

**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

RETAILER CLASS SETTLEMENT AGREEMENT

This Retailer Class Settlement Agreement (“Retailer Class Settlement Agreement” or “Settlement Agreement”), made on this ^{23rd} day of June, 2021, submitted pursuant to Rule 23 of the Federal Rules of Civil Procedure and Rule 408 of the Federal Rules of Evidence, embodies a settlement made and entered into by and among Plaintiffs, for themselves and on behalf of the Retailer Settlement Class, on the one hand; and Tractor Supply Company (“TSC”); Orscheln Farm and Home LLC (“Orscheln”); Rural King Administration, Inc., R.K. Family, Inc., R.K. Holdings, LLP, Mattoon Rural King Store, Inc., Waterloo Rural King Supply, Inc., Vandalia Rural King Supply, Inc., RK Distribution, LLC, Rural King Holding Co. (collectively referred to as “Rural King”); and Atwood Distributing, LP (“Atwood”), together with each of their affiliates, divisions, subsidiaries, and assigns (collectively referred to as “Retailer Defendants”) on the other hand, to resolve all claims against the Retailer Defendants in the above-captioned multi-district litigation pending in the United States District Court for the Western District of Missouri, Western Division, inclusive of the transferor-lawsuits and direct-action claims made part of the above-referenced MDL and Master Case numbers (the “Action”). This Retailer Class Settlement Agreement is intended by the parties to fully, finally, and forever resolve, discharge, and settle the Released Claims against Retailer Defendants upon and subject to the terms and

conditions hereof and subject to and conditioned upon preliminary and final approval of the Court.

I. RECITALS

WHEREAS, this Retailer Class Settlement Agreement includes the attached exhibits, which are incorporated by reference as though fully set forth herein:

Exhibit A – Preliminary Approval Order

Exhibit B – Final Approval Order

Exhibit C – Retailer Settlement Class Membership Form

Exhibit D – Long Form Retailer Settlement Notice

Exhibit E – Retailer Settlement Summary Class Notice

Exhibit F – Retailer Settlement Mailed Class Notice

Exhibit G – Repairs/Parts/Specific Equipment Damage Claim Form

Exhibit H – Request for Correction Form

Exhibit I -- Repairs/Parts/Specific Equipment Damage Claims Review Process

Exhibit J – Settlement Administration and Notice Plan

WHEREAS, throughout this Retailer Class Settlement Agreement, all capitalized terms used herein are defined in Section II. of this Agreement or indicated in parentheses elsewhere in this Agreement;

WHEREAS, during the relevant time period, TSC, Orscheln, Rural King, and Atwood marketed, advertised, and sold 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 (collectively referred to as “303 THF Products”);

WHEREAS, Plaintiffs filed a First Amended Consolidated Class Action Complaint against TSC, Orscheln, Rural King, and Atwood alleging that they marketed, advertised, and sold the 303 THF Products in the United States since December 1, 2013;

WHEREAS, Plaintiffs allege in the Action, among other things, that the labels for the 303 THF Products were deceptive and misleading for the reasons set forth in the First Amended Consolidated Complaint, and that use of the 303 THF Products in equipment causes increased wear and damage to various parts of the equipment.

WHEREAS, Plaintiffs' Class Counsel believe that the Settlement set forth in this Retailer Class Settlement Agreement confers substantial benefits upon the Retailer Settlement Class in light of the circumstances present here. Based on their evaluation, Class Counsel have determined that the Settlement set forth in this Retailer Settlement Agreement is in the best interests of Plaintiffs and the Retailer Settlement Class, and is fair, reasonable, adequate, and in the best interests of the Retailer Settlement Class;

WHEREAS, Retailer Defendants have vigorously denied, and continue to vigorously deny, all of the claims, allegations, and contentions asserted in the Action, and likewise vigorously denied, and continue to vigorously deny, any and all alleged wrongdoing and liability to Plaintiffs and the Retailer Settlement Class;

WHEREAS, Retailer Defendants have also considered the risks and potential costs of continued litigation, on the one hand, and the benefits of the proposed settlement, on the other hand, and desire to settle the Action upon the terms and conditions set forth in this Retailer Class Settlement Agreement;

WHEREAS, Retailer Defendants have agreed not to oppose certification of the Retailer Settlement Class in the Action, but only for the sole and exclusive purpose of compromising and settling the claims of the Plaintiffs and the Retailer Settlement Class on a class-wide basis, and

not for any other purpose whatsoever, as set forth more fully herein; and

WHEREAS, this Retailer Class Settlement Agreement was reached as a result of extensive arms-length negotiations between Class Counsel and counsel for Retailer Defendants, including but not limited to a mediation with Lee Shidlofsky in Kansas City, Missouri on September 30, 2020, and extended discussions following that mediation.

NOW, THEREFORE, IT IS HEREBY STIPULATED AND AGREED by and among the Plaintiffs, on the one hand, and Retailer Defendants, on the other hand, by and through their respective counsel of record, that, subject to the approval of the Court pursuant to Rule 23(e) of the Federal Rules of Civil Procedure, in consideration of the benefits flowing to the parties from the Settlement set forth herein, the Released Claims shall be finally and fully compromised, settled, and released as to all Released Parties, and the Action shall be settled, compromised, and dismissed with prejudice as to the Released Retailer Defendants, without costs, except as stated herein, and with releases extended as set forth in this Settlement Agreement, upon and subject to the terms and conditions of the Settlement Agreement, as follows.

II. DEFINITIONS

As used in this Retailer Class Settlement Agreement, the following terms have the meanings specified below:

1. “Bar Date” means the final time and date by which: (i) a Class Membership Form and/or Claim Form must be received by the Settlement Administrator in order for certain Retailer Settlement Class Members to be entitled to recover the benefits described in this Settlement Agreement; (ii) any objection to the Retailer Settlement Agreement must be filed and served pursuant to the terms of this Settlement Agreement; and (iii) any request to be excluded from the Retailer Settlement Class must be sent to the Settlement Administrator pursuant to the terms of this Settlement Agreement. The Bar Date shall be 150 calendar days

after the Notice Date or the date otherwise set forth in the Preliminary Approval Order entered by the Court. The Bar Date may be extended by written agreement of the Parties through Class Counsel and Retailer Defendants' Counsel without further approval of the Court or notice to the Retailer Settlement Class, provided that the Settlement Website administered by the Settlement Administrator shall be promptly updated to reflect any extension of the Bar Date.

