

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

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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

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**PLAINTIFFS’ SUGGESTIONS IN SUPPORT OF UNOPPOSED MOTION FOR  
PRELIMINARY APPROVAL OF CLASS ACTION SETTLEMENT**

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COME NOW Plaintiffs, by and through their attorneys of record, and submit the following Suggestions in Support of Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement Agreement and Release ("Manufacturer Settlement Agreement") with Defendants Smitty's Supply, Inc. ("Smitty's") and CAM2 International LLC ("CAM2") (sometimes referred to herein collectively as "Manufacturer Defendants").

## **I. INTRODUCTION**

Plaintiffs and Manufacturer Defendants have agreed to a class action settlement of this case which makes relief available and provides notice to more than 100,000 Manufacturer Settlement Class Members who have purchased Super S Super Trac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, CAM2 Promax 303 Tractor Hydraulic Oil, and/or CAM2 303 Tractor Hydraulic Oil ("Smitty's/CAM2 303 THF") in the United States at any point in time from December 1, 2013 to present, excluding any persons and other entities who purchased for resale or solely purchased Super S Super Trac 303 Tractor Hydraulic Fluid in Missouri. The class action settlement is set forth in the Manufacturer Settlement Agreement, which includes all exhibits thereto, and which is attached as Exhibit 1 to Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement ("Motion").

Settlement of a class action requires judicial approval, which usually consists of three major steps: (1) preliminary approval of the settlement and conditional approval of the settlement class; (2) dissemination of notice to the class; and (3) the holding of a formal fairness hearing to determine whether the settlement should be granted final approval as fair, reasonable and adequate.

In their Motion, Plaintiffs request this Court to enter the accompanying proposed order which:

- (a) grants preliminary approval of the Manufacturer Settlement Agreement;

- (b) conditionally certifies, for settlement purposes, the Manufacturer Settlement Class as defined in the Manufacturer Settlement Agreement and appoints the Plaintiffs set forth on Appendix A to the Manufacturer Settlement Agreement as Class Representatives and Plaintiffs' Counsel as Class Counsel;
- (c) approves the Parties' proposed form and method of giving members of the Manufacturer Settlement Class notice of the Action and the proposed Settlement;
- (d) directs that notice be given to Manufacturer Settlement Class Members in the proposed form and manner set forth in the Manufacturer Settlement Agreement;
- (e) sets deadlines and procedures for persons and/or entities that fall within the Manufacturer Settlement Class definition to exclude themselves, for Manufacturer Settlement Class Members to comment on the proposed Settlement, and for Manufacturer Settlement Class Members to submit Claim Forms; and
- (f) schedules a fairness hearing to determine whether the Manufacturer Settlement Agreement should be granted final approval, whether the Class Representatives should be awarded incentive awards, and whether Class Counsel should be awarded reasonable attorneys' fees and expenses.

(See [Proposed] Preliminary Approval Order, Motion Exhibit 1-A.)

In the Corrected Fifth Amended Consolidated Complaint (“5<sup>th</sup> CAC”), Plaintiffs allege that Smitty’s CAM2 303 THF was negligently made and deceptively labeled, that Manufacturer Defendants breached warranties and state consumer and deceptive practices statutes, and that purchase and use of such products causes damage to various parts of equipment.

The Manufacturer Settlement Agreement provides meaningful relief and benefits through the Manufacturer Settlement Class Fund of \$31,900,000.00, from which shall be paid (a) all Settlement Administration and Notice expenses, (b) claims of Qualified Manufacturer Settlement Class Members, (c) 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 Manufacturer Settlement Class Fund shall revert to Manufacturer Defendants.

The Manufacturer Settlement Class Fund is sufficient to provide each Qualified Manufacturer Settlement Class Member with a payment for damage that will be based on the number of units of Smitty's/CAM2 303 THF purchased as well as a payment for repairs, parts, and/or specific damage to equipment the Manufacturer Settlement Class Member claims to have suffered. Payments for that damage and for specific damage to equipment will be allocated *pro rata* based on the total amount of valid claims.

As noted, also paid out of the Manufacturer Settlement Class Fund are all Settlement Administration and Notice expenses, incentive awards to Class Representatives as ordered by the Court, and all attorneys' fees and expenses of Class Counsel as ordered by the Court. Settlement Administration and Notice expenses for this nationwide class settlement are estimated to be \$992,790, with approximately \$530,000 related to publication notice costs, \$245,000 related to direct notice costs, and \$220,000 related to claim form processing, telephone and email support, and fund distribution. (*See* Motion, Exhibit 2). Incentive awards in the amount of \$4,500.00 are requested for each of the Class Representatives who provided deposition testimony, written discovery responses and documents and \$3,000 for each of the Class Representatives who provided written discovery responses and documents. Class Counsel has also agreed to limit their request for attorneys' fees to 40% of the Settlement amount less the expenses for which reimbursement is ordered by this Court.

