

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

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

Case No. 17-cv-313-JAG

**CLASS REPRESENTATIVE'S MOTION FOR STATUTORY COSTS AND FEES
PURSUANT TO 52 O.S. § 570.14 IN THE STIPULATED AMOUNT OF \$5,000,000.00**

Pursuant to the Court’s Order dated February 3, 2022 (Dkt. No. 368), Perry Cline (“Class Representative”), on behalf of the Certified Class, files this Motion for Statutory Costs and Fees Pursuant to 52 O.S. §570.14 in the Stipulated Amount of \$5,000,000.00.¹

1. The Production Revenue Standards Act (“PRSA”) mandates that the losing party in a PRSA case must pay costs of the suit, including but not limited to, reasonable attorney and expert witness fees to the prevailing party. *See* 52 O.S. § 570.14(C)(2) (“[t]he prevailing party in any court proceeding brought pursuant to the [PRSA] shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees.”). Here, Class Representative is the prevailing party. Class Representative won a Final Judgment Order in August 2020 against Defendants in the amount of \$80,691,486.00 in actual damages and \$75,000,000.00 in punitive damages. *See* Dkt. Nos. 307 & 308. On October 30, 2020, the Court issued its Plan of Allocation Order. *See* Dkt. No. 339.

2. As a result, Class Representative is the “prevailing party” under the PRSA in this litigation. *See* 52 O.S. § 570.14(C)(2); *see also* *BP Am. Prod. Co. v. Chesapeake Exploration, LLC*, 747 F.3d 1253, 1262 (10th Cir. 2014) (under Oklahoma law, “the concept of ‘prevailing party’ is result oriented,” and the “prevailing party is the party that succeeds on the merits of the claim and has affirmative judgment rendered in its favor”).

3. As the prevailing party, Class Representative is entitled to all statutory costs and fees allowed under the PRSA. *See* 52 O.S. § 570.14(C)(2) (“[t]he prevailing party in any court proceeding brought pursuant to the [PRSA] shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees.”).

¹ Unless otherwise indicated, all emphasis is added and internal citations are omitted herein.

4. While Defendants do not agree that the Final Judgment Order is final or that Class Representative is a prevailing party, the Parties have entered into a Stipulation regarding the amount Defendants owe Class Representative. *See* Stipulation Regarding the Amount of Statutory Costs and Fees Pursuant to 52 O.S. § 570.14, attached hereto as Exhibit 1. The Parties have agreed to stipulate that the amount of Class Representative's statutory costs and fees under the PRSA is \$5,000,000.00. *Id.* The Parties stipulated to this amount in an effort to promote judicial economy, conserve resources, and eliminate a protracted dispute and satellite litigation as to the proper amount of such statutory costs and fees. *Id.*

5. Accordingly, there is no dispute as to the amount of statutory costs and fees Defendants will pay pursuant to the PRSA. That amount is \$5,000,000.00. No further proof is required.

6. The law is clear that the amount of statutory costs and fees Defendants shall pay Class Representative under the PRSA pursuant to the Stipulation is wholly separate and apart from any costs, expenses, attorney fees, and/or incentive award the Certified Class may owe Class Representative and Class Counsel from the Judgment Common Fund pursuant to Fed. R. Civ. P. 23(h). Class Counsel will request payment of those fees, expenses, and award by separate motion.

7. As is discussed in Class Representative's 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, and Brief in Support (filed contemporaneously herewith), Class Representative intends to request that the Court use this \$5,000,000.00 to net out what the Class ultimately owes Class Counsel in fees and expenses from the Judgment Common Fund. That is, rather than add \$5,000,000.00 to the Judgment Common Fund and request a fee as

a percentage of the total amount, Class Counsel intends to request a percentage of the Judgment Common Fund without the inclusion of this payment and then apply \$5,000,000.00 as a credit to whatever amount the Court awards.

