oil. Oklahoma law requires a first purchaser of crude oil—such as Sunoco—to pay promptly for the oil. If the purchaser pays late, it must pay interest to the owner of the well that produced the oil. This case involves Sunoco's failure to pay that interest.

Long ago, Sunoco decided not to pay interest on late payments. Recognizing that the law mandated interest, Sunoco has adopted a policy only to pay if the well owner requests an interest payment. Since most well owners do not know they can get the payment, few request their interest, and Sunoco keeps the money. It amounts to millions of dollars each year.

Sunoco's indifference to its obligation extends far beyond not paying what it should. Sunoco has never even bothered to figure out how much interest it owes to owners. It keeps scant records of why it made late payments. Instead, Sunoco simply keeps the 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.

In this case, a farmer named Perry Cline calls Sunoco to task on this practice.

I. INTRODUCTION

Perry Cline, the named plaintiff, represents a class of owners of interests in oil wells in Oklahoma.[1] The defendants, Sunoco, Inc. (R&M), and Sunoco Partners Marketing & Terminals, L.P. (collectively, "Sunoco"), purchase crude oil from those wells, sell the oil, and pay proceeds to well owners pursuant to Oklahoma's Production Revenue Standards Act ("PRSA"). *See* Okla. Stat. tit. 52, § 570, *et seq.* The PRSA says that, when Sunoco pays well owners late, it must pay interest on those late payments.

Cline has sued Sunoco under the PRSA for failing to pay the statutory interest on late payments it made on oil proceeds. He also contends that Sunoco committed fraud by failing to disclose that it owed interest on those payments.

This case requires the Court to resolve several straightforward questions: Under the PRSA, when Sunoco pays an interest owner late, must Sunoco automatically pay statutory interest owed on the late payment? If Sunoco did not pay interest at the same time it made the late payment, does interest continue to accrue? Does Sunoco's failure to disclose that it did not pay interest on a late payment constitute fraud? And how much does Sunoco owe?

On December 10, 2019, the Court concluded that the PRSA requires Sunoco to make statutory interest payments automatically with the late payment. The Court held a bench trial on the remaining issues from December 16-19, 2019. The Court heard closing arguments on June 17, 2020.[2] The Court now issues this Opinion to set forth its findings of fact and conclusions of law resolving the remaining questions in this case. *See* Fed. R. Civ. P. 52(a)(1).

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[1] Cline serves as the named representative of a class certified by the Court on October 3, 2019. The Court uses the terms "the class" and "Cline" interchangeably.

[2] The Court delayed ruling on the case until the parties received the trial transcript and had a chance to brief the case. Unfortunately, by the time the parties filed briefs, Coronavirus 2019

II. PROCEDURAL HISTORY

On July 7, 2017, Cline filed this case in Oklahoma state court on behalf of himself and all others similarly situated. Cline asserts claims for a violation of the PRSA (Count One) and fraud (Count Two). He seeks compensatory and punitive damages, and various forms of equitable relief.

Almost immediately after Cline filed suit, Sunoco removed the case to the U.S. District Court for the Eastern District of Oklahoma (Dk. No. 2) and filed its answer (Dk. No. 23). The case moved along slowly, and, finally, on June 14, 2019, Cline moved to certify the class, appoint a class representative, and appoint class counsel. (Dk. No. 91.)

On July 18, 2019, the Court reassigned this case to the undersigned. (Dk. No. 97.) Given the length of time the case had gone on, the Court set the case for trial on December 16, 2019, set a discovery cutoff of October 18, 2019, and set other pretrial deadlines. (Dk. No. 102.)

On October 3, 2019, the Court certified the following class:

> All non-excluded persons or entities who: (1) received Untimely Payments from Defendants (or Defendants' designees) for oil proceeds from Oklahoma wells on or after July 7, 2012, and (2) who have not already been paid statutory interest on the Untimely Payments. An "Untimely Payment" for purposes of this class definition means payment of proceeds from the sale of oil production from an oil and gas well after the statutory periods identified in Okla. Stat. tit 52, § 570.10(B)(1) (i.e., commencing not later than six (6) months after the date of first sale, and thereafter not later than the last day of the second succeeding month after the end of the month within which such production is sold). Untimely Payments do not include: (a) payments of proceeds to an owner under Okla. Stat. tit 52, § 570.10(B)(3) (minimum pay); (b) prior period adjustments; or (c) pass-through payments.
>
> The persons or entitles excluded from the Class are: (1) agencies, departments, or instrumentalities of the United States of America or the State of Oklahoma; (2) publicly traded oil and gas companies and their affiliates; (3) persons or entities that Plaintiff's counsel may be prohibited from representing under Rule 1.7 of the Oklahoma Rules of Professional Conduct; and (4) officers of the court.

(COVID-19) had struck, and the judge could not immediately return to Oklahoma to hear oral argument.

(Dk. No. 127, at 1.)

When it became clear that the case would move forward, Sunoco adopted a number of tactics to derail the litigation. First, after the Court set the case for trial, Sunoco moved to dismiss it as moot. Sunoco had finagled its mootness argument by sending Cline an unrequested check for the amount of interest it owed him, and then, nearly two years later, claimed that the tendered check deprived him of standing. This attempt to pick him off as a plaintiff failed. (Dk. Nos. 122-23)

Second, on October 8, 2019, Sunoco moved to stay this case pending its appeal of the Court's class certification decision to the Tenth Circuit Court of Appeals, pursuant to Federal Rule of Civil Procedure 23(f). The Court denied the stay. (Dk. Nos. 131, 149-50.) On November 13, 2019, the Tenth Circuit denied Sunoco's request to appeal the Court's class certification ruling. (Dk. No. 170.)

Third, after the Court certified the class (and long after the Court set a trial date and discovery cutoff), Sunoco finally began to look through thousands of files for evidence of what it might owe. This resulted in a massive production of millions of lines of data to the plaintiff—after the plaintiff's expert report was due, and after the discovery cutoff.[3] Sunoco characterizes its search for data as heroic; in reality, Sunoco ignored its files for years because it never intended to pay much interest, and let this case sit around for three years without getting its evidence together. Notwithstanding its untimely production of millions of pieces of evidence, Sunoco scolded Cline's expert for not including it in her calculations. And Sunoco's own expert, Eric Krause, relied upon the compilation of data to file tardy reports of his own—reports that he supplemented and that

[3] Sunoco produced the same data to its own expert, helping to fatally delay his report, as discussed below.

continued to evolve to fit the defense's needs. (*See* Dk. Nos. 207, 230, 234.) Indeed, he even revised his opinion the weekend before the trial in this case.

Fourth, Sunoco filed a motion to "clarify" the class definition, which merely amounted to an argument to cut down the size of the class. (Dk. No. 172.) On November 26, 2019, the Court denied this motion. (Dk. No. 186.)

In December, 2019, the case finally moved toward rulings on the merits. On December 10, 2019, the Court granted Cline's motion for partial summary judgment. (Dk. Nos. 231-32.) The Court concluded that the PRSA requires Sunoco to pay interest at the same time it makes a late payment, and that Sunoco cannot wait for a request from the owner before paying that interest. (*See* Dk. No. 231.) The Court held a bench trial in this case from December 16-19, 2019, and heard closing arguments on June 17, 2020.

III. THE PRSA

Before reciting the facts, the Court begins by setting forth the relevant provisions of the PRSA. In this case, Sunoco admits that it frequently makes late payments for oil. The PRSA sets forth different interest rates on late payments, depending on the cause of the lateness. A great deal of the evidence at trial dealt with the issue of the correct rate of interest. The significance of the evidence in the case, therefore, only grows clear when viewed through the prism of the PRSA's requirements.

As noted above, the PRSA imposes duties on the first purchaser who buys oil or gas from an interest owner or the person holding the proceeds from the sale of the oil and gas. Specifically, the first purchaser must pay owners their proceeds within six months from the date of first sale and within two months after the month of subsequent sales. Okla. Stat. tit. 52, § 570.10(B)(1). This

requirement has several exceptions, including one that allows less frequent payments for small royalties of less than $100. *See, e.g., id.* §570.10(B)(3).

The Oklahoma Legislature adopted the prompt payment rule because of abusive practices by the oil industry, which frequently withheld payments from owners for a long time. *See Krug v. Helmerich & Payne, Inc.*, 362 P.3d 205, 214 (Okla. 2015). To compensate owners for delayed payment, and to provide an incentive to pay properly, the statute requires the oil industry to pay interest on late payments. When "proceeds from the sale of oil or gas production . . . are not paid prior to the end of the applicable time periods provided in" the PRSA, those proceeds "shall earn interest." Okla. Stat. tit. 52 §570.10(D)(1)-(2). "Except as otherwise provided in paragraph 2 of this subsection [regarding late payments due to marketable title]," a 12 percent interest rate applies to late payments "until the day paid." *Id.* § 570.10(D)(1). When a first purchaser or holder of proceeds does not pay proceeds due to an issue with marketable title,[4] a 6 percent interest rate applies to periods before November 1, 2018, and "the prime interest rate as reported in the Wall Street Journal" applies to periods on or after November 1, 2018.[5] *Id.* § 570.10(D)(2)(a). The interest compounds annually. One of the big fights in this case revolves around whether Sunoco owes 12 percent or 6 percent interest.

[4] "Marketability of title shall be determined in accordance with the title examination standards of the Oklahoma Bar Association." § 570.10(D)(2)(a). The title examination standards define "marketable title" as "one free from apparent defects, grave doubts and litigious uncertainty, and consists of both legal and equitable title fairly deducible of record." (Defs.' Ex. 26, at 12.)

[5] The lower interest rate also applies until "the holder has received an acceptable affidavit of death and heirship in conformity with Section 67 of Title 16 of the Oklahoma Statutes," or until the proceeds are interpled, as set forth in § 570.10(D)(2)(b). *See* § 570.10(D)(2)(a). The Court will refer to the lower interest rate as the 6 percent interest rate throughout this Opinion. This rate only applies until title to the interest becomes marketable. *Id.*

The PRSA also bears on Cline's argument that Sunoco committed fraud by withholding information from well owners. The statute says that, when a first purchaser or holder of proceeds makes a payment to an owner, it must provide the owner with the following information:

1. Lease or well identification;
2. Month and year of sales included in the payment;
3. Total barrels or MCF attributed to such payment;
4. Price per barrel or MCF, including British Thermal Unit adjustment of gas sold;
5. Total amount attributed to such payment of severance and other production taxes, with the exception of windfall profit tax;
6. Net value of total sales attributed to such payment after taxes are deducted;
7. Owner's interest, expressed as a decimal, in production from the property;
8. Owner's share of the total value of sales attributed to such payment prior to any deductions;
9. Owner's share of the sales value attributed to such payment less owner's share of the production and severance taxes; and
10. A specific listing of the amount and purpose of any other deductions from the proceeds attributed to such payment due to the owner upon request by the owner.

Okla. Stat. tit. 52, § 570.12(A).

