

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

ALL ACTIONS

SUGGESTIONS IN SUPPORT OF PLAINTIFFS'
APPLICATION FOR INCENTIVE AWARDS FOR CLASS REPRESENTATIVES, AND
FOR AWARD OF ATTORNEYS' FEES AND EXPENSES
RELATED TO CLASS SETTLEMENT WITH MANUFACTURER DEFENDANTS
SMITTY'S AND CAM2

COME NOW PLAINTIFFS and set forth the following as their Suggestions in Support of their Application for Incentive Awards for Class Representatives and for Award of Attorneys' Fees and Expenses Related to Class Settlement with Manufacturer Defendants Smitty's and CAM2 ("Application"):

I. Introduction

Class Representatives and Class Counsel have devoted substantial time and effort in their prosecution of this case on behalf of the Class. The settlement was the result of approximately five years of work across 41 states with initial focus on and contested class certification of eight states. Hundreds of thousands of documents were reviewed, scores of depositions were taken, and numerous experts were identified, deposed and challenged, along with numerous legal challenges before this Court and at the appellate level. Numerous attempts at resolution were made with multiple mediators over several years. The results of that work produced not only a settlement fund for Class Members in the eight certified states, but also a fund for Class Members in all states

throughout the country. The benefits of these efforts are reflected in the Class Settlement Agreement with Manufacturer Defendants Smitty's and CAM2 ("Manufacturer Settlement Agreement") which provides meaningful economic relief to Class Members nationwide. Qualifying Class Members will receive an award from the Manufacturer Class Settlement based on (a) the units of 303 THF Products Class Members purchased; and (b) repair costs and other damage to the equipment in which those products were used.

This Application seeks approval for the payment of incentive awards and for an award of reasonable attorneys' fees and expenses in connection with this litigation. Specifically for the Class Members, Plaintiffs and Class Counsel seek an incentive award in the amount of (i) \$4,500 to each of the Class Representatives who provided deposition testimony as well as interrogatory responses and documents in discovery, and (ii) \$3,000 to each of the Class Representatives who provided interrogatory responses and documents in discovery, but gave no deposition testimony. Counsel for Manufacturer Defendants do not oppose the amounts sought and have agreed to the payment of these incentive awards out of the Class Settlement Fund if approved by this Court.

Plaintiffs and Class Counsel also seek an award of \$1,716,535.05 in reasonable litigation expenses and \$12,760,000.00 in reasonable attorneys' fees. The expenses sought are those advanced by Class Counsel and not reimbursed in the earlier Retailer Settlement, and the fee amount sought equals 40% of the Class Settlement Fund of \$31,900,000.00. Manufacturer Defendants are aware of the nature and extent of the work that has gone into this litigation, the work that went into the Manufacturer Settlement Agreement and the results achieved and have indicated that they do not oppose this Application.

Rule 23(h) provides that, "[i]n a certified class action, the court may award reasonable attorney's fees and nontaxable costs that are authorized by . . . the parties' agreement." The Rule

further provides that “[a] claim for an award must be made by motion under Rule 54(d)(2),” notice of which must be “directed to class members in a reasonable manner” and that the Court “must find the facts and state its legal conclusions under 52(a).” Fed. R. Civ. P. 23(h)(1) and (3). In turn, Rule 54(d)(2) requires a claim for fees to be made by motion, and specifies its timing and content, including, in relevant part, the “grounds entitling the movant to the award” and “the amount sought.” Fed. R. Civ. P. 54(d)(2)(B).

Notice of the reasonable attorneys’ fees, expenses and Class Representatives’ incentive awards was provided in the notice to Settlement Class Members, the published Summary Notice, and on the settlement website. Accordingly, Plaintiffs now move for approval of the incentive awards to Class Representatives and for an award to Class Counsel of their reasonable attorneys’ fees and expenses. For the reasons stated herein, Plaintiffs respectfully request this Application be granted.