2. "Class Counsel" for purposes of this Agreement means Tricia Campbell, Leader of the Settlement Committee, from the law firm Langdon & Emison in Kansas City, Missouri; Tom Bender and Dirk Hubbard from the law firm Horn Aylward & Bandy, LLC in Kansas City, Missouri; Bryan White from the law firm White, Graham, Buckley & Carr, L.L.C. in Independence, Missouri; Clayton Jones of the Clayton Jones Law Firm in Raymore, Missouri; Athena Dickson of the Siro Smith Dickson Law Firm in Kansas City, Missouri; John Emerson of the Emerson Firm, PLLC in Little Rock, Arkansas; Mark Bryant from the law firm Bryant Law Center, P.S.C. in Paducah, Kentucky; Christopher Jennings of the Johnson Firm in Little Rock, Arkansas; Stephen Basser from the law firm Barrack, Rodos & Bacine in San Diego, California; Paul Lundberg of the Lundberg Law Firm, P.L.C. in Sioux City, Iowa; James Malter of the law firm Malter, Shepher & Von Holtum in Worthington, Minnesota; Travis Griffith from the law firm Griffith Law Center, PLLC in Charleston, West Virginia; and Jon Robinson and Zachary Anderson from the law firm Bolen Robinson & Ellis, LLP in Decatur, Illinois.

3. "Class Period" means the time period for which purchases of Defendants' 303 THF Products from the Retailer Defendants are included in the Retailer Class Settlement for purposes of Class Membership Forms and determinations pursuant to the Plan of Allocation, that time period is December 1, 2013, through the present.

4. "Class Membership Period" means the time period from the Notice Date through

the Bar Date, which is the time period that Retailer Settlement Class Members will have to determine if they wish to stay in the Retailer Settlement Class and, where necessary, file a Class Membership Form, and, where desired, file a Claim Form as contemplated by the Plan of Allocation and this Retailer Settlement Agreement.

5. “Consolidated Class Action Complaint” means the Plaintiffs’ First Amended Consolidated Class Action Complaint, filed in this Action on January 29, 2021, as well as any subsequent Amended Consolidated Complaint filed by Plaintiffs in this Action.

6. “Court” means the United States District Court for the Western District of Missouri, Western Division.

7. “Effective Date” means the date on which the Judgment and Order of Dismissal becomes Final. As used in this definition, the term "Final" means ten calendar days after all of the following conditions have been satisfied:

- a. the Court enters a Judgment and Order of Dismissal against Retailer Defendants pursuant to Section IX of this Settlement Agreement; and
- b. either: (i) 30 days have passed after entry of the Judgment and Order of Dismissal and no appeal is taken after the judgment's entry and no motion or other pleading has been filed with the Court (or with any other court) seeking to set aside, enjoin, or in any way alter the Judgment and Order of Dismissal or to toll the time for appeal of the Judgment and Order of Dismissal; or (ii) all appeals, reconsideration, rehearing, or other forms of review and potential review of the Court's Judgment and Order of Dismissal are exhausted, and the Judgment and Order of Dismissal is upheld without any material modification of the terms of this Settlement Agreement.

8. “Event of Termination” means any event terminating the Settlement Agreement

pursuant to its terms and conditions, including but not limited to: (i) mutual written agreement of the Parties to terminate the Settlement Agreement; (ii) the Court denying any motion for preliminary or final approval of the Settlement, except when denial is based on the Court's disapproval of the proposed method for providing notice to the Retailer Settlement Class; and, (iii) any reviewing court reversing the Court's orders approving preliminary or final approval of the Settlement. Upon an Event of Termination, the Parties shall return to their respective positions as they were on the date this Settlement Agreement was signed.

9. "Fee and Expense Award" means the attorneys' fee and expense award Ordered by the Court, as further discussed in paragraphs 49 and 50, below.

10. "Final Fairness Hearing" means the hearing that is to take place after entry of the Preliminary Approval Order and after the Notice Date for purposes of: (i) entering the Judgment and Order of Dismissal as to Retailer Defendants with prejudice; (ii) determining whether to Settlement should be approved as fair, reasonable, adequate, and in the best interests of the Retailer Settlement Class Members; and (iii) ruling upon an application by Class Counsel for an award of attorneys' fees and expenses.

11. "General Equipment Damage Claim Value" means the Settlement Administrator's determination for each Qualified Retailer Settlement Class Member pursuant to the Plan of Allocation, as set forth in paragraph 47(b).

12. "Judgment and Order of Dismissal" means the judgment and order of dismissal with prejudice to be rendered by the Court upon approval of the Retailer Settlement, in substantially the form of Exhibit B attached hereto, or such other substantially similar form agreed to by the Settling Parties.

13. "Long Form Retailer Settlement Notice" (also referred to as "Long Form Notice") means the long form notice of settlement substantially in the form attached hereto as

Exhibits D.-

14. “Manufacturer Defendants” means Smitty’s Supply, Inc. (“Smitty’s”) and CAM2 International, LLC (“CAM2”).

15. “Net Retailer Class Settlement Fund” means the Retailer Class Settlement Fund less: (i) Class Notice and Administration Expenses; (ii) the amount of the Fee and Expense Award and any Plaintiffs’ class representative incentive award to the extent allowed by the Court; (iii) any other fees or expenses approved by the Court.

16. “Notice Date” means the date on which the Settlement Administrator first publishes notice pursuant to Section VII of this Settlement Agreement.

17. “Parties” means Plaintiffs and Retailer Defendants.

18. “Person” means a natural person, individual, corporation, partnership, limited partnership, association, pension fund, mutual fund, joint stock company, estate, legal representative, trust, unincorporated association, government or any political subdivision or agency thereof, any business or legal entity and his, her or its spouses, heirs, predecessors, successors, representatives, beneficiaries, trustees, or assignees, and any other entity on behalf of whom the person has a legal right to make or release a claim.

19. “Plaintiffs” means the persons identified in Appendix “A” to this Settlement Agreement, each of whom is a putative class member in the litigation.

20. “Plaintiffs’ Counsel” means Lead Counsel and any counsel who appeared on behalf of Plaintiffs in the Action.

21. “Plan of Allocation” means a plan or formula of allocation pursuant to which the Net Settlement Fund shall be distributed to Retail Settlement Class Members. The proposed Plan of Allocation is set forth in paragraph 47 of this Settlement Agreement. The Plan of

Allocation is subject to approval by the Court and also subject to change, as approved and/or ordered by the Court. The Released Parties shall have no responsibility or liability with respect to the Plan of Allocation.

22. “Preliminary Approval Order” means the order requesting, *inter alia*, the preliminary approval of the Settlement set forth in the Retailer Settlement Agreement, in substantially the form of Exhibit A attached hereto, or such other substantially similar form agreed to by the Settling Parties. Plaintiffs will file a motion for preliminary approval of the settlement within ten days of execution of this Settlement Agreement.

23. “Qualified Retailer Settlement Class Member” means and includes: (i) a Retailer Settlement Class Member, as defined below, for whom the Settlement Administrator has been provided by Defendants a name, mailing address, and information reflecting the brand, number and size of 303 THF Product units purchased during the Class Period; and (ii) a Retailer Settlement Class Member, as defined below, who timely submits a fully completed and valid Class Membership Form. A Qualified Retailer Settlement Class Member is also eligible to submit a Repairs/Parts/Specific Equipment Damage Claim Form. Each Qualified Retailer Settlement Class Member shall be entitled to participate in an award from monies in the Net Settlement Fund, pursuant to the Plan of Allocation. The Settlement Administrator shall maintain a record of each payment made to a Qualified Retailer Settlement Class Member.