IV. FACTS

A. The Parties

1. Sunoco

Sunoco, Inc. (R&M) (now Sunoco (R&M), LLC) is a limited liability company that is a wholly owned subsidiary of ETP Holdco Corporation ("ETP"). Sunoco Partners Marketing & Terminals, L.P., is a limited partnership with no corporate parents. Sunoco has a net value over $30 billion.

Sunoco buys crude oil from oil producers and sells the oil. (Trial Tr. vol. 1, 168:11-20.) Sunoco is a first purchaser under the PRSA. (*Id.* 77:7-10, 85:21 to 86:8.) As a first purchaser, Sunoco is a "holder" of the oil proceeds owed to owners until Sunoco pays the oil proceeds directly

to owners or to states as "unclaimed" property on behalf of unlocated owners. (*Id.* 77:7-13, 86:3-8, 131:8-24.)

Sunoco is not itself an oil and gas producer and does not have leases with individual landowners. (*Id.* 112:18 to 113:1, 177:7-9.) Rather, "operators" typically extract the oil from the ground and, pursuant to contracts, convey it to Sunoco.[6] Sunoco then pays owners their proceeds directly. (*Id.* 86:3-8, 191:2-14.) Sunoco has paid thousands of owners across the United States. (*Id.* 178:3-5.) In many cases, Sunoco has agreed to pay these owners pursuant to a contract with the operator.[7] (*See, e.g.*, Defs.' Ex. 29, at 3 ¶ 6.) Sunoco often relies on information provided by a well operator to pay owners their proceeds. (*See, e.g.*, Trial Tr. vol. 1, 178:6 to 181:11.) That information is not always correct. (*Id.* 171:6-14, 178:6 to 181:11.)

[6] Oil production has a cast of varied characters. When someone (such as Cline) owns land that may have oil on it, an exploration and production ("E&P") company leases the land to drill for and extract the oil. (Trial Tr. vol. 1, 174:22 to 175:8.) The E&P company agrees to split the proceeds from the sale of that oil with the landowner if the company can extract it. (*Id.* 175:10-13.) Usually, the landowner gets at least a one-eighth royalty and bears no costs or risk associated with drilling the well or cleaning and closing a dry hole. (*Id.* 175:14-20.) The E&P company partners with other industry players, known as working interest owners, to drill the well, and they split the remaining interest. (*Id.* 175:21-24.) One of the working interest owners is deemed the "operator." (*Id.* 175:25 to 176:2.) The operator "frequently ha[s] either a majority interest, or [it is] elected because [it is] knowledgeable and the other working interest owners respect [it]." (*Id.* 176:3-7.) The working interest owner with the largest share of the interest performs and coordinates the work, with the remaining companies sharing in the cost and risk. (*Id.* 176:8-13.) After the working interest owners extract the oil, companies such as Sunoco will enter into contracts with the operators to transport and market the oil. (*Id.* 176:24 to 177:6.) The landowner's interest may fracture over time, such as when a landowner dies or sells the interest to another individual or entity. (*Id.* 177:13 to 178:10.) Thus, it is not unusual for Sunoco to pay anywhere from tens to thousands of interest owners for oil produced from a well. (*Id.* 172:19-25.)

[7] The contracts sometimes include an indemnity agreement under which the producer or operator agrees to indemnify Sunoco for costs associated with late payments to owners. (*See* Trial Tr. vol. 1, 125:22 to 127:4.)

2. Cline and the Class

Cline lives in Oklahoma and owns royalty interests in three oil wells. (Dk. No. 175.) He works as a farmer and has no training in the oil and gas industry. (Trial Tr. vol. 2, 428:2-16.) During the class period, Sunoco paid Cline royalty proceeds on all three wells; on occasion, Sunoco paid the royalties late. (Dk. No. 175.) Cline did not ask Sunoco to pay him interest on the late payments. (Trial Tr. vol. 1, 257:1-4.) At all relevant times, Sunoco had Cline's correct contact and interest information. (*See id.* 99:8-15, 103:21 to 110:4; Pl.'s Exs. 459-60, 463.)

Cline represents a class of individuals and entities who own royalty interests in wells from which Sunoco purchased crude oil and paid proceeds late without paying interest on the proceeds. (*See* Dk. No. 127, at 1.)

B. Sunoco's Conduct

1. Late Payments

Sunoco generally pays proceeds to owners on time. (Trial Tr. vol. 1, 77:25 to 78:2, 222:8-14.) On approximately one percent of its payments, however, Sunoco pays owners the proceeds late as defined by the PRSA. (*Id.* 77:14-24, 78:3-5, 91:12-20, 222:8-14.) Because Sunoco deals with thousands of owners, making many payments to each owner, over the years this small percentage amounts to millions of late payments.

The reasons for the late payments vary. Sometimes, the payments are just not on time. Other times, Sunoco has an internal reason why they are late. For example, Sunoco may suspend payment on an account if the owner has not returned a division order.[8] (*Id.* 103:6-20.) If Sunoco

[8] Sunoco uses division orders to confirm ownership and ensure accuracy of the payments. (Trial Tr. vol. 1, 186:19 to 187:11.) Oklahoma law says that an oil company cannot withhold payments because the owner has not signed a division order. Whether Sunoco's practices with regard to division orders violate the PRSA is not before the Court.

does not have current or accurate information either from the owner or from the producer to pay the owner, sometimes it cannot remit the funds, or it may receive a returned check.[9] (*Id.* 186:21 to 187:11, 221:1 to 222:1, 281:4-8.) If Sunoco does not know the identity of the interest owner, it does not remit payment to anyone and instead pays those proceeds to Texas as unclaimed funds.[10] (Trial Tr. vol. 3, 577:7-24, 578:23 to 580:8.)

When Sunoco pays owners late, it does not automatically pay statutory interest. (Trial Tr. vol. 1, 78:6-13, 116:3-11; Pl.'s Ex. 43.) As noted above, Sunoco only pays statutory interest when specifically requested by an owner. (Trial Tr. vol. 1, 78:10-13, 82:20-23; Holland Dep. 55:18 to 56:16; *see, e.g.*, Pl.'s Ex. 38.) Sunoco does not get many requests for interest each year. (*See, e.g.*, Trial Tr. vol. 1, 83:21-24; Holland. Dep. 33:5-15; Pl.'s Ex. 62.)

Sunoco takes a haphazard approach to its obligations arising from late payments. In fact, Sunoco has not even tried to identify every instance of a late payment in Oklahoma. (Trial Tr. vol. 1, 79:6-7; Holland Dep. 102:5-19.) For its millions of late payments, it says it cannot determine the amount of interest due. This inability, however, does not arise from a lack of information. Rather, it arises from Sunoco's unwillingness to make the effort, at the time of the late payment, to determine the cause of the lateness and the amount of interest due. On the rare occasions when Sunoco receives a request for interest, it usually has the information it needs to calculate the amount of interest due on the late payment. (*See, e.g.*, Trial Tr. vol. 1, 99:8-15; Holland Dep. 34:8-24.) Sunoco employees simply look at the files for each payment to determine the reason the payment was late and whether Sunoco owes that owner 6 percent interest or 12 percent interest.

[9] When Sunoco gets bad owner information from a producer or operator, it generally does not tell the producer or operator. (*See* Pl.'s Ex. 339.)

[10] Sunoco calls payments for which it has no owner information "undivided payments."

(Trial. Tr. vol. 1, 94:1 to 95:3, 223:17 to 224:7.) One employee handles calculating interest after other employees research the request. (*Id.* 94:1-21.) Sunoco uses a computer program into which a Sunoco employee manually inputs information to calculate the interest. (*Id.* 94:1 to 95:3; Holland Dep. 19:8 to 21:19; *see* Defs.' Exs. 261-79.) When Sunoco finally gets around to paying interest, it pays the interest due only through the date Sunoco paid the proceeds to the owner. (Holland Dep. 123:7 to 124:18.)

Although Sunoco knows that it owes interest on late payments under the PRSA, it takes the position that the statute does not set forth a due date; in other words, the debt never becomes due. Sunoco takes this position based on industry practice and the advice of counsel. (*See, e.g.*, Trial Tr. vol. 1, 84:15-24.)

After Cline filed this lawsuit, Sunoco investigated Cline's claim for interest. (*Id.* 98:21 to 99:17; Pl.'s Ex. 4.) Sunoco had not paid Cline because Cline had not signed a division order and had not otherwise responded to Sunoco's communications with him. (*Id.* 99:21 to 100:7.) On December 19, 2017, Sunoco sent Cline a check for $1,886.54 in unpaid interest. (Dk. No. 175; Pl.'s Exs. 4, 24.) Sunoco applied a 12 percent interest rate compounded through the date it had paid Cline his late proceeds. (Trial Tr. vol. 1, 99:16-20; Pl.'s Exs. 4, 24.) When Cline did not cash the check, Sunoco sent Cline a letter asking Cline to respond and explaining that failure to respond would lead Sunoco to deem the funds as unclaimed, which could have resulted in the money going to Oklahoma's unclaimed property agency. (Trial Tr. vol. 1, 110:9 to 111:21; Pl.'s Ex. 476.) To date, Cline has not cashed Sunoco's check. (Trial Tr. vol. 2, 445:10-19.)

As a result of this litigation, Sunoco has decided to stop paying proceeds and interest in Oklahoma. (Trial Tr. vol. 1, 74:10 to 75:19.)

2. The Amount of Interest Due Because of Late Payments

Sunoco owes millions of dollars in interest on late payments. To prove the precise amount due, Cline relied on the expert testimony of Barbara Ley, a certified public accountant who has extensive experience with accounting in the oil and gas industry. (*See, e.g.*, Trial Tr. vol. 3, 493:4 to 510:15.) Ley testified credibly, and described a thorough and defensible method of calculating the amount due from Sunoco. Ley received information from Sunoco to create a database of individual owner information and to determine whether each payment was late based on that data. (*Id.* 510:17 to 588:12.) Sunoco's data identifies the date proceeds were sold, the date Sunoco paid proceeds to an owner, and the amount of the proceeds. (Trial Tr. vol. 1, 89:3-15.) To the extent she could, Ley checked the sale date against public records. (Trial Tr. vol. 3, 519:4 to 520:17.) She also reviewed depositions and other documents produced in the case, and was present in the courtroom during the majority of the trial. (*Id.* 505:1-24). Sunoco agrees that Ley's data reliably reflects the sale date, payment date, and amount of proceeds. (Id. 90:8-20.)

Ley removed some late payments from her database because they fell outside the class certification definition. She did this based on Sunoco's accounting data, Sunoco's suspense codes,[11] and discussions with class counsel and Sunoco's experts. (*Id.* 561:9 to 570:4, 587:14 to 588:12.) Further, Ley excluded payments made to unclaimed property funds[12] when Sunoco issued a check to the interest owner on time. (*Id.* 580:21 to 582:7.) Thus, she did not include payments to unclaimed funds if Sunoco previously sent a timely check to the owner that went

[11] Suspense codes are Sunoco's administrative notes about delayed payments. In relying on Sunoco's suspense codes, Ley bent over backwards to give Sunoco the benefit of the doubt. As discussed below, even Sunoco's own experts say that the suspense codes do not give reliable information about the reasons for late payments.