II. Incentive Awards

Plaintiffs seek the Court’s approval of incentive awards of \$4,500.00 or \$3,000.00 to each of the Class Representatives, with the higher amount for those who undertook the time and expense of providing deposition testimony. Incentive awards are typical in class actions. *Newberg on Class Actions* §11:38 (4th ed. 2008). Courts routinely grant incentive awards to class representatives in class action settlements to promote the public policy underlying class action litigation by encouraging individuals to step up on behalf of a class to vindicate those collective rights. *Caligiuri v. Symantech Corp.*, 855 F.3d 860, 867 (8th Cir. 2017). Factors in determining an appropriate incentive award include: “(1) actions the plaintiffs took to protect the class’s interests, (2) the degree to which the class has benefitted from those actions, and (3) the amount of time and effort the plaintiffs expended in pursuing litigation.” *Id.* (citation omitted).

All of these Class Representatives spent a substantial amount of time in meeting and talking with Class Counsel, providing information, assisting in development of the case, reviewing pleadings, gathering documents, and in otherwise assisting the prosecution of this case. Of the 128 Class Representatives, 40 gave deposition testimony – some on more than one occasion. Others had to set time aside to allow Manufacturer Defendants to inspect their equipment, requiring them to schedule the inspections during normal working hours. Thousands of Settlement Class Members benefited based on the efforts of these Class Representatives. Further, the requested incentive awards are within the range approved by district courts in the Eighth Circuit. *See, e.g., Yarrington v. Solvay Pharms., Inc.*, 697 F. Supp. 2d 1057, 1069 (D. Minn. 2010) (\$5,000 to each class representative); *Wineland v. Casey's Gen. Stores, Inc.*, 267 F.R.D. 669, 677-78 (S.D. Iowa 2009) (\$10,000 to each of the named plaintiffs); *Zilhaver v. United Health Group, Inc.*, 646 F. Supp. 2d 1075, 1085 (D. Minn. 2009) (\$15,000 to each lead plaintiff).

As noted earlier, the amount of incentive awards has been disclosed to and is agreed to by Manufacturer Defendants, subject to the approval of this Court, and the payments are to come out of the \$31,900,000.00 Class Settlement Fund. The requested awards for the 128 Class Representatives total \$444,000.00. Accordingly, the Court is asked to approve the incentive awards for each of the Class Representatives as set forth on Exhibit 1 to the Application.

III. Attorneys' Fees and Expenses

More than five years ago, Plaintiffs undertook a complicated case under a novel theory, covering many states, against major defendants represented by very skilled counsel. This case has involved a variety of unique factual and scientific issues, including the nature of hydraulic fluids and hydraulic fluid specifications, the nature and function of lubricants within tractor systems, and the complexities of the manufacturing and labeling of these products. There were

difficult damage issues, involving the testing and interpretation of data and proof of damages. There were also difficult legal issues, including the laws for various states, issues involving class certification and complex MDL issues. Each stage of the litigation has been hard fought, with skilled defendants' counsel and retained experts challenging each of the elements of the case and the propriety of class certification. Plaintiffs are now seeking an award of attorneys' fees for the work that was performed and the results that have been obtained from the Manufacturer Defendants. Plaintiffs respectfully submit the requested fee is plainly justified by the work performed and the result achieved and satisfies any of the approaches for analyzing a request for attorneys' fees sought by class counsel in a class action.

The Eighth Circuit has endorsed two approaches to analyzing a request for attorneys' fees: (1) the "percentage of the benefit" or "common fund" approach; and, (2) the lodestar approach. *Keil v. Lopez*, 862 F.3d 685, 701 (8th Cir. 2017)(citing *Johnston v. Comerica Mortg. Corp.*, 83 F.3d 241, 244 (8th Cir. 1996)); *Pollard v. Remington Arms Co., LLC*, 320 F.R.D. 198, 222 (W.D. Mo. 2017) (citing *Galloway v. The Kan. City Landsmen, LLC*, 833 F.3d 969, 972 (8th Cir. 2016)). It is within the discretion of the district court to choose which method to apply, as well as to determine what constitutes a reasonable attorneys' fee in a given case. *In re Life Time Fitness, Inc., Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 622 (8th Cir. 2017); *Pollard*, 320 F.R.D. at 222.

