IN THE
SUPREME COURT OF THE UNITED STATES

No. 21A188

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

Applicants,

v.

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

Respondent.

REPLY IN SUPPORT OF 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:

Sunoco's application requests only the modest relief of maintaining the status quo for a few more weeks while this Court considers Sunoco's petition by pausing Cline's aggressive efforts to collect a $155 million damages award that is the subject of Sunoco's pending petition and will not be executable at all if this Court grants and reverses. Sunoco has been forced to seek that relief because the Tenth Circuit bizarrely deviated from the well-established practice of allowing protective notices of appeal and refused to exercise its unquestioned jurisdiction and virtually unflagging obligation to determine its own jurisdiction. Instead, the Tenth Circuit punished Sunoco for raising its good-faith concern about the court's appellate jurisdiction by arguing that a lack of finality was just one of the many flaws with the district court's orders. Making matters worse, the district court and the Tenth Circuit have given Cline a green light to proceed full speed ahead with his highly disruptive execution efforts on the orders that are the subject of Sunoco's pending petition even though those efforts will irreparably injure Sunoco's operations before this Court can even resolve the petition. Those extraordinary circumstances readily justify extraordinary intervention and modest relief to preserve the status quo.

Rather than confront the realities of the situation, Cline chides Sunoco for its "excited rhetoric" and insists that this is all "a problem of its own making." That takes a remarkable bit of chutzpah coming from a party that just told the district court that the mere filing of this application is affront to "how justice [] works in this country" (and somehow equivalent to "prior restraint on free speech" to boot). *See*

Ex.B.at.1-2. In reality, it is Cline who manufactured an emergency out of a situation that involves no risk of non-payment, as he refused to pause execution efforts for even a few weeks notwithstanding his ready admission that Sunoco is of course good for the money if and when the time to pay comes. Indeed, Cline started trying to lay the groundwork for contempt proceedings *within 48 hours* of Sunoco's efforts to comply with the magistrate judge's radically overbroad asset discovery order while preserving some semblance of objections that the district court seems content to effectively pocket-veto. And while Cline promises *this* Court that he is many months away from collecting anything, he told the district court mere days ago that he is not willing to forestall his execution efforts for even one week, and he is actively demanding that Sunoco supply everything from documentation of its oil reserves to its *customers*' bank account information to facilitate those efforts, even though Sunoco has already supplied the details of well over $155 million in assets.

Whether Cline will take his time distributing assets to the class is therefore largely beside the point, as there can be no serious doubt that he intends to deploy the execution process to inflict maximum disruption on Sunoco's business operations right now. Indeed, if that were not his plan, then he would have agreed to hold off for the few weeks that it will take this Court to resolve Sunoco's petition, as he all but concedes that neither he nor the class would suffer any conceivable injury from maintaining the status quo that little bit longer. It is thus Cline himself that has forced Sunoco (and this Court) into this position—and all as part of an unapologetic effort to preclude Sunoco from *ever* appealing a nine-figure class-action damages

award on the merits, simply because Sunoco had the temerity to abide by its obligation to bring its finality/jurisdictional concerns to the Tenth Circuit's attention. That is the only true "affront to justice" in this case, and this Court should not consign Sunoco to suffering irreparable injury before the Court can even decide whether the serious issues that Sunoco's petition for certiorari presents warrant relief.

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

There is at least "a fair prospect" that this Court will grant Sunoco's petition and reverse, *Hollingsworth v. Perry*, 558 U.S. 183, 190 (2010), as the Tenth Circuit's decision not only is profoundly wrong and grossly unfair, but poses a direct threat to the well-established practice of protective appeals. The practical consequences of the decision below are enormous. One need look no further than Cline's ongoing and increasingly aggressive efforts to execute a $155 million class-action damages award that Sunoco believes in good faith is neither final nor executable, and that no appellate court has recognized as final, let alone affirmed on the merits. There is a good reason Cline does not wish to "dwell" on the merits of Sunoco's petition. Opp.13: He has no real defense for the Tenth Circuit's stark departure from a practice that is essential to the proper functioning of appellate review. Simply put, when a primary flaw in a district court decision that purports to be final is that it is not in fact final (and thus neither properly appealable nor executable), there must be a way for a party to secure appellate review without sacrificing its finality objection. Protective notices of appeal supply the solution—everywhere but the Tenth Circuit.