The Court should grant preliminary approval because the Manufacturer Settlement Agreement provides substantial and meaningful relief and benefit to the Manufacturer Settlement Class in a way that addresses the fundamental issues underlying the Action, and because the terms of the Settlement are well within the range of reasonableness and consistent with applicable case law. Indeed, the Settlement, under which the Manufacturer Defendants and their Insurers will pay

\$31,900,000 (apportioned among the Manufacturer Defendants and their Insurers as separately agreed to) to create a Manufacturer Settlement Class Fund, is a great result for the Manufacturer Settlement Class. Its terms should therefore be submitted to Settlement Class Members for their reaction, and a fairness hearing scheduled to determine whether the Manufacturer Settlement Agreement warrants final approval. Based on the Manufacturer Settlement Agreement, the accompanying documents, the Declaration of the Settlement Administrator attached to the Motion for Preliminary Approval, the Declaration of Lead Class Counsel attached hereto as Exhibit I, the Settlement Administration and Notice Plan attached as Exhibit H to the Manufacturer Settlement Agreement, and the following Suggestions, this Court should preliminarily approve the Manufacturer Settlement Agreement, certify the Manufacturer Settlement Class for settlement purposes, approve the dissemination of notice, and set a final fairness hearing and related dates.

## **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

### **A. Plaintiffs' Claims**

This lawsuit involves four products made by Manufacturer Defendants: Super S Super Trac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, CAM2 Promax 303 Tractor Hydraulic Oil, and CAM2 303 Tractor Hydraulic Oil. Plaintiffs allege (1) that Smitty's/CAM2 303 THF did not meet the equipment manufacturers' specifications or provide the performance benefits listed on the product labels, (2) that Smitty's/CAM2 303 THF was made with inappropriate ingredients, and (3) that use of Smitty's/CAM2 303 THF in equipment causes increased wear and damage to various parts of equipment. Plaintiffs also allege that Smitty's/CAM2 303 THF should not be used as tractor hydraulic fluid and that the fluid should be flushed from equipment systems.

Plaintiffs allege that the Manufacturer Defendants' conduct violated state consumer laws and constituted breaches of warranty, negligent misrepresentations, negligence, and unjust enrichment. Manufacturer Defendants vigorously deny all these claims of wrongdoing.

Plaintiffs seek various categories of damages on behalf of themselves and the putative class of purchasers based on claims and purported harms alleged in the 5<sup>th</sup> CAC, including: (i) restitution/return of cost of product; (ii) benefit of the bargain damages; (iii) cost of common remedial measures; (iv) other repair and parts costs as damages; (v) punitive damages; and (vi) attorneys' fees and costs.

## **B. Litigation History**

On June 2, 2020, the Judicial Panel on Multidistrict Litigation ("MDL") transferred eight putative class actions involving the manufacture, labeling, marketing, and performance of Smitty's/CAM2 303 THF to this Court. On August 3, 2020, the Court entered an Order adopting a substantive Master Consolidated Amended Complaint, allowing Plaintiffs' Counsel to combine all the parties and claims in the pending transferred and/or individual state class action cases into a substantive and superseding Master Consolidated Amended Complaint for purposes of all MDL consolidated proceedings before the Court, and allowing direct joinder of additional plaintiffs and claims in the consolidated action through inclusion in the Master Consolidated Complaint. Plaintiffs filed the Consolidated Amended Complaint on September 1, 2020 and filed a First Amended Consolidated Complaint on January 29, 2021.

Plaintiffs' 5<sup>th</sup> CAC includes the following Counts:

- Count I – Negligence
- Count II – Breach of Express Warranty
- Count III – Breach of Implied Warranty of Merchantability
- Count IV – Breach of Implied Warranty of Fitness for Particular Purpose
- Count V – Unjust Enrichment
- Count VI – Fraudulent Misrepresentation



Count VII – Negligent Misrepresentations  
Counts VIII – XXXVII – Violations of Various State Deceptive Practices Acts

Prior to the Parties engaging in the settlement discussions that have culminated in the entry of the Manufacturer Settlement Agreement, Class Counsel devoted substantial time in pursuit of the claims. Plaintiffs' Counsel conducted extensive discovery in multiple cases prior to the MDL consolidation. Extensive search terms were utilized for email discovery, with thousands of pages of documents produced by Manufacturer Defendants and reviewed and analyzed by Plaintiffs. Plaintiffs have taken numerous depositions of Manufacturer Defendants' witnesses. Plaintiffs also retained and involved expert witnesses.