8. Because the amount of statutory costs and fees Defendants owe under the PRSA is a stipulated amount, and because the amount will be netted out of the amount of attorney fees awarded from the Judgment Common Fund, Class Representative respectfully requests that the Court *not* enter an order directing Defendants to pay the amount of \$5,000,000.00 until such time as the Court enters an order regarding attorney fees from the Judgment Common Fund. Further, in the event there is an attempted appeal over any issue related to attorney fees and costs, Class Representative believes the interests of judicial economy would be better served if any and all fee and cost orders are entered on the same day so they can be handled simultaneously.

CONCLUSION

For the reasons sets forth herein, Class Representative requests the Court enter an order requiring Defendants to pay \$5,000,000.00 in statutory costs and fees pursuant to the terms of the Stipulation, but not until the Court enters an order regarding attorney fees from the Judgment Common Fund.

DATED: March 7, 2022.

Respectfully submitted,

/s/Bradley E. Beckworth

Bradley E. Beckworth, OBA No. 19982

Jeffrey Angelovich, OBA No. 19981

Lisa Baldwin, OBA No. 32947

Andrew G. Pate, OBA No. 34600

Trey Duck, OBA No. 33347

Winn Cutler, TX Bar No. 24084364

NIX PATTERSON, LLP

3600 North Capital of Texas Highway

Building B, Suite 350

Austin Texas, 78746
Telephone: (512) 328-5333
Facsimile: (512) 328-5335
bbeckworth@nixlaw.com
jangelovich@nixlaw.com
lbaldwin@nixlaw.com
dpate@nixlaw.com
tduck@nixlaw.com
winncutler@nixlaw.com

Susan Whatley, OBA No. 30960
NIX PATTERSON, LLP
P.O. Box 178
Linden, Texas 75563
Telephone: (903) 215-8310
swhatley@nixlaw.com

Patrick M. Ryan, OBA No. 7864
Phillip G. Whaley, OBA No. 13371
Jason A. Ryan, OBA No. 18824
Paula M. Jantzen, OBA No. 20464
RYAN WHALEY COLDIRON JANTZEN PETERS
& WEBBER PLLC
400 N. Walnut Ave.
Oklahoma City, OK 73104
Telephone: (405) 239-6040
Facsimile: (405) 239-6766
pryan@ryanwhaley.com
pwhaley@ryanwhaley.com
jryan@ryanwhaley.com
pjantzen@ryanwhaley.com

Michael Burrage, OBA No. 1350
WHITTEN BURRAGE
512 N. Broadway Ave., Ste. 300
Oklahoma City, OK 73102
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
mburrage@whittenburragelaw.com

Robert N. Barnes, OBA No. 537
Patranell Lewis, OBA No. 12279
Emily Nash Kitch, OBA No. 22244
BARNES & LEWIS, LLP
208 N.W. 60th Street
Oklahoma City, OK 73118

Telephone: (405) 843-0363
Facsimile: (405) 843-0790
rbarnes@barneslewis.com
plewis@barneslewis.com
ekitch@barneslewis.com

Lawrence R. Murphy, Jr., OBA No. 17681
SMOLEN LAW, PLLC
611 South Detroit Avenue
Tulsa, Oklahoma 74120
Telephone: (918) 777-4529
Facsimile:(918) 890-4529
larry@smolen.law

**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: March 7, 2022.

/s/ Bradley E. Beckworth

Bradley E. Beckworth

EXHIBIT 1

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

**STIPULATION REGARDING THE AMOUNT OF
STATUTORY COSTS AND FEES PURSUANT TO 52 O.S. §570.14**

This Stipulation Regarding the Amount of Statutory Costs and Fees Pursuant to 52 O.S. §570.14 (“Stipulation”) is entered into between Class Representative Perry Cline, on behalf of the Certified Class (“Plaintiff”), and Sunoco, Inc. (R&M) and Sunoco Partners Marketing & Terminals, L.P. (“Defendants”). Plaintiff and Defendants are referred to below each as a “Party” and collectively as “Parties.” The Stipulation is conditioned on the terms and conditions below:

