

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

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

MDL No. 2936

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

This document relates to:
All Class Actions

**PLAINTIFFS’ MOTION FOR FINAL APPROVAL
OF RETAILER CLASS SETTLEMENT AGREEMENT**

COME NOW Plaintiffs, by and through Class Counsel, and move the Court for entry of an order and judgment granting final approval to the Retailer Class Settlement Agreement. In support of their Motion, Plaintiffs respectfully state as follows:

Settlement Class and Proposed Final Approval Order

1. On or about June 23, 2021, the four Retailer Defendants and Plaintiffs entered into a Settlement Agreement and Release (the “Retailer Class Settlement Agreement”). The Retailer Class Settlement Agreement makes partial relief available to more than 100,000 proposed Retailer Settlement Class Members who have purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil (referred to collectively as “303 THF Products”) from Tractor Supply Company, Orscheln, Rural King and/or Atwood stores during the Class Period, excluding persons and entities who solely purchased Super S Supertrac 303 Tractor Hydraulic Fluid in Missouri. The Retailer Class Settlement Agreement, with all exhibits thereto, was attached as Exhibit 1 to the Motion for Preliminary Approval. (Doc. 181-1).

2. On June 30, 2021, this Court entered its Preliminary Approval Order granting

preliminary approval of the Retailer Class Settlement Agreement (the “Preliminary Approval Order”). (Doc. 188). The following Settlement Class was conditionally certified:

All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil from any of the Retailer Defendants Tractor Supply Company, Orscheln Farm and Home, Rural King, and/or Atwoods, in the United States at any point in time from December 1, 2013 to present, excluding persons and entities who solely purchased Super S Supertrac 303 Tractor Hydraulic Fluid in Missouri. Also excluded from the Retailer Settlement Class are Retailer Defendants, including any parent, subsidiary, affiliate or controlled person of Retailer Defendants; Retailer Defendants’ officers, directors, agents, employees and their immediate family members, as well as the judicial officers assigned to this litigation and members of their staffs and immediate families.

(Doc. 188, ¶ 6).

3. Since that time, the Court-appointed Settlement Administrator, RG/2 Claims Administration LLC (“RG/2”), has implemented the Court-approved notice and claims administration process, as set forth in the Retailer Class Settlement Agreement and the Preliminary Approval Order. In support of the adequacy and appropriateness of the Retailer Class Settlement Agreement, including the notice provided to Retailer Settlement Class Members, the processing of claims, and the response of Class Members, the Declaration of Tina Chiango, Director of Claims Administration, Securities, and Antitrust for RG/2, the Court-approved Settlement Administrator, is attached hereto as Exhibit 1. As set forth in RG/2’s Declaration, there have been no objections to the Retailer Class Settlement Agreement, and only 14 potential Class Members have requested to be excluded from the Settlement. (Ex. 1, Declaration of Tina Chiango, ¶¶ 16-17).

4. With the objection, opt-out, and claims period to be closed on December 29, 2021, Plaintiffs, pursuant to the Settlement Agreement and the Court’s Preliminary Approval Order, file this Motion and respectfully request that the Court enter an order, in substantially the same form as Exhibit B to the Retailer Class Settlement Agreement, granting final approval of the class action

settlement memorialized in the Retailer Class Settlement Agreement. As set forth more fully in Exhibit B to the Retailer Class Settlement Agreement and the Proposed Order which will be provided to the Court, the requested order finally approves the Retailer Class Settlement Agreement and, among other things:

- (a) finds that the notice provided satisfies the requirements of due process and Fed. R. Civ. P. 23(e)(1);
- (b) finds that Retailer Settlement Class Members have been adequately represented by the Class Representatives and Class Counsel;
- (c) finds that the Retailer Class Settlement Agreement is fair, reasonable and adequate to the Retailer Settlement Class, that each Retailer Settlement Class Member shall be bound by the Retailer Class Settlement Agreement, including the release and the covenant not to sue set forth in the Retailer Class Settlement Agreement, and that the Retailer Settlement Agreement should be and is finally approved;
- (d) dismisses on the merits and with prejudice the claims asserted by the Retailer Settlement Class Members against the Retailer Defendants, with each Party waiving all rights to appeal and waiving all rights to seek reimbursement of attorneys' fees or costs (except as expressly provided in the Retailer Settlement Agreement);
- (e) permanently enjoins each and every Retailer Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against any of the Released Parties; and,
- (f) retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of the Retailer Class Settlement Agreement.