Over the four years following transfer to this MDL, the Parties engaged in even more extensive fact discovery, as well as expert discovery and class certification briefing. In this MDL, there have been more than 75 depositions of Manufacturer and Retailer Defendants' witnesses, Plaintiffs/dismissed Plaintiffs, third-party witnesses, and experts. Multiple requests for production of documents and interrogatories have been served, with many discovery hearings before and Orders from the MDL Court. Class discovery and class certification experts and briefing focused on eight initial states of Arkansas, California, Kansas, Kentucky, Minnesota, Missouri, New York, and Wisconsin. Classes were certified on some claims in each of those eight states, and class notice was provided from April through June of 2024. The Missouri trial was scheduled to start on August 26<sup>th</sup>, and all pre-trial proceedings had been completed when resolution was reached two days before the August 26<sup>th</sup> start.

Agreement was reached through an ongoing mediation with Mediator John Perry which had started in Spring of 2024. The Parties reached an agreement in principle for the Manufacturer Settlement Agreement on August 24, 2024. Further detailed negotiations of the full Manufacturer Settlement Agreement took place between August 24<sup>th</sup> and October 2<sup>nd</sup>, culminating in the signing

of the Manufacturer Settlement Agreement attached as Exhibit 1 to Plaintiffs' Motion and for which this Court's Preliminary Approval Order is now sought.

Although Plaintiffs have prevailed on eight contested class certifications and believe they will prevail on all class certifications and trials, Manufacturer Defendants continue to assert that they have violated no laws and that they have meritorious defenses to class certification and liability. In light of these positions and the risks of litigation for both sides, the Manufacturer Settlement Agreement provides substantial benefits to Manufacturer Settlement Class Members and represents a reasonable resolution of the claims on a class-wide basis. Therefore, the Parties have agreed to resolve all claims through their proposed Settlement.

**C. The Proposed Settlement**

*1. The Proposed Settlement Class*

Plaintiffs now seek preliminary approval of the Parties' proposed Manufacturer Settlement Agreement. The Manufacturer Settlement Class under the Parties' Settlement Agreement consists of the following class:

All persons and other entities who purchased Super S Super Trac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, CAM2 Promax 303 Tractor Hydraulic Oil, and/or CAM2 303 Tractor Hydraulic Oil in the United States and its territories, other than Missouri, at any point in time from December 1, 2013 to present, excluding any persons and/or entities who purchased for resale; and,

All persons and other entities who purchased Super S 303 Tractor Hydraulic Fluid, CAM2 Promax 303 Tractor Hydraulic Oil, and/or CAM2 303 Tractor Hydraulic Oil in Missouri at any point in time from December 1, 2013 to present, excluding any persons and/or entities who purchased for resale.

The Manufacturer Settlement Class also excludes Manufacturer Defendants, including their immediate family members, as well as the M D L judicial officers assigned to the Action and their immediate family and staff members.

To represent the Manufacturer Settlement Class for purposes of the Manufacturer Settlement Agreement, Plaintiffs propose the Court appoint as Class Representatives the \_\_\_\_\_

persons and/or entities identified as Plaintiffs in Appendix A to the Manufacturer Settlement Agreement, and also appoint Plaintiffs' Counsel as Class Counsel (i.e., counsel for the Manufacturer Settlement Class).

2. *Settlement Payments*

Under the Manufacturer Settlement Agreement, Manufacturer Defendants and their Insurers will establish a Manufacturer Settlement Class Fund of \$31,900,000.00. In addition to funding Settlement Administration and Notice expenses, incentive awards, and Class Counsel's expenses and fees, the Manufacturer Settlement Class Fund should be sufficient to provide each Qualified Settlement Class Member with a payment of damages based on the qualifying units of Smitty's/CAM2 303 THF purchased and any repairs, parts, or specific equipment damage suffered.

3. *Notice and Administration Costs*

The Manufacturer Settlement Class Fund also pays the reasonable costs, fees, and expenses of the Settlement Administrator in providing notice to the Manufacturer Settlement Class and administering the Settlement. Those notice and administration costs, fees, and expenses are estimated to be \$992,790.00.

4. *Class Representative/Plaintiffs' Incentive Awards and Attorneys' Fees*

The Manufacturer Settlement Class Fund also pays whatever the Court awards in incentive awards for the Class Representative/Plaintiffs, reimbursement of expenses to Class Counsel, and an award of attorneys' fees to Class Counsel. Class Counsel anticipates seeking the following amounts from the Court: (a) a \$4,500 incentive award to each of the Class Representative/Plaintiffs who provided deposition testimony as well as interrogatory responses and documents in discovery and a \$3,000 incentive award to each of the Class Representatives/Plaintiffs who provided interrogatory responses and documents in discovery, but no deposition testimony, (b) reimbursement of Class Counsel's case expenses, and (c) a 40% contingency fee to Class Counsel.

