

**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

**303 RETAILER CLASS SETTLEMENT
STATUS REPORT REGARDING SETTLEMENT ADMINISTRATION
AND MOTION TO APPROVE SECOND PHASE SETTLEMENT ADMINISTRATION
BUDGET AND PROCESS**

COME NOW Plaintiffs, by and through Class Counsel, and provide the Court the following Status Report Regarding Settlement Administration and Consent Motion to Approve Second Phase Settlement Administration Budget and Process.

I. Current Status of Review and Evaluation of Class Membership Forms

In this Retailer Class Settlement, which received Final Approval from this Court on January 6, 2022, a total of 3,027 Class Membership Forms were submitted online and 216 Class Membership Forms were submitted in paper format. (Ex. 1, RG/2 Declaration, ¶ 3). Those Class Membership Forms are being reviewed and evaluated for validity. The following objective factors are being applied to determine the validity of Class Membership Claims:

1. Whether the THF Product listed by the Claimant was sold at the retailer listed.
2. Whether the THF Product listed by the Claimant was sold in the time period listed.
3. Whether the THF Product listed by the Claimant is one that is part of this Settlement.
4. Whether the THF Product purchase listed by the Claimant was prior to the Class Period.

5. Whether the THF Product purchase listed by the Claimant involved 55-Gallon Drum Purchases, which are not credible.
6. Whether the Claimant provided incomplete retailer information, product information, and/or purchase date information.
7. Whether the Claimant provided incomplete equipment information.
8. Whether there are other indicators that the Claim is not valid and/or fraudulent.
9. Whether the Claimant identified only 2020-2021 purchase dates that are not valid.
10. Whether the Retailer listed by Claimant is a part of the Settlement.
11. Whether the Claimant listed 1-gallon jug purchases which are not valid.

Pursuant to paragraph 80 of the Retailer Class Settlement Agreement, “the Settlement Administrator, together with Class Counsel and Retailer Defendants’ Counsel, shall determine whether each Class Membership Form and each Claim Form meet the requirements set forth in this Retailer Settlement Agreement, and the amount, if any, to be allowed for each claim for relief.” The review and evaluation process for Class Membership Forms is thus a collaborative process in which all are contributing and applying the objective matrix of factors set forth above. Specifically, RG/2 has created a spreadsheet for Class Membership Forms and populated that spreadsheet with the information provided by the Claimants. RG/2 then is doing an initial review of the claims and providing comments and highlights regarding the potential validity of the claim, based on a variety of factors. Class Counsel is then performing their initial evaluations/determination recommendations by applying the objective factors noted above. Class Counsel is then providing those initial evaluations/determinations/applications of the objective factors to Defendants’ Counsel and RG/2 for their review, evaluation and determination recommendations. In the event that Defendants’ Counsel and/or RG/2 disagree with any of Class Counsel’s initial evaluations/determination/recommendations, Class Counsel, Retailer

Defendants' Counsel, and RG/2 will work to reach agreement on each disputed Class Membership Form determination. If, after review and application of the factors, RG/2, Class Counsel, and Retailer Defendants' Counsel do not agree on the determination of any Claimant's Class Membership Form, RG/2 as Settlement Administrator will make the final determination.

The Claims Administrator has estimated the cost of undertaking an independent review, independent evaluation and independent determination of each and every claim without the collaborative process outlined above would add an additional \$700,00 to estimated costs discussed below in section VI for the claim review and determinations, communications with Claimants regarding the determinations, and calculation/distribution of settlement monies to Class Members. (Ex. 1, RG/2 Declaration, ¶ 6). Accordingly, hundreds of thousands of dollars in Settlement Administrator costs are being saved through use of this process which does not require RG/2 to make each and every initial determination independently, but instead is one involving a collaborative process among Class Counsel, Retailer Defendants' Counsel, and the Settlement Administrator. Further, the collaborative process provides for a more efficient review and evaluations of the Class Membership Forms.

Class Counsel anticipate that the process of Class Membership Form review and initial determinations will be completed by March 11th.