Direct Mailed/E-Mailed Notice

5. Pursuant to this Court's Preliminary Approval Order, on September 28, 2021, the Mailed Class Notice was mailed to 151,601 Members of the Settlement Class who were identified by the Retailer Defendants' records as having specific purchases of the 303 THF Products during the Class Period. These notices provided each recipient with the number of their purchases of the 303 THF Products as reflected in the Retailers' records, for each of the various sizes – 2-gallon jugs; 5-gallon buckets; and 55-gallon drums. The Mailed Class Notice also provided each Class

Member a link to the Claims online filing portal and a personalized, purchase data review portal. The “Data Lookup” page on the Settlement Website contains a link to the Data Portal where Class Members can use their personalized username and password to view the details of their purchases that were contained in the Retailers’ records and summarized in their Mailed Class Notice. (Ex. 1, ¶ 8).

6. Also pursuant to this Court’s Preliminary Approval Order, on October 1, 2021, email notice was sent to 142,855 potential Retailer Settlement Class Members and mailed notice was sent to 24,506 other potential Members of the Retailer Settlement Class. These were persons and/or entities who were identified by Retailer Defendants’ records as having purchased 303 THF Products during the Class Period, but for whom specific purchase information was not available. (Ex. 1, ¶ 9).

7. Of the 176,107 Mailed Class Notice Packets and other Notices mailed to potential Retailer Settlement Class Members, a total of 13,115 were returned by the USPS as undeliverable. Of those returned, 759 contained a forwarding address, and RG/2 immediately remailed those Data Notice Packets or Notice and Claims Forms to the forwarding addresses. RG/2 performed address verification searches (also referred to as “skip tracing”) for those returned as undeliverable without a forwarding address. RG/2 promptly sent the Notice information to 8,706 potential Retailer Settlement Class Members via U.S. First Class mail at the updated addresses located via skip tracing. After these efforts, 3,650 remained undeliverable. Of these, 2,863 were Class Members with Data Notice Packets. (Ex. 1, ¶ 15).

Publication of Summary Notice

8. In addition to emailing and mailing the Notices and in order to reach additional potential Retailer Settlement Class Members, Summary Notice was published in the following

publications beginning on August 1, 2021:

- **Progressive Farmer**
- **Farm & Ranch Living**
- **Farm Journal**
- **Successful Farming**
- **Arkansas Agriculture**
- **Iowa Farm Today**
- **Illinois AgriNews**
- **Indiana AgriNews**
- **Ohio's Country Journal**
- **Michigan Farm News**
- **Midwest Messenger**
- **Texas Agriculture**
- **Citrus Industry**
- **Lancaster Farming**
- **The Farmer's Pride**
- **Alabama Farm Bureau Neighbors**
- **SE Farm Press**
- **NC Farm Bureau Field & Family**
- **Tennessee Farm Bureau**
- **VA Farm Bureau Cultivate**
- **Various West Virginia Newspapers**
- **KS Farm Bureau Living**
- **SW Farm Press**
- **OK Farm Bureau Country**
- **Delta Farm Press**

(Ex. 1, ¶ 10). The total circulation of these publications exceeds three million.

9. A media notice campaign was also implemented. It included Facebook and Google Ads that allowed potential Class Members to click on the ad and be linked to the Settlement website. Banner Ads were also placed through digital media at the Farm Journal and Progressive Farmer. Overall, this digital media campaign produced over 20 million impressions online. (Ex. 1, ¶ 11).

10. In addition to the mailed and emailed Notices, publications, and digital media, notice of the Class Settlement was also provided through radio spots on the AG Radio Network, which were estimated to produce over 13 million impressions. (Ex. 1, ¶ 11).