### III. ARGUMENT

#### A. The Class Action Settlement Approval Process

Pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, a class action may not be dismissed, compromised, or settled without court approval. In considering granting its approval, the court is to consider that the law favors settlement, especially in class action cases and other complex matters where significant resources can be conserved by avoiding the time, costs, and rigor of prolonged litigation. *Little Rock School Dist. v. Pulaski County Special School Dist.*, 921 F.2d 1371 (8th Cir. 1990). “[S]ettlement agreements are presumptively valid. *Id.* at 1391. The standard for review is for abuse of discretion. *Id.* In reviewing decisions approving such settlements, the appellate courts simply ask “whether the District Court considered all relevant factors, whether it was significantly influenced by an irrelevant factor, and whether in weighing the factors it committed a clear error of judgment.” *Id.*

“In approving a class settlement, the district court is to ‘consider whether it is fair, reasonable, and adequate.’” *Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 907 (9th Cir. 2018) (quoting *Prof’l Firefighters Ass’n of Omaha, Local 385 v. Zalewski*, 678 F.3d 640, 648 (8th Cir. 2012) and *DeBoer v. Mellon Mortg. Co.*, 64 F.3d 1171, 1176 (8th Cir. 1995)). “‘Great weight is accorded [the district court’s] views because [the judge] is exposed to the litigants, and their strategies, positions and proofs. [The judge] is aware of the expense and possible legal bars to success. Simply stated, [the judge] is on the firing line and can evaluate the action accordingly.’” *Id.* (quoting *Grunin v. Int’l House of Pancakes*, 513 F.2d 114, 123 (8th Cir. 1975) and *Ace Heating & Plumbing Co. v. Crane Co.*, 453 F.2d 30, 34 (3d Cir. 1971)). The Eighth Circuit has noted, “We will set aside a judicially approved class action settlement ‘only upon a clear showing that the district court abused its discretion.’” *Id.*

The first step in the approval process is for the Court to make a preliminary fairness decision. “Preliminary approval does not require the court to decide the ultimate question whether a proposed settlement is fair, reasonable, and adequate. At this stage, the issue is whether the proposed settlement falls within the range of fairness so that notice of the proposed settlement should be given to class members and a hearing scheduled to consider final approval.” *Komoroski v. Utility Services Partners Private Label, Inc.*, Case No. 4:16-CV-00294-DGK, 2017 WL 3261030 at \*1 (July 31, 2017 W.D. Mo.).

At the preliminary approval stage, the Court should make a preliminary evaluation of the proposed terms. If that evaluation does not disclose grounds to doubt its fairness or other obvious deficiencies, such as unduly preferential treatment of class representatives or segments of the class, or excessive compensation for attorneys, and if it appears to fall within the range of possible approval, the settlement should be given preliminary approval. If the Court finds preliminary approval is warranted, the Court should direct that notice be provided to the class members and hold a formal fairness hearing where formal arguments can be made both in support of and in opposition to the settlement if class members so choose. *See* Manual for Complex Litigation, Fourth, § 21.632.

At the preliminary approval stage, the Court does not make a final decision on the merits of the proposed settlement; rather it merely evaluates whether (i) the settlement agreement was negotiated at arms’ length, (ii) there has been sufficient investigation and discovery to enable counsel and the Court to act intelligently, and (iii) there are any obvious deficiencies in the settlement agreement. *See*, NEWBERG ON CLASS ACTIONS, § 11.25.

Preliminary approval is further appropriate under Federal Rule 23 if the monetary relief and other appropriate terms of the settlement agreement are such that “giving notice is justified by

the Parties' showing that the Court will likely be able to: (i) approve the proposal under Rule 23(e)(2); and (ii) certify the class for purposes of judgment on the proposal." Here, this Court should determine that it "will likely be able to approve" the Manufacturer Settlement Agreement pursuant to Rule 23(e)(2) in that:

- (A) the Class Representatives and Class Counsel have adequately represented the Manufacturer Settlement Class;
- (B) the proposed Settlement was negotiated at arm's length;
- (C) the relief provided for the Manufacturer Settlement Class is adequate, taking into account:
  - (i) the costs, risks, and delay of trials and appeals;
  - (ii) the effectiveness of any proposed method of distributing relief to the Manufacturer Settlement Class, including the method of processing class-member claims;
  - (iii) the terms of the proposed award of attorney's fees, including the timing of payment; and
  - (iv) any agreement required to be identified under Rule 23(e)(3); and,
- (D) the proposal treats Manufacturer Settlement Class Members equitably relative to each other.

With further regard to (c)(iii), the Manufacturer Settlement Agreement provides that Class Counsel will submit their request for a fee award amount to be awarded by the Court, in the amount of 40%, and that whatever fees are awarded by the Court would be paid from the Manufacturer Settlement Class Fund. With further regard to (c)(iv), there are no agreements other than the Manufacturer Settlement Agreement being presented to this Court for approval. The Court has previously granted preliminary and final approval to the 303 Retailers Class Settlement Agreement.