II. Report on Denial of Invalid Class Membership Forms and Process for Claimants to Contest Denials

Pursuant to paragraph 80 of the Retailer Class Settlement Agreement, the "Settlement Administrator shall notify the person and/or entity through the mailing address provided in the Class Membership Form and/or Claim Form of rejection of any claims." It is thus anticipated that on or about March 1 the Settlement Administrator will mail letters to those Claimants whose Class

Membership Forms have been denied. Those Claimants will be given 21 days to contest the denial, and the outcome of any such Class Membership Form denial contests will be determined through a collaborative review process among RG/2, Class Counsel, and Defendants' Counsel. If consensus is not reached on any Class Membership Form denial contested by a Claimant, then RG/2 as Settlement Administrator will make the final decision. It is anticipated that any and all contests of Class Membership Form denials will be determined no later than April 30, 2022.

III. Status of Review and Evaluation of Request for Correction Forms

Class Members whose purchase information was contained in one or more of the four Retailer Defendants' specific purchase data had the opportunity to submit a Request for Correction Form if the number of purchases in that purchase information (which was communicated to the Class Member via the Mailed Notice) did not accurately reflect the total 303 THF Products that Class Member had purchased during the Class Period. A total of 197 Request for Correction Forms were submitted online and 473 were submitted in paper form. (Ex. 1, RG/2 Declaration, ¶ 4). Those Request for Correction Forms are being reviewed and evaluated for validity. The same objective factors set forth above with regard to Class Membership Forms will be applied to determine the validity of Request for Correction Forms.

The review and evaluation process for Request for Correction Forms involves the same collaborative process. RG/2, Class Counsel, and Retailer Defendants' Counsel all are contributing and applying the objective matrix of factors. Specifically, RG/2 has created a spreadsheet for the Correction Forms and populated that spreadsheet with the information provided by the Claimants. RG/2 then does an initial review of the Correction Forms claims and provides comments regarding that initial review, including whether the Claimant was on auto-pay and, if so, information regarding that Claimant's purchases. Using the spreadsheet and information

provided by RG/2, Class Counsel performs their initial evaluation/determination recommendations based on the same objective factors set forth above. Class Counsel is then providing those initial evaluation/determination recommendations to Defendants' Counsel and RG/2 for their review, evaluation and determination recommendations. In the event that Defendants' Counsel and/or RG/2 disagree with any of Class Counsel's initial evaluation/determination recommendations, Class Counsel, Retailer Defendants' Counsel, and RG/2 will work to reach agreement on each disputed Request for Correction Form determination. If RG/2, Class Counsel, and Retailer Defendants' Counsel do not agree on the determination of any Class Member's Request for Correction Form, RG/2 as Settlement Administrator will make the final determination.

Class Counsel anticipate that the process of Request for Correction Form review and initial determinations will be completed by March 17th.

IV. Report on Denial of Invalid Requests for Correction Form Claims and Process for Claimants to Contest Denial

On or about March 15, 2022, the Settlement Administrator will mail letters to those Claimants whose Request for Correction Forms have been denied. Those Class Members will be given 21 days to contest the denial, and the outcome of any such Request for Correction Form denial contests will be determined through a collaborative review process among RG/2, Class Counsel, and Defendants' Counsel. If consensus is not reached on any Request for Correction Form denial contested by a Claimant, then RG/2 as Settlement Administrator will make the final decision. It is anticipated that any and all contests of Request for Correction Form denials will be determined no later than April 30, 2022.

V. **Review and Evaluation of Claims for Repairs/Parts/Specific Equipment Damage**

A separate Repairs/Parts/Specific Equipment Damage Claim Form could be submitted by any valid Class Member who is listed on one of the four Retailer Defendants' specific purchase data or who submits a valid Class Membership Form. The following is a summary of the Repairs/Parts/Specific Equipment Damage Claim Forms received to date:

	<u># of Claims</u>	<u>Repair Damages</u>	<u>Other Loss Damages</u>	<u>Total</u>
<u>Online</u>	783	\$8,056,992.43	\$3,097,433.45	\$11,154,425.88
<u>Paper</u>	1336	\$13,580,398.04	\$4,814,490.26	\$18,394,888.30

Total – All Claims – Repair Damages and Other Loss Damages = **\$29,549,314.18**

(Ex. 1, RG/2 Declaration, ¶ 5).