"The most used approach for awarding attorney's fees in common fund cases is the 'percentage of the fund' approach." *Niewinski v. State Farm Life Ins. Co.*, No. 23-04159-CV-C-BP, 2024 WL 4902375, at *4 (W.D. Mo. Apr. 1, 2024) (citing *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019); *Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1157 (8th Cir. 1999); *see also Burnett, et al. v. Nat'l Ass'n of Realtors, et al.*, No. 4:19-CV-00332-SRB, 11/27/24 Order at 79

(citing *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019)) (“Courts in the Eighth Circuit typically use the ‘percentage-of-the-fund method’ to award attorneys’ fees from a common fund”). “In the Eighth Circuit, use of a percentage method of awarding attorney fees in a common-fund case is not only approved, but also ‘well established,’ or may even be ‘preferable.’” *Burnett*, at 79 (citing *In re Xcel Energy, Inc., Sec., Derivative & “ERISA” Litig.*, 364 F. Supp.2d 980, 991 (D. Minn. 2005) (quoting *Petrovic*, 200 F.3d at 1157) and *Barfield v. Sho-Me Power Elec. Co-op., No. 11-CV-4321*, 2015 WL 3460346, at *3 (W.D. Mo. June 1, 2015)(quoting *West v. PSS World Med., Inc.*, No. 13-CV-574, 2014 WL 1648741, at *1 (E.D. Mo. Apr. 24, 2014))).

Plaintiffs thus respectfully suggest the percentage of the benefit approach is an appropriate approach for the Court to formally utilize in this settlement. Through its work with the parties over the last five-plus years, the Court is aware of the amount of work Class Counsel has performed in this case. The nature and extent of the work performed fit within the factors recognized in other cases in which the percentage fee award was sought. In the case of *In re Texas Prison Litig.*, 191 F.R.D. 164 (W.D. Mo. 1999), the Court applied many of the same factors set forth in *Grinin v. International House of Pancakes*, 513 F.2d 114 (8th Cir. 1975), to assess a fee request in a percentage of the fund case. The *Texas Prison* Court identified the following factors to be considered:

- (1) The time and labor required;
- (2) The novelty and difficulty of the questions;
- (3) The skill requisite to perform the legal service properly;
- (4) The preclusion of other employment by the attorney due to acceptance of the case;
- (5) The customary fee for similar work in the community;
- (6) Whether the fee is fixed or contingent;

- (7) Time limitations imposed by the client or the circumstances;
- (8) The amount involved and the results obtained;
- (9) The experience, reputation, and ability of the attorneys;
- (10) The undesirability of the case;
- (11) The nature and length of the professional relationship with the client; and
- (12) Awards in similar cases.

Id. at 176 (citing *Johnson v. Georgia Highway Express, Inc.*, 488 F.2d 714, 717–19 (5th Cir.1974); *Brown v. Phillips Petroleum Co.*, 838 F.2d 451, 454 (10th Cir. 1988) (holding that the *Johnson* factors are relevant to the percentage that should be awarded as fees)). The Eighth Circuit and Western District of Missouri Courts apply these *Johnson factors*. See, e.g., *Rawa*, 934 F.3d at 870; *Niewinski*, 2024 WL 4902375 at *4. This Court recently applied the many of the same factors in approving class counsel’s fee requests in *Burnett*, 4:19-CV-00332-SRB, 2024 WL 284222 at *79-86 (W.D. Mo. May 9, 20204) and *Hartley v. Sig Sauer, Inc.*, 4:18-CV-00267-SRB, 2020 WL 3473652, at *4 (W.D. Mo. June 25, 2020).

