

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

**DECLARATION OF ROBERT N. BARNES, PATRANELL BRITTEN LEWIS,
AND EMILY NASH KITCH**

Robert N. Barnes (“Barnes”), Patranell Britten Lewis (“Lewis”), and Emily Nash Kitch (“Kitch”) of Barnes & Lewis, LLP (“BL”) declare as follows:

1. We submit this declaration in support of Class Counsel’s Motion for Approval of Attorneys’ Fees (“Fee Motion”), Class Counsel’s Motion for Approval of Reimbursement of Litigation Expenses (“Expense Motion”), and Class Representative’s Motion for Case Contribution Award (“Case Contribution Award Motion”), which are filed contemporaneously herewith. Unless otherwise stated herein, the statements made herein are based upon my personal knowledge and information available to me to the best of my recollection, and while I do not believe there are any errors, omissions, incomplete or incorrect statements, to the extent any occur, they are wholly accidental and unintentional.

2. For decades, BL has litigated class actions and complex commercial litigation in the United States District Courts for the Eastern District of Oklahoma, the Western District of

Oklahoma, and the Northern District of Oklahoma, the state courts of Oklahoma, and numerous other state and federal courts around the country.

3. BL, Nix Patterson, LLP (“NP”), and Ryan Whaley Coldiron Jantzen Peters & Webber, PLLC (“RW”) have been appointed by the Court as Class Counsel for Plaintiff, Perry Cline, on behalf of himself and all others similarly situated (“Plaintiff” or “Class Representative”), and the Certified Class. *See* Order, dated October 3, 2019 (Dkt. 127). We personally rendered legal services and had co-responsibility for coordinating and leading the activity carried out by attorneys at BL in this Litigation. As Co-Lead counsel for Plaintiff and the Class, BL significantly contributed to this Litigation and performed work on behalf of, and for the benefit of, the Class.

4. All information regarding BL’s attorneys’ time and litigation expenses contained herein is based upon the records kept by BL in the ordinary course of business. BL employs various methods of time-keeping including contemporaneous notes, calendar review and intermittent docket review to ensure that the majority of our time is accurately captured. With the understanding that it is impossible to capture every second spent ideating, contemplating, and internally discussing the day-to-day happenings of each case, we strive to ensure that our billing records are as authentic as practicable under varying sets of circumstances and conditions. However, even despite our careful attention, we can certainly attest that countless hours are simply lost. As such, with the understanding that time-keeping is not an exact science, the attorney time-keeping information discussed herein is based upon BL’s records.

5. This Litigation was filed in 2017 and required substantial time and labor. Because BL is a small law firm, prosecution of this litigation required the devotion of substantial time, manpower and resources from Class Counsel over that extensive period. Moreover, BL was hindered from pursuing other cases as a result of the time and effort this litigation required.

6. Thus, BL has expended considerable time and effort in advancing the claims of the Class in this matter and, as a result of substantial time and labor, obtained an outstanding Judgment for the Class. With this background and based on the below information, we believe the fee request is fair and reasonable and should be approved.

7. We were retained by Mr. Cline to prosecute this case on a fully contingent basis. Mr. Cline negotiated, and we agreed to, a contract to prosecute this case on a fully contingent basis with a fee arrangement of 40% of any recovery obtained for Mr. Cline and/or the Class. We believe, and numerous state and federal courts in Oklahoma have determined, that a 40% contingent fee is within the appropriate market rate range for cases of this nature. Under Oklahoma law, the percentage of the common fund method is permitted as long as the resulting fee is reasonable. *See Strack v. Continental Resources, Inc.*, 2021 OK 21, ¶19, 507 P.3d 609, 617. Indeed, the application of the equitable common fund doctrine is a bedrock premise of litigation in this country and has repeatedly been applied by the United States Supreme Court, the Tenth Circuit, Oklahoma federal and state courts, every federal circuit, and legal scholars. Otherwise, the absent class members would get a windfall at the expense of Class Counsel and Mr. Cline. *See Boeing Co. v. Van Gemert*, 444 U.S. 472, 478 (1980); *Sprague v. Ticonic Nat'l Bank*, 307 U.S. 161, 165 (1939); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988); *Court-Awarded Attorney Fees: Report of the Third Circuit Task Force*, 108 F.R.D. 237, 250 (3d Cir. 1985); *see generally* Miller Declaration.