After completion of the determinations on Class Membership Forms and Request for Correction Forms, the parties will know the universe of those individuals who have been determined legitimate Class Members entitled to submit Repairs/Parts/Specific Equipment Damage Claim Forms. The Repairs/Parts/Specific Equipment Damage Claim Forms of those individuals will be reviewed and evaluated for validity. The following are some of the objective factors to be applied in evaluating those claims:

1. Whether the Claimant is or is not a Class Member; for example, whether the Claimant ever purchased the Manufacturer Defendants' 303 THF Products at all, and whether the purchase was made from one of the four Retailer Defendants.
2. Whether the repairs or damage claimed is the type caused by the Manufacturer Defendants' 303 THF Products as set forth in the notice and claim form.
3. Whether the repairs or damage occurred prior to the Class Period.
4. Whether the repairs or damage occurred prior to the Class Member's purchase of any of the Manufacturer Defendants' 303 THF Products.

5. Whether the Claimant submit a timely Class Membership Form or received direct Mailed Notice with specific purchase information.
6. Whether there are other factors that indicate the claim is not valid and/or fraudulent.
7. Whether the Claimant provided adequate information regarding the equipment repair and/or damage.

The review and evaluation process for Repairs/Parts/Specific Equipment Damage Claim Forms involves the same collaborative process RG/2, Class Counsel, and Retailer Defendants' Counsel all are contributing and applying the objective matrix of factors. RG/2 has created a spreadsheet for the Repairs/Parts/Specific Equipment Damage Forms and populated that spreadsheet with the information provided by the Claimants. RG/2 then does an initial review of the Damage Claim Forms regarding potential validity, as well as whether the Claimant was on auto-pay or if the Claimant submitted a Class Membership Form. Class Counsel use the spreadsheet created and populated by RG/2 to perform their initial evaluation/determination recommendations, based on the objective factors set forth above. Class Counsel will then provide those initial evaluation/determination recommendations to Defendants' Counsel and RG/2 for their review, evaluation and determination recommendations. In the event that Defendants' Counsel and/or RG/2 disagree with any of Class Counsel's initial evaluations/determinations, Class Counsel, Retailer Defendants' Counsel, and RG/2 will work to reach agreement on each disputed Repairs/Parts/Specific Equipment Damage Claim Form determination. If RG/2, Class Counsel, and Retailer Defendants' Counsel do not agree on the determination of any Class Member's Repairs/Parts/Specific Equipment Damage Claim Forms, RG/2 as Settlement Administrator will make the final determination. Class Counsel anticipate that the review process and initial determinations of Repairs/Parts/Specific Equipment Damage Claim Forms will be completed by May 30th. Prior to that time, Class Counsel will provide the Court an interim Settlement

Administration Update with additional information regarding the process and status of review of these Repairs/Parts/Specific Equipment Damage Claim Forms.

VI. Settlement Administration – Claim Review/Evaluation and Distribution Costs

Attached as Exhibit 2 is the estimate provided by Settlement Administrator RG/2 for the costs of their time in connection with the second phase of this Retailer Class Settlement – that involving claim review and determinations, communications with Claimants regarding the determinations, and calculation/distribution of settlement monies to Class Members. RG/2 has estimated those costs to be \$226,553.50, with an additional \$5,000 required if scanning and providing copies of all paper claims is required. (Ex. 1, RG/2 Declaration, ¶ 5).

VII. Motion for Order to Approve Settlement Administration Costs and Process

WHEREFORE, based on the above, Class Counsel seek the Court’s Order approving the Settlement Administration budgeted costs and Settlement Administration claims evaluation and determination process set forth herein. A proposed Order will be provided.

Date: February 24, 2022

Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFFS
AND CLASS MEMBERS**

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DECLARATION OF SETTLEMENT ADMINISTRATOR

I, Tina Chiango, hereby declare under penalty of perjury pursuant to 28 U.S.C. § 1746 that the following is true and correct:

1. I am the Director of Claims Administration, Securities, and Antitrust for RG/2 Claims Administration LLC ("RG/2"), the Settlement Administrator retained in this matter, located at 30 S. 17th Street, Philadelphia, PA 19103. I am over 21 years of age and am not a party to this action. I have personal knowledge of the facts set forth herein and, if called as a witness, could and would testify competently thereto.

2. RG/2 was retained by the parties and approved by the Court to serve as Settlement Administrator, which includes amongst other tasks, disseminating notice to the class via first class mail or email; contracting and overseeing published notice; receiving and tracking requests for exclusion and objections; responding to Class Member inquiries; processing Claim Forms and evaluating Claims; calculating, preparing and mailing Settlement Award checks to all Eligible Settlement Class Members; and any additional tasks as the parties mutually agree upon or the Court orders RG/2 to perform.