Application of these factors supports the conclusion that the percentage sought in this case is reasonable. See Ex. 1, Declaration on Class Counsel Thomas V. Bender. This case has required a significant amount of time over the course of several years, with Class Counsel having expended more than 30,000 attorney hours and 6,000 assistant hours on work related to this litigation. In addition, hundreds more hours of attorney and legal assistant time will be spent on further settlement administration activity over the next several months. *Id.*

All of the Law Firms representing the Settlement Class are relatively small in size such that the time and expense devoted to this case affected their ability to undertake other additional

work. As the Court knows, there were periods of time when Class Counsel had to devote nearly all of their time to the work required in this case, requiring them from time to time to forgo investigation or representation in connection with other matters. The customary fee for contingency cases is often 40% or 50% in complex matters. This was a complex matter, and Class Counsel advanced large expenses such that there were significant risks related with recovery by no means assured. Indeed, there was companion litigation between Defendants and their insured as to whether any insurance funds would be available to satisfy any judgment obtained.

The fee sought results in a percentage that is reasonable under the percentage-of-the-benefit approach. First, the percentage itself, while on the higher end of contingency fee percentages, is not high relative to the work that was expended and is in line with awards approved by Courts. The Eighth Circuit has noted that “courts have frequently awarded attorneys’ fees ranging up to 36% in class actions.” *Huyer v. Buckley*, 849 F.3d 395,399 (8th Cir. 2017); *see also Burnett*, 11/27/24 Order, at 80. Other courts have observed that attorneys’ fee awards in common fund cases have ranged between 19% and 45% of the fund. *In re Cell Pathways, Inc., Sec. Litig. II*, No. 01-CV-1189, 2002 WL 31528573, at *10 (E.D. Pa. September 23, 2002); *see also, e.g., In re US Bancorp Litigation*, 276 F.3d 1008, 1010 (8th Cir. 2002) (approving 36% fee); *In re Iowa Ready-Mix Concrete Antitrust Litig.*, 2011 WL 5547159 (N.D. Ia. Nov. 9, 2011) (approving fee of 36.04%); *In re Combustion, Inc.*, 986 F. Supp. 1116 (W.D. La. 1997) (approving 36% fee).

Second, an attorneys’ fee of 40% is appropriate here given the nature of the litigation and is justified by the work and the result achieved in this case. The attorneys involved are experienced in class action matters, have pursued this case diligently for more than five years, and have obtained very favorable results for the Settlement Class Members in this Manufacturer Settlement. The Manufacturer Settlement Agreement amount is \$31,900,000.00 and class members are

anticipated to receive meaningful monetary awards from that settlement. The result could not have been achieved without a demonstration by Plaintiffs and Class Counsel that they are ready and willing to do the work required to proceed numerous class certifications and trials. To achieve the result reflected in the Settlement Agreement, Class Counsel took scores of fact witness depositions and expert depositions, prepared and produced 40 Class representatives and class members for deposition, prepared and produced experts for nine depositions, briefed and responded to multiple motions to dismiss, motions for summary judgment, and motions to strike Plaintiffs' experts. Plaintiffs briefed class certification issues for eight states and successfully secured certification of at least one claim in each of those states. Plaintiffs then prepared and funded the class notice for those eight states and prepared the Missouri class case for trial, resolving this matter less than 48 hours before the first date of that trial. Given the result achieved and work performed, supported by application of the above *Johnson* factors, the percentage and overall amount of attorneys' fees requested are appropriate.

Alternatively (or just as a cross-check), the lodestar method more than supports Class Counsel's requested fee requested fee of \$12,760,000.00. In fact, Class Counsel's hours alone support the award with *no* multiplier. As noted above, the recovery obtained from the Manufacturer Defendants for the Settlement Class is extremely favorable, as Class Counsel negotiated and obtained a Class Settlement Fund of \$31,900,000.00. This settlement provides all Settlement Class Members the opportunity to receive benefits based on the 303 THF Products they purchased in the Class Period and to recover for repairs to equipment damaged as a result of the fluid—including damages from leaks, hydraulic pump failures, seal problems, transmission problems, brake chatter, power-take-off problems or other common issues. If the equipment was

damaged beyond repair, the Class Members also had the opportunity to make a claim for money lost on that equipment.