[12] Unclaimed property payments are discussed below.

uncashed. (*Id.* 580:21 to 582:13.) She also excluded statutory interest payments Sunoco previously made during the class period for the types of payments at issue in this case. (*Id.* 574:15 to 575:5.) All told, Ley only considered liability for interest on late payments falling within the class definition. (*Id.* 589:5-17.)

Ley determined that Sunoco made 1,596,945 late payments to approximately 53,000 class members. (*Id.* 554:8-12, 568:21 to 569:1; Pl.'s Ex. 454.) As of December 16, 2019, Sunoco owed $74,763,113.00 in late interest payments, based on a 12 percent interest rate compounded annually.[13] (Trial Tr. vol. 3, 571:23 to 572:5.)

C. Evidence Related to Sunoco's Defenses

1. Unclaimed Property Funds[14]

Sunoco says that it should not have to pay interest on proceeds it pays to unclaimed property funds. Each state has created by statute a government agency that collects money held

[13] Because the actual damages in this case include amounts that will continue to compound until the Court enters judgment, the Court must explain its reference point for damages. At trial, Cline presented a damages figure of $74,763,113.00 based on Ley's calculations. (Trial Tr. vol. 3, 571:23 to 572:5.) That figure represented the statutory interest due on the late payments through December 16, 2019, less interest Sunoco already paid and any opt-outs received during the class notification process as of the first day of trial. (*Id.* 572:9 to 576:25.) For ease, the Court will base its damages award off the $74,763,113.00 discussed during trial. Thus, the interest owed in this case is $74,763,113.00 plus any additional interest due from December 17, 2019, to the date of this Opinion. Further, for the reasons set forth below, the Court will apply a 12 percent interest rate to all the late payments.

After trial, however, the class administrator submitted information about additional opt-out requests and withdrawals of previously submitted opt-out requests. Although the Court will award damages based on the figure presented at trial, the Court will require counsel to submit updated calculations before it enters the final judgment order. Nevertheless, the Court believes it is appropriate to issue this Opinion and Order because the exclusion requests do not affect the merits of this case. Further, Sunoco had adequate notice of the additional exclusion requests well before closing arguments in June, 2020. Issuing this decision will stop interest from compounding and will enable counsel to provide a final damages calculation.

[14] The parties sometimes refer to these payments as "escheat" payments.

by businesses for people who cannot be found. The agency holds the money on behalf of the true owners.

When Sunoco cannot identify or locate an owner, it eventually sends the owner's proceeds to the unclaimed property fund of the state of the owner's last known residence. (*See, e.g., id.* 131:8 to 132:21.) For example, if someone stops cashing his or her checks and does not respond to the notice Sunoco sends, Sunoco sends the proceeds to the unclaimed agency of the owner's state. It makes this payment after it holds the funds for a certain number of years set by state unclaimed property law. (*Id.* 265:10 to 270:2) If Sunoco does not know the address of the owner or the payment is an undivided payment, it pays unclaimed proceeds to Texas, Sunoco's home state. (*Id.* 262:10-20.) When Sunoco sends unclaimed proceeds to a state, it does not send any interest owed on those proceeds. (*Id.* 132:22-25.)

Sunoco does not conduct an extensive search to locate unidentified or unlocated owners. (*Id.* 137:6 to 138:8; Lanscelin Dep. 67:24 to 69:8, 70:23 to 71:02.) Rather, if Sunoco has an address for an owner who has stopped cashing checks, it will send a division order twice to the address on file, a stale check notice, a letter notifying the owner that it may send the funds to the state as unclaimed, and a due diligence notice. (Trial Tr. vol. 1, 135:16 to 137:5, 156:8-22.) Sometimes people will respond to Sunoco's notices, at which point Sunoco verifies the owner's identity or ownership. (*Id.* 271:4 to 272:3.)[15]

[15] Cline offered evidence designed to show that Sunoco did not make a bona fide effort to find people before sending their proceeds to unclaimed property funds. For instance, Sunoco claimed not to know where well owner Paul Walker lived, even though he had lived at the same place for decades. Fred Buxton, an oil producer, said that his company took many steps more than Sunoco does to find correct addresses for owners. And Sunoco threatened to send one of Cline's interest checks to unclaimed property, even though it was in litigation with Cline, knew his address, and had frequent contact with his lawyers. While interesting, and indicative of a lackadaisical attitude by Sunoco, this evidence does not figure in the Court's analysis.

2. Unmarketable Title

Under the PRSA, a purchaser owes only 6 percent interest if a delay in payment occurs because the owner does not have marketable title to the oil sold. Sunoco tried to show that many of its late payments could have stemmed from the owner's unmarketable title.

To establish unmarketability, Sunoco relied on its "suspense" codes. When Sunoco puts a payment in suspense, it does not send the money to the owner. Someone at the company makes a file entry reflecting one of fifty codes. The codes are shorthand for reasons to withhold payments. As an example, Sunoco might not make a payment if the IRS had asserted a lien over the proceeds; an employee at Sunoco would then make an entry for the code relating to IRS liens. The validity of suspense codes to establish marketability was a central issue at trial.

Sunoco called Kraettli Epperson as an expert on marketable title. Epperson testified about the title opinion process and opined that the title examination standards do not presume marketability, but that "you have to look at the record, you have to determine in essence whether it is clear that somebody owns it." (Trial Tr. vol. 4, 707:9-16.) Thus, a title examiner must review a variety of records to determine whether title is marketable. (*Id.* 708:20 to 710:11.)

Epperson did not examine any titles, and could not testify that any of the owners did not have marketable title. He did talk about the suspense codes, and opined that some of them might mean that the owner did not have unmarketable title. Ultimately, however, the suspense codes were, at best, "a crude surrogate" for marketability. (*Id.* 715:5.) They do not give a determination that title is marketable or unmarketable. *(Id*. 718:9-14.) As defense counsel observed at trial, Sunoco's employees prepared the codes to justify failure to make payments. The codes are simply an administrative tool, not an indication of marketability. (*Id.* 629:15-18.)

Epperson did not conduct a title search on property of any of the 53,000 owners to whom Sunoco made late payments. He offered no opinion on the state of any titles at issue in this case.

D. Fraud

Cline offered evidence to support his claim that Sunoco had committed fraud on owners to whom it owed interest. Essentially, Cline showed that Sunoco did not tell owners either that it owed them interest on late payments, or that it would give them interest payments if they requested it.

Sunoco did, however, provide check stubs with royalty checks. Although they generally do not mention interest, Sunoco's check stubs do contain the information required by § 570.12. (See, e.g., Defs.' Ex. 8; see also Closing Arg. Tr. 195:21 to 196:6.) The check stubs, however, do not indicate: (1) that Sunoco owes the owner interest and has withheld that interest; (2) how to calculate the interest Sunoco is withholding based on the data provided; or (3) that Sunoco will pay the interest if the owner requests it. (Trial Tr. vol. 3, 589:19 to 592:2; Pl.'s Ex. 520.) On the occasions when Sunoco pays interest, it notes the payment on the check stub with an "interest payment" code. (Trial Tr. vol. 3, 514:16-20; see Pl.'s Ex. 24; Defs.' Ex. 45.)

E. Eric Krause

Sunoco called Eric Krause to rebut Ley's testimony regarding liability and damages. For the reasons set forth below, the Court will strike Krause's testimony.

V. ANALYSIS

A. Preliminary Matters

Before turning to the merits of the case, the Court must address two preliminary matters raised by the parties at trial and in their briefs.

1. Class Certification

Sunoco continues to challenge the Court's decision to certify the class. (*See, e.g.*, Dk. No. 274, at 58-60; Dk. No. 275, at 155-65.) The Court has had multiple opportunities to consider the propriety of class certification. (*See* Dk. Nos. 126, 149, 186.) For the reasons set forth in its October 3, 2019 Opinion (Dk. No. 126), the Court continues to conclude that class certification is proper in this case. The evidence and trial testimony do not change the Court's conclusions. Nevertheless, the Court will briefly address some of Sunoco's arguments.

First, although this case requires a degree of individualized inquiry, "questions of law or fact common to class members predominate over any questions affecting only individual members." Fed. R. Civ. P. 23(b)(3). The Court has resolved most of the issues in this case by interpreting provisions of the PRSA and applying that interpretation to the class as a whole. (*See, e.g.*, Dk. No. 231.) The trial testimony established that Sunoco followed a practice of not paying interest until it received a request from an owner. (*See, e.g.*, Trial Tr. vol. 1, 78:6-13, 82:20-23; Holland Dep. 102:5-19.) Ley created a methodology through which she could calculate class-wide damages based on that conduct. (Trial Tr. vol. 3, 491:21 to 594:25; Trial Tr. vol. 4, 605:10 to 683:7.) Further, her computer calculations identify the precise damages for each late payment for each owner of each well.

Moreover, the trial confirmed that "a class action is superior to other available methods for fairly and efficiently adjudicating the controversy." Fed. R. Civ. P. 23(b)(3). For the reasons set forth below, Cline will prevail on his breach of statutory interest claim on behalf of the class, which comprises approximately 53,000 class members and more than 1.5 million late payments. Cline has done this through a trial that lasted approximately one week. That outcome represents a fair and efficient way of resolving the claims without requiring individual actions.

In essence, Sunoco wants to force all 53,000 victims of its scheme to file independent claims, just as it has tried to compel them to make individual requests for interests. No doubt, Sunoco hopes that the owners will abandon their claims, most of which are small, rather than incur the cost and effort to take on a behemoth. Class actions exist precisely for claims such as those presented here.

Second, to the extent that Sunoco complains that it could not possibly have presented all of its defenses at trial, Sunoco had the opportunity to at least try to do so. Instead, Sunoco did not object to finishing the trial on December 19, 2019—a day before trial was scheduled to end. (Trial Tr. vol. 4, 602:16 to 603:6.) Nor did it request any additional time to try this case. It did not even begin to analyze its own data until the eve of trial.

Sunoco continues to insist that its defenses are too individualized to present in a class action. At trial, Sunoco presented a light sampling of these defenses but failed to establish that such defenses would have overwhelmed the trial.[16] Unsurprisingly, Sunoco conflates doing what is impossible with doing what is hard. No doubt, figuring out what Sunoco owes to interest owners is difficult when it has failed to comply with the PRSA for years. Had Sunoco done its homework in the years before this suit, it would have known how much interest it owes, and could have presented a compilation or summary. *See* Fed. R. Evid. 1006. Sunoco's own evidence shows that it has the ability to determine what Sunoco owes interest owners; it just does not do so until asked. Thus, Sunoco's arguments fall far short.

The Court declines to decertify the class.

[16] Additionally, many of the defenses did not actually rebut Cline's claims or carry Sunoco's burden.