Settlement Website

11. All Notice and media referred to the Settlement website www.303tractorhydraulicfluidsettlement.com, which was established by RG/2. The website includes the following:

- a. A “Homepage” containing a brief summary of the Settlement and advising potential Settlement Class Members of their rights under the Settlement;
- b. An “Important Date” page containing a list of key dates and deadlines;
- c. A “Notice and Claim Form” page containing a pdf copy of the Court-Ordered Long Form Notice, Class Membership Form, Request for Correction Form, and Repairs/Parts/Specific Equipment Damage Claim Form. The page also includes a link to the Claims online filing portal and a personalized, purchase data review portal;
- d. A “Court Documents” page containing: the Settlement Agreement; the Motion for Preliminary Approval; Suggestions in Support of Preliminary Approval; the Preliminary Approval Order; the Long Form Notice; the Application for Incentive Awards, and for Attorneys’ Fees and Expenses; Suggestions in Support of Application for Incentive Awards, Attorneys’ Fees and Expenses; and the Declaration of Thomas Bender in Support of Application for Incentive Awards, Attorneys’ Fees and Expenses (any additional documents will be added as requested);
- e. A “Data Lookup” page containing a link to the Data Portal where Class Members can use a personalized username and password to view the details of their purchases that were summarized in their Mailed Class Notice;
- f. A “Claims Filing” page containing links to the Class Membership Form portal; the Correction Form portal and the Damages Claim portal. This page also contains pdf versions of these forms for printing. A link to the Data Portal is also available on this page;
- g. An “FAQs” page containing various questions and answers pertaining to the Settlement; and
- h. A “Contact Us” page containing RG/2’s contact information for any questions or requests for information regarding the settlement.

(Ex. 1, ¶ 13).

12. Potential Class Members were able to utilize the online claims portals to complete and submit the Class Membership Form, the Request for Correction Form, and the Repairs/Parts/Specific Equipment Damage Claim Form. (Ex. 1, ¶ 14).

No Objections to the Settlement Have Been Asserted by Class Members

13. In accordance with this Court's Preliminary Approval Order, Class Members have until December 29, 2021, by which to file objections to the Settlement. As of December 21, 2021, no Class Member has filed an objection. (Ex. 2, ¶ 17).

Opt-Outs/Requests for Exclusion

14. In accordance with this Court's Preliminary Approval Order, Class Members have until December 29, 2021, by which to opt-out of the Settlement. As of December 21, 2021, fourteen (14) Class Members have opted out. (Ex. 1, ¶ 16).

Summary of Claims

15. As of December 21, 2021, 2,515 Class Membership Claim Forms have been submitted and 361 Correction Forms have been submitted claiming to have purchased various sizes of the 303 THF Products. (Ex. 1, ¶¶ 18-19). The Settlement Administrator, Class Counsel, and Retailer Defendants' Counsel will be reviewing and evaluating these claims pursuant to the terms of the Retailer Class Settlement Agreement. Claim denial emails and/or letters will be sent to claimants whose claims are denied. That process is expected to take 60-90 days.

16. As of December 21, 2021, there have been 999 Repairs/Parts/Specific Equipment Damage Forms submitted. (Ex. 1, ¶ 20). The Settlement Administrator, Class Counsel, and Retailer Defendants' Counsel will be reviewing and evaluating these claims pursuant to the terms of the Retailer Class Settlement Agreement. Claim denial emails and/or letters will be sent to claimants whose Repair/Parts/Specific Equipment Damage claims are denied. That process is

expected to take 60-90 days.

Settlement Administration and Notice Costs to Date

17. It is anticipated that RG/2 will complete the Settlement Administration process within the budgeted amount of \$925,774.00. Note that the original budgeted amount did not include estimates for award distribution or other post-Final Approval Settlement Administration.

Conclusion

18. In further support of this Motion, Plaintiffs file concurrently herewith their Suggestions in Support of Unopposed Motion for Final Approval of Retailer Class Settlement Agreement.

19. Upon Final Approval of the Retailer Class Settlement Agreement, the Settlement Administrator, Class Counsel, and Retailer Defendants' Counsel will complete the claim review and evaluation process. Class Counsel anticipates reporting back to the Court in 90 days with an update on claims.

WHEREFORE, Plaintiffs respectfully request the Court enter the proposed Final Approval Order for Retailer Class Settlement Agreement and for such other and further relief as is just and proper.

Date: December 24, 2021

Respectfully Submitted,

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