Plaintiffs note that Class Counsel's lodestar – just through February 1, 2025 – and at a relatively conservative hourly rate for class action work, is more than \$15,000,000.00. Accordingly, the requested fee results in a lodestar multiplier of less than one. This points out the reasonableness of the requested fee as lodestar multipliers less than three are well within the bounds of reasonableness. *See Nelson v. Wal-Mart Stores, Inc.*, 2:05CV000134WRW, 2009 WL 2486888, at *2 (E.D. Ark. Aug. 12, 2009) (“a multiplier of 2.5... is reasonable in light of other fee awards by courts in the Eighth Circuit.”) Lodestar multipliers much higher than three have also been considered reasonable by Eighth Circuit Courts. *See, e.g., Burnett*, 11/27/24 Order, at 85-86 (approving fee with “an approximate 3.6 multiplier on lodestar”), *Rawa v. Monsanto Co.*, 934 F.3d 862, 870 (8th Cir. 2019) (“while a 5.3 lodestar multiplier is high, it does not exceed the bounds of reasonableness”) (citing *In re Charter Commc'ns, Inc. Sec. Litig.*, No. 4:02-cv-1186-CAD, 2005 WL 4045741, at *18 (E.D. Mo. June 30, 2005) (finding reasonable a 5.61 cross-check multiplier and noting that “[t]o overly emphasize the amount of hours spent on a contingency fee case would penalize counsel for obtaining an early settlement and would distort the value of the attorneys’ services”). Certainly, when the lodestar method shows the value of counsel’s time to be in excess of the fee requested and thus no multiplier (or a multiplier of less than 1), the lodestar method justifies the award sought and demonstrates its reasonableness.

Finally, as noted, also to be paid out of the Class Settlement Fund is a reimbursement for litigation expenses in the amount of \$1,716,535.05. Ex. 1. Those expenses are reasonable and supported by the record. To achieve this settlement result for the class, Class Counsel were required to engage multiple experts for class certification and merits issues and take and attend

depositions and inspections in more than 8 states, in addition to other expenses reflected in the expense submission. Those include mediation expenses, document management and hosting expenses paid to a third party. Class Counsel also funded the notice program for the eight certified states and all of the expenses that were incurred in connection with preparing the first bellwether case to be tried in Missouri.

Class Counsel are not seeking reimbursement for expenses previously reimbursed as part of the Retailer Settlement. Class Counsel also do not seek to recover expenses relating to practice overhead. The expenses requested are those that private, fee-paying clients in the marketplace are ordinarily charged and ordinarily pay in addition to their attorneys' fees for services. As such, those expenses are recoverable even if some are not ordinarily taxable as costs. As shown on the itemized list, the major expenses in this case consisted of deposition costs, expert fees, notice costs, database charges and contract claim assistants.

IV. Conclusion

The requests for incentive awards for Class Representatives and for attorneys' fees and expenses are reasonable. Plaintiffs respectfully seek the Court's Order and Judgment approving the Settlement Agreement, including ordering incentive awards to the Class Representatives as set forth above be paid out of the Class Settlement Fund and that Class Counsel shall be paid \$1,716,535.05 in expenses and \$12,760,000.00 in fees out of the Class Settlement Fund.

Date: February 14, 2025

Respectfully Submitted,

HORN AYLWARD & BANDY, LLC

BY: /s/ Thomas V. Bender

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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 14th day of February 2025.