WITNESSETH:

WHEREAS, in this action (“Litigation”) Plaintiff has made certain claims against Defendants, including for violations of the Oklahoma Production Revenue Standards Act (52 O.S. §570, *et seq.*) (“PRSA”);

WHEREAS, Section 570.14(C)(2) of the PRSA provides the “prevailing party in any court proceeding brought pursuant to the [PRSA] shall be entitled to recover the costs of the suit, including but not limited to reasonable attorney and expert witness fees”;

WHEREAS, the Court conducted a bench trial in 2019 and, thereafter, entered an order (Dkt. 308) that awarded damages in the amount of \$155,691,486.00 (“Common Fund”);

WHEREAS, Defendants do not agree that the Court has entered a judgment that constitutes a final judgment, contend that they are entitled to have the Tenth Circuit decide the merits of their appeal from any final judgment, and they thus do not agree that Plaintiff is the prevailing party in this case for purposes of recovering attorney fees;

WHEREAS, Plaintiff contends that the Final Judgment is final, Defendants have waived any further appellate challenge to finality, and Plaintiff is a prevailing party in this case for purposes of recovering attorney fees;

WHEREAS, on February 3, 2022, the Court ordered Plaintiff to file Class Representative's Statutory Costs and Fees Motion under Rule 54 and the PRSA by March 7, 2022 (Dkt. 368);

WHEREAS, the Parties agree that the amount of statutory costs and fees to which Plaintiff may be entitled is a matter of dispute between the Parties;

WHEREAS, in an effort to promote judicial economy, conserve resources, and eliminate a protracted dispute as the proper amount of such statutory costs and fees, the Parties have agreed to stipulate that the amount of Plaintiff's statutory costs and fees under the PRSA is \$5,000,000.00 ("PRSA Costs and Fees");

WHEREAS, by entering into this Stipulation, Plaintiff and Defendants agree that this Stipulation does not create any appellate rights, nor does it waive any appellate rights, that may or may not exist; instead, Plaintiff and Defendants stipulate and agree that the sole purpose of this Stipulation is to resolve the dispute regarding the amount of fees and costs that may be owed under the PRSA and all other rights possessed by Plaintiff or Defendants shall not be affected by entering into this Stipulation;

WHEREAS, the PRSA Costs and Fees shall constitute the total amount of Plaintiff's costs, expenses, and attorney fees under the PRSA, including any costs, expenses, and attorney fees incurred on appeal;

WHEREAS, on February 3, 2022, the Court ordered Plaintiff's attorneys ("Class Counsel") to file their motion to approve form and manner of notice and to set briefing schedule for Class Counsels' motion for attorney fees and costs under Fed. R. Civ. P. 23 by March 7, 2022;

WHEREAS, the Parties agree that any award of PRSA Costs and Fees is separate and apart from any costs, expenses, attorney fees, and/or incentive award the Certified Class may owe to Plaintiff and Class Counsel from the Common Fund pursuant to Fed. R. Civ. P. 23(h);

WHEREAS, Plaintiff and Class Counsel agree that they will not seek recovery from Defendants of any further costs, expenses, attorney fees, and/or incentive award other than the \$5,000,000.00 amount agreed here, and Defendants agree not to challenge or dispute the amount of costs, expenses, attorney fees, and/or incentive award Class Counsel or Plaintiff may seek from the Common Fund;

WHEREAS, Defendants have informed Plaintiff that, in order to preserve their right, if any, to appeal whether Plaintiff is a prevailing party, Defendants will file a notice of appeal from any order of the Court granting costs and fees. But if this Court has awarded PRSA Costs and Fees in the amount stipulated herein, then, on appeal, Defendants will not challenge the amount of PRSA Costs and Fees awarded or the amount of any fee award granted by the Court from the Common Fund. However, Defendants reserve their right to challenge whether Plaintiff is entitled to recover any PRSA Costs and Fees (or the Common Fund) at all;

