

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

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

MDL No. 2936

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

This document relates to:
All Class Actions

**PLAINTIFFS’ SUGGESTIONS IN SUPPORT OF
MOTION FOR FINAL APPROVAL
OF CLASS SETTLEMENT AGREEMENT
WITH MANUFACTURERS SMITTY’S AND CAM2**

COME NOW Plaintiffs, by and through their attorneys of record, and submit the following Suggestions in Support of Plaintiffs’ Motion for Final Approval of Class Settlement Agreement with Manufacturers Smitty’s Supply, Inc. (“Smitty’s) and CAM2 International, LLC (“CAM2”) (referred to collectively as “Manufacturer Defendants”).

I. INTRODUCTION AND SUMMARY OF CLASS SETTLEMENT BENEFITS

On October 3, 2024, this Court granted preliminary approval of the Class Settlement Agreement and Release between Plaintiffs and the two Manufacturer Defendants (referred to as “Manufacturer Settlement Agreement” or “Settlement”). Dkt. 1204. The Manufacturer Settlement Agreement makes relief available to thousands of 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 (referred to collectively as “303 THF Products”), excluding persons and entities who solely purchased Super S Super Trac 303 Tractor Hydraulic Fluid in Missouri or for resale.

The Class Representatives and Class Counsel now respectfully request the Court's entry of its Final Approval Order of the class action settlement set forth in the Manufacturer Settlement Agreement, including all exhibits thereto, which was attached as Exhibit 1 to the Unopposed Motion for Preliminary Approval of Class Action Settlement. Dkt. 1202-1.

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 final approval should be granted to the settlement as fair, reasonable and adequate.

The first two steps have occurred. This Court granted its Preliminary Approval on October 3, 2024. Dkt. 1204. Notice has now been carried out and the claims period ended on March 1, 2025. Dkt. 1212-1. There have been no objections to the Manufacturer Settlement Agreement, and only one Class Member has opted out. *Id.* at ¶¶ 21-22. The Manufacturer Settlement Agreement is fair, reasonable and adequate. The Fairness Hearing is set for March 26, 2025, and Plaintiffs respectfully request the Court grant final approval to the Settlement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This lawsuit involves four products made by Smitty's Supply, Inc. and CAM2 International, LLP ("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 equipment manufacturers' specifications or provide 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 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 Plaintiffs' Corrected Fifth Consolidated and Amended Complaint, 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, Discovery, and Mediation 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. Further amendments were subsequently made, with the operative Fifth Amended Consolidated Complaint including 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 hundreds of thousands of pages of documents produced by Manufacturer Defendants and reviewed and analyzed by Plaintiffs. Plaintiffs took numerous depositions of Manufacturer Defendants' witnesses. The Parties 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, extensive motion practice, 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, 2024, and all pre-trial proceedings had been completed when resolution was reached two days before the August 26th start.

Agreement was reached through the involvement of numerous mediators, including 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 24th and October 2nd, culminating in the signing of the Manufacturer Settlement Agreement on October 2nd, with regard to which this Court granted Preliminary Approval on October 3, 2024, and for which this Court's Final Approval Order is now sought.

Although Plaintiffs have prevailed on eight contested class certifications and believe they would 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, liability, and damages. 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 final 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 MDL 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, the Court's Preliminary Approval Order appointed as Class Representatives the 128 persons and/or entities identified as Plaintiffs in Appendix A to the Manufacturer Settlement Agreement. Dkt. 1204 at ¶ 3.¹ The Court's Preliminary Approval Order appointed Plaintiffs' Counsel as Class Counsel (i.e., counsel for the Manufacturer Settlement Class). *Id.* at ¶ 8.

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 based on repairs, parts, or specific equipment damage suffered. Pursuant to the Settlement Agreement's terms, the claims for units purchased and

¹ On February 28, 2025, Plaintiffs, with Defendants' consent, provided a corrected list of Class Representatives in connection with their Application for incentive awards, attorneys' fees, and expenses. That correction deleted a duplication and also corrected the designation of one representative who was initially incorrectly listed as not having given a deposition. Dkt. 1215 at 3; Dkt. 1215-1.

repairs/damages are in the process of being evaluated, with final determinations expected to be made in the next 30-60 days.