This Court's review for preliminary approval should also include consideration of whether it appears the Manufacturer Settlement Class can meet the requirements of Rule 23(a) and (b)(3). The Court should conduct such review bearing in mind that it is only considering whether there is

probable cause to believe that the class can be certified for purposes of settlement and that it is not making a determination as to whether the case could be maintained as a class action if the settlement failed and litigation were required, nor is it making a final determination of certification for purposes of settlement. A final fairness hearing is the mechanism by which the Court finally evaluates the Parties' settlement in light of the strong judicial and societal policy favoring settlements.

The Court should also consider Manufacturer Defendants' view of Plaintiffs' case and the probability of success on class certification and the merits. "An integral part of the strength of a case on the merits is a consideration of the various risks and costs that accompany continuation of the litigation." *Donovan v. Estate of Fitzsimmons*, 778 F.2d 298, 309 (7th Cir. 1985). While Plaintiffs have prevailed on class certification of some claims for each of the eight initial focus states and while they believe they would have prevailed on all issues of class certification and liability in this matter, Plaintiffs nevertheless recognize there is risk and uncertainty in litigation. Further, Manufacturer Defendants' Counsel and Manufacturer Defendants were confident that they had viable defenses to class certification and to liability. There was also the possibility of further appeals even if other state classes were certified against Manufacturer Defendants and then successful at trial. Thus, even if Plaintiffs were successful at all class certifications, trials, and appeals, it could be years before the Manufacturer Settlement Class Members received any benefits. In light of all of the considerations, the Settlement benefits are fair and reasonable.

**B. Preliminary Approval of The Settlement is Appropriate**

*1. Adequate Investigation and Discovery was Conducted*

Class Counsel conducted adequate discovery and performed a sufficient investigation into the underlying basis of the claims against Manufacturer Defendants in order to make an intelligent evaluation of the possible outcome of the litigation and the Settlement terms. Years of extensive

document and deposition discovery have been conducted in this MDL and the underlying cases previously pursued in various jurisdictions. Class Counsel also consulted with experts in the tractor hydraulic fluid field. Expert reports have been provided by the Parties and expert depositions taken with regard to class certification of eight focus states, as well as merits for the Missouri Class. Class Counsel also performed extensive research and analysis of the legal principles applicable to the claims against Manufacturer Defendants and class certification of those claims, as well as to the potential defenses to those claims and certification. Thousands of pages of documents and emails were produced by Manufacturer and Retailer Defendants. Numerous depositions were also taken of key management officials of Manufacturer and Retailer Defendants. Settlement was reached in this case only after extensive discovery and with adequate information. Plaintiffs' Counsel performed all necessary work to prosecute and evaluate the case prior to reaching a settlement with Manufacturer Defendants. There should be no question that Plaintiffs had sufficient information when the Settlement was reached.

## 2. *The Settlement Resulted from Arm's-Length Negotiation*

The Manufacturer Settlement Agreement before the Court is the product of intensive, arm's-length negotiations. The negotiations included several formal mediations, the final one continuing over a two-month span with mediator John Perry, Jr. The negotiations were informed by informal discovery, formal discovery, expert witnesses, and other investigation and preparation undertaken by the Parties. Negotiations were conducted by Plaintiffs' Counsel highly experienced in pursuing and resolving complex litigation and class action matters and Manufacturer Defendants' Counsel similarly experienced in defending such cases. Accordingly, the Settlement is entitled to a preliminary presumption of fairness. *See, e.g., In re BankAmerica Corp. Securities Litig.*, 210 F.R.D. 694, 700 (E.D. Mo. 2002) ("In evaluating the settlement, the Court: should keep in mind the unique ability of class and defense counsel to assess the potential risks and reward of



litigation; a presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.”); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74 (S.D.N.Y. 2000) (“If the Court finds that the Settlement is the product of arm’s length negotiations conducted by experienced counsel knowledgeable in complex class litigation, the Settlement will enjoy a presumption of fairness. Once the settlement is presumed fair, it is not for the court to substitute its judgment as to a proper settlement for that of such competent counsel . . .”).

3. *The Proposed Settlement Provides Significant Benefits to Class Members and Is Within the Range of Possible Approval*

The Manufacturer Settlement Agreement provides significant monetary relief to Manufacturer Settlement Class Members, directly addressing the fundamental issues underlying the litigation. The Manufacturer Settlement Class Fund will provide each Qualified Manufacturer Settlement Class Member a payment based on the units of Smitty’s/CAM2 303 THF purchased during the Class Period and a payment for any repairs, parts, or specific equipment damage suffered. Each Qualified Manufacturer Settlement Class Member will receive a pro rata share of his/her/its Total Claim Value.