Cline tries to defend the Tenth Circuit's departure from standard practice as an "admittedly strict" but "technically sound" and "unremarkable" product of a "mundane application of established briefing rules." Opp.11-12. But there is nothing technically sound about an approach that compels appellants to affirmatively abandon the very finality objection that the appeal is designed to test, on pain of forever forfeiting their appellate rights. The whole point of the protective-appeal doctrine is to provide a mechanism for appellants to obtain appellate review of a decision that is erroneous precisely because it incorrectly purports to be final and ripe for execution. Protective notices of appeal allow appellate courts to correct such erroneous decisions (and avoid the consequences of premature execution efforts) by invoking the court's "virtually unflagging obligation," *Mata v. Lynch*, 576 U.S. 143, 150 (2015), to exercise its "jurisdiction to determine its own jurisdiction," *United States v. Ruiz,* 536 U.S. 622, 628 (2002). Rather than being "technically sound," abandoning that practice is practically disastrous, as this case well illustrates. Indeed, protective notices of appeal are every bit as essential as an emergency docket to the proper functioning of the federal appellate courts. They provide a solution to the recurring problem of judgments that are erroneous precisely because they are non-final; they keep courts within their constitutionally and statutorily prescribed jurisdictional limits; and they guard against the risk of orders escaping appellate review when the parties that want to appeal them have good-faith concerns about their appealability.

A "mundane application" of the rules governing protective appeals thus would have led the Tenth Circuit to do what any other court would have done with Sunoco's protective appeal—indeed, what the Tenth Circuit itself did with Sunoco's first protective appeal: resolve the parties' finality dispute one way or the other. Had the Tenth Circuit simply followed that settled course, Sunoco's merits appeal would have been resolved long ago, and Sunoco would not be here today left with nowhere to turn but this Court to halt remarkably disruptive efforts to collect a nine-figure class-action money damages award that both Cline and the Tenth Circuit seem not just content, but determined, to preclude Sunoco from ever appealing. In short, it is the Tenth Circuit's failure to resolve Sunoco's protective appeal (plus Cline's and the lower courts' refusal to pay this Court the courtesy of hitting pause for even a few weeks on execution efforts that demand not the slightest bit of urgency) that led directly to the need to seek emergency relief to preserve *this* Court's ability (should it be inclined) to grant Sunoco effective relief on its petition before irreparable injury has already come to pass.

Instead of coming to grips with the reality that the Tenth Circuit's decision will force parties in Sunoco's position to choose between misrepresenting their views on finality and forfeiting their appellate rights, Cline rehashes his argument that this is all "a problem of [Sunoco's] own making" because Sunoco made some sort of "tactical choice to deny finality." Opp.19. But Cline once again fails to identify any conceivable tactical benefit Sunoco could have obtained by purportedly "repackaging [] its merits-based arguments as jurisdictional impediments." *Id.* What Sunoco wanted more

than anything was to preserve its right to appellate review of a massive class-action damages verdict. That is why it filed protective appeals of orders it did not believe were final under Tenth Circuit precedent, lest it be deemed to have waited too long to appeal. If Sunoco were really just seeking "tactical" advantage, it could have maximized its chances for a ruling on its merits arguments by presenting them alone, and keeping its jurisdictional concerns from the Tenth Circuit. That approach would have been both "tactical" and in violation of Sunoco's and its lawyers' obligations to the court. Instead, Sunoco informed the court of its good-faith belief that its own appeals were premature, in an effort to abide by its duty of candor to the court while preserving its right to a single bite at the appellate apple. The decision below effectively punishes Sunoco for its candor. Moreover, Sunoco fully briefed both the jurisdictional issues *and* the merits issues for the Tenth Circuit; there was no effort to hide the ball or "repackage" jurisdictional objections as merits objections or vice-versa.

In short, Sunoco presented its jurisdictional concerns out of obligation to the court, not as some clever stratagem to plead itself out of court. Nothing in "briefing rules" or anything else forced Sunoco to abandon those concerns to preserve its appellate rights. There is at least a "fair prospect" that this Court will reverse the Tenth Circuit's contrary conclusion and restore the critical role that protective appeals play in ensuring that parties need not choose between their appellate rights and their obligation to help the federal courts stay within their prescribed jurisdictional limits.

