

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

PERRY CLINE, on behalf of)
himself and all others)
similarly situated,)
)
Plaintiff,)
)
v.)
)
SUNOCO, INC. (R&M))
and SUNOCO PARTNERS)
MARKETING & TERMINALS, L.P.,)
)
Defendants.)

Case No. 17-cv-313-JAG

**CLASS COUNSEL’S MEMORANDUM OF LAW IN SUPPORT OF MOTION
FOR APPROVAL OF REIMBURSEMENT OF LITIGATION EXPENSES AND
ADMINISTRATION, NOTICE AND DISTRIBUTION COSTS**

I. INTRODUCTION

The Court is well aware of the factual, procedural and appellate background of this case. Therefore, in the interest of brevity, Class Counsel will not recite the background of this litigation again. Instead, Class Counsel respectfully refer the Court to the trial transcript, the complete trial and appellate record in this case to date, the Motion and Memorandum in Support of Motion for Approval of Attorneys’ Fees and exhibits thereto, the relevant pleadings on file, and any other matters of which the Court may take judicial notice, all of which are incorporated by reference as if set forth fully herein. *See, e.g., United States v. Ahidley*, 486 F.3d 1184, 1192 n.5 (10th Cir. 2007); *St. Louis Baptist Temple, Inc. v. FDIC*, 605 F.2d 1169, 1172 (10th Cir. 1979).

In sum, Class Counsel obtained a Judgment for the benefit of the Certified Class, which consists of: (1) \$80,691,486.00 in actual damages, (2) \$75,000,000.00 in punitive damages, plus (3) post-judgment interest. The actual damages award represents approximately **100%** of the Class’s actual damages during the Relevant Time Period. Defendants already deposited these

amounts into the Judgment Common Fund, which is earning interest. As of the date of this filing, the total amount, inclusive of interest, in the Judgment Common Fund is now \$156,893,580.59. *See* Ex. 21 at ¶13.¹

Pursuant to the Court’s Order (Dkt. No. 610), Class Counsel caused the “Notice of Motion for Attorney’s Fees From Judgment Fund Pursuant to Rule 23(h)” to be issued on January 13, 2023. *Id.* at ¶5. Class Counsel also caused the publication notice to be published on January 19, 2023 in six newspapers. *Id.* at ¶8. The Notices stated that the total amount of Litigation Expenses sought would not exceed \$850,000.00; and that the total amount of Administration, Notice and Distribution Costs sought would not exceed \$650,000.00. *Id.* at Exs. A & B.

Class Counsel now respectfully request reimbursement of the following amounts from the Judgment Common Fund:

1. \$719,430.29 in past Litigation Expenses;
2. Up to \$130,569.71 in future Litigation Expenses (such that the aggregate of past and future Litigation Expenses will not exceed a maximum of \$850,000.00 as noticed). Class Counsel will apply for reimbursement from these future Litigation Expenses periodically as they are incurred;
3. \$140,480.28 in past Administration, Notice and Distribution Costs; and
4. Up to \$509,519.72 in future Administration, Notice and Distribution Costs (such that the aggregate of past and future Administration, Notice and Distribution Expenses will not exceed a maximum of \$650,000.00 as noticed). Class Counsel will apply for reimbursement from these future Administration, Notice and Distribution Costs periodically as they are incurred.

For the reasons set forth below, these requests are fair, reasonable, and Class Counsel respectfully request they be granted.

¹ References to “Ex. ___” are to the exhibits attached to Class Counsel’s Motion for Approval of Attorneys’ Fees filed contemporaneously herewith.

II. ARGUMENT

A. The Court May Award Expenses From The Judgment Fund

Class Counsel have recovered a total of \$156,893,580.59 for the benefit of the Certified Class, which consists of the Final Judgment amount and all interest accrued to date. Federal courts—including those in Oklahoma—have long recognized that, under the “common fund rule,” a party who creates, preserves or increases the value of a fund may be reimbursed for litigation expenses incurred. *See* FED. R. CIV. P. 23(h) (“In a certified class action, the court may award ... nontaxable costs that are authorized by law or by the parties’ agreement.”); *Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980) (noting underlying purpose of common fund doctrine is to place cost of litigation upon persons who benefit from the lawsuit); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (same); *see also Kernan v. Casillas Operating, LLC*, No. CIV-18-00107-JD (W.D. Okla. Jan. 3, 2023) (Dkt. No. 123 at ¶6); *Allen v. Apache Corp.*, No. 22-cv-00063-JAR (E.D. Okla. Nov. 16, 2022) (Dkt. No. 38 at ¶6); *Rhea v. Apache Corp.*, No. 14-cv-00433-JH (E.D. Okla. June 23, 2022) (Dkt. No. 506 at ¶4); *Chieftain Royalty Co. v. BP America Prod. Co.*, No. 18-CV-54-JFH (N.D. Okla. Mar. 2, 2022) (Dkt. No. 181 at ¶6); *Miller v. DCP Operating Co., LP*, No. CIV-18-0199-JH (E.D. Okla. June 29, 2021) (Dkt. No. 97 at ¶6).²

As stated, Class Counsel have obtained an excellent recovery for the Certified Class. The actual damages award represents approximately 100% of any interest owed to the Class on any late payments, at the highest possible rate. With the addition of punitive damages, the total value of the Judgment is nearly **double** the amount of the Class’s actual damages as determined by the Court. Accordingly, an award of Litigation Expenses from the Judgment Fund is just, reasonable,

² Likewise, Oklahoma’s class action statute provides “the court may award . . . nontaxable costs that are authorized by law or by the parties’ agreement.” *See* 12 O.S. § 2023(G)(1).

and equitable. If the Court determines it is fair and reasonable to grant both this request for reimbursement of expenses and Class Counsel's Motion for Approval of Attorneys' Fees, the Class will still recover over 100% of their actual damages net of all fees and expenses.