/s/ Dirk Hubbard

EXHIBIT 1

**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

ALL ACTIONS

DECLARATION OF THOMAS V. BENDER
IN SUPPORT OF PLAINTIFFS' APPLICATION FOR INCENTIVE AWARDS FOR
CLASS REPRESENTATIVES
AND FOR AWARD OF ATTORNEYS' FEES AND EXPENSES
RELATED TO CLASS SETTLEMENT WITH MANUFACTURER DEFENDANTS
SMITTY'S AND CAM2

I, Thomas V. Bender, declare as follows:

1. I am an attorney licensed to practice in the state of Missouri and in the United States District Court for the Western District of Missouri. I have been in practice for over forty-five years, including involvement in numerous contingency fee and class action cases.
2. I am lead counsel in the above-captioned litigation, and I make this Declaration in support of Plaintiffs' Application for Incentive Awards for Class Representatives and for Award of Attorneys' Fees and Expenses Related to Class Settlement with Manufacturer Defendants Smitty's and CAM2. I have actively participated in all aspects of this litigation, and I make this Declaration based on my personal knowledge.
3. Class Counsel request that the Class Representatives each be awarded an incentive award of between \$3,000.00 and \$4,500.00, depending on whether the Representative gave a

deposition.¹ The basis for and the amount of this request is supported by law and by the circumstances of this case. These Class Representatives represented thousands of purchasers across the United States. They actively participated in the case, providing Class Counsel with input in case development and responsive documents and information. They communicated with counsel and assisted with obtaining key information. Many made their equipment available for inspection by Defendants' experts, sometimes during times they needed to be in the field, and many gave deposition testimony, sometimes more than once. These Class Representatives understand that the amount of the incentive award, if any, is in the discretion of the Court. Further, Manufacturer Defendants have agreed with payment out of the Class Settlement Fund of the amount awarded by the Court in incentive awards, up to \$4,500.00 per Class Representative who provided deposition testimony and up to \$3,000 for the other Class Representatives.

4. Class Counsel further request reasonable attorneys' fees and expenses to be awarded by the Court to be paid out of the Class Settlement Fund.

5. As to the case expenses, Class Counsel has incurred \$1,716,535.05 in unreimbursed² expenses and costs, and a summary of those expenses is attached to this Declaration as Exhibit A. The primary areas of expense were the engagement of multiple experts for both class certification and merits issues; deposition expenses; document management/hosting costs; and contract law clerks, paralegals and claim assistants. Class Counsel also funded the notice

¹ The Class Representatives who purchased from one or more of the four Retailers who were prior Defendant each received a \$500 incentive award as part of the Retailer Class Settlement and as Ordered by this Court.

² Class Counsel have excluded from this Application any expenses for which reimbursement was already provided as part of the Retailer Class Settlement.

program for the eight certified states and incurred all of the expenses necessary for preparing the Missouri case to be the first bellwether trial.

6. Any payments to Class Counsel for fees or expenses incurred were contingent on a recovery. As indicated in the Suggestions in Support of the Application, there were significant expenses and time incurred that exceeded the amount being sought. Here, an award of \$12,760,000.00 for attorneys' fees would be 40% of the total Settlement amount of \$31,900,000.00. However, as reflected in the Application, the lodestar reflecting time incurred, even when using a very conservative rate for this complex litigation, actually is greater than the percentage of the fund fee being sought.

7. The attorney's fees requested by Class Counsel are supported by the factors set forth in the Application and are consonant with customary market rates for cases of this type. Based upon my years of experience and familiarity with the market for legal representation of the type provided to the Class Members in this action, fees sought for complicated or risky litigations can range up to, or sometimes, in excess of the 40% contingency sought. While a 40% contingency is on the higher side of approved ranges, each case has to be examined on its own, and in light of the *Johnson* factors. As set forth below and in the Application, the 40% fee is reasonable under the circumstances and recovery obtained in this case.

8. The attorneys' fee is supported by the work done, and risk taken, by Class Counsel in this case. Because this litigation required a substantial advancement of professional time and expense, because the measure of recoverable damages was uncertain and because the risk of nonpayment or underpayment was significant, it was financially impossible for the Plaintiffs or any Settlement Class Members to have agreed to pursue this matter on any basis other than a contingency fee arrangement, with expenses advanced by counsel. Class Counsel has undertaken

this litigation bearing the full risk that a recovery would not be realized. No Member of the Settlement Class was asked to pay any fees or advance the expense required to investigate, prepare for filing, and prosecute this litigation.