Despite substantial obstacles to obtaining class-wide relief, the Manufacturer Settlement Agreement in fact provides this immediate and meaningful relief. The class-wide financial relief is a significant victory for Manufacturer Settlement Class Members. Although Plaintiffs believe they would have been able to continue to make sufficient showings at class certification and would also have been able to do so at trial and on any further appeals, Manufacturer Defendants intended to continue to vigorously contest this matter, including at further class certifications, summary judgments, and trials, and on appeals of any appealable rulings in favor of Plaintiffs. Accordingly, if the claims asserted in the action were not settled by voluntary agreement among the parties,

future proceedings, including appeals, would be protracted and expensive, involve highly complex legal and factual issues relating to, among other things, class certification, liability, and damages. It would also involve substantial uncertainties, delays, and other risks inherent in litigation. In light of these positions and the risks of litigation for both sides, the Manufacturer Settlement Agreement provides substantial benefits to Manufacturer Settlement Class Members and represents a reasonable resolution of the claims against Manufacturer Defendants on a class-wide basis.

When these risks, as well as the uncertainties and risks inherent in any litigation, are balanced against the benefits provided by the Manufacturer Settlement Agreement – cash payments to Qualified Manufacturer Settlement Class Members – Plaintiffs submit that the Settlement easily falls within the range of possible final approval.

Next, there is no undue preferential treatment of segments of the Manufacturer Settlement Class. The relief distribution amount for Qualified Manufacturer Settlement Class Members is calculated pursuant to the established, uniform standard.

Finally, the law favors settlement, especially in class actions and other complex cases. By their very nature, “[c]lass actions, in general, place an enormous burden of costs and expense upon parties.” *Marshall v. National Football League*, 787 F.3d 502, 512 (8th Cir. 2015) (internal quotations and citation omitted); *see also In re Uponor, Inc., F1807 Plumbing Fittings Prod. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013) (same). And in complex cases such as this one, “the enormity of the burden is obvious.” *Marshall*, 787 F.3d at 512. Here, the Manufacturer Settlement Class Members receive real value in exchange for the release of their claims. Further, approval of the Settlement will avoid significant litigation costs that likely would have been incurred in hard-fought, complicated, and expensive litigation, likely requiring years to complete. In addition to

preserving both parties' expenditure of fees and costs, the Settlement preserves the judicial resources of this Court.

4. *Defendants Receive a Reasonable Release of Liability*

In return for the consideration to be provided under the Manufacturer Settlement Agreement, Manufacturer Defendants receive a reasonable release of liability related to purchase and use of Smitty's/CAM2 303 THF in the United States. Paragraph 54 of the Manufacturer Settlement Agreement specifically provides as follows:

Upon the Effective Date, the Releasing Parties, for and in consideration of the terms and undertakings herein, the sufficiency and fairness of which are acknowledged, hereby fully release and forever discharge the Released Parties (as defined herein) from any claims that have been or that could have been made or brought in the Action arising out of or relating to the Action or Plaintiffs' allegations about, or any purchase and/or use of Smitty's/CAM2 303 THF, including but not limited to Super S Super Trac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, CAM2 Promax 303 Tractor Hydraulic Oil, and/or CAM2 303 Tractor Hydraulic Oil in the United States and its territories during the Class Period, or any alleged personal injury or property damage relating to the use of any of the aforementioned products. This Release shall broadly include, at least, all known and unknown claims against the Released Parties arising out of or relating to the Action or Plaintiffs' allegations about, or any purchase and/or use Smitty's/CAM2 303 THF, including but not limited to Super S Super Trac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in the United States and its territories during the Class Period, including but not limited to any potential claims of breach of express or implied warranty, breach of contract, negligent misrepresentation, fraud or fraudulent misrepresentation, consumer fraud, negligence, unjust enrichment or any other common law, statutory or equitable claims. (The claims referenced in the prior sentences in this Paragraph referred to herein as the "Released Claims") This Release is intended to be a broad release, and the parties hereto intend to fully release the Released Parties from any and all claims and potential claims arising out of or relating to the Action, including those relating to the purchase of Super S Super Trac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, CAM2 Promax 303 Tractor Hydraulic Oil, and/or CAM2 303 Tractor Hydraulic Oil. The Parties shall further agree to language empowering the Court, after Preliminary Approval, to enjoin under the All Writs Act, any putative state or federal class action that purports to assert any Released Claim under the Manufacturer Settlement Agreement against any of the Released Parties.