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. This estimate included the cost for claim evaluation, communications, distribution of settlement proceeds, and other post-final approval activities.

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

The Manufacturer Settlement Class Fund also pays the amounts 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 have sought 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 unreimbursed case expenses, and (c) a 37.8% contingency fee to Class Counsel. Dkt. 1215, pg. 1.

III. ARGUMENT

A. Appropriate Notice Was Provided to Settlement Class Members

Due process requires that Class Members be provided the best notice practicable, reasonably calculated to apprise them of the pendency of the action and afford them the opportunity to object. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); Fed. R. Civ. P.

23(c)(2)(B). Here, as detailed in the Declaration of the Settlement Administrator, RG/2 Claims Administration, LLC (“RG/2”), attached as Exhibit 1 to the Motion for Final Approval of Class Settlement Agreement with Manufacturers Smitty’s and CAM2, the Class was notified of the settlement by direct mail, print media publication, and digital publication.

Direct notice was mailed to more than 148,000 Settlement Class Members who were (a) identified by the retailer records as having specific purchases of the 303 THF Products during the Class Period, and/or (b) were identified by prior claims submitted in the Retailer Class Settlement. These notices provided each recipient with the number of their purchases of the 303 THF Products as reflected in the retailers’ records and/or prior claims, for each of the various sizes of product—1-gallon jugs, 2-gallon jugs; 5-gallon buckets; and 55-gallon drums. The Mailed Class Notice also provided each Class Member the amount of each’s valid damage/repair claim, if any, from the Retailer Class Settlement Agreement. These Class Members had the option of adopting the number of purchases reflected in their Mailed Class Notice as well as their previous repair claims submitted in the Retailer Class Settlement. They could also submit claims for additional purchases and/or additional repairs/damage. The Mailed Class Notice provided substantial information about the Settlement and provided the settlement website address and information.

Further notice was provided by email to an additional 130,598 potential Settlement Class Members and by mail to another 24,506 potential Settlement Class Members. These were persons and/or entities who were identified by retailer records as possibly having purchased 303 THF Products during the Class Period, but for whom specific purchase information was not available. Further notice was provided by mail to an additional 1,642 persons who were in listings provided by other retailers including Bomgaars, Cape Warehouse, Froedge Machine & Supply, and Runnings.

A reminder email was also sent on January 6, 2025, to 1,183 Class Members who filed a claim in the Retailer Settlement, had provided email addresses, and had not yet submitted a Claim Form for the Manufacturer Settlement.

In addition to this direct notice, summary notice of the Settlement was also published in the following publications, which combined, exceed 1.1 million distributions:

- **Progressive Farmer**
- **Farm Journal**
- **Successful Farming**
- **Construction Equipment**
- **Builder**
- **Timber Line**
- **AgriView (WI)**
- **Grassroots (NY)**
- **Wisconsin Agriculturalist**
- **Minnesota Farmer**

A media notice campaign was also implemented that included Facebook and Google Ads that allowed potential Class Members to click on the ad and be linked to the settlement website. Overall, this digital media campaign produced over 40 million impressions online.

The full form detailed notice, claim form, settlement agreement, and other key materials were also placed on a website maintained by Settlement Administrator for purposes of providing additional information and documents to Class Members. The website, www.303tractorhydraulicfluidsettlement.com, included (i) a Homepage setting forth a brief summary of the Settlement and potential Class Members' rights under the Settlement; (ii) .pdf copies of the Court-Ordered Detailed Notice and Claim Form, as well as a link to the Claims online filing portal; and, (iii) Court Documents that included the Settlement Agreement and Release, Preliminary Approval Order, and documents regarding the Application for Incentive Awards and Attorneys' Fees and Expenses. In addition to the website and claims-filing portal, the Settlement

Administrator maintained an email address and toll-free telephone number for the receipt of Settlement Class Member inquiries.