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

Sunoco has shown more than "a likelihood," *Hollingsworth*, 558 U.S. at 190, that, in the absence of a stay, it will suffer irreparable harm from Cline's efforts to execute a $155 million damages award should this Court ultimately grant Sunoco's petition and vacate or reverse the Tenth Circuit's decision dismissing Sunoco's appeal. Cline does not and cannot deny that premature execution is a classic "irreparable injury" when there is a significant risk that recovery after the fact would be impossible. *Forgay v. Conrad*, 47 U.S. (6 How.) 201, 204 (1848). Instead, he just insists that there is no such risk here—not because $155 million could actually be recovered from 53,000 class members once distributed (he nowhere denies the impossibility of that), but because he promises that "Sunoco is a long way from losing possession of any property." Opp.15.

That claim is markedly inconsistent with what Cline has told the district court, which is that the most he was willing to offer *as a concession* during the parties' (unsuccessful) efforts to negotiate a resolution to the now-ongoing asset discovery proceedings was to delay collection efforts "until after the September 12 hearing" at which Sunoco has been ordered to provide a witness to supply additional information regarding its assets and liabilities. Opp.Ex.D.at.3. And Cline ultimately did not even agree to that paltry accommodation, instead opting to run to the district court complaining about the information that Sunoco has *already* produced less than 48 hours after Sunoco provided it. *Id.* By his own telling, then, Cline is ready and willing to start trying to execute on any and all information he obtains *today*, and does not

have to wait for "the magistrate judge [to] issue findings and recommendations" on whatever additional information he is able to obtain from the September 12 hearing. Opp.15.

Indeed, Cline told the district court months ago that there was "nothing" to "prevent" him "from collecting" even then save his professed desire "to be careful to identify the correct assets." Dkt.378.at.5. And while Cline blithely suggests that Sunoco may object to whatever findings and recommendations may come from the September 12 hearing, that is rather rich given that the district court allowed the August 31 deadline for sweeping document production that the magistrate judge ordered to come and go without ever ruling on Sunoco's objections to that order (even as it found time to issue an order refusing to stay that deadline for even a few days to let this Court resolve this application, *see* Ex.C). In short, it is Cline and the district court that are treating asset discovery proceedings as if there were some sort of dire emergency here. Indeed, Cline could eliminate all the urgency simply by telling this Court that he will stand down on all execution efforts until after this Court resolves Sunoco's petition. The fact that Cline has declined to make that promise to this Court—while affirmatively telling the district court and the magistrate judge that execution should proceed immediately—speaks volumes.

Moreover, Cline has literally nothing to say about the irreparable harm that would result from the disruptive means through which he apparently plans to proceed with execution. *See* Sunoco.Appl.25. From the way he portrays things before this Court, one would think all he has sought is the details of a few bank accounts from

which he can collect cash several months down the road. Yet before the district court, he has already complained that Sunoco failed to identify all of its "assets (both personal and real)," including all of its "oil and NGL volumes," all "month-end inventories by general location (in Oklahoma)," all "short term bond assets[,] long term bonds having maturities longer than one year[, and] publicly traded securities"; and all "liens, mortgages, or similar documents which burden any of Defendants' physical assets in Oklahoma." Opp.Ex.D.at.4-5. Indeed, Cline has even gone so far as to complain that Sunoco redacted details regarding "the source" of payments *into* its accounts—in other words, details about Sunoco's *customers*' identities and bank accounts. *Id.* at 4. Setting aside the problem that this highly sensitive information is protected by federal law, *see* Dkt. 377, at 8 & Ex. 1; 49 U.S.C. §16103, Cline cannot even begin to explain how he could possibly have a basis to "garnish" the assets of Sunoco's customers. And on top of all that, Cline is demanding all of that information now even though he concedes that he has no doubt that Sunoco will be able to pay the damages award if and when the time comes. *Id.* In fact, Sunoco has already provided details on well in excess of $155 million in assets, in addition to an executed parent guarantee, yet Cline still demands more.