"Unknown" claims as released herein means any and all claims that any Manufacturer Settlement Class Member does not know to exist against any of the

Released Parties which, if known, might have affected his, her, or its decision to enter into or be bound by the terms of this Manufacturer Settlement Agreement. Plaintiffs and the Manufacturer Settlement Class Members acknowledge that they may hereafter discover facts in addition to or different from those that they now know or believe to be true concerning the subject matter of this Release, but nevertheless fully, finally, and forever settle and release any and all claims arising out of or relating to the Action or Plaintiffs' allegations about, or any purchase and/or use of, Smitty's/CAM2 303 THF, known or unknown, derivative or direct, suspected or unsuspected, accrued or unaccrued, asserted or unasserted, in law or equity, including, without limitation, claims that have been asserted or could have been asserted in this Action against any of the Released Parties. The foregoing waiver includes, without limitation, an express waiver to the fullest extent permitted by law, by Plaintiffs and the Manufacturer Settlement Class Members of any and all rights under California Civil Code § 1542 or any similar law of any other state or of the United States, which provides:

**A GENERAL RELEASE DOES NOT EXTEND TO CLAIMS THAT THE CREDITOR OR RELEASING PARTY DOES NOT KNOW OR SUSPECT TO EXIST IN HIS OR HER FAVOR AT THE TIME OF EXECUTING THE RELEASE AND THAT, IF KNOWN BY HIM OR HER, WOULD HAVE MATERIALLY AFFECTED HIS OR HER SETTLEMENT WITH THE DEBTOR OR RELEASED PARTY.**

The Settling Parties acknowledge, and the Manufacturer Settlement Class Members shall be deemed by operation of the Final Approval Order to acknowledge, that the foregoing waiver was separately bargained for and a key element of the Settlement of which this release is a part.

As noted, this release is not overly broad and only releases Manufacturer Settlement Class Members' claims against Manufacturer Defendants arising out of or relating to the Action and Plaintiffs' allegations about the purchase of Smitty's/CAM2 303 THF in the United States.

5. *Plaintiffs' Counsel and the Class Representatives Support the Settlement*

Through their informal investigation, the substantial document production and review in this litigation, the depositions taken, consultation with the Class Representatives, as well as through their consultations with experts, Plaintiffs' Counsel have gained a comprehensive knowledge of the facts relating to the respective claims and defenses and have sufficient evidence on which to base an intelligent assessment of the Settlement proposal. Based on their knowledge of the case and the applicable law, as well as their experience in similar complex litigation and

class actions, Plaintiffs' Counsel believe the Manufacturer Settlement Agreement is fair, reasonable and adequate. The Plaintiffs in the Action (see Appendix A) have also approved the Manufacturer Settlement Agreement.

6. *The Requirements of Fed. R. Civ. P. 23(a) and (b)(3) are Satisfied for Settlement Purposes.*

This Court's review for preliminary approval also considers whether the requirements of Rule 23(a) and (b)(3) are satisfied for purposes of certifying the Manufacturer Settlement Class and administering the Settlement. The Manufacturer Settlement Class satisfies these requirements for settlement purposes. It is estimated that there are more than 100,000 members of the proposed Manufacturer Settlement Class. The claims of those persons arise from the purchase and use of Smitty's/CAM2 303 THF in the United States during the Class Period. The Plaintiffs identified in Appendix A to the Manufacturer Settlement Agreement bought and used Smitty's/CAM2 303 THF within those parameters. They are members of the Manufacturer Settlement Class, asserting claims typical of Manufacturer Settlement Class Members, and they do not have interests that are contrary to, or in conflict with, interests of the Manufacturer Settlement Class Members for purposes of settlement. The Plaintiffs identified in Appendix A to the Manufacturer Settlement Agreement have also retained experienced counsel who have protected fully and adequately the interests of the Manufacturer Settlement Class Members in the Settlement.

7. *The Proposed Method and Content of Class Notice are Appropriate*

Due process and Rule 23 require that the Court "direct to class members the best notice that is practicable under the circumstances, including individual notice to all members who can be identified through reasonable effort." Fed. R. Civ. P. 23(c)(2)(B). Similarly, Rule 23(e)(1) calls for notice to be provided in a "reasonable manner to all class members who would be bound by the proposal[.]" Fed. R. Civ. P. 23(e)(1)(B). The notice must contain specific information in plain,

easily understood language, including the nature of the action and the rights of class members. Fed. R. Civ. P. 23(c)(2)(B)(i)-(vii).

To ensure that the notice satisfies the requirements of due process and Rule 23 in both form and content, Plaintiffs have worked closely with RG/2 Claims Administration, LLC (“RG/2”), which specializes and has substantial experience in providing notice and administrative services in class action litigation, to develop a comprehensive and substantial notice plan. Plaintiffs propose that the Court appoint RG/2 to serve as the Settlement Administrator. The notice plan developed by Plaintiffs and RG/2 is comprised of several parts.