24. “Released Claims” means the claims released in Section VI of this Settlement Agreement.

25. “Released Parties,” means Retailer Defendants and each of their respective affiliates, divisions, subsidiaries, and assigns; nothing in this definition or Retailer Settlement Agreement is meant to or shall be interpreted to release, apply to, or settle, or compromise, in any way Plaintiffs’ and/or Retailer Settlement Class Members’ claims against other entities,

parties or Defendants, including Manufacturer Defendants Smitty's Supply, Inc. and CAM2 International, LLC.

26. "Releasing Parties" means Plaintiffs and Retailer Settlement Class Members, including their respective partners, agents, representatives, heirs, executors, personal representatives, successors and assigns.

27. "Repairs/Parts/Specific Equipment Damage Claim Form" (also referred to as "Claim Form") means the form attached hereto as Exhibit G, to be made available to Settlement Class Members.

28. "Repairs/Parts/Specific Equipment Damage Claims Review Process" means the process set forth in Exhibit I for reviewing claims made by Retailer Settlement Class Members for the costs of equipment repairs, costs of parts purchases, and/or specific damage to equipment which the Retailer Settlement Class Member contends resulted from, in whole or in part, the use of the Manufacturer Defendants' 303 THF Products.

29. "Repairs/Parts/Specific Damage Claim Value" means the Settlement Administrator's determination for each Qualified Retailer Settlement Class Member pursuant to the Plan of Allocation, as set forth in paragraph 47(c).

30. "Request for Correction Form" (also referred to as "Correction Form") means the form attached hereto as Exhibit H, to be made available to those Settlement Class Members for whom purchase information exists.

31. "Retailer Defendants" shall mean TSC, Orscheln, Rural King, and Atwood, together with their respective affiliates, divisions, subsidiaries, and assigns.

32. "Retailer Defendants' Counsel" shall mean Nikki Cannezzaro and Joseph Swift.

33. "Retailer Class Settlement Fund" is defined in paragraph 44, below.

34. "Retailer Settlement" and "Retailer Settlement Agreement" mean the settlement

embodied in the terms and conditions of this Retailer Class Settlement Agreement.

35. “Retailer Settlement Class” means 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 in the United States at any point in time from December 1, 2013 to present, excluding those persons and/or entities who only 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.

36. “Retailer Settlement Class Member” means a Person who falls within the definition of the Retailer Settlement Class and has not timely and validly elected to be excluded from, or opt out of, the Retailer Settlement Class in accordance with the terms and conditions of this Retailer Settlement Agreement and the Preliminary Approval Order.

37. “Retailer Settlement Class Membership Form” (also referred to as “Class Membership Form”) means the document substantially in the form attached hereto as Exhibit C, which may be modified to meet the requirements of the Settlement Administrator, pursuant to which eligible Retailer Settlement Class Members can elect to seek to become a member of the Retailer Settlement Class and be eligible for the benefits described in this Settlement Agreement.

38. “Settlement Administrator” means the qualified third party selected by the Parties and approved by the Court in the Preliminary Approval Order to administer the Settlement, including providing notice to the Retailer Settlement Class, processing claims, and

distributing the Class Settlement Fund, all pursuant to the terms and conditions of this Retailer Settlement Agreement and the Court's Preliminary Approval Order. The Parties agree to recommend that the Court appoint RG/2 Claims Administration LLC as the Settlement Administrator. If RG/2 Claims Administration LLC becomes unable to fulfill that role or the Parties agree otherwise, the Parties may recommend a different proposed Settlement Administrator.

39. "Settling Parties" means Plaintiffs and Retailer Defendants.

40. "Total Claim Value" means the Settlement Administrator's determination for each Qualified Retailer Settlement Class Member pursuant to the Plan of Allocation, as set forth in paragraph 47(a).

III. MOTION FOR PRELIMINARY APPROVAL

41. **Stay of Prosecution of Claims Against Retailer Defendants in Action.** Upon the Signing of this Settlement Agreement, the Parties agree to stay all pending deadlines and proceedings in the Action -- related only to prosecution of claims against Retailer Defendants -- except those proceedings necessary to carry out or enforce the terms and conditions of this Retailer Settlement Agreement and to secure the Preliminary Approval Order and Judgment and Order of Dismissal from the Court. The agreed stay shall be lifted automatically upon an Event of Termination pursuant to the terms of this Retailer Settlement Agreement. Nothing in this Retailer Settlement shall be interpreted as preventing continued prosecution and commencement of claims against the Manufacturer Defendants in this Action or any other actions. Retailer Defendants agree to cooperate by providing information, documents, and witness testimony requested in the continuing Class Actions against Manufacturing Defendants and relevant to the issues therein and acknowledge that is a material term of this settlement. Plaintiffs agree to work with Retailer Defendants in identifying the relevant information, documents, and witness

testimony and also in obtaining such information without the need of subpoena.

42. **Motion for Preliminary Approval.** Within ten (10) days following the signing of this Settlement Agreement by all Parties, Class Counsel shall move the Court to preliminarily approve the Retailer Settlement and enter the Preliminary Approval Order substantially in the form attached hereto as Exhibit A. Pursuant to that motion for preliminary approval, Plaintiffs will request that the Court:

- a. approve the Notice and Administration Plan contained herein and attached as Exhibit J, including the Long Form Notice, Summary Notice, and Mailed Class Notice substantially in the forms attached hereto as Exhibit D, Exhibit E and Exhibit F, respectively, and find that the notice plan established pursuant to this Retailer Settlement Agreement, constitutes the best notice practicable under the circumstances and satisfies the requirements of due process and Fed. R. Civ. P. 23;
- b. approve the proposed Plan of Allocation, a timetable for submission of Class Counsel's request for incentive awards for Class Representatives and request for attorneys' fees, costs and expenses, the date and time of the settlement hearing, the right to appear and the settlement hearing, and the right to object to or request exclusion from the Retailer Settlement Class;
- c. find that the requirements for provisional certification of the Retailer Settlement Class have been satisfied, appointing Plaintiffs identified on Appendix A to the Settlement Agreement as the representatives of the Retailer Settlement Class, and Class Counsel as counsel for the Retailer Settlement Class, and preliminarily approving the Retailer Settlement as being within the range of reasonableness such that notice shall be provided pursuant to the terms of the Retailer Settlement

Agreement;