8. The application of hourly rates on a pay as you go basis could not and would not work here. Mr. Cline could not afford to pay for the fees and expenses it took to litigate this matter, which remains ongoing. And, as a professional matter, neither our firm, nor our partners could or would have agreed to take on this litigation on an hourly basis where we advanced costs and

expenses and worked at risk of non-payment only to be paid an hourly rate if, and only if, we obtained a full recovery for our client and absent class members. This case is unique in that we have also had to go beyond a trial and appeals to actual enforcement efforts due to Defendants' refusal to pay the judgment. This fact of business is a troublesome one for most firms and their clients and that trouble is compounded by the fact that the defendant in most royalty cases, including this one, is a well-funded oil company with its own internal legal department and a cadre of top outside counsel lawyers who work by the hour.

9. Nevertheless, in addition to the contractually agreed upon 40% contingent fee market rate, Mr. Cline also negotiated an hourly rate that Class Counsel and additional Plaintiff's Counsel would bill at in the event this Court determined that it was appropriate to consider Plaintiff's Counsel's hourly rates to determine whether any fee request is fair and reasonable. To be clear, Mr. Cline did not agree to pay these rates, nor could he afford to. The use of an hourly rate in a contingent fee case is an inefficient endeavor and, to put it simply, patently unreasonable in the context of commercial litigation. This is so because unlike our adversaries, who work by the hour, with no out of pocket expenses, we advance all costs and expenses, work entirely at risk, lose the ability to take on other paying work, and run the risk that we will lose both the value of our time and expenses if we lose. Further, our goal is always to achieve the best result possible for the class under the circumstances at the time, and if possible, resolve all claims as quickly and efficiently as possible. If that means we can obtain a fair and reasonable settlement the day we file the case, we will do so; if that means we must get a case certified, uphold that certification on appeal, then try the case to verdict and judgment, and then uphold that judgment on appeal, we will do so. Put simply, we will—as we have demonstrated in many cases—prosecute a case through trial and all appeals, completely at risk of non-payment and total and utter loss.

10. Based upon our collective experience, knowledge, education, study, and professional qualifications, BL believes that the 40% contingent fee we agreed to with Mr. Cline is the market rate for this case and is fair and reasonable and, further, that the hourly rates Mr. Cline agreed upon for BL, NP and our co-counsel are well below market rate for cases prosecuted on a contingent basis and approved by Oklahoma state and federal courts for this type of case.

11. Based on the decades of oil and gas class action litigation experience of BL, we believe that we are qualified to offer evidence regarding what we believe are reasonable attorney rates in Oklahoma class actions. BL has been involved in and served as lead class counsel in many oil and gas class actions, including at least fourteen (14) Oklahoma oil and gas class action cases, that have resulted in combined Common Funds approaching \$700 million – far more than any other law firm in Oklahoma. BL’s principals, Robert Barnes and Patranell Lewis, hold the distinction of having been lead counsel in the first oil and gas class action nationwide to have been successfully tried to a jury. That jury verdict was upheld on appeal and resulted in a total Common Fund of approximately \$110 million. *See Bridenstine v. Kaiser Francis*, Case No. 97,117 (unpublished) August 22, 2003, *cert. denied*, June 26, 2006, Okla. Sup. Ct., Case No. DF-01569.

a. Robert Barnes has practiced law in state and federal court for over 48 years. He grew up in the oil and gas industry (his father was an exploration geologist) and the legal community (two uncles were well known lawyers) and graduated from the University of Oklahoma College of Law in 1974. By the time he was 28 years old, he had tried numerous jury trials and taken hundreds of depositions while based in Tulsa. He then went on to serve as general counsel and vice-president of land for Texas International Petroleum Corporation. At age 32, he was appointed president of Carson Petroleum Corp. in Oklahoma City. In 1982, he co-founded the oil and gas law firm of Stack & Barnes in

Oklahoma City. By that time, he was AV-rated by Martindale Hubbell based on his experience as an oil and gas lawyer. Over the next 10 years, Barnes represented primarily large independent oil and gas companies in major litigation. In 1991, Barnes co-founded BL with Ms. Lewis. Through the remainder of the 1990s, BL continued to represent oil and gas companies, but also took on more and more contingent fee litigation for landowners and mineral owners against oil and gas companies. By the time that BL became lead class counsel in *Bridenstine vs Kaiser-Francis* in the late 1990s, Barnes was well-known as an expert litigator in all facets of the oil and gas industry.

b. Patranell Lewis has practiced law in state and federal court for over thirty-five (35) years. She began her career working in the oil and gas area working for Dwight's Energy Data (now known as IHS Energy Group). Ms. Lewis graduated from the University of Oklahoma College of Law in 1987 and earned top honors in various courses, including top honors in the Oil and Gas law course. She joined Mr. Barnes in 1986 and three years later was AV-rated by Martindale Hubbell. Ms. Lewis became a partner in 1991. She has represented both oil companies and mineral owners in complex litigation. She has served as class counsel in all of the oil and gas royalty owner class actions in which BL has been involved.