The substance and methods of notice were adequate and provided the Class with the material information regarding the Settlement and their rights pertaining to it. *See, e.g. Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 906-07 (8th Cir. 2018).

B. Standard for Final Settlement Approval

A class action may not be settled without the Court's approval, and the Court must ensure that "the proposed settlement is fair, reasonable, and adequate." *In re Texas Prison Litigation*, 191 F.R.D. 164, 172 (W.D. Mo. 1999). The law favors settlement, especially in class actions and other complex cases where significant resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See Little Rock School Dist. v. Pulaski County Special School Dist.*, 921 F.2d 1371 (8th Cir. 1990). "[Settlement] agreements are presumptively valid." *Id.* at 1391. Approval of a class settlement is in the Court's discretion. *Id.* In reviewing decisions approving class 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.* "A strong public policy favors agreements, and courts should approach them with a presumption in their favor." *Id.* at 1388; *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 7-8.

Rule 23(e)(2) includes four factors for consideration in evaluating the fairness of a class settlement. Those factors include whether:

- (A) the class representative and class counsel have adequately represented the class;
- (B) the proposal was negotiated at arm's length;

(C) the relief provided for the class is adequate, taking into account:

- (i) the costs, risks, and delay of trial and appeal;
- (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims;
- (iii) the terms of any proposed award of attorney's fees, including timing of payment; and
- (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

Rule 23(e) requires the Court to review a class settlement agreement “to ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned.” *Rawa v. Monsanto Co.*, 2018 WL 2389040, at *6 (E.D. Mo. May 25, 2018), *aff'd*, 934 F.3d 862 (8th Cir. 2019); *see also*; *In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018); *Pollard*, 896 F.3d at 907; *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005). A settlement meets the standard for final approval if it is “fair, reasonable and adequate.” Fed. R. Civ. P. 23(e)(2).

It is left to the District Court's discretion to determine if the Settlement is fair, reasonable, and adequate:

Such a determination is committed to the sound discretion of the trial judge. Great weight is accorded his views because he is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success. Simply stated, he is on the firing line and can evaluate the action accordingly.

Van Horn v. Trickey, 840 F.2d 604, 606-07 (8th Cir. 1988) (internal citation omitted); *see also* *Rawa*, 934 F.3d at 868-69; *Pollard*, 896 F.3d at 907.

In making the determination of whether the class settlement is “fair, reasonable, and adequate,” the Court should consider the following factors:

1. The merits of the plaintiffs’ case, weighed against the terms of the settlement;
2. The defendant’s financial condition;
3. The complexity and expense of further litigation; and
4. The amount of opposition to the settlement.

Van Horn, 840 F.2d at 606-07; *see also Keil v. Lopez*, 862 F.3d 685, 695 (8th Cir. 2017); *Burnett*, No. 4:19-CV-00332-SRB, 11/27/24 Order at 9. “The first factor is the ‘single most important factor.’” *Huyer v. Njema*, 847 F.3d 934, 939 (8th Cir. 2017) (quoting *Van Horn*, 840 F.2d at 607).

“The district court need not make a detailed investigation consonant with trying the case; it must, however, provide the appellate court with a basis for determining that its decision rests on ‘well-reasoned conclusions’ and is not ‘mere boilerplate.’” *In re Wireless Fee Litig.* 396 F.3d at 932-33 (quoting *Van Horn*, 840 F.2d at 607). “In evaluating the settlement, the Court: ‘should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation’” *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 700 (E.D. Mo. 2002) (quoting Fed. Judicial Ctr., *Manual for Complex Litig.* § 30.42 at 240 (3d ed. 1997)). “Courts may rely on the judgment of experienced counsel on the merits of a class action settlement.” *Daniels v. Greenkote IPC, Inc.*, 2013 WL 1890654, at *2 (E.D. Mo. May 6, 2013) (citation omitted).

Applying these factors, the Court should grant final approval to this Manufacturer Settlement Agreement.