- d. schedule the Final Fairness Hearing approximately 180 days following the Notice Date to determine whether the Settlement should be finally approved as fair, reasonable, adequate and in the best interests of the Retailer Settlement Class Members, and to determine whether a Judgment and Order of Dismissal should be entered dismissing the Action as to the Retailer Defendants with prejudice;
- e. preliminarily approve the form of the Judgment and Order of Dismissal;
- f. approve appointment of RG/2 Claims Administration LLC as the Settlement Administrator;
- g. direct that notice of the Retailer Settlement and of the Final Fairness Hearing shall be provided to the Retailer Settlement Class pursuant to terms of this Settlement Agreement;
- h. approve the Class Membership Form, Claim Form, and Correction Form in substantially the form attached hereto as Exhibit C, G, and H, respectively, and provide that Retailer Settlement Class Members shall, where necessary, submit any Class Membership Forms, Claim Forms, and Correction Forms pursuant to the terms and conditions of this Settlement Agreement;
- i. provide that any objections by any Retailer Settlement Class Member to the certification of the Retailer Settlement Class for purposes of settlement, the proposed Retailer Settlement, or entry of the Judgment and Order of Dismissal, shall be submitted and heard, if appropriate, pursuant to terms and conditions set forth in this Retailer Settlement Agreement;
- j. provide that all Retailer Settlement Class Members shall be bound by the Judgment and Order of Dismissal dismissing the Action as to Retailer Defendants

with prejudice unless such potential members of the Retailer Settlement Class timely submit valid written requests for exclusion or opt out in accordance with the terms and conditions of this Retailer Settlement Agreement;

- k. establish a date by which the Parties shall file and serve all papers in support of the application for final approval of the Retailer Settlement and in response to any valid and timely objections; and
- l. enjoin Plaintiffs and Retailer Settlement Class Members, and any of them, from commencing or prosecuting, either directly or indirectly, any action asserting any of the Released Claims against Retailer Defendants, pending the Final Fairness Hearing, however nothing in this Retailer Settlement or proposed Preliminary Approval Order shall be interpreted as preventing continued prosecution and commencement of claims against the Manufacturer Defendants in this Action or any other actions.

43. **Notice.** Within a reasonable time following entry of the Preliminary Approval Order, Notice shall be provided to the Retailer Settlement Class pursuant to Section VII and Exhibits C through H, the Settlement Administration and Notice Plan attached hereto as Exhibit J, and/or in any other form and method required and/or approved by the Court.

IV. BENEFITS TO THE RETAILER SETTLEMENT CLASS

44. **Retailer Class Settlement Fund.** Retailer Defendants shall cause to be paid Seven Million Two Hundred Thousand Dollars (\$7,200,000.00) pursuant to Section VII.B hereof to settle any and all claims of the Retailer Settlement Class against the Retailer Defendants relating to the Retailer Defendants' distribution, marketing, or sales of Super S 303 Tractor Hydraulic Fluid, Super S Supertrac 303 Tractor Hydraulic Fluid, Cam2 Promax 303 Tractor Hydraulic Oil, and Cam2 303 Tractor Hydraulic Oil, including all claims made or that could have

been made in formal complaints filed against Retailer Defendants and obtain the release set forth in Section VI hereof. That amount shall establish a settlement fund (the "Retailer Class Settlement Fund").

45. The Retailer Class Settlement fund shall be applied as follows: (a) to pay all Class Notice and Administration Expenses (including, if necessary, distribution costs); (b) to pay the Fee and Expense Award, subject to the approval of the Court; (c) to pay any Class Representative incentive awards, subject to the approval of the Court; (d) to pay any other expenses as approved by the Court; and (e) after the Effective Date to distribute the Net Retailer Class Settlement Fund to Qualified Retailer Settlement Class Members pursuant to the Retailer Settlement Agreement and the Plan of Allocation, as approved by the Court. No amount of the Retailer Class Settlement Fund shall revert to the Retailer Defendants.

46. **Payments to Class Representatives.** Class Counsel and Plaintiffs will seek, and Retailer Defendants agree not to oppose, payment of a partial incentive award by Retailer Defendants of Five Hundred Dollars (\$500.00) each to Plaintiffs for their services as class representatives (sometimes referred to herein as the "Retailer Settlement Class Representatives"). The partial incentive awards, as approved by the Court and not to exceed Five Hundred Dollars (\$500.00) for each Class Representative, shall be paid out of the Class Settlement Fund. These amounts represent only partial incentive awards, and additional incentive awards will be requested for each Class Representative out of any eventual settlement or other recovery from the Manufacturing Defendants. Each Class Representative shall also be entitled to receive his/her/its award under the Plan of Allocation approved by the Court.

47. **Plan of Allocation.** The Net Retailer Class Settlement Fund shall be distributed to Qualified Settlement Class Members as follows:

- (a) Total Claim Value: Each Qualified Retailer Settlement Class Member will receive a Total Claim Value based on the

combination of (1) the General Equipment Damage Claim Value based on that Class Member's amount of purchases of Defendants' 303 THF Products from the Retailer Defendants; and (2) the Repairs/Parts/Specific Equipment Damage Claim Value based on the Settlement Administrator's determination on that Class Member's submission of a Claim Form, if any.

- (b) General Equipment Damage Claim Value: Each Qualified Retailer Settlement Class Member will receive a General Equipment Damage Claim Value determined based on a percentage of the price of his/her/its purchases of Defendants' 303 THF Products from the Retailer Defendants during the Class Period, excluding purchases of Super S Supertrac 303 made in Missouri. This is to provide compensation for the property damage which Plaintiffs allege was generally sustained in each piece of equipment which used Defendants' 303 THF Products. The General Equipment Damage Claim Value allowed for the respective unit sizes of Defendants' 303 THF Products shall be as follows: \$12 for each 5-gallon bucket purchased; \$4 for each 1-gallon jug purchased; \$6 for each 2-gallon jug purchased; and \$90 for each 55-gallon drum purchased. These amounts are estimated to be equal to 50% of that unit's average sale price during the Class Period. As noted, no credit shall be given to purchases of Super S Supertrac 303 in Missouri.
- (c) Repairs/Parts/Specific Damage Claim Value: Each Qualified Retailer Settlement Class Member who timely submits a Claim Form will receive a Repairs/Parts/Specific Equipment Damage Claim Value based on the Settlement Administrator's determination based on the Class Member's equipment repairs, parts purchases, and/or specific damage to equipment that may be attributable, in whole or in part, the use of the Manufacturer Defendants' 303 THF Products during the Class Period. Such repairs, parts purchases, and/or equipment damage may relate to, without limitation, damage to seals, pumps, filters, gears, and clutch and brake systems, power take-off (PTO) systems and/or losses incurred as a result of equipment being damaged beyond reasonable repair which occurred as a result of damage and increased or excessive wear resulting from use of the Manufacturing Defendants' 303 THF Products. Such increased wear and damage may include, without limitation, scratching, corrosive wear, rippling, ridging, pitting, spalling and scoring of the gears and metal components, seal damage, spiral gear damage, metal abrasion, corrosion, surface wear, clutch wear and breakage, wet brake damage, pump failure, leakage, and damage from deposits, sludging and thickening. Claims for such repairs/parts/specific damage shall require submission of the

Claim Form along with receipts or other paperwork (if available) related to losses, repairs and/or parts.