9. From the inception of this litigation, Class Counsel have aggressively prosecuted this case and vigorously represented the best interests of the Plaintiffs and putative Class. The case was initially prosecuted by attorneys and staff from three Kansas City area Law Firms; Tom Bender and Dirk Hubbard of Horn, Aylward & Bandy, LLC; Bryan White, Bill Carr, and Gene Graham from White, Graham, Buckley & Carr, LLC; and Clayton Jones, Attorney at Law. Counsel from Arkansas, Texas, Kentucky, Iowa, Minnesota, California, West Virginia, and Illinois were added to Plaintiffs' counsel team, with separate class actions filed in many of those states prior to JPML Transfer to this MDL. Additional and valuable assistance was provided by the addition of Tricia Campbell and Athena Dickson to the Steering Committee and of Don Downing and Gretchen Garrison as co-lead counsel. Pursuit of this case has included investigating the facts, performing legal research, reviewing and analyzing documents, assembling and drafting pleadings, conducting discovery, taking depositions, work related to expert witness reports and depositions, and communicating with counsel for Defendants. Discovery and investigations have included requesting and reviewing information from the Missouri Department of Agriculture and other states' agencies; exchange of information between the parties through discovery; meeting and conferences with Class Representatives; meeting and conferences with representatives of Defendants; retention and consultation with experts; and noticing and preparing for depositions. Hundreds of thousands of pages of documents have been reviewed, many of them highly technical, including test results related to Defendants' 303 THF Products. Many motions, including motions for summary judgment, motions for class certification, *Daubert* motions and motions in limine

were filed by Defendants and required significant work in response. Overall, more than 30,000 hours of attorney time and 6,000 hours of assistant time have been spent by Class Counsel's Law Firms that was directly related to this litigation (as well as thousands more hours of other time attributable to investigating the industry as a whole which directly benefitted this litigation but are not included in these calculations). Further, hundreds of additional hours of attorney and legal assistant time will be spent in the next six months related to settlement administration. At an average/blended rate of \$500 per hour, which is less than that many of the filings submitted to this Court in other complex cases, the lodestar for Class Counsel's time is \$15,000,000.00, resulting in a multiplier of less than one.³

10. The Manufacturer Settlement makes available benefits to thousands of Settlement Class Members who have purchased the 303 THF Products made by Smitty's and CAM2 in the United States during the Class Period. As described in detail in the Settlement Agreement, the Settlement provides for allocation of the monetary recovery to the Settlement Class in a way that addresses the fundamental issues underlying this case.

11. Class Counsel have diligently investigated and prosecuted this matter, dedicating substantial time, effort, resources, and expertise to the investigation and prosecution of the claims at issue in the action. Class Counsel and Defendants' Counsel have worked hard to avoid unnecessary time charges and expenses where possible and have worked cooperatively with numerous mediators to try to obtain a fair resolution that takes into consideration the risks of litigation and the benefits to be obtained through a settlement. As a result, we have successfully negotiated the Manufacturer Settlement Agreement to benefit the Settlement Class.

³ The lodestar multiplier is still one or below when one includes the fees awarded to Class Counsel in the retailer settlement.

12. I respectfully request the Court find and conclude that incentive awards of \$4,500.00 and \$3,000 are appropriate for each of the Class Representatives, as noted above, and that \$1,716,535.05 in reasonable expenses and \$12,760,000.00 in reasonable attorneys' fees be awarded to Class Counsel.

13. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date Executed: 2/13/25

/s/ Thomas V. Bender
Thomas V. Bender

Exhibit A

<u>Expert Expenses</u>	\$782,383.62
<u>Depositions/Mediations/Copies</u>	\$361,967.52
<u>Contract Labor</u>	\$306,676.29
<u>Class Notice – 8 States</u>	\$174,932.00
<u>Document Management/Database Services – Vendor</u>	\$ 90,575.62
TOTAL	\$1,716,535.05