2. Motion to Strike Krause

On December 5, 2019, Cline moved to strike the testimony and opinions of Krause, Sunoco's expert witness on damages. (Dk. No. 207.) Cline argues that Sunoco disclosed Krause's opinions late in violation of the Court's pretrial order and the Federal Rules of Civil Procedure. At trial, the Court took the motion and related objections under advisement. For the following reasons, the Court will grant the motion and sustain Cline's objections.

a. Background[17]

The parties began discovery in 2017. Sunoco disclosed Krause as an expert in March, 2019. Cline contends that Krause asked Sunoco for its suspense history data in 2018. Sunoco claims that it did not refuse to produce the historical suspense data. Rather, it asserts "that the data did not exist in [usable], accessible form in Sunoco's accounting system, and it was only through a massive effort appropriately undertaken after the Court certified the class on October 3 that Sunoco was able to come up with it at all." (Dk. No. 230, at 6.) It took Sunoco several weeks to compile the data in a usable format. This argument ignores the question of why Sunoco waited until after class certification to begin to think about its exposure to damages in this case.

The Court reassigned the case to the undersigned district judge on July 18, 2019. On August 5, 2019, the Court set the discovery deadline as October 18, 2019. (Dk. No. 102, at 1.) For expert disclosures, the Court set the following deadlines: initial disclosures for the party with burden of proof on an issue were due October 25, 2019; the opposing party's disclosures were due on November 1, 2019; and rebuttal expert disclosures were due on November 8, 2019. (*Id.* at 2.)

[17] Because Cline filed this motion before trial, the Court summarizes the relevant facts as set forth in the parties' briefs.

Sunoco served Krause's initial expert report on November 1, 2019. In the report, Krause explained that Sunoco provided him with the data he needed to render certain opinions on October 31, 2019, and reserved the right to supplement his opinions "once [he was] able to complete a refined study" of the data. (Dk. No. 207-5 ¶ 49.) Based on his preliminary review of the data, however, he could not link millions of dollars of damages in Ley's model to any suspense codes. (*Id.* ¶ 49 n.38.) He also opined that, even with the data, he could not determine the reason for the untimely payments. (*Id.*)

On November 8, 2019, Ley served her rebuttal expert report. She objected to Krause's use of the suspense code information but nevertheless asserted that, if Sunoco met its burden of showing unmarketable title, she could incorporate those conclusions into her model. (*See* Dk. No. 230-7 ¶¶ 5-9.) She also reserved the right to supplement her report because she understood Krause's work to be ongoing. (*Id.* ¶ 11.)

Less than three weeks before trial, Krause's expert report was not done, and his opinions were not complete. Two weeks before trial, Krause served a supplemental report "[d]ue to the complex nature of the data and because [he] received the data one day prior to [his] report being due." (Dk. No. 207-3 ¶ 5.) He explained that he "did not have sufficient time by November 1 to perform a quantification of the effects to any damages resulting from a full analysis and evaluation of this data." (*Id.*) Nevertheless, "[i]t remain[ed] [his] opinion after a full review of the suspense history data" that Ley could not use that information to fully understand the reason for an untimely payment and whether a 6 percent or 12 percent interest rate would apply. (*Id.*) The report also responded to the Court's ruling on the motion to clarify. (*Id.* ¶ 29.) Krause's analysis reduced the damages amount by approximately $3.5 million. (*Id.* ¶ 15.) Krause further opined that his

damages figures would change based on work performed between completing the report and trial. (*See id.* ¶ 14.)

On December 3, 2019, Sunoco sent Cline a corrected version of Krause's supplemental report. Sunoco served the materials supporting the report on December 4, 2019. Cline deposed Krause on December 5, 2019, and filed the motion to strike later that day. Sunoco contends that the "additional work [Krause] intends to do is a summary, for illustrative purposes only, of his already-disclosed opinions." (Dk. No. 230, at 14.)

At trial, Krause testified about a number of topics, including issues related to unclaimed funds and the feasibility of using the suspense codes to determine marketable title. (Trial Tr. vol. 4, 814:13 to 912:24; Trial Tr. vol. 5, 920:21 to 947:17.) He also considered evidence from the Oklahoma Corporation Commission using information he downloaded from the Internet on December 15, 2019. (Trial Tr. vol. 4, 854:19 to 858:7.) Further, Krause testified to his own calculation of damages—a number significantly lower than Ley's calculations. (*See, e.g., id.* 885:15 to 888:22, 896:17 to 901:3.) Cline objected to much of the testimony, including a continuing objection to the admissibility of Krause's testimony for the reasons set forth in the motion to strike. (*See id.* 822:21 to 823:23, 839:23 to 840:13, 855:23 to 858:7, 870:11 to 872:5, 872:15 to 873:2, 875:11 to 876:4, 890:2-3, 890:18 to 891:5.)

b. Legal Standard

When a party discloses the identity of its expert witness, the party must provide a written report prepared and signed by the expert that contains "a complete statement of all opinions the witness will express and the basis and reasons for them." Fed. R. Civ. P. 26(a)(2)(B)(i). Parties must make these disclosures by the dates ordered by the court. *See* Fed. R. Civ. P. 26(a)(2)(D).

A party has a duty to supplement its disclosures "in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing." Fed. R. Civ. P. 26(e)(1)(A). For expert reports, the duty to supplement applies to information both included in the report and given in a deposition. *See* Fed. R. Civ. P. 26(e)(2). The disclosures, however, "must be [made] by the time the party's pretrial disclosures under Rule 26(a)(3) are due." *Id.*

Expert reports "are necessary to allow the opposing party a reasonable opportunity to prepare for effective cross examination and perhaps arrange for expert testimony from other witnesses." *Rodgers v. Beechcraft Corp.*, 759 F. App'x 646, 656 (10th Cir. 2018) (alterations and quotations omitted). A party who fails to disclose or supplement information may not use that information or witness "to supply evidence" at a trial "unless the failure was substantially justified or is harmless." Fed. R. Civ. P. 37(c)(1).

"Substantial justification requires justification . . . that could satisfy a reasonable person that parties could differ as to whether the party was required to comply with the disclosure request. The proponent's position must have a reasonable basis in law and fact." *Nguyen v. IBP, Inc.*, 162 F.R.D. 675, 680 (D. Kan. 1995). A failure to disclose is harmless "when there is no prejudice to the party entitled to the disclosure." *Id.* The late-disclosing party bears the burden of establishing that the failure was substantially justified or harmless. *See id.*

A court need not make "explicit findings" about whether the failure was substantially justified or harmless. *Rodgers*, 759 F. App'x at 657. Rather, it must consider the following factors: (1) the prejudice or surprise to the party against whom the testimony is offered, (2) the ability of the party to cure the prejudice, (3) the extent to which introducing the testimony would disrupt the

trial, and (4) the moving party's bad faith or willfulness. *See id.* The late-disclosing party's conduct does not need to satisfy all factors to justify exclusion. *See, e.g., SFF-TIR, LLC v. Stephenson*, No. CIV 14-0369, 2020 WL 2922190, at *14 (N.D. Okla. June 3, 2020).

c. Application

Here, Sunoco's disclosures were both late and incomplete. Sunoco assumed that Cline had the burden of proof regarding marketability of title. For the reasons set forth below, Sunoco bore that burden. Thus, Sunoco should have disclosed Krause's opinions regarding marketable title on October 25, 2019. (See Dk. No. 102.) Even if Sunoco did not have the burden of proof, the final version of his report was over a month late. In any event, Krause's disclosures gave Cline at best a high-level overview of Krause's opinions regarding marketable title and the reliability of Ley's methodology, but his opinions were essentially a moving target until trial. Thus, Cline did not have "a complete statement of all opinions [Krause] [would] express and the basis and reasons for" the opinions until trial. Fed. R. Civ. P. 26(a)(2)(B)(i).

Moreover, Sunoco had no reasonable justification to delay the production of its historical suspense data and the disclosure of Krause's opinions; it simply hoped that the case would not proceed to trial. *See* Fed. R. Civ. P. 37(c)(1). The Court cannot overstate the prejudice that Cline suffered and the incurable nature of that prejudice. *See Rodgers*, 759 F. App'x at 657. Sunoco lauds itself for transforming its suspense code data into a usable format within a few weeks of the Court's class certification decision. But discovery had been going on for nearly two years. To the extent that the reassignment of this case to the undersigned district judge changed the trial timeline, the parties knew a month and a half before discovery closed that this case would proceed to trial in December, 2019. Instead of trying to complete discovery within the required timeline, Sunoco

waited to begin these efforts until the Court certified the class and rejected Sunoco's last-ditch effort to pick off the named plaintiff and moot this case.

When Sunoco finally produced key evidence, it did so after Ley's first report was due. Then, Sunoco blamed Ley for creating an allegedly unreliable model in large part because she tried to discern marketable title from Sunoco's late-produced data. Sunoco, however, created an untenable situation for Cline—either scramble through "a big new slug of data" produced after discovery closed or risk failing to meet his burden regarding liability at trial. (Trial Tr. vol. 4, 622:4-5.) Cline, of course, chose the former option. Ultimately, Ley created a well-reasoned and thorough model that she testified about at trial.

Krause continued to work with the data well past the discovery and expert deadlines, leaving Cline to guess about Krause's opinions—the exact scenario that Rule 26 and the Court's pretrial order meant to avoid. Krause's late disclosures significantly limited the amount of time Cline's attorneys had to prepare for Krause's cross-examination and required Cline to take a deposition on the eve of trial. Any argument that Cline knew the contours of Krause's opinions ignores the fact that Sunoco's conduct still limited class counsel's ability to fully prepare for trial and required them to expend resources completing depositions well past the discovery deadline. Much of this case now centers on the damages Sunoco owes. Any change to the damages calculations bears on central questions in this case. Regardless of whether Sunoco acted willfully or in bad faith, Sunoco's conduct justifies exclusion of Krause's testimony and opinions.

On a final note, even if the Court denied the motion, Krause's opinions would not tip this case in Sunoco's favor. Most of the evidence presented through Krause's testimony rests on faulty assumptions—that Cline bore the burden to prove marketable title and that Ley created an unreliable model. For the reasons set forth below, Sunoco, not Cline, bears the burden of proving

unmarketable title, and Ley created a reliable model that satisfies Cline's burden. Moreover, Krause's testimony mostly echoes what Sunoco's other witnesses have said all along—that Sunoco's suspense codes are not reliable, and that it is too unfair to hold Sunoco liable for violating the PRSA because it would be really hard for Sunoco to straighten it all out now. These defenses do not carry the day.

For the foregoing reasons, the Court will grant the motion to strike and will sustain Cline's objections to Krause's testimony.

B. Count One: Breach of Statutory Obligation to Pay Interest

1. Liability

Cline has met his burden of proving liability by a preponderance of the evidence for the entire class.