- (d) Each Qualified Retailer Settlement Class Member will receive a pro rata share of the portion remaining in the Retailer Settlement Class Fund, as referenced above, based on his/her/its Total Claim Value. Note that the Total Claim Value of all Qualified Retailer Settlement Class Members may exceed the portion remaining in the Retailer Settlement Class Fund, as this is a partial settlement with pursuit of damages ongoing against the Manufacturer Defendants.
- (e) Upon the Effective Date and thereafter, and in accordance with the terms of the Retailer Settlement Agreement, the Plan of Allocation, or such further approval and further orders(s) of the Court as may be necessary or as circumstances require, the Net Retailer Settlement Fund shall be distributed to Qualified Retailer Settlement Class Members, subject to and in accordance with Section VII.F., below.

48. **Sales Practices and Injunctive Relief.**

- a. **No Sale of "303" THF Products.** Retailer Defendants agree not to sell any tractor hydraulic fluid that is labeled, or otherwise held out to customers and the public, as "303" or as meeting specifications of only John Deere 303.
- b. **Injunctive Relief.** Retailer Defendants agree to monitor the quality of the tractor hydraulic fluid sold in its retail stores. Retailer Defendants will reasonably review customer complaints to identify problems with tractor hydraulic fluid products. The Retailer Defendants will also reasonably consult with tractor hydraulic fluid vendors/manufacturers to help ensure those vendors/manufacturers are providing the retailers with products that meet product specifications and labeling/packaging requirements.

V. **EXPENSES AND FEES OF CLASS COUNSEL**

49. Expenses of Class Counsel. Plaintiffs will seek for purposes of this Retailer Settlement Agreement only, and Retailer Defendants will not object to or encourage or assist any third parties to object to, the Court's Order awarding Class Counsel reimbursement of expenses already incurred in this case. Class Counsel's request for reimbursement of expenses to date will not exceed Four Hundred Thousand Dollars (\$400,000.00). Payment of Class Counsel's expenses, as Ordered by the Court, shall come out of the Retailer Class Settlement Fund.

50. Fees of Class Counsel. Plaintiffs will seek for purposes of this Settlement Agreement only, and Retailer Defendants will not object to or encourage or assist any third parties to object to, an award of attorneys' fees to Class Counsel in the amount of thirty percent (30%) of the Class Settlement Fund minus case expenses being reimbursed to Class Counsel, for an estimated total fee award of Two Million Forty Thousand Dollars (\$2,040,000.00). Class Counsel agree that their request for attorneys' fees will not exceed thirty percent (30%) of the Class Settlement Fund minus case expenses being reimbursed to Class Counsel. Payment of Class Counsel's fees, as Ordered by the Court, shall come out of the Class Settlement Fund.

51. Deadline for Filing Application for Fees and Expense. Class Counsel shall file an application for attorneys' fees no later than ten (10) business days before the Bar Date.

52. Settlement Not Conditioned on Award of Attorneys' Fees. This Retailer Settlement is not dependent upon the Court's approval of Plaintiffs' requests for an award of attorneys' fees or the particular attorneys' fees amounts sought by Plaintiffs. In the event the Court approves the Retailer Settlement but declines to award Class Counsel fees in the amount requested by Class Counsel, the Retailer Settlement will nonetheless be binding on the Parties and the Settlement Class Members.

53. Release and Discharge of Retailer Defendants for Fees and Expenses. Plaintiffs, Retailer Settlement Class Members and Class Counsel, and each of them, agree that

upon Retailer Defendants' compliance with the terms and conditions of this Retailer Settlement Agreement, Retailer Defendants will forever and finally have satisfied any and all obligations to Plaintiffs, Retailer Settlement Class Members and Class Counsel concerning payment of attorneys' fees, incentive awards, costs and expenses in the Action for the Released Claims, and will forever and finally be absolved, released and discharged of any liability whatsoever to Plaintiffs, Retailer Settlement Class Members and Class Counsel, and any of them, concerning attorneys' fees, costs and expenses in the Action for the Released Claims. It is further acknowledged and agreed that under no circumstances will Plaintiffs, Retailer Settlement Class Members or Class Counsel, or any of them, make any demand upon or prosecute any action against any of the Retailer Defendants based on, because of, relating to, concerning, or as a result of any payment or allocation of attorneys' fees and costs made in accordance with this Settlement Agreement.

VI. RELEASES AND DISMISSAL OF ACTION

54. Release. Plaintiffs, individually, on behalf of the Retailer Settlement Class Members, and on behalf of Plaintiffs' and Retailer Settlement Class Members' respective partners, agents, representatives, heirs, executors, personal representatives, successors, and assigns (the "Releasing Parties"), hereby fully release and forever discharge Retailer Defendants, together with each of their respective affiliates, divisions, subsidiaries, and assigns from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and attorneys' fees of any nature whatsoever, that are asserted, or could have been asserted against them in this case, arising out of or relating to the Retailer Defendants' distribution, marketing, or sales of 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 in the United States during the Class Period (“Released Claims”). This release shall broadly include all known and unknown claims against Retailer Defendants arising out of or relating to the distribution, marketing, sales or purchases of 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, 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. This release is intended to be a broad release, and the parties hereto intend to fully release Retailer Defendants from all potential claims arising out of or relating to the purchase of 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. As of the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order shall have, fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Parties pursuant to the terms of this Retailer Settlement Agreement. This Retailer Settlement applies to Plaintiffs’ and the putative classes’ claims against, and the liability of, Retailer Defendants only. Nothing in this Retailer Settlement is meant to or shall be interpreted to release, apply to, or settle, or compromise, in any way Plaintiffs’ and/or the Retailer Settlement Class Members’ claims against any other individuals, entities, parties or Defendants, including Individual Defendants, Manufacturer Defendants Smitty’s Supply, Inc. and CAM2 International, LLC or the insurers for Manufacturer Defendants.

55. Covenant Not to Sue. The Releasing Parties agree and covenant not to institute any action or cause of action (in law, in equity or administratively), suit, debt, lien, or claim, known or unknown, fixed or contingent, in state or federal court, in arbitration, or with any state,

federal or local government agency or with any administrative or advisory body, which the Releasing Parties have or claim to have against any of the Released Parties arising out of the Released Claims, or assist others in so doing.

56. Opt Outs. Potential members of the Retailer Settlement Class who have timely and validly opted out of the Retailer Settlement pursuant to the terms and conditions of this Retailer Settlement Agreement and the Court's Preliminary Approval Order shall have no right to obtain any benefits of the Retailer Settlement and do not release any claims any of them have or may have against the Released Parties by operation of this Retailer Settlement Agreement.