Cline offers no explanation for why he even needs any of that voluminous information, let alone why he needs it before this Court can even act on Sunoco's petition at the end of this month. That is because the explanation is both obvious and indefensible: This process has never been about merely collecting money. It is about making the execution process as disruptive to Sunoco's operations as possible,

threatening everything from imposing liens (which he admits he has already started doing, *see* Opp.3.n.1) to interfering with transactions with third parties to seizing physical assets to try to get Sunoco to throw in the towel before the appellate process can play out. Indeed, if that were not what this was about, then Cline would simply agree to put things on hold until the end of this month, as there can be no conceivable harm to having to wait just a few more weeks at this point. All of that makes Cline's assurances that he will not start *distributing* funds for several more months rather beside the point, as the business injuries he is using the execution process to inflict are irreparable in their own right. *See, e.g.*, *Forgay*, 47 U.S. (6 How.) at 204; *Husky Ventures, Inc. v. B55 Invs., Ltd.*, 911 F.3d 1000, 1012-13 (10th Cir. 2018).

Unable to reconcile his representation to this Court with his hair-on-fire tactics in the district court, Cline tries to shift the blame. He first faults Sunoco for not filing this application until after its petition was fully briefed. Opp.5. But that ignores the procedural history of this case and Sunoco's efforts to exhaust all alternatives before troubling this Court. When Sunoco filed its petition, execution had been temporarily stayed by the district court, so there was no relief Sunoco could have sought from this Court. Sunoco.Appl.11. As soon as that stay expired, Sunoco asked the district court to extend it. *Id.* As soon as the court denied that request, Sunoco filed a stay application with the Tenth Circuit—which the Tenth Circuit proceeded to sit on for two months. When the magistrate ordered asset discovery to proceed notwithstanding the pendency of that motion, Sunoco promptly asked the district court in its objections to that order to at least stay proceedings until the Tenth Circuit

could rule. *See* Dkt.431. When the district court took no immediate action on that request, Sunoco was finally forced to prompt a ruling from the Tenth Circuit by asking for an administrative stay of the fast-approaching asset discovery deadlines. *See* CA10-7018.08.25.2022.Motion. Sunoco then filed its application to this Court a mere two business days after the Tenth Circuit denied both a stay and even a modest reprieve to give Sunoco time to seek that relief. Cline does not and cannot explain how Sunoco could have proceeded any more expeditiously given that this Court's rules require parties to seek relief from the lower courts before resorting to this Court. *See* S. Ct. R. 23.3.

Cline next faults Sunoco for not posting a supersedeas bond. Opp.19. Again, that ignores the basic problem at the heart of this case: Rule 62 requires a "judgment," Fed. R. Civ. P. 62(b), which means an "order from which an appeal lies," Fed. R. Civ. P. 54(a), and there is not and has not ever been a final judgment for Sunoco to bond or appeal. Indeed, the only order ever even designated a "final judgment" is the district court's August 27, 2020 "Judgment Order," which the Tenth Circuit unambiguously held was *not* a final judgment, Sunoco.Pet.App.13. Moreover, Cline conspicuously does not suggest that he would be holding off on *collecting* if Sunoco had been able to post a bond. He just faults Sunoco for not making his efforts easier by essentially handing over a pile a cash that he could collect before Sunoco has been able to get its one bite at the appellate apple—which, if he had his druthers, he would have already done nearly a year ago, before Sunoco could even file its petition for certiorari seeking review of the Tenth Circuit's extraordinary decision

punishing Sunoco for bringing jurisdictional concerns to its attention. *See* Dkt.360. Sunoco can hardly be faulted for not going out of its way to facilitate Cline's premature efforts to collect a $155 million damages award that it does not believe is a final judgment and that it has never been able to test on appeal.

Finally, Cline insists that Sunoco is "holding money that does not belong to it" because it did not "dispute liability" in its merits briefing in the appeal that the Tenth Circuit dismissed. Opp.19. Setting aside the problem that Sunoco very much disputed class certification, *see* CA10.20-7064.03.03.21.Appellant.Br.at.74-75, that argument presupposes a valid, final, and executable damages award, which is the precise question that has never been resolved. At any rate, Cline offers zero authority for the proposition that the balance of equities supports allowing a class to collect a $155 million damages award in full before it can even be tested on appeal just because some as-yet-unknown portion of that award may be upheld. In reality, the public interest plainly favors ensuring that massive damages awards are not executed until they have been reduced to final judgment and affirmed on appeal, not facilitating efforts to shield them from any appellate review at all.

CONCLUSION

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

Respectfully submitted,

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September 7, 2022

EXHIBIT A

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,

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EXHIBIT B

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 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. 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 D

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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DATED: September 2, 2022.

/s/ Bradley E. Beckworth
Bradley E. Beckworth