C. The Settlement Meets the Standard for Final Approval

1. The Merits of the Case, Weighed Against the Terms of Settlement

The most important factor in determining the fairness, reasonableness, and adequacy of a class settlement is “the strength of the case for Plaintiffs on the merits, balanced against the amount offered in settlement.” *In re Wireless Fee Litig.*, 396 F.3d at 933 (internal citation omitted).

Although Plaintiffs believe they would have prevailed against the Manufacturer Defendants in additional class certifications and on the merits if cases had proceeded to trial, Plaintiffs recognize the difficulties presented and the risk and uncertainty in this litigation.

The Court should also consider the Manufacturer Defendants' view of Plaintiffs' case and the probability of success on class certification and the merits. "[A]n 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) (citing *Grunin v. Int'l House of Pancakes*, 513 F.2d 114, 124 (8th Cir. 1975)). 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, liability and damages. There was also the possibility of further appeals even if other state classes were certified against Manufacturer Defendants and then were also 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.

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 were 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. Hundreds of thousands of pages of documents and emails were produced by Manufacturer and Retailer Defendants. Numerous depositions were also taken of key management officials of the Manufacturer and Retailer Defendants. In short, 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.

Through their investigation, document and test results review, depositions and other discovery in this litigation, as well as through their consultations with experts, Class 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 Manufacturer Settlement. 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 Settlement with the Manufacturer Defendants is fair, reasonable and adequate. The Class Representatives have also approved the Settlement.

The class-wide financial relief is a significant victory for Settlement Class Members. The Settlement provides monetary relief to Class Members and directly addresses the fundamental issues underlying the litigation. The Class Settlement Fund will provide payment based on the units of qualifying 303 THF Products purchased by each as well as payment based on repairs, parts, or specific equipment damage suffered by that Settlement Class Member, if applicable. Each

Settlement Class Member who submitted a claim form will receive a pro rata share of his/her/its Total Claim Value.

Finally, no Class Member has objected to the Settlement, and only one Class Member has opted out of the Settlement.

The benefits provided by the Settlement, weighed against the merits of the case, support this Court's grant of final approval.

2. *The Defendants' Financial Condition*

There is no indication that the financial condition of either of the Manufacturer Defendants should be a factor in approving this Settlement. Even though the Manufacturer Defendants "could likely afford a greater settlement, the result is quite favorable" *See Wiles v. Sw. Bill Tel. Co.*, 2011 WL 2416291, at *3 (W.D. Mo. June 9, 2011) (citation omitted). *See also In re BankAmerica Corp.*, 210 F.R.D. at 702 (holding "[a]lthough it appears that the defendant bank has the ability to withstand a greater financial judgment . . . given the substantial risks and obstacles faced by the classes in proceeding to trial . . . such factor does not weigh against approving the settlement.>").

3. *The Complexity and Expense of Further Litigation*

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, and would involve substantial uncertainties, delays, and other risks inherent in litigation.

"Class actions, in general, place an enormous burden of costs and expense upon parties." *Keil*, 862 F.3d at 698 (quoting *Marshall v. Nat'l Football League*, 787 F.3d 502, 512 (8th Cir. 2015)). With resolution occurring in this case at this stage, this Court should therefore find that this factor weighs heavily in favor of final approval.

4. *The Amount of Opposition to the Settlement*

The reaction of Class Members to the Settlement has been positive, with only one opt out and no objection filed. Accordingly, this factor strongly favors approval. *See Wiles*, 2011 WL 2416291, at *4 (“Having no objectors demonstrates strong support for the value and benefits delivered by the settlement” and so this “factor weighs heavily in favor of approval of the settlement.”); *McClellan v. Health Sys., Inc.*, 2015 WL 12426091, at *6 (W.D. Mo. June 1, 2015) (finding “final factor strongly favors approval” where “[n]o Class Member filed an objection . . . and only fourteen individuals opted out (.04% of the Class).”).

5. *The Settlement Resulted from Arms’ 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.*, 210 F.R.D. at 700 (“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....”) (internal citation omitted).

IV. CONCLUSION

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

Date: March 12, 2025

Respectfully Submitted,

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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 12th day of March 2025.

/s/ Dirk Hubbard