57. Dismissal of Action as to Retailer Defendants with Prejudice. Upon entry of, and pursuant to, the Final Approval Order, the Action, including all individual cases consolidated therein, shall be dismissed as to the Retailer Defendants with prejudice. Class Counsel shall ensure that the Action is timely dismissed as to the Retailer Defendants with prejudice in accordance with the terms of this Retailer Settlement Agreement. Plaintiffs, all Retailer Settlement Class Members, and all persons acting on behalf of, or in concert or participation with, such Plaintiffs or Retailer Settlement Class Members, agree to refrain from bringing any lawsuit or class action individually or on behalf of Plaintiffs or Retailer Settlement Class Members for the Released Claims, seeking to certify a class that includes Plaintiffs or Retailer Settlement Class Members, or continuing to prosecute or participate in any previously filed and/or certified class action, in any lawsuit asserting any of the Released Claims against the Released Parties. Plaintiffs' and/or Retailer Settlement Class Members' claims as to all other entities, parties or Defendants, including Manufacturer Defendants, are not dismissed and shall be preserved.

58. Continuing Jurisdiction. The Court shall retain jurisdiction over the Parties to this Retailer Settlement Agreement with respect to the future performance of the terms of this

Retailer Settlement Agreement. In the event that any applications for relief are made arising out of or relating to this Retailer Settlement Agreement, such applications shall be made to the Court.

59. Settlement is Exclusive Remedy and Bar. Upon the Effective Date: (i) the Retailer Settlement Agreement shall be the exclusive remedy for any and all Released Claims of the Releasing Parties against the Released Parties; and (ii) the Releasing Parties shall be permanently barred and enjoined from initiating, asserting, or prosecuting against the Released Parties in any federal or state court or tribunal any and all Released Claims.

VII. ADMINISTRATION OF THE SETTLEMENT, FINAL AWARDS, AND SUPERVISION AND DISTRIBUTION OF THE SETTLEMENT FUND

A. The Role of the Settlement Administrator

60. Administration of Settlement. The Settlement Administrator shall administer the Settlement in accordance with the terms and conditions of this Retailer Settlement Agreement and, without limiting the foregoing, shall:

- a. treat any and all documents, communications, and other information and materials received in connection with the administration of the Settlement as strictly confidential, shall not use any of them for any purpose other than administration of the Settlement, and shall not disclose any such documents, communications or other information to any person or entity other than Class Counsel and Retailer Defendants' Counsel except as expressly provided for in this Settlement Agreement or by Court order;
- b. receive and process claim forms and other information submitted, opt-out and other requests from potential members of the Retailer Settlement Class to exclude themselves from the Settlement and provide to Class Counsel and Retailer Defendants' Counsel a copy thereof of said claims forms, supporting documents, and other information, as well as any opt-out and other requests from potential

members of the Retailer Settlement Class, within three (3) days of receipt. If the Settlement Administrator receives any claim forms, supporting documents, exclusion forms or other requests from Retailer Settlement Class Members to exclude themselves from the Settlement after the deadline for the submission of such forms and requests, the Settlement Administrator shall promptly provide Class Counsel and Retailer Defendants' Counsel with copies thereof.

61. Fees, Costs, and Expenses of Administrator. The Class Settlement Fund shall pay the

Settlement Administrator's reasonable costs, fees, and expenses of: (i) providing notice to the Settlement Class in accordance with the terms and conditions of this Settlement Agreement; and (ii) administering the Settlement in accordance with the terms and conditions of this Settlement Agreement. In the event that final approval of the Settlement is not granted, Retailer Defendants shall be solely responsible for the costs, fees, and expenses incurred by the Settlement Administrator, and neither Plaintiffs nor Class Counsel shall have any obligation to pay the Settlement Administrator for such costs, fees, and expenses.

B. Establishment of the Retailer Class Settlement Fund

62. Initial Payment to Establish Retailer Class Settlement Fund and Pay Settlement Administration Expenses. Within ten (10) days from the Court's entry of the Preliminary Approval Order, TSC shall cause the payment of an initial Five Hundred Thousand Dollars (\$500,000.00) to be made to the Settlement Administrator in order to establish the Retailer Class Settlement Fund and to cover the anticipated costs of Settlement Administration.

63. Remaining Payments to the Retailer Class Settlement Fund.

a. Within thirty (30) days of the Court's Preliminary Approval Order, but no earlier than July 1, 2021, TSC shall cause a second payment of Two Million Dollars

(\$2,000,000.00) to be made to the Settlement Administrator in the manner designated by the Settlement Administrator.

- b. Within thirty (30) days after the exhaustion of any appeals from the Court's Final Approval Order, TSC shall cause an additional Three Million One Hundred Thousand Dollars (\$3,100,000.00) to be paid to the Settlement Administrator in the manner designated by the Settlement Administrator.
- c. Within thirty (30) days after the exhaustion of any appeals from the Court's Final Approval Order, Atwood shall cause a total of One Million Dollars (\$1,000,000.00) to be paid to the Settlement Administrator in the manner designated by the Settlement Administrator.
- d. Within thirty (30) days after the exhaustion of any appeals from the Court's Final Approval Order, Rural King shall cause a total of Five Hundred Thousand Dollars (\$500,000.00) to be paid to the Settlement Administrator in the manner designated by the Settlement Administrator.
- e. Within thirty (30) days after the exhaustion of any appeals from the Court's Final Approval Order, Orscheln shall cause a total of One Hundred Thousand Dollars (\$100,000.00) to be paid to the Settlement Administrator in the manner designated by the Settlement Administrator.

64. Payments of Incentive Awards to Class Representatives. The Settlement Administrator shall pay each Class Representatives' Incentive Award, in the amount Ordered by the Court, out of the Retailer Class Settlement Fund and within five (5) business days of receipt of Retailer Defendants' payment of the amounts set forth in paragraph 63(b)-(e), above.

65. Payments of Class Counsel's Fees and Expenses. The Settlement Administrator shall pay Class Counsel's Fees and Expenses, in the amount Ordered by the Court,

out of the Retailer Class Settlement Fund and within five (5) business days of receipt of Retailer Defendants' payment of the amount set forth in paragraph 63(b)-(e), above.

C. Retailer Settlement Class Notice

66. Provision of Information to Settlement Administrator. As soon as possible and no later than thirty (30) calendar days after entry of the Preliminary Approval Order, Retailer Defendants shall provide to the Settlement Administrator, to the extent available, the full name and last known address (and email address, if available) of each Retailer Settlement Class Member and, where available, for each Retailer Settlement Class Member the number and size of the units of 303 THF Products purchased during the Class Period. Retailer Defendants will provide name, contact, and all other purchase information, if available, for any purchaser who utilized an Agriculture Tax Exemption and for any purchaser who was in any customer loyalty programs such as the Neighbors Program, Grow/Rewards Program, and any others.