3. As of January 31, 2022, in addition to the automatic reimbursements based on purchased contained in the Retailer Defendants' data, a total of 3,027 Class Membership Forms had been submitted online and 216 Class Membership Forms had been submitted in paper format

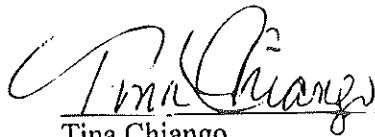
4. As of January 31, 2022, a total of 197 Request for Correction Forms had been submitted online and 473 had been submitted in paper form in this Retailer Class Settlement.

5. The following is a summary of the Repairs/Parts/Specific Equipment Damage Claim Forms received as of January 31, 2022:

	<u># of Claims</u>	<u>Repair Damages</u>	<u>Other Loss Damages</u>	<u>Total</u>
<u>Online</u>	783	\$8,056,992.43	\$3,097,433.45	\$11,154,425.88
<u>Paper</u>	1336	\$13,580,398.04	\$4,814,490.26	\$18,394,888.30
<u>Total – All Claims – Repair Damages and Other Loss Damages</u> =				\$29,549,314.18

6. RG/2 initially provided an estimate of the fees and costs of the administration for the first phase which involved notice and publication. The second phase of this Retailer Class Settlement will involve claim processing, review and determinations, communications with Claimants regarding the determinations, and calculation/distribution of settlement monies to Class Members. RG/2 has estimated those costs to be \$226,553.50, with an additional \$5,000 required if scanning and providing copies of all paper claims is required. Attached is RG/2's itemization of the estimated fees and costs for the second phase of settlement administration. RG/2 notes that the estimated second phase settlement administration fees and costs would be approximately \$700,000 higher if the Settlement Administrator was required to undertake an independent review, evaluation, and determination of each and every claim rather than through the collaborative process involving Class Counsel and Defendants' Counsel.

Dated: February 24, 2022


Tina Chiango

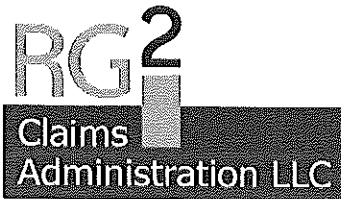


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Presented by:
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**Fees and Costs for Claims Administration and Distribution Services related
*Smitty's Nationwide Class Action***

	<u>Quantity</u> <u>(hours/pieces)</u>		<u>Amount</u>
<i>Claims Processing</i>			
Data Entry of Paper Class Membership Forms	219	\$	1,752
Data Entry of Paper Correction Forms	473	\$	3,784
Data Entry of Paper Damage Claims	1,336	\$	13,360
Initial Review of All Class Membership Forms	3,246	\$	17,853
Initial Review of All Correction Forms to determine if on Auto Pay and if any duplication of buckets	670	\$	4,355
Initial Review of All Damage Claim to determine if on Auto Pay or filed a Class Membership Form	2,118	\$	13,767
Fraud Review	15	\$	3,600
Data Research for Class Membership		\$	1,265
Issue Deficiency/Denial Letters/Emails	3,500	\$	6,825
Postage	3,500	\$	2,030
Process Responses	350	\$	1,050
Subtotal: Processing Cost			\$ 69,641
<i>Telephonic Database Support</i>			
<i>Live Operator Minutes*</i>	750	\$	3,375
Emails	500	\$	1,915
*minimum \$250 per month			
Subtotal: Telephone and Email Support			\$ 5,290
<i>Distribution</i>			
Issue Paper Checks	150,000	\$	141,623
Postage	150,000	\$	69,000
Reissue Checks per Claimant Request	250	\$	688
Check Remailings	4,500	\$	6,750
Postage	4,750	\$	2,185



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	<u>Quantity</u> <u>(hours/pieces)</u>	<u>Amount</u>
Tax Filings		\$ 1,500
QSF Tax Return Prep & Filing (2022 @ 5 hours per year)		\$ 1,500
Subtotal: Fund Distribution & Tax Preparation		\$ 143,123
Case Management, Data Management, Data Warehousing, Technical Support and Reporting to Counsel and the Court.		\$ 8,500
Subtotal: Project Management		\$ 8,500
Total Fees and Expenses		\$ 226,553.50

** If Scanning and providing copies of all paper claims is required, it would add an additional \$ 5,000 to this budget



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