WHEREAS, Plaintiff and Class Counsel agree that if the Judgment Order were set aside, vacated, or reversed, in any proceedings challenging that judgment, then any award to Plaintiff of

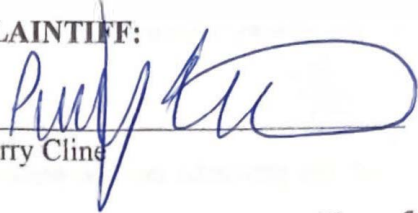
PRSA Costs and Fees and any award to Class Counsel of fees from the Common Fund should be set aside, vacated, or reversed; and, if necessary the Parties agree jointly to move the Court to vacate such awards; and Plaintiff and Class Counsel agree that such awards will not be collectible; and

WHEREAS, Defendants enter this Stipulation without admitting any liability whatsoever and reserving their right, if any, to challenge recoverability of PRSA Costs and Fees and their contention that the award of the Common Fund should be reversed, and solely to avoid the delay, expense, and inconvenience of litigating the amount of PRSA Costs and Fees.

NOW THEREFORE, subject to and in consideration of the mutual promises, agreements, undertakings, and other terms and provisions of this Stipulation, Defendants and Plaintiff, on behalf of the Certified Class, stipulate and agree, without admission of any liability or wrongdoing, to the amount of PRSA Costs and Fees, while reserving and not waiving Defendants' right, if any, to challenge recoverability of PRSA Costs and Fees and their contention that any award of the Common Fund should be reversed.

IN WITNESS WHEREOF, the Parties and Class Counsel have executed this Stipulation,
in several, as of March 2, 2022.

PLAINTIFF:


Perry Cline

CLASS COUNSEL:


Bradley E. Beckworth, OBA No. 19982
Jeffrey Angelovich, OBA No. 19981
Andrew G. Pate, TX Bar No. 24079111
Trey Duck, OBA No. 33347
NIX PATTERSON, LLP
3600 North Capital of Texas Highway
Suite 350, Building B
Austin Texas, 78746
Telephone: (512) 328-5333
Facsimile: (512) 328-5335
bbeckworth@nixlaw.com
jangelovich@nixlaw.com
dpate@nixlaw.com
tduck@nixlaw.com

Susan Whatley, OBA No. 30960
NIX PATTERSON, LLP
P.O. Box 178
Linden, Texas 75563
Telephone: (903) 215-8310
swhatley@nixlaw.com

Patrick M. Ryan, OBA No. 7864
Phillip G. Whaley, OBA No. 13371
Jason A. Ryan, OBA No. 18824
Paula M. Jantzen, OBA No. 20464
RYAN WHALEY COLDIRON JANTZEN PETERS
& WEBBER PLLC
400 N. Walnut Ave.
Oklahoma City, OK 73104
Telephone: 405-239-6040
Facsimile: 405-239-6766

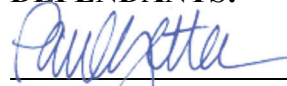
pryan@ryanwhaley.com
pwhaley@ryanwhaley.com
jryan@ryanwhaley.com
pjantzen@ryanwhaley.com

Michael Burrage, OBA No. 1350
WHITTEN BURRAGE
512 N. Broadway Ave., Suite 300
Oklahoma City, OK 73103
Telephone: (405) 516-7800
Facsimile: (405) 516-7859
mburrage@whittenburragelaw.com

Robert N. Barnes, OBA No. 537
Patranell Lewis, OBA No. 12279
Emily Nash Kitch, OBA No. 22244
BARNES & LEWIS, LLP
208 N.W. 60th Street
Oklahoma City, OK 73118
Telephone: (405) 843-0363
Facsimile: (405) 843-0790
rbarnes@barneslewis.com
plewis@barneslewis.com
ekitch@barneslewis.com