For the reasons set forth in the Court's December 10, 2019 Opinion, "[t]he PRSA requires Sunoco to pay interest on late payments at the same time it makes those payments, and Sunoco cannot require an interest owner to make a demand for payment before paying that interest." (Dk. No. 231, at 13.) Sunoco's representative at trial, Eric Koelling, acknowledged that Sunoco sometimes pays proceeds late and does not automatically remit interest with the late proceeds. (Trial Tr. vol. 1, 77:19 to 78:9.) Koelling also acknowledged that Sunoco generally only pays interest when owners ask for it. (*Id.* 78:10-13.) Koelling further agreed that Sunoco had already sent every class member a check for proceeds and that "there is no issue about whether those people have a right to be paid their principal proceeds." (*Id.* 159:3-12.)

Ignoring the evidence at trial, Sunoco says that the Court must consider the file of every single class member—that it must conduct thousands of mini-trials. As the Court described above, however, Ley conducted a thorough and individual assessment of more than 1.5 million late

payments. (*See* Trial Tr. vol. 3, 510:17 to 588:12; Pl.'s Ex. 454.) She determined the date payment was due, and the date it was made. She calculated interest. She identified payments that fell outside of the class and excluded those payments from her calculations. (Trial Tr. vol. 3, 561:9 to 570:4, 580:21 to 582:13, 587:14 to 588:12.) This methodology proves liability by a preponderance of the evidence.

Nevertheless, Sunoco attacks Ley's method as unreliable, mainly arguing that she cannot accurately determine marketable title issues. As discussed below, Sunoco, not Cline, bears the burden of proving that it withheld payments due to title issues. Thus, Sunoco's argument that its data is unreliable merely faults Ley for being unable to meet Sunoco's burden regarding the applicable interest rate. (*See, e.g.*, Trial Tr. vol. 4, 618:8 to 634:11, 710:12 to 744:22.)[18]

Sunoco also says that Ley cannot identify payments that fall outside the class definition. Again, Sunoco fails to sufficiently challenge Ley's methodology. Sunoco primarily relies on Krause to establish that Ley's conclusions are unreliable or incorrect. Because the Court has struck his testimony, Sunoco cannot rely on his opinions. Even so, Krause did not identify any payments Ley categorized as late because they were paid outside of the six-month and two-month time frames. (Trial Tr. vol. 5, 937:3 to 938:8, 943:3-10.) Krause did find a few small errors in Ley's

[18] Sunoco's focus on this point also underscores a separate flaw in its argument. The PRSA requires that interest accrue at 6 percent "until such time as the title to such interest becomes marketable." § 570.10(D)(2)(a). When title is not marketable, Sunoco "is not [ ] required to pay until the other party has cleared up his title." *In re Tulsa Energy, Inc.*, 111 F.3d 88, 90 (10th Cir. 1997). Interest, however, still accrues, albeit at 6 percent. At most, the defendant's argument would reduce the amount of interest it owes, a defense on which it has the burden of proof. This litigation only focuses on interest owed on payments Sunoco already made. Thus, when Sunoco paid an owner the proceeds, Sunoco essentially determined that it was liable for that payment in some capacity.

To the extent that Sunoco argues that it sometimes paid owners as a "business decision," it has provided little concrete evidence to rebut Ley's methodology and conclusions regarding class-wide liability. (Trial Tr. vol. 1, 158:3-14.)

methodology, and relied on them to conclude that the entire model was unreliable. (*See* Trial Tr. vol. 3, 565:20 to 566:21; Trial Tr. vol. 4, 860:13 to 861:24; Trial Tr. vol. 5, 945:8-20.) The Court cannot resolve this case based on a hypothetical challenge. Thus, even if the Court considered Krause's opinions, a few examples of small errors in a document spanning millions of lines of data does not undermine the credibility of Ley's testimony or methodology.

Next, relying on *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), Sunoco tries to characterize this litigation as a "trial by spreadsheet." In *Dukes*, the Supreme Court determined that a class certified under Rule 23(b)(2) could not seek individualized money damages for violations of Title VII of the Civil Rights Act of 1964. The Supreme Court distinguished the class certified under Rule 23(b)(2) from one certified under Rule 23(b)(3), which "allows class certification in a much wider set of circumstances but with greater procedural protections." *Id.* at 362. The Court disagreed with the approach to determining liability, in which "[a] sample set of the class members would be selected, as to whom liability for sex discrimination and the backpay owing as a result would be determined in depositions supervised by a [special] master." *Id.* at 367. Under this approach, the special master would determine "[t]he percentage of claims . . . to be valid . . . and then . . . appl[y] [that percentage] to the entire remaining class." *Id.* Each class member would receive an average back pay award.

Here, the Court certified this class under Rule 23(b)(3), thereby affording the class greater protections than enjoyed by the class in *Dukes*. Further, the class members will not receive an average damages award based on representative claims. As explained above, Ley has examined each payment and determined liability for each class member. Essentially, Sunoco saw a spreadsheet and cried foul. But for the above reasons, Sunoco has not endured a "trial by spreadsheet."

Finally, Sunoco argues that Cline failed to prove that Sunoco alone caused the harm. Under the PRSA, "[w]here royalty proceeds are paid incorrectly as a result of an error or omission, the party whose error or omission caused the incorrect royalty payments shall be liable for the additional royalty proceeds on such production and all resulting costs or damages ***incurred by the party making the incorrect payment***."[19] § 570.10(C)(4) (emphasis added). Under that provision's plain language, the party causing the error or omission must pay Sunoco for costs associated with the incorrect payment. That provision, however, does not change Sunoco's obligations to pay owners on time when it undertakes the responsibility to do so. (*See* Trial Tr. vol. 1, 85:21 to 86:8.)[20]

Here, Sunoco was a first purchaser that paid owners late during the class period. Thus, Sunoco owes interest on those late payments. Accordingly, Cline has established liability under Count One.

2. Default Interest Rate

Next, the parties dispute whether the 12 percent interest rate or the 6 percent interest rate applies by default, and which party bears the burden of proving that the non-default rate applies.

"Legislative intent controls statutory interpretation." *Krug*, 362 P.3d at 210. "The obvious overriding purpose of the [PRSA] is to ensure that royalty owners are timely paid their share of the proceeds. The [Oklahoma] Legislature has followed a path of strengthening mineral owners[']

[19] The Court assumes for the purposes of this argument that the PRSA considers a late payment an "incorrect payment."

[20] For the same reasons, the Court rejects Sunoco's arguments regarding liability issues related to indemnity agreements. Whether Sunoco can later recover from another party for its liability in this lawsuit is not before the Court.

rights since the [PRSA's] inception." *Id.* at 214. Against that background, the Court reaches the unremarkable conclusion that the PRSA sets forth a 12 percent default interest rate.

Under the PRSA,

> ***[e]xcept as otherwise provided in paragraph 2 of this subsection***, where proceeds from the sale of oil or gas production or some portion of such proceeds are not paid prior to the end of the applicable time periods provided in this section, ***that portion not timely paid shall earn interest at the rate of twelve percent (12%) per annum*** to be compounded annually"

§ 570.10(D)(1) (emphasis added). The "paragraph 2" referred to in that provision describes when a 6 percent interest rate applies for unmarketable title. Thus, the statute defines the 6 percent interest rate as an exception, not a rule. *See Roberts Ranch Co. v. Exxon Corp.*, 43 F. Supp. 2d 1252, 1275 (W.D. Okla. 1997) ("[T]he only exception to the twelve percent interest provision is where the proceeds are not paid because the title to the royalties is not marketable, in which case the unpaid royalties bear interest at the annual rate of six percent (6%).") The only question that remains, therefore, is who bears the burden of proving which interest rate applies in this case?

Sunoco argues that *Tulsa Energy* should inform the Court's analysis. 111 F.3d 88. In *Tulsa Energy*, the Tenth Circuit considered whether the parties could waive the interest provision in a division order. In its analysis, the Tenth Circuit explained that "[i]t is the interest owner's responsibility to establish marketable title so that he can receive proceeds." *Id.* at 90. The court then concluded that parties may waive the 6 percent interest rate because that rate "merely compensates the party entitled to payment for the use of his money until he can establish marketable title." *Id.* at 91 (quotations omitted).

Here, the Court has limited the class definition to those whom Sunoco has paid proceeds but failed to pay interest. (*See* Dk. No. 127, at 1.) Thus, whether the class members bore the

burden of proving marketable title to receive the proceeds in the first place makes no difference. Sunoco has already remitted payments to the class in some fashion. Now, it must pay the interest.

Instead, the Court considers *Quinlan v. Koch Oil Co.*, 25 F.3d 936 (10th Cir. 1994), instructive. In *Quinlan*, the Tenth Circuit rejected the argument that the plaintiff "was not entitled to twelve percent interest because he was not legally entitled to the proceeds as he failed to show either marketable title or sign a division order." *Id.* at 939 (quotations omitted). Because no question as to marketability of title existed with regard to the plaintiff's oil interest, the Tenth Circuit explained that the PRSA "did not require [the plaintiff] to make an affirmative showing of marketable title at that time in order to be deemed 'legally entitled to the proceeds.'" *Id.* at 939-40. Further, the Tenth Circuit declined to impose a burden on the interest owner to prove marketable title for every royalty payment.

Unmarketability is, in essence, an affirmative defense. In making its argument, Sunoco agrees it owes some interest under the statute, but says that those payments falls into an exception to the general rule. The burden of proving an affirmative defense rests with the defendant. *Meacham v. Knolls Atomic Power Lab.*, 554 U.S. 84, 92 (2008); *NLRB v. Transp. Mgmt. Corp.*, 462 U.S. 393, 400 (1983); *Roberts v. Barreras*, 484 F.3d 1236, 1241 (10th Cir. 2007) ("[T]he burden of proving all affirmative defenses rests on the defendant."). The burden is not only to put the defense in issue, but also to ultimately prove it. *See Roberts*, 484 F.3d at 1241.

Sunoco's entire argument rests on its suspense codes. But its own witness called them a "crude surrogate" for issues of marketability. (*See* Trial Tr. vol. 4, 715:5.) Sunoco did not identify a single case in which an owner did not have marketable title. In fact, Sunoco has already paid owners their proceeds and has not raised any legitimate questions about marketability. Thus,

applying *Quinlan*'s holding more broadly, the Court concludes that the PRSA imposes the burden on Sunoco—not Cline—to prove that it withheld the payments at issue due to unmarketable title.[21]

In sum, the PRSA requires first purchasers and holders of proceeds, such as Sunoco, to pay 12 percent interest on late payments by default. The first purchaser and holder of proceeds bears the burden of proving that it withheld payment due to unmarketable title such that it only owes 6 percent interest on the late payment. Accordingly, Sunoco bore the burden of establishing that a 6 percent interest rate applied to any of the late payments at issue in this case.

3. Unclaimed Funds

The parties dispute whether (and when) Sunoco is liable for interest on unclaimed funds. Sunoco contends that it does not owe interest on these funds when it pays the funds to the state. (*See, e.g.*, Trial Tr. vol. 1, 139:9-15.)

a. Standing

The class members entitled to unclaimed funds have standing to seek damages. To have standing, a plaintiff must prove (1) that he suffered an injury in fact that is "concrete and particularized and . . . actual or imminent, not conjectural or hypothetical;" (2) that the injury is "fairly traceable to the challenged action of the defendant;" and (3) that it is "likely, as opposed to merely speculative, that the injury will be redressed by the relief requested." *Tandy v. City of Wichita*, 380 F.3d 1277, 1283 (10th Cir. 2004); *see Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560-61 (1992).