67. Direct Mail Notice. As soon as possible but no later than sixty (60) calendar days after receipt of the information set forth in the immediately preceding paragraph, the Settlement Administrator shall mail by bulk mailing the Mailed Class Notice in substantially the form attached hereto as Exhibit F to the last known mailing address of each Retailer Settlement Class Member for whom such information is available. With respect to those Retailer Settlement Class Members for whom the Settlement Administrator has been provided contact information, the Class Notice shall include such purchase information and/or reference to a website where the complete purchase information can be viewed. The Mailed Class Notice shall also be provided by email for those Retailer Settlement Class Members for whom the Settlement Administrator has been provided email addresses. With respect to any possible Retailer Settlement Class Members for whom the Settlement Administrator does not have such purchase information for the 303 THF Products, the Long Form Class Notice and a Class Membership Form substantially

in the form attached as Exhibit C and D, respectively, shall be available on the website and also mailed upon request. The date on which the Settlement Administrator first publishes notice pursuant to paragraph 73, below, shall be the “Notice Date.”

68. Declaration of Mailing. Within ten (10) business days of the Bar Date, the Settlement Administrator shall submit a declaration to Class Counsel and Retailer Defendants’ Counsel verifying to whom direct mail notice was disseminated in a manner consistent with this Retailer Settlement Agreement and any applicable Court Order.

69. Directed Mail Notice Returned as Undeliverable. For any initial direct mail notice that is returned as undeliverable within twenty-one (21) calendar days after mailing, the Settlement Administrator shall attempt to locate a new address through an address search or any other reasonably available means. If a new address is located, the Settlement Administrator shall promptly re-mail the initial notice. If, after a second mailing, the notice is again returned, no further efforts need be taken by the Settlement Administrator to send the direct mail notice.

70. Settlement Administrator Mailing Address and E-mail Address. Within thirty (30) days after entry of the Preliminary Approval Order, but no later than the Notice Date, the Settlement Administrator shall: (i) secure and maintain a Post Office Box or similar mailing address for the receipt of Class Membership Forms, opt-out notices, and any other correspondence related to the Retailer Settlement; and (ii) establish a unique, case-specific e-mail address for online receipt of Class Membership Forms, opt-out notices, and any other correspondence related to the Retailer Settlement.

71. Retailer Settlement Website. Within thirty (30) days after entry of the Preliminary Approval Order, but no later than the Notice Date, the Settlement Administrator shall create and maintain an operating website that: (i) contains downloadable copies of the Preliminary Approval Order, Long Form Class Notice, the Retailer Settlement Agreement, and

Class Membership 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 Retailer Settlement Class Members to submit Class Membership Forms and supporting documentation. This website shall be referred to as the "Settlement Website."

72. Toll-Free Settlement Phone Number. Within thirty (30) days after entry of the Preliminary Approval Order, but no later than the Notice Date, the Settlement Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number shall be maintained until sixty (60) calendar days after the Bar Date. After that time, and for a period of ninety (90) calendar days thereafter, either a person or a recording will advise any caller to the toll-free telephone number that the deadline for submitting claims has passed and the details regarding the Retailer Settlement may be reviewed on the Settlement Website.

73. Publication Notice. The date on which the Settlement Administrator first publishes notice in one of the print, digital, radio, or television publications listed below shall be the "Notice Date." Within thirty (30) days after entry of the Preliminary Approval Order, the Settlement Administrator shall cause the Summary Class Notice in substantially the form attached hereto as Exhibit E to be published in accordance with the Settlement Administration and Notice Plan attached hereto as Exhibit J. Notice shall also be published electronically, in printed newspapers, by radio and television, digitally, and in store at Retailer Defendants' stores (with a notice where the tractor hydraulic fluid is sold). The Parties have worked with the Settlement Administrator to develop and present to the Court a proposed plan for notice by publication that achieves the appropriate notice, and that plan is included in Exhibit J hereto. In the event the Court does not approve the method and/or scope of notice initially presented by the

Parties, the Parties agree to make additional proposed notice suggestions to the Court and to be bound by the Court's decisions.

74. Class Notice shall also be posted from the Notice Date to the Bar Date in all Retailer Defendants' stores, with said notice being posted in an area where the tractor hydraulic fluid is sold. The content of said notice shall be agreed to by the Parties. In the event the Parties cannot agree, the dispute will be submitted to the Court to decide.

75. **Declaration of Settlement Administrator.** Prior to the filing of the motion seeking preliminary approval of the Settlement, the Settlement Administrator shall provide to the Parties' counsel a written declaration in a form that is appropriate for submission to the Court describing the notice to be provided to the Retailer Settlement Class as set forth in this Settlement Agreement and on the Notice Plan attached hereto as Exhibit J, together with a detailed written explanation supporting the adequacy and appropriateness of the notice under Fed. R. Civ. P. 23 and any other applicable law.

D. Class Membership and Claims Process

76. **Potential Claimants and Qualified Retailer Settlement Class Members.** Each Retailer Settlement Class Member who does not timely and validly request exclusion from the Retailer Settlement Class in the manner required by this Settlement Agreement (a Retailer Settlement Class Member, as defined above) shall be entitled to participate in the Retailer Settlement Plan of Allocation approved by the Court, and shall be bound by the Release set forth herein. Each Qualified Retailer Settlement Class Member shall be entitled to participate in an award from monies in the Net Settlement Fund, pursuant to the Plan of Allocation. The Settlement Administrator shall maintain a record of each and every payment made to a Qualified Retailer Settlement Class Member. A Retailer Class Member's Class Membership Form and Claim Form can be supplemented or amended prior to the submission deadline. Class

Membership Forms and Claim Forms will be made readily available by mail and/or electronic means by the Settlement Administrator as required by this Retailer Settlement Agreement and upon request.

77. No Class Membership Form Required for Retailer Settlement Class Members for Whom Retailer Defendants Have Mailing Address and Purchase Information. Retailer Settlement Class Members for whom the Settlement Administrator has information from Retailer Defendants reflecting the brand, number and size of the 303 THF Product units purchased or the fact or purchase of a 303 THF Product by that Retailer Settlement Class Member during the Class Period shall not be required to submit a Class Membership Form to be eligible to receive reimbursement from any monies in the Net Settlement Fund pursuant to the Plan of Allocation at the conclusion of this litigation. Each such Retailer Settlement Class Member, if that Retailer Settlement Class Member does not timely and validly object to, or request exclusion from, the Retailer Settlement as required in this Retailer Settlement Agreement, shall automatically be entitled at the conclusion of this litigation to participate in any monetary award calculated pursuant to the Plan of Allocation.