Lawrence R. Murphy, Jr., OBA No. 17681
SMOLEN LAW, PLLC
611 South Detroit Avenue
Tulsa, Oklahoma 74120
Telephone: (918) 777-4529
Facsimile:(918) 890-4529
larry@smolen.law

DEFENDANTS:



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

Subject: Activity in Case 6:17-cv-00313-JAG Cline et al v. Sunoco, Inc. (R&M) et al Motion for Miscellaneous Relief

Date: Monday, March 7, 2022 at 4:26:45 PM Central Standard Time

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U.S. District Court

Eastern District of Oklahoma

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Case Name: Cline et al v. Sunoco, Inc. (R&M) et al

Case Number: [6:17-cv-00313-JAG](#)

Filer: Perry Cline

WARNING: CASE CLOSED on 08/27/2020

Document Number: [389](#)

Docket Text:

MOTION Class Representative's 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)

6:17-cv-00313-JAG Notice has been electronically mailed to:

Andrew G. Pate dpate@nixlaw.com, ncameron@nixlaw.com

Bradley E. Beckworth bbeckworth@nixlaw.com, bkelllogg@nixlaw.com, codyhill@nixlaw.com, sprince@nixlaw.com, swhatley@nixlaw.com

Brooke A. Churchman bchurchman@nixlaw.com, ncameron@nixlaw.com

Daniel M. McClure dan.mcclure@nortonrosefulbright.com, inga.domask@nortonrosefulbright.com

Emily Nash Kitch ekitch@barneslewis.com, aoldenburg@barneslewis.com, lbeebe@barneslewis.com

Emma W. Perry eperry@yettercoleman.com

Jason A. Ryan jryan@ryanwhaley.com, jmickle@ryanwhaley.com

Jeffrey J. Angelovich jangelovich@nixlaw.com, ncameron@nixlaw.com, sprince@nixlaw.com

Kevin W. Yankowsky kevin.yankowsky@nortonrosefulbright.com, liane.hunt@nortonrosefulbright.com

Lawrence R. Murphy, Jr larry@smolen.law

Lisa P. Baldwin lbaldwin@nixlaw.com, ncameron@nixlaw.com

Mark D. Christiansen MChristiansen@elbattorneys.com

Mark T. Emery mark.emery@nortonrosefulbright.com

Matthew A. Dekovich matt.dekovich@nortonrosefulbright.com

Michael Burrage mburrage@whittenburrage.com, cnorman@whittenburrage.com,
docketing@whittenburrage.com

Patranell Lewis plewis@barneslewis.com, abarnes@barneslewis.com, lbeebe@barneslewis.com,
lrosales@barneslewis.com

Patrick M. Ryan pryan@ryanwhaley.com, jmickle@ryanwhaley.com

Paula M. Jantzen pjantzen@ryanwhaley.com, jmickle@ryanwhaley.com, mkeplinger@ryanwhaley.com

Phillip G. Whaley pwhaley@ryanwhaley.com, jmickle@ryanwhaley.com

R. Paul Yetter pyetter@yettercoleman.com, lprince@yettercoleman.com, svacek@yettercoleman.com

Robert D. Woods rwoods@yettercoleman.com

Robert N. Barnes rbarnes@barneslewis.com, aoldenburg@barneslewis.com, ekitch@barneslewis.com,
lbeebe@barneslewis.com

Ross Leonoudakis rossl@nixlaw.com

Susan R. Whatley swhatley@nixlaw.com

Trey Duck tduck@nixlaw.com, sprince@nixlaw.com

Winn Cutler winncutler@nixlaw.com

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Document description:Exhibit 1 - Stipulation Regarding the Amount of Statutory Costs and Fees Pursuant to 52 O.S.
Section 570.14

Original filename:n/a

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