

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION**

IN RE: SMITTY’S/CAM2 303 TRACTOR
HYDRAULIC FLUID MARKETING, SALES
PRACTICES, AND PRODUCTS LIABILITY
LITIGATION

MDL No. 2936

Master Case No. 4:20-MD-02936-SRB

This document relates to:
All Class Actions

**PLAINTIFFS’ MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED RETAILER CLASS ACTION SETTLEMENT**

COME NOW Plaintiffs identified in Appendix A (“Plaintiffs”), with the non-opposition of Retailer Defendants Tractor Supply Company (“TSC”); Orscheln Farm and Home, LLC d/b/a Orscheln Farm and Home (“Orscheln”); Rural King Administration, Inc., R.K. Family, Inc., R.K. Holdings, LLP, Mattoon Rural King Store, Inc., Waterloo Rural King Supply, Inc., Vandalia Rural King Supply, Inc., RK Distribution, LLC, Rural King Holding Co. (collectively referred to as “Rural King”); and Atwood Distributing, LP (“Atwood”) (sometimes referred to herein collectively as the “Retailer Defendants”), and move the Court for an Order preliminarily approving the Retailer Class Settlement Agreement and Release filed herewith. In support of their Motion, Plaintiffs respectfully state as follows:

1. On or about June 23, 2021, the Parties entered into a Retailer Class Settlement Agreement and Release in this matter (the “Retailer Class Settlement Agreement”). The Retailer Class Settlement Agreement makes partial relief available to more than 100,000 proposed Retailer Settlement Class Members comprised of persons who have purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil from TSC, Orscheln, Rural King and/or

Atwood Stores, in the United States at any point in time from December 1, 2013 to present, excluding persons and entities who solely purchased Super S Supertrac 303 Tractor Hydraulic Fluid in Missouri.

2. The Retailer Settlement Agreement, with the following exhibits thereto, is attached as Exhibit 1 to this Motion:

Exhibit A – Preliminary Approval Order

Exhibit B – Final Approval Order and Judgment

Exhibit C – Retailer Settlement Class Membership Form

Exhibit D – Long Form Retailer Settlement Notice

Exhibit E – Retailer Settlement Summary Class Notice

Exhibit F – Retailer Settlement Mailed Class Notice

Exhibit G – Repairs/Parts/Specific Equipment Damage Claim Form

Exhibit H – Request for Corrections Form

Exhibit I – Repairs/Parts/Specific Equipment Damage Claim Review Process

Exhibit J – Settlement Administration and Notice Plan

3. This Retailer Settlement provides meaningful relief and benefits, particularly in light of the partial nature of the settlement, the institutional reforms obtained through the settlement, and the notice to Class Members of potential damage to their equipment that is made possible by the settlement. The Retailer Settlement provides for a Class Settlement Fund of \$7,200,000.00, from which shall be paid (a) all settlement administration and notice costs, (b) claims of Qualified Retailer Settlement Class Members, (c) partial incentive awards to Class Representatives as Ordered by the Court, and (d) attorneys' fees and expenses of Class Counsel as Ordered by the Court. No amount of the Class Settlement Fund shall revert to Retailer Defendants.

4. In addition to the monetary aspect of this Retailer Settlement Agreement, the four Retailer Defendants have also agreed not to sell any tractor hydraulic fluid that is labeled, or otherwise held out to customers and the public, as "303" or as meeting specifications of John Deere 303. The Retailer Defendants have also agreed to monitor the quality of the tractor hydraulic fluid sold in their retail stores, to reasonably review customer complaints to identify problems with

tractor hydraulic fluid products, and to consult with tractor hydraulic fluid vendors/manufacturers to help ensure those vendors/manufacturers are providing the retailers with products that meet product specifications and labeling/packaging requirements.

5. Finally, the Retailer Settlement provides for direct and published notice to be disseminated to Settlement Class Members through which each can be advised about Plaintiffs' allegations concerning the Manufacturer Defendants' 303 THF Products and the potential damage to their equipment, allowing those Settlement Class Members to stop using the defective fluid and flush their equipment if they can afford it.

6. Pursuant to this Retailer Class Settlement Agreement, Plaintiffs now respectfully request that the Court enter an Order, in substantially the form of the proposed Preliminary Approval Order attached hereto as Exhibit 1-A, in summary, as follows:

- (i) Preliminarily approving the terms and conditions set forth in the Settlement Agreement, including all exhibits thereto, as fair, reasonable, and adequate.
- (ii) Conditionally certifying, for settlement purposes only, the following settlement class: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil from any of the Retailer Defendants Tractor Supply Company, Orscheln Farm and Home, Rural King, and/or Atwoods, in the United States at any point in time from December 1, 2013 to present, excluding persons and entities who solely purchased Super S Supertrac 303 Tractor Hydraulic Fluid in Missouri. Also excluded from the Retailer Settlement Class are Retailer Defendants, including any parent, subsidiary, affiliate or controlled person of Retailer Defendants; Retailer Defendants' officers, directors, agents, employees and their immediate family members, as well as the judicial officers assigned to this litigation and members of their staffs and immediate families.
- (iii) Conditionally finding, for settlement purposes only and conditioned upon entry of the Final Approval Order, and the occurrence of the Effective Date (as defined in the attached Retailer Class Settlement Agreement), that the prerequisites for a class action under Rules 23(a)

and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class for purposes of settlement; (d) Plaintiffs have fairly and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiffs have retained experienced counsel to represent them; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual members of the Settlement Class; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