78. Class Membership Forms Required for all Other Retailer Settlement Class Members. Retailer Settlement Class Members for whom the Settlement Administrator does not have information from the Retailer Defendants reflecting the brand, number and size of the 303 THF Product units purchased or the fact of purchase of at least one 303 THF Product by that Retailer Settlement Class Member during the Class Period must submit a valid Class Membership Form to be a Qualified Retailer Settlement Class Member and be eligible to receive an award from the Net Settlement Fund pursuant to the Plan of Allocation at the conclusion of this litigation. The Class Membership Form, in the form attached hereto as Exhibit C, must be submitted via United States mail, fax, e-mail, or the Settlement Website no later than the Bar

Date.

79. Method of Class Membership Form and Repairs/Parts/Specific Equipment Damage Claim Form Submission. In order to file a Class Membership Form and/or Claim Form, a Retailer Settlement Class Member must submit a fully completed Class Membership Form and/or Claim Form to the Settlement Administrator by: (a) United States mail to the address specified by the Settlement Administrator; (b) fax to the number specified by the Settlement Administrator; (c) e-mail to the e-mail address specified by the Settlement Administrator; or (d) through the Settlement Website. All Class Membership Forms and Claim Forms must be submitted by the Bar Date. Any Class Membership Form and any Claim Form postmarked after the Bar Date shall, in the discretion of the Settlement Administrator, be deemed untimely and denied as invalid for purposes of the Retailer Settlement.

E. Class Membership Form and Claim Form Review

80. Settlement Administrator Review of Class Membership Forms and Claim Forms. At the conclusion of the litigation, the Settlement Administrator, together with Class Counsel and Retailer Defendants' Counsel, shall determine whether each Class Membership Form and each Claim Form meets the requirements set forth in this Retailer Settlement Agreement, and the amount, if any, to be allowed for each claim for relief. Class Membership Forms and Claim Form that do not meet the terms and conditions of this Retailer Settlement Agreement shall be rejected. The Settlement Administrator shall notify the person and/or entity through the mailing address provided in the Class Membership Form and/or Claim Form of rejection of any claims. Class Counsel and Retailer Defendants' Counsel shall be provided with copies of all such notifications. The Settlement Administrator may contact a Retailer Settlement Class Member to obtain additional information or supporting documentation if a Class Membership Form and/or Claim Form is incomplete.

81. Rejection of Fraudulent and Duplicate Class Membership Form. The Settlement Administrator shall use all reasonable efforts and means to identify and reject duplicate and/or fraudulent Class Membership Forms, including, but not limited to, crosschecking claim information against the information supplied by Retailer Defendants regarding number of purchases at each store location. Where a good faith basis exists, the Settlement Administrator may reject a Retailer Settlement Class Member's Class Membership Form for, among other reasons, the following:

- a. the Retailer Settlement Class Member purchased solely from sellers other than Retailer Defendants and/or the information supplied by the Retailer Settlement Class Member is not credible;
- b. failure to fully complete or sign the form;
- c. illegible form
- d. fraudulent form;
- e. duplicative form;
- f. the person submitting the form is not a Retailer Settlement Class Member;
- g. failure to submit the form by the Bar Date; and/or
- h. the form otherwise does not meet the requirements of this Retailer Settlement Agreement.

The Settlement Administrator may consult with Class Counsel and/or Retailer Defendants' Counsel in evaluating Class Membership Form under this paragraph.

82. Failure to Submit Class Membership Form. Any Retailer Settlement Class Member for whom Retailer Defendants do not have 303 THF Product purchase information and who fails to submit a fully completed Class Membership Form by the Bar Date shall be forever barred from receiving any monetary benefit pursuant to this Retailer Settlement Agreement, but

shall in all other respects be bound by all of the terms of this Retailer Settlement Agreement including the terms of the Final Approval Order and Judgment to be entered and the releases provided for herein, and will be barred from bringing any action against any of the Released Parties concerning any of the Released Claims. Notwithstanding the foregoing, however, such Retailer Settlement Class Member is not barred from submitting a claim or participating in any recovery from the ongoing claims against the Manufacturing Defendants.

83. Right to Inspect Claim Documents. Class Counsel, Retailer Defendants' Counsel and Retailer Defendants shall have the right to inspect the Class Membership Forms, Claim Forms, Request for Correction Forms, and supporting documentation received by the Settlement Administrator at any time upon reasonable notice.

84. No Liability for Settlement Administration. No person shall have any claim against Retailer Defendants, Retailer Defendants' Counsel, Plaintiffs, the Settlement Class, Class Counsel, or the Settlement Administrator based on any Class Membership determinations or distributions made in accordance with this Retailer Settlement Agreement.

F. Distribution of Retailer Settlement Class Fund

85. At a time after Final Approval by the Court and approval of the Retailer Settlement Fund Plan of Allocation, the Settlement Administrator shall calculate the awards to be made to Qualified Retailer Settlement Class Members substantially in accordance with the Plan of Allocation and as approved by the Court.

86. Other than in the event of the termination of the Settlement Agreement as provided herein, Retailer Defendants shall not have a reversionary interest in the Net Settlement Fund. If there is any balance remaining in the Net Settlement Fund after a reasonable period of time after the initial date of distribution of the Net Settlement Fund, such funds shall be paid to the Cy Pres recipient selected by Class Counsel and approved by the Court.

87. No Payments if Retailer Settlement Not Approved or Terminated. If the Retailer Settlement is not approved, if for any reason the Effective Date does not occur, or if the Settlement is terminated pursuant to the terms and conditions of this Retailer Settlement Agreement, no payments or distributions to Retailer Settlement Class Members of any kind shall be made pursuant to this Settlement Agreement.

VIII. OBJECTIONS AND OPT-OUTS

A. Objections to the Settlement

88. Objecting to the Settlement. Any Retailer Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of the Retailer Settlement must, no later than the Bar Date or the deadline for submitting objections otherwise set forth in the Court's Preliminary Approval Order: (i) file a written objection with the Court either by mailing it to Office of the Clerk of Court, United States District Court for the Western District of Missouri, 400 E. 9th Street, Kansas City, Missouri, 64106, or by filing it in person at any location of the United States District Court for the Western District of Missouri, or by electronic filing; and (ii) serve a copy of the same on counsel for the Parties at the addresses set forth in this Retailer Settlement Agreement.

89. Content of the Objection. In the written objection, the Retailer Settlement Class Member must list the 303 THF Products purchase information required on the Class Membership Form, state the Retailer Settlement Class Member's full name, current address, telephone number, the reasons for the objection, whether he, she, or it intends to appear at the fairness hearing on his or her own behalf or through counsel, and a list of all cases in which the objector or objector's counsel has objected to a class-action settlement in the last five (5) years. Any documents supporting the objection must also be attached to the written objection, and if the objecting Retailer Settlement Class Member intends to call witnesses at the Final Fairness Hearing, any

such witness must be identified, including by providing each such witness's name, address and telephone number. Objections must be signed by the Retailer Settlement Class Member or by his, her, or its counsel. Any Retailer Settlement Class Member who fails to file and serve