B. The Request for Reimbursement of Litigation Expenses Is Reasonable

Class Counsel respectfully request reimbursement of litigation expenses that have been incurred and permission to be reimbursed for future litigation expenses that may be incurred by Class Counsel in prosecuting and resolving this Litigation. Under the common fund doctrine, Class Counsel are entitled to reimbursement of all reasonable out-of-pocket litigation expenses and costs in the prosecution of claims, such as expenses incurred in connection with document production, retaining experts and consultants, travel and other litigation-related expenses. *See supra* at 3-4; *see also* Ex. 7 at ¶138. To date, the expenses incurred prosecuting this litigation on behalf of the Certified Class total \$719,430.29. *See* Ex. 1 at ¶89; Ex. 3 at ¶24; Ex. 4 at ¶18; Ex. 5 at ¶22; Ex. 23 at ¶12. These expenses include litigation expenses related to investigation, discovery, document production and hosting, trial, expert witnesses, mediation fees, and travel.

All these expenses were reasonable, necessary, and incurred for the benefit of the Class. *See* Ex. 1 at ¶89; Ex. 3 at ¶24; Ex. 4 at ¶18; Ex. 5 at ¶22; Ex. 23 at ¶12; *see also* Ex. 7 at ¶138. Such costs are typical of large, complex class actions such as this and are customarily awarded. *See id.*

Further, Class Counsel are not seeking reimbursement of all expenses incurred. For example, Class Counsel are not seeking reimbursement of expenses for any meals, long distance charges, and have capped transportation related expenses. *See* Ex. 1 at ¶90.

Additionally, Class Counsel reasonably anticipate future litigation expenses in defending against Defendants' appeals and distributing the Judgment. Class Counsel have capped the total

litigation expenses they would seek at \$850,000.00. Thus, the amount Class Counsel may seek to be reimbursed for future litigation expenses is \$130,569.71. Class Counsel will seek approval from the Court for payment when any such future expenses are incurred.

All of these expenses were reasonable and necessary and incurred as part of the prosecution of this case. As such, the Expense Request is fair, reasonable and should be granted. *See* Ex. 1 at ¶89; Ex. 3 at ¶24; Ex. 4 at ¶18; Ex. 5 at ¶22; Ex. 23 at ¶12; *see also* Ex. 7 at ¶138.

Class Representative has approved the expense request. Ex. 2 at ¶28. Moreover, eleven Class Members have executed declarations in support of Class Counsel's expense request. *See* Exs. 8 – 18. This support by Class Members further demonstrates the Expense Request is fair, reasonable, and should be granted.

C. The Request for Approval of Administration, Notice, and Distribution Costs Is Reasonable and Should be Approved

In the Notice, Class Counsel also stated they would request approval of Administration, Notice, and Distribution Costs associated with effectuating the Settlement in an amount not to exceed \$650,000.00 to be paid from the Judgment Common Fund. To date, the Judgment Administrator, JND, has incurred \$140,480.28 in costs for carrying out the two Court ordered notice campaigns and its work on the case. Ex. 21 at ¶14. These costs include, for example, mailing the Notice of Pendency and the Notice to Class Members; processing opt-out requests submitted in response to the Notice of Pendency; establishing and maintaining a dedicated website and toll-free number; establishing the Judgment Fund Account; and responding to Class Member correspondence. *See id.* JND will incur additional costs in the future for its continuing efforts to reach and communicate with Class members and to distribute the Judgment Common Fund to them. *See id.* Further, Class Counsel reasonably anticipate that the experts working on Administration, Notice and Distribution will continue to incur expenses in carrying out their duties.

As such, Class Counsel request the Court enter an Order approving Administration, Notice and Distribution Costs previously incurred in the amount of \$140,480.28, plus future expenses in the amount of \$509,519.72 (which equals a total of up to \$650,000.00, as noticed). Class Counsel will seek approval from the Court when any such future expenses are incurred.

Such costs are reasonable and necessary for purposes of administering the Judgment Fund. *See* Ex. 1 at ¶92; Ex. 7 at ¶139. Class Representative has approved the request for costs, Ex. 2 at ¶29, as well as the Class Members who have executed declarations in support of Class Counsel's request. *See* Exs. 8 – 18. As such, Class Counsel respectfully request such costs be awarded.

III. CONCLUSION

For the foregoing reasons, Class Counsel respectfully request the Court award the following:

1. \$719,430.29 in past Litigation Expenses;
2. Up to \$130,569.71 in future Litigation Expenses (such that the aggregate of past and future Litigation Expenses will not exceed a maximum of \$850,000.00 as noticed). Class Counsel will apply for reimbursement from these future Litigation Expenses periodically as they are incurred;
3. \$140,480.28 in past Administration, Notice and Distribution Costs; and
4. Up to \$509,519.72 in future Administration, Notice and Distribution Costs (such that the aggregate of past and future Administration, Notice and Distribution Expenses will not exceed a maximum of \$650,000.00 as noticed). Class Counsel will apply for reimbursement from these future Administration, Notice and Distribution Costs periodically as they are incurred.

DATED: January 31, 2023.

Respectfully submitted,

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**CLASS COUNSEL AND ATTORNEYS FOR
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CERTIFICATE OF SERVICE

I hereby certify that on January 31, 2023 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.

/s/Bradley E. Beckworth

Bradley E. Beckworth