First, direct-mail and email notice of the Settlement will be provided to the Manufacturer Settlement Class Members for whom Retailers have provided names and contact information. The Settlement Administrator will mail by bulk mailing the Mailed Class Notice in substantially the form filed herewith as Exhibit 1-F to the Motion to the last known mailing address of each member of the Manufacturer Settlement Class for whom such information is available. The Mailed Class Notice will reference how to complete a Claim Form substantially in the form filed herewith as Exhibit 1-C to the Motion. Email notification will also be sent to those Manufacturer Settlement Class Members for whom email addresses have been provided to the Settlement Administrator.

Second, publication notice of the Settlement will be provided to the remainder of the Manufacturer Settlement Class for whom the Settlement Administrator is unable to reasonably ascertain name and address information. To accomplish this publication notice to this segment of the Manufacturer Settlement Class, the Settlement Administrator shall cause the Summary Class Notice in substantially the form submitted herewith as Exhibit 1-E to the Motion to be published pursuant to the Notice Plan reflected in Exhibit 1-H.

Third, electronic notice of the Manufacturer Settlement Agreement will be provided through targeted Facebook ads and other digital advertising and press releases.

Fourth, electronic information regarding the Manufacturer Settlement Agreement will be provided through a dedicated, interactive Settlement Website. To accomplish this notice, the Settlement Administrator will maintain an operating website that: (i) contains downloadable copies of the Preliminary Approval Order, Long Form Notice, the Manufacturer Settlement Agreement, Claim Form, and, when filed, Class Counsels' motions for attorneys' fees, costs, and for incentive awards for the Class Representatives; (ii) will post any subsequent notices agreed upon by the Parties and approved by the Court; and (iii) allows members of the Manufacturer Settlement Class to submit Claim Forms and supporting documentation.

As set forth in more detail in the Declaration of RG/2, filed with the Plaintiffs' Motion as Exhibit 2, the comprehensive proposed notice plan is calculated to reach a substantial number of the Manufacturer Settlement Class Members, and provides the best notice practicable under the circumstances, thus satisfying the requirements of the Due Process Clause of the United States Constitution and Federal Rule of Civil Procedure 23.

The content of the proposed notices also satisfies Rule 23's requirement. The Mailed Class Notice, submitted herewith as Exhibit 1-F, and the Long Form Notice, submitted herewith as Exhibit 1-D to the Motion, plainly describe the proposed Manufacturer Settlement Class, explain the material terms of the Manufacturer Settlement Agreement (including the benefits it provides to the Manufacturer Settlement Class), disclose Plaintiffs' Counsel's application for attorneys' fees, give notice of the time and place of the final approval hearing, and set forth procedures and deadlines for opting out of the Manufacturer Settlement Class and submitting comments and objections. The Mailed Class Notice and Long Form Notice also fulfill the requirement of

neutrality in class notices. They summarize the proceedings to date, making clear that the Settlement does not constitute an admission of liability by Manufacturer Defendants and that the Court has not ruled on the merits of the Action. Accordingly, the Mailed Class Notice and Long Form Notice display the fairness, completeness and neutrality required of a class-action settlement notice.

The Summary Class Notice, submitted herewith as Exhibit 1-E to the Motion, likewise satisfies Rule 23's requirements. The Summary Class Notice describes the Action and settlement fairly and neutrally. It refers Manufacturer Settlement Class Members to the Long Form Notice, available on the Settlement Website, or in print if requested, for a more complete description of these matters, tells them how they can obtain copies of that notice, and provides a toll-free number to call plus a website to visit to obtain more information. The Summary Class Notice will more than adequately provide the Manufacturer Settlement Class with the material information regarding the Settlement and their rights pertaining to it.

8. *The Plan of Allocation and Claims Process are Appropriate.*

The Plan of Allocation and the claims process for the Manufacturer Settlement Class Fund is reasonable, appropriate, and provides meaningful benefits directly to Manufacturer Settlement Class Members. Each such Qualified Manufacturer Settlement Class Member will be able to review the Long Form Notice and submit Part A of the Claim Form in order to receive a Claim Value based on the Manufacturer Settlement Class Member's purchase history. Each may also submit Repairs/Parts/Specific Equipment Damage on Part B of the Claim Form to receive a Claim Value based on additional losses suffered. The Claim Forms are to be submitted in substantially the form as Exhibit 1-C to the Motion, and they can be submitted to the Settlement Administrator via United States mail, fax, email, or through the Settlement Website. The Claim Form provides



a place for prior claimants in the 303 Retailer Class Settlement to request their prior claims forms be deemed submitted in the Manufacturer Settlement Agreement.

#### IV. CONCLUSION

Based on the above and foregoing, Plaintiffs respectfully ask that the Court grant preliminary approval of the proposed Manufacturer Settlement Agreement and enter the proposed Preliminary Approval Order.

Date: October 2, 2024

Respectfully submitted,

HORN AYLWARD & BANDY, LLC

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**LEAD CLASS COUNSEL 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 2<sup>nd</sup> day of October 2024.

\_\_\_\_\_  
*/s/ Dirk Hubbard*