- (iv) Appointing Tricia Campbell, Leader of the Settlement Committee, from the law firm Langdon & Emison in Kansas City, Missouri; Tom Bender and Dirk Hubbard from the law firm Horn Aylward & Bandy, LLC in Kansas City, Missouri; Bryan White from the law firm White, Graham, Buckley & Carr, L.L.C. in Independence, Missouri; Clayton Jones of the Clayton Jones Law Firm in Raymore, Missouri, Athena Dickson of the Siro Smith Dickson Law Firm in Kansas City, Missouri; John Emerson of the Emerson Firm, PLLC in Little Rock, Arkansas; Mark Bryant from the law firm Bryant Law Center, P.S.C. in Paducah, Kentucky; Christopher Jennings of the Johnson Firm in Little Rock, Arkansas; Stephen Basser from the law firm Barrack, Rodos & Bacine in San Diego, California; Paul Lundberg of the Lundberg Law Firm, P.L.C. in Sioux City, Iowa; James Malters of the law firm Malters, Shepher & Von Holtum in Worthington, Minnesota; Travis Griffith from the law firm Griffith Law Center, PLLC in Charleston, West Virginia; and Jon Robinson and Zachary Anderson from the law firm Bolen Robinson & Ellis, LLP in Decatur, Illinois, as counsel for the Settlement Class (“Class Counsel”).
- (v) Designating named Plaintiffs in Appendix A to the Retailer Class Settlement Agreement as Representatives of the Settlement Class.
- (vi) Appointing RG/2 Claims Administration LLC to serve as the Settlement Administrator.
- (vii) Setting a Final Fairness Hearing (as defined in the attached Retailer Class Settlement Agreement) to be held before this Court to determine whether the terms and conditions forth in the Retailer Class Settlement Agreement are fair, reasonable, and adequate and should receive final approval.
- (viii) Staying, pending the Final Fairness Hearing, the proceedings in this action as to the Retailer Defendants, other than proceedings necessary to

carry out or enforce the terms and conditions of the Retailer Class Settlement Agreement and/or discovery required as part of the ongoing claims against the Manufacturer Defendants.

- (ix) Approving the Retailer Settlement Mailed Class Notice (attached hereto as Exhibit 1-F), Long Form Class Notice (attached as Exhibit 1-D), Summary Class Notice (attached hereto as Exhibit 1-E), Retailer Settlement Class Membership Form (attached hereto as Exhibit 1-C), Repairs/Parts/Specific Equipment Damage Claim Form (attached hereto as Exhibit 1-G), the Request for Correction Form (attached hereto as Exhibit 1-H), the Repairs/Parts/Specific Equipment Damage Claim Review Process (attached hereto as Exhibit 1-I), the Settlement Administration and Notice Plan (attached hereto as Exhibit 1-J), and the notice and settlement administration process set forth in Retailer Class Settlement Agreement and exhibits thereto attached to this Motion, finding that it is the best practicable notice under the circumstances, it provides individual notice to all Retailer Settlement Class Members who can be identified through a reasonable effort, and it is reasonably calculated, under all the circumstances, to apprise the members of the Retailer Settlement Class of the pendency of this action, the terms of the settlement, and their right to object to the settlement or exclude themselves from the Retailer Settlement Class.
- (x) Approving the timetable and process for exclusion from the Retailer Settlement Class or objection to the Retailer Class Settlement by any Retailer Settlement Class Member.
- (xi) Approving the timetable and process for Class Counsel to file their Application for incentive awards for the Retailer Settlement Class Representatives and for reasonable attorneys' fees and expenses.

7. In further support of the adequacy and appropriateness of the Notice Plan, the Declaration of a representative of proposed Settlement Administrator RG/2 Claims Administration LLC is attached hereto as Exhibit 2.

8. In further support of this Motion, Plaintiffs file concurrently herewith their Suggestions in Support of Unopposed Motion for Preliminary Approval of Proposed Retailer Class Action Settlement.

9. Retailer Defendants' counsel has indicated that Retailer Defendants do not oppose Plaintiffs' Motion for Preliminary Approval and that such Motion is in accord with the terms of

the Retailer Class Settlement Agreement.

WHEREFORE, Plaintiffs respectfully request the Court enter the proposed Preliminary Approval Order attached hereto as Exhibit 1-A and for such other and further relief as is just and proper.

Date: June 23, 2021

Respectfully submitted,

LANGDON & EMISON

BY: /s/ Tricia L. Campbell

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**ATTORNEYS FOR PLAINTIFFS
AND CLASS MEMBERS**

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed electronically with the United States District Court for the Western District of Missouri, with notice of case activity to be generated and sent electronically by the Clerk of the Court to all designated persons this 23rd day of June, 2021.

/s/ Dirk Hubbard