[21] Sunoco has vigorously argued that its own records are too unreliable to explain why it made a late payment. If the Court interpreted the PRSA to impose on the owners the burden to prove why Sunoco withheld payment, the Court would effectively allow Sunoco to hide behind a mess of its own making, claiming innocence. Moreover, Sunoco, not the owner, is in the best position to know the reasons Sunoco made a late payment. Thus, placing the burden on the owner to prove why Sunoco made a late payment would undermine the purpose of the PRSA.

Cline has proven that all class members suffered an injury, including those entitled to unclaimed funds. For most payments to unclaimed property funds, Sunoco knew the identity of the owner. Even where Cline has not provided the precise identities for some class members, Ley's methodology identified late payments—payments Sunoco determined it owed to someone—on which Sunoco did not pay interest. Moreover, Sunoco admitted that it does not pay interest when it sends proceeds to a state. (Trial Tr. vol. 1, 132:22-25.) As the Court explained on November 26, 2019, "the owners' right to the funds in question . . . exists, whether the owners take possession of the funds themselves or a state holds the money for them." (Dk. No. 186, at 1.) Once the state receives the money on behalf of the individual, the owner can claim the money. *See, e.g.*, Okla. Stat. tit. 60, §§ 661, 663-64, 674-75; Tex. Prop. Code Ann. §§ 74.304, 74.501. Paying the state amounts to paying the owner or an agent or trustee on behalf of the owner. Thus, each class member has suffered an injury because Sunoco has withheld interest it owes to the owner.

Sunoco creatively argues that those entitled to unclaimed funds do not have a concrete injury because the owners have not asked for the proceeds, and therefore, are not aggrieved by a lack of interest. (*See* Dk. No. 274, at 22.) This argument implies that an owner suffers no injury if the owner never realizes that Sunoco owes the owner proceeds. No matter how one looks at it, Sunoco has kept someone else's money, a classic example of a concrete injury. The failure to pay interest on late proceed payments—regardless of whether Sunoco has identified or located the owner—"affect[s] the [owner] in a personal and individual way," creating an injury that "actually exist[s]." *Spokeo, Inc. v. Robins*, 136 S. Ct. 1540, 1548 (2016), *as revised* (May 24, 2016).

Essentially, the owners of unclaimed funds suffer an injury at the moment Sunoco fails to pay interest on the late payment. Requesting the proceeds or interest, therefore, cannot be a

precondition to suffering an injury for Sunoco's violation of the PRSA for failing to pay interest on late payments without a request.

Next, Sunoco argues that it has not caused the unidentified class members' injuries because those class members have not claimed their proceeds. (Dk. No. 274, at 23.) This argument is a thinly veiled effort to shift the blame to those who had a right to the money in the first place. The PRSA requires Sunoco to pay interest on proceeds, which Sunoco did not pay. Thus, Sunoco caused the class members' injuries. *See Nova Health Sys. v. Gandy*, 416 F.3d 1149, 1156 (10th Cir. 2005) ("Article III . . . require[s] proof of a substantial likelihood that the defendant's conduct caused plaintiff's injury in fact.").

Finally, Sunoco argues that Cline has not established redressability because "a judgment awarding interest to the owners of unclaimed proceeds likely would be of no practical benefit to them." (Dk. No. 274, at 23.) As with the injury analysis, Sunoco asks the Court to relieve it of its legal obligations because a royalty interest owner has not yet claimed the funds. This argument "misconstrue[s] the nature of [the] redressability inquiry." *Sprint Commc'ns Co., L.P. v. APCC Servs., Inc.*, 554 U.S. 269, 286 (2008). The Court must consider "whether the *injury* that a plaintiff alleges is likely to be redressed through the litigation." *Id.* at 287. The Court's judgment must "redress[ ] the plaintiff's injury . . . directly or indirectly." *Nova Health Sys.*, 416 F.3d at 1159. "[T]he requirement of redressability ensures that the injury can likely be ameliorated by a favorable decision." *S. Utah Wilderness All. v. Office of Surface Mining Reclamation & Enf't*, 620 F.3d 1227, 1233 (10th Cir. 2010).

Here, the class members' injuries occurred when Sunoco made a late payment without the required interest. An award of damages will compensate the unidentified or unlocated owners for the interest owed on those late payments. Once the relevant state receives the damages award on

behalf of the owner, the owner may claim that interest at any time. At a minimum, this provides indirect relief for the injury. *See Nova Health Sys.*, 416 F.3d at 1159. Thus, a damages award will redress the injury that each class member suffered as a result of Sunoco's violations of the PRSA, regardless of whether the owner is identified.[22] Accordingly, owners entitled to unclaimed funds have standing.

b. PRSA Language

The Court has already concluded that paying the state unclaimed property fund amounts to paying the owner or a trustee on behalf of the owner. (Dk. No. 186.) If Sunoco could hold proceeds without interest until it sends the proceeds to unclaimed funds, that would "contradict[ ] the purpose of the PRSA, which Oklahoma adopted to prevent exactly this kind of windfall." (*Id.* at 4.)

Indeed, the Court's analysis regarding the interest owed on unclaimed funds begins and ends with the language of the PRSA. Section 570.10 provides,

> ***Except as otherwise provided in this section***:
>
> 1. Proceeds from the sale of oil or gas production from an oil or gas well ***shall be paid to persons legally entitled thereto***:
>
> a. commencing not later than six (6) months after the date of first sale, and
>
> b. thereafter not later than the last day of the second succeeding month after the end of the month within which such production is sold.

§ 570.10(B)(1) (emphasis added). The PRSA, therefore, sets forth the precise timeframes by which Sunoco must pay proceeds. The PRSA further excepts certain payments from its timing

[22] Because the injuries to the unidentified or unlocated owners of unclaimed funds have already occurred, their claims are ripe for adjudication. *See Texas v. United States*, 523 U.S. 296, 300 (1998) ("A claim is not ripe for adjudication if it rests upon contingent future events that may not occur as anticipated, or indeed may not occur at all." (quotations omitted)).

requirements. *See, e.g.*, § 570.10(B)(3). Those exceptions do not include unclaimed funds. *See World Pub'g Co. v. Miller*, 32 P.3d 829, 833 (Okla. 2001) ("Th[e] [Oklahoma Supreme] Court does not read exceptions into a statute not made by the Legislature."). The PRSA's timing requirements, therefore, apply to unclaimed funds.

Moreover, because interest accrues "until the date paid," interest accrues until the proceeds—including interest on late payments—are paid to the relevant state.[23] *See, e.g.*, Okla. Stat. tit. 60, §§ 661, 663-64, 674-75; Tex. Prop. Code Ann. §§ 74.304, 74.501; *see also Cockerell Oil Props., Ltd v. Unit Petroleum Co.*, No. CIV-16-135, 2020 WL 2110904, at *2 (E.D. Okla. May 4, 2020) ("The term as used in the PRSA is, therefore, found to be unambiguous and providing for the annual accrual of interest on the accumulated interest on any unpaid proceeds not paid timely under the provisions of that statute.").

Accordingly, Sunoco must pay interest on unclaimed funds from the date the interest payment is late under the PRSA through the date it remits those funds as unclaimed property to the relevant state.[24]

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[23] Sunoco lodges a bevy of challenges related to unclaimed funds, including that unclaimed funds involve numerous individual questions and that the unclaimed funds statutes of each state conflict with the PRSA and implicate constitutional concerns. The Court rejects those arguments. Sunoco has previously sent payments to unclaimed funds, so it can identify the state to which the payment is due. (*See, e.g.*, 131:8 to 139:25.) Sunoco has also summarized the period of time that must elapse before a state considers property abandoned. (Dk. No. 275, at 98-99.) Further, the PRSA requires Sunoco to pay proceeds on time and creates a consequence for not doing so; the unclaimed funds statutes set timelines for remitting the funds *only if Sunoco's efforts to locate owners do not work*. Thus, despite the deadline in the unclaimed funds statutes, Sunoco remains free to try to locate and identify the owners. Sunoco, therefore, has failed to show that (1) individual questions predominate in this regard; (2) the various states' unclaimed funds statutes conflict with the PRSA's interest payment requirements or otherwise control in this case; or (3) any purported conflicts between the PRSA timing requirements and the unclaimed funds statutes raise due process concerns.

[24] The Court rejects Sunoco's argument that it should be excused from complying with the PRSA because it relied on industry custom and could not possibly determine the applicable interest

4. Compound Interest

Sunoco argues that once it makes the late payment to the interest owner, statutory interest stops accruing. Cline contends that Sunoco owes compound interest until Sunoco pays the statutory interest. Sunoco refers to this as "interest on interest," in an attempt to make it sound like something exotic or unusual. In fact, compound interest is a common feature in investments and means simply that interest becomes part of the principal and therefore earns interest. *See* Kate Ashford, *What is Compound Interest?*, Forbes (Aug. 12, 2020, 1:18 p.m.), https://www.forbes.com/advisor/investing/compound-interest/.

Under the PRSA,

> where proceeds from the sale of oil or gas production or some portion of such proceeds are not paid prior to the end of the applicable time periods provided in this section, that portion not timely paid shall earn interest at the rate of twelve percent (12%) per annum to be compounded annually, calculated from the end of the month in which such production is sold until the day paid.

§ 570.10(D)(1). Essentially, Sunoco interprets "until the day paid" to mean "until the day Sunoco paid the proceeds." Thus, Sunoco argues that it does not owe compound interest.

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rate at the same time it makes a late payment. Moreover, Sunoco's repeated proclamations that it simply misinterpreted the law falls short. If Sunoco could escape liability because it misinterpreted the statute or because it believed its actions were legal because everyone else was doing it, that would undermine the remedy enacted by the Oklahoma Legislature to address the precise conduct that Sunoco has engaged in. *Cf. Creekmore v. Pomeroy IT Sols., Inc.*, No. 10-cv-0091, 2010 WL 3702543, at *2 (N.D. Okla. Sept. 16, 2010) ("Permitting a defendant to plead ignorance of the requirements of the Testing Act would have virtually eliminated the civil remedy created by the Testing Act, and would have reserved a civil remedy only for the most extreme violations." (quotations omitted)). Further, Sunoco presented testimony that shows that compliance may have been difficult, but it failed to establish that compliance was impossible. Indeed, Sunoco could calculate interest when someone requested interest. (*See, e.g.*, Trial Tr. vol. 1, 90:8-20, 99:8-15; Holland Dep. 34:8-24.) To the extent that Sunoco argues that the PRSA is void for vagueness, the fact that Sunoco misunderstood the PRSA's requirements does not make the PRSA "so vague and indefinite as really to be no rule or standard at all." *A.B. Small Co. v. Am. Sugar Ref. Co.*, 267 U.S. 233, 239 (1925).