12. Based upon our personal experiences, and the knowledge, skill and experience we have gained from my own work and study on this issue, we believe we are qualified to testify regarding the reasonableness of attorney's fees in a contingent fee class action such as this one. Based on our qualifications and experience, we can attest that a 40% contingent rate is the market rate for a complex royalty multistate class action like this one. There are very few firms who have the skill, ability and funding to prosecute a case like this one to verdict and judgment and even

fewer who can do it correctly. The vast majority of law firms could not and would not take such a case on a contingent basis. Moreover, we are not aware of a single law firm that would agree to take on a case like this at an hourly rate and also agree that they would (1) advance all costs and expenses and (2) would only get paid that straight hourly rate if they obtained a settlement or judgment and, even then, (3) could only get paid upon judicial review and approval.

13. As referenced above, despite working on a fully contingent basis, BL has kept records regarding our time spent prosecuting this matter. We have performed an internal review of the material information supporting the fee and expense requests that are the subject of this declaration and have made certain reductions to both time and expense in the exercise of “billing judgment.” We believe the time and expenses set forth below are reasonable in amount and were necessary for the effective and efficient prosecution and resolution of the litigation.

14. Based on the work performed and the above-referenced review of information reflecting work performed by attorneys at BL in this litigation, we have prepared a summary chart which identifies each of BL attorney’s individual’s hourly rate along with the total number of hours each individual expended in connection with work on this litigation.

15. As set forth below, the total number of hours expended by BL in this Litigation, from investigation through January 30, 2023, is at least 1,302.90 hours. The hours spent were necessary and benefitted the Class as a whole. Further, we anticipate expending at least 50 more hours in defending Sunoco’s continued appeals with the Tenth Circuit, inevitable second appeal to the U.S. Supreme Court, and working with Class Members and JND on distribution. This would result an additional value of approximately \$44,150.

| BARNES & LEWIS | | |
|---------------------------|--------------|----------------|
| | Hours | Rate |
| Partners | | |
| Robert Barnes | 480.10 | \$1,075 |
| Patranell Lewis | 378.2 | \$875 |
| Emily Kitch | 444.60 | \$700 |
| Total | 1,302.90 | \$1,158,252.50 |

16. BL is providing additional detailed records regarding the hours expended during this Litigation, which are attached to Class Counsel's Motion for Approval of Attorneys' Fees (Ex. 20). We believe this total number of hours is a conservative and understated amount because, among other things, all of our attorneys work extensively on many matters in a collaborative context where it is not possible to record every hour worked and/or not possible to reduce any given hour to only one case. Therefore, we believe BL worked more hours on this case than the hours listed above.

17. BL's hourly figures are based on its billing rates, which do not include charges for expense items. Expense items are billed separately and such charges are not duplicated in the billing rates.

18. As of the date of this declaration, BL has incurred Litigation Expenses in the amount of \$5,974.33. In our judgment, these expenses were reasonable, necessary, and critical to the prosecution of this Litigation. Details of those expenses are as follows:

SUMMARY OF EXPENSES

| | Total Category Expense |
|---------------------------------------|-------------------------------|
| Administrative Expenses | |
| FedEx/ Postage | 7.91 |
| Court Fees/ Filing/ Reporting/ Copies | 27.86 |
| Litigation Support | |
| Matlin Petroleum Co. | 3,750.00 |
| Research & Investigation | |
| Pacer | 37.10 |
| Oklahoma County Records | 45.00 |
| Westlaw | 669.36 |
| Travel Expenses | |
| Lodging and Transportation | 1,437.10 |
| TOTAL SUBMITTED EXPENSES | \$5,794.33 |

19. It is BL's practice to keep contemporaneous records of expenses as incurred and reflected from invoices, receipts, credit card records, expert billings, etc. Based on BL's work in connection with this litigation and our review of these records, we believe them to constitute an accurate record of the expenses actually incurred by BL in connection with this Litigation.

20. Finally, Mr. Cline is seeking a Case Contribution Award. We have worked with Mr. Cline for years on this case both prior to its filing and throughout its prosecution. Mr. Cline has been instrumental in the successful pursuit of this case and put the Class's interests ahead of his own. For example, Mr. Cline rejected Defendants' attempts to pay him off for his damages and elected to pursue the case on the Class's behalf. He was deposed multiple times, testified at trial, kept himself aware of everything in the litigation, attended multiple mediations, and has demonstrated incredible fortitude in his pursuit of this case on behalf of the Class. Through his efforts, he was able to obtain a Judgment for the Class that is twice their actual damages. Therefore, we believe the Case Contribution Award he is seeking is fair and reasonable and should be granted.

We declare under penalty of perjury, pursuant to 28 U.S.C. § 1746, that the foregoing is true and correct.

DATED: January 30, 2023



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