The Court recently resolved this question in a different case, concluding that the plain language of the PRSA "provides for compounding of interest until the full amount—the proceeds due *and the accrued interest*—are paid in accordance with the terms of the statute," *Cockerell Oil Props.*, 2020 WL 2110904, at *1-2 (emphasis added). The Court finds *Cockerell Oil* persuasive and adopts the reasoning set forth therein. *Id.* Further, Ley's model adequately compounds interest on the payments at issue in this case. (*See, e.g.*, Trial Tr. vol. 3, 526:23 to 527:25.) Accordingly, the PRSA requires Sunoco to pay interest on interest, and Ley's model adequately calculates compound interest for the payments at issue in this case.

C. Count Two: Fraud

Cline has not proven fraud. Oklahoma recognizes two types of fraud—actual and constructive. "To be actionable, both actual fraud and constructive fraud require detrimental reliance by the person complaining." *Howell v. Texaco Inc.*, 112 P.3d 1154, 1161 (Okla. 2004). "Fraud is never presumed, but must be proven by clear and convincing evidence."[25] *Tice v. Tice*, 672 P.2d 1168, 1171 (Okla. 1983).

As explained above, the PRSA sets forth the information Sunoco must include when it remits payment. *See* § 570.12. "The PRSA . . . give[s] the royalty owners a right to be accurately informed of the facts and place[s] a legal duty on the [first purchasers and holders of proceeds] to accurately inform the plaintiffs of the facts on which the royalty payments are based." *Howell*, 112 P.3d at 1161. The plain language of the PRSA creates a legal duty for Sunoco to provide the information set forth in § 570.12. *See id.*

[25] "[C]lear and convincing evidence is the measure or degree of proof which will produce in the mind of the trier of fact a firm belief or conviction as to the truth of the allegation sought to be established." *In re C.D.P.F.*, 243 P.3d 21, 23 (Okla. 2010).

Cline does not argue that Sunoco failed to comply with the PRSA's explicit requirements under § 570.12. (Closing Arg. Tr. 196:2-6); *cf. Howell*, 112 P.3d at 1161 ("The respondents failed to include any statements or evidentiary materials in their motions for partial summary judgment showing that they complied with the PRSA."). *Compare* § 570.12, *with* (Pl.'s Ex. 520). Rather, Cline contends the class relied on Sunoco's "material misrepresentations and omissions to their detriment" because "[t]hey cashed the checks they received from Sunoco believing that Sunoco paid them all the monies they were owed." (Dk. No. 272, at 43.)

The Court doubts that an additional duty exists for Sunoco to inform interest owners that it withheld interest from a late payment. *See Wylie v. Chesser*, 173 P.3d 64, 71 (Okla. 2007) ("If a statute is plain and unambiguous and its meaning clear and no occasion exists for the application of rules of construction a statute will be accorded the meaning expressed by the language used."). In any event, Cline has failed to establish class-wide detrimental reliance based on Sunoco's check stubs. For instance, owners entitled to interest on unclaimed funds did not cash—and likely, did not see—the checks. Thus, Cline has not shown that those class members have relied on the information contained on the check stubs. *See Buford White Lumber Co. Profit Sharing & Sav. Plan & Tr. v. Octagon Props., Ltd.*, 740 F. Supp. 1553, 1570 (W.D. Okla. 1989) ("The alleged misrepresentations need not be the sole inducement which causes a party to take action, but they must be that *without which the party would not have acted*." (emphasis added)). Moreover, the information on the check stubs allowed an owner to determine whether she had received interest and, if so, in what amount. Accordingly, Cline has not proven class-wide detrimental reliance by clear and convincing evidence sufficient to prove fraud.

D. Relief[26]

1. Actual Damages[27]

a. Damages Award

For the reasons set forth above, Cline has established class-wide liability, and Sunoco must pay compound interest. Further, the Court has concluded that the PRSA applies a 12 percent interest rate to unpaid proceeds by default, and that Sunoco bears the burden of proving when a 6 percent interest rate applies. Unfortunately for Sunoco, it has failed to meet its burden of proving that 6 percent interest applies to any of the late payments.

Sunoco repeatedly emphasized that its own data cannot reliably establish why a payment was late. (*See, e.g.*, Trial Tr. vol. 1, 222:2-7, 223:17-25.) Epperson opined that the codes were "simply a crude surrogate" for identifying payments made due to unmarketable title. (Trial Tr. vol. 4, 715:5.) He also agreed that none "of [Sunoco's] codes provide a definitively accurate determination of marketability or unmarketability without doing a more elaborate search of Sunoco's records and potentially even public records." (*Id.* 718:9-14.) Further, at trial, Koelling explained that the ability to locate an interest owner does not mean that the owner has marketable title. (Trial Tr. vol 1, 133:23-25.) Under that reasoning, the inverse is also true—being unable to

[26] Based on the post-trial briefs and closing arguments, Cline no longer seeks equitable relief if the Court awards actual and punitive damages. (*See, e.g.*, Dk. No. 272, at 53.) Because the Court will award those damages, it will not award an accounting, disgorgement, or an injunction.

[27] Sunoco argues that "Cline . . . concedes that the actual class damages claimed at trial ($74,763,113) should be reduced by $8,033,00.60 for the 'undivided' category of unclaimed funds paid to the states and by $5,790,028 based on the Krause identification of payments associated with Epperson's 'unmarketable' suspense codes." (Dk. No. 279, at 28.) Cline, however, only agrees to reduce the damages award by those amounts if the Court concludes that Sunoco met its burden of proving unmarketable title at trial. (*See* Closing Arg. Tr. 16:23 to 17:2; *see also* Dk. No. 272, at 20.) Accordingly, the Court will consider whether Sunoco has met its burden of proving marketable title as to those two figures.

locate an interest owner does not mean that that owner has unmarketable title. Indeed, Sunoco has not proffered—nor could the Court find—any authority holding that a company's inability to locate or identify an owner makes the title to that owner's interest unmarketable per se.

In sum, Sunoco has failed to establish by a preponderance of the evidence that Sunoco withheld any of the late payments at issue due to unmarketable title. Accordingly, 12 percent interest applies to all late payments in this case.[28]

b. Fluid Damages

Relying primarily on *Eisen v. Carlisle & Jacquelin*,[29] Sunoco contends that the presence of unidentified class members deprives Sunoco of its due process rights, making a damages award unconstitutional. (Dk. No. 274, at 49-50.) As noted above, Cline has offered evidence that questions whether many of these individuals truly cannot be located. In any event, Sunoco has misplaced its reliance on *Eisen*.

[28] The Court construes Sunoco's argument that the class did not mitigate its damages because owners failed to provide Sunoco with updated contact information as a challenge to the Court's class certification decision. To the extent that Sunoco also raises this argument as a challenge to liability and damages, that argument ignores that the PRSA requires Sunoco to pay interest regardless of the reason for the late payment. *See* § 570.10(D). For that same reason, the argument that a class member has waived interest by preventing payment also fails. Further, the Court rejects Sunoco's argument that some class members may have waived interest by contract. First, Sunoco did not prove by a preponderance of the evidence that the class members were parties to contracts waiving the interest requirement. Second, as explained above, the Court concludes that a 12 percent interest rate applies to all late payments in this case. In *Tulsa Energy*, the Tenth Circuit held that parties cannot waive the 12 percent interest rate for public policy reasons. 111 F.3d at 90. Although Sunoco argues that the Oklahoma Supreme Court later concluded that PRSA claims are contractual, *see Purcell v. Santa Fe Minerals*, 961 P.2d 188, 193 (Okla. 1998)—implying that a party can now waive that interest—neither the Oklahoma Supreme Court nor the Tenth Circuit have cast doubt on the holding in *Tulsa Energy*. Thus, pursuant to *Tulsa Energy*, the parties cannot waive the 12 percent interest rate requirement.

[29] 479 F.2d 1005 (2d Cir. 1973), *vacated on other grounds*, 417 U.S. 156 (1974).

Eisen involved a six-million-member class of individuals throughout the world who bought or sold odd lots on the New York Stock Exchange from 1962 through 1966. Millions of unidentified class members would receive notice by publication through extensive efforts. After several appeals, the district judge substituted individual claimants for "the class as a whole." *Eisen*, 479 F.2d at 1010. Under the district court's plan, after the defendants distributed the damages award to the court, counsel would continue to publish notices soliciting claims. Importantly, the U.S. Court of Appeals for the Second Circuit suspected that few individuals would ever be identified or file claims, and the court could not discern how the district court expected to disburse the remainder of the "huge residue." *Id.* at 1010-11. The Court further noted that "the expenses of giving the notices required by . . . Rule 23 and the general costs of administration of the action would exceed the amount due to the few members of the class who filed claims and the individual members of the class would get nothing." *Id.* at 1018.

This case does not present the same manageability problems at issue in *Eisen*. The Court has not substituted individual claimants with the class as a whole. Nor has Ley's methodology simply aggregated damages into one lump payment without considering Sunoco's liability to every class member. Rather, Ley has calculated individual damages through a standard methodology, and Sunoco has had the opportunity to rebut those calculations. *See McLaughlin v. Am. Tobacco Co.*, 522 F.3d 215, 232 (2d Cir. 2008), *abrogated on other grounds by Bridge v. Phx. Bond & Indem. Co.*, 553 U.S. 639 (2008) (explaining the right to raise individual defenses against the class members "does not mean that defendants are constitutionally entitled to compel a parade of individual plaintiffs to establish damages" (quotations omitted)). Moreover, this action is far from "hopelessly unmanageable" due to the unidentified class members. *Eisen*, 479 F.2d at 1010. To

the extent that Cline cannot identify the owner owed the funds, Cline need only send that member's portion of the damages to the same place Sunoco remitted the underlying unclaimed funds.

Accordingly, recovery in this case does not "mask the prevalence of individual issues [such that] it is an impermissible affront to defendants' due process rights." *McLaughlin*, 522 F.3d at 232.

2. Punitive Damages[30]

Cline must clear two hurdles to receive punitive damages: first, Cline must show that Sunoco's conduct meets the standard set forth in the Energy Litigation Reform Act ("ELRA"), Okla. Stat. tit. 52, § 903; and second, Cline must show that Sunoco's conduct meets the requirements set forth in Oklahoma's punitive damages statute, Okla. Stat. tit. 23, § 9.1.

a. ELRA

Under the ELRA, the PRSA "provide[s] the exclusive remedy to a person entitled to proceeds from production for failure of a holder to pay the proceeds within the time periods required for payment." § 903. A plaintiff may recover punitive damages, however, if the Court determines

> upon clear and convincing evidence that the holder who failed to pay such proceeds did so with the actual, knowing[,] and willful intent: (a) to deceive the person to whom the proceeds were due, or (b) to deprive proceeds from the person the holder knows, or is aware, is legally entitled thereto.

Id. Cline, therefore, must first show that Sunoco's conduct overcomes the ELRA's bar to punitive damages.

[30] In its motion to dismiss, Sunoco argued that Cline waived his claim to punitive damages by failing to include those damages in his initial disclosures. (Dk. No. 117, at 3, 11-12.) Sunoco never moved to strike that request.

As an initial matter, Sunoco argues that the ELRA only applies to claims for "proceeds," not "interest." But "it is the failure to timely pay 'proceeds' that leads to the recovery of 'interest.'" *Cockerell Oil Props., Ltd v. Unit Petroleum Co.*, No. CIV-16-135, 2020 WL 974875, at *6 (E.D. Okla. Feb. 28, 2020), *modified on other grounds on reconsideration*, 2020 WL 2110904. Thus, the ELRA does not bar Cline's claim in that respect.

Next, the Court concludes that Sunoco acted with "the actual, knowing[,] and willful intent: . . . to deprive proceeds from the person the holder knows, or is aware, is legally entitled thereto." § 903. Sunoco says that it had a good faith belief that it did not have to pay interest automatically based in large part on industry practice. (*See* Dk. No. 274, at 46.)

As thousands of mothers have told their children, the fact that everyone does something does not make it right. Here, an industry (apparently supported by its lawyers) decided that it owes interest that it never has to pay. This myopic group-think does not excuse keeping millions of dollars of other people's money.

At trial, Koelling confirmed that Sunoco knew that it owed interest to royalty owners for the late payments. (Trial Tr. vol. 1, 82:20 to 85:19.) Sunoco also admitted that it generally waited for owners to ask for that interest rather than pay the interest automatically. (*Id.* 78:6-9, 82:20 to 83:23.) Further, Cline introduced other evidence, such as emails, that established that Sunoco is aware of its legal obligation to pay interest and its intent to keep the interest absent a request, thereby depriving owners of the interest Sunoco owed them. (*See, e.g.*, Pl.'s Ex. 38.)

Thus, Cline proved by clear and convincing evidence that Sunoco knew it owed interest payments and intentionally withheld that interest until—and unless—the owner finally asked for the interest. Accordingly, the ELRA allows punitive damages in this case.

b. Oklahoma's Punitive Damages Statute[31]

Cline seeks an award of punitive damages equal to twice the class' actual damages, or in the alternative, to the amount of the class' actual damages.

When the factfinder finds by clear and convincing evidence that the defendant acted with *reckless disregard* for the rights of others, the Court may award punitive damages equal to the amount of actual damages awarded. Okla. Stat. tit. 23, § 9.1(B). Reckless disregard requires the plaintiff to prove that the defendant "was either aware, or did not care, that there was a substantial and unnecessary risk that [its] conduct would cause serious injury to others." *Beavers v. Victorian*, 38 F. Supp. 3d 1260, 1273-74 (W.D. Okla. 2014) (quoting Okla. Unif. Civil Jury Instr. 5.6).

When the factfinder finds by clear and convincing evidence that the defendant acted intentionally with *malice* towards others, the Court may award twice the amount of actual damages. *Id.* § 9.1(C). Malice "requires that the action complained of be actuated by ill will or hatred and may be inferred from a willful action in reckless or wanton disregard for the rights of another." *Chavez v. Sears, Roebuck & Co.*, 525 F.2d 827, 830 (10th Cir. 1975).[32]

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[31] Sunoco argues that Cline cannot recover for punitive damages pursuant to Oklahoma's punitive damages statute because the punitive damages statute only applies to actions "for the breach of an obligation not arising from contract." § 9.1(A). Sunoco says that PRSA claims are contractual in nature. The cases Sunoco relies on considered PRSA claims as contractual for the purposes of determining (1) the statute of limitations, *Purcell*, 961 P.2d at 193, and (2) whether a party owed owners interest on a settlement payment, *see Krug*, 362 P.3d at 210-13 (concluding that the PRSA was inapplicable to that case). Neither case considered whether punitive damages are available for the type of claim at issue here, and the ELRA specifically contemplates an award of punitive damages if the defendant's conduct meets its threshold requirements. *See* § 903. "Clearly, an exception exists under the [ELRA] for the availability of a punitive damage claim, should [the plaintiff] make the appropriate showing," *Cockerell Oil Props.*, 2020 WL 974875, at *6. Accordingly, § 9.1 does not bar recovery for punitive damages.

[32] *See Hamilton v. Amwar Petroleum Co.*, 769 P.2d 146, 149 (Okla. 1989) ("Showings necessary for a punitive damage award require a higher standard of culpability, i.e., fraud[,] oppression[,] or malice which is accompanied with some evil intent or recklessly wanton conduct as is deemed its equivalent in the law.").

> To determine the amount of punitive damages to award, the Court must consider:
>
> 1. The seriousness of the hazard to the public arising from the defendant's misconduct;
> 2. The profitability of the misconduct to the defendant;
> 3. The duration of the misconduct and any concealment of it;
> 4. The degree of the defendant's awareness of the hazard and of its excessiveness;
> 5. The attitude and conduct of the defendant upon discovery of the misconduct or hazard;
> 6. In the case of a defendant which is a corporation or other entity, the number and level of employees involved in causing or concealing the misconduct; and
> 7. The financial condition of the defendant.

§ 9.1(A).

Seriousness and profitability of the misconduct. The public has suffered an enormous loss in this case. Sunoco urges the Court to consider that it pays almost all proceeds either early or on time. But as of December 16, 2019, Sunoco had withheld more than $74 million on more than 1.5 million late payments. (Trial Tr. vol. 3, 554:2-12, 572:5; Pl.'s Ex. 454.) Moreover, Sunoco withheld payments from over 50,000 class members. (Trial Tr. vol. 3, 568:21 to 569:1.) Despite that large number of class members and late payments, Sunoco does not get many requests for interest each year. (*See, e.g.*, Trial Tr. vol. 1, 83:21-24; Holland. Dep. 33:5-15; Pl.'s Ex. 62.) Thus, Sunoco has enjoyed an enormous benefit by paying owners late and then withholding interest on those late payments—particularly significant in light of the purpose of § 570.10(D). *See Krug*, 362 P.3d at 214.

Duration of the misconduct, concealment, and awareness. Sunoco has withheld interest until an owner asks for it for the entire class period. (*See, e.g.*, Trial Tr. vol. 1, 78:10-13, 82:20-23; Pl.'s Ex. 43.) For the reasons set forth above, the Court concludes that Sunoco did not actively conceal that it failed to pay interest to interest owners. But Sunoco knew that it owed interest on late proceeds and failed to make any effort to identify the late payments and pay the interest owed.

(Trial Tr. vol. 1, 79:4-20.) Instead, Sunoco generally waited for a demand for payment before paying interest. (Trial Tr. vol. 1, 84:15 to 85:19, 116:3-6; Pl.'s Ex. 339.)

Attitude and conduct of Sunoco after discovery. Outside of litigation, Sunoco still has not tried to calculate the interest it owes on late payments or identify every late payment it has made in Oklahoma. (Trial Tr. vol. 1, 79:4-20.) Further, when this Court ruled that interest was due at the same time as the late payment, Sunoco decided to "get out of the business" of paying royalty proceeds altogether. (*Id.* 74:10-17.)

Number and level of employees involved. Sunoco did not formally train its employees on the PRSA requirements; they all received on-the-job training. (*Id.* 97:19 to 98:12; Holland Dep. 67:1-11.) Company-wide, Sunoco generally does not pay interest unless someone asks for it. (Trial Tr. vol. 1, 82:20-23.) In limited or "unusual" circumstances, Sunoco will pay interest without a request. (*Id.* 83:8-11.)

Financial Condition. Sunoco's parent company is worth approximately $30 billion.[33] (Pl.'s Ex. 440, at 169.) In Sunoco's view, the unpaid interest "was never a significant dollar amount to [Sunoco]. It was never something where [Sunoco was] going to make a fortune not paying the interest." (Trial Tr. vol. 1, 121:9-11.)

Sunoco's conduct probably reflects malice required for a punitive damages award of double the amount of compensatory damages under § 9.1(C). Malice here is demonstrated by a willful action in reckless and wanton disregard of the rights of others—specifically keeping other people's money. Nevertheless, the Court is reluctant to impose $150 million dollars in punitive damages. Generally, Sunoco does a good job of paying proceeds to owners on time, at a better

[33] During discovery, Sunoco told Cline to look at the net worth of ETP to determine Sunoco's net worth. (Trial Tr. vol. 5, 948:25 to 951:6.)

rate than the petroleum industry as a whole. While it bungled its system for paying interest on late payments, an award of double the amount of compensatory damages goes a bit too far.

Sunoco's conduct, however, certainly amounts to a reckless disregard of the class members' rights. *See* § 9.1(B). Sunoco knew that it owed interest on late payments, but it made no effort to identify those payments to determine the interest it owed—much less pay that interest. (Trial Tr. vol. 1, 79:4-20.) Absent this litigation, Sunoco would have deprived the class members of millions of dollars of interest indefinitely. Thus, Sunoco acted with a reckless disregard to a risk of serious harm to the class that supports an award of punitive damages. *See* § 9.1(B).

Furthermore, this award advances "the primary purpose of punitive damages"—punishing the wrongdoer and deterring similar conduct in the future. *Thiry v. Armstrong World Indus.*, 661 P.2d 515, 517 (Okla. 1983). Sunoco has had these business practices in place for decades yet is only being held accountable for late payments made on or after July 7, 2012. Nevertheless, although Sunoco may have assumed that "people didn't care that much about" more than seventy million dollars in withheld interest payments (Trial Tr. vol. 1, 93:14-19), this punitive damages award will adequately punish Sunoco for failing to comply with § 570.10(D) during the class period. Further, such an award will deter Sunoco—and companies like it—from adopting "[p]erverse and absurd statutory interpretations . . . in the name of literalism" that perpetuate the abuse that the PRSA was designed to correct. *Twisdale v. Snow*, 325 F. 3d 950, 953 (7th Cir. 2003).

Thus, pursuant to § 9.1(B), the Court will award punitive damages of $75 million dollars, an amount approximately equal to the class' actual damages.[34]

[34] At this time, the plaintiff has proved damages of just under $75 million. With interest added until the date of this Opinion, the Court expects the actual damages amount will exceed $75 million.

VI. CONCLUSION

For the foregoing reasons, the Court will grant the motion to strike Krause as an expert and will sustain Cline's objections to Krause's testimony at trial. The Court will enter judgment against Sunoco as to Count One and will award the class: (1) actual damages in the amount of the interest owed on the late payments identified by Ley, amounting to $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 Opinion and Order, subject to modification based on the updated exclusion requests[35]; and (2) punitive damages in the amount of $75,000,000. The Court will not enter judgment against Sunoco as to Count Two and will not award any equitable relief. The Court will overrule the remaining objections to the exhibits, witnesses, depositions, and other evidence.

The Court will issue an appropriate Order.

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

Date: 17 August 2020
Richmond, VA

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

[35] As explained earlier, the Court will withhold entering judgment pursuant to Federal Rule of Civil Procedure 58 until counsel provides the updated damages calculations to the Court. This Opinion and Order, however, will serve as the judgment for the purposes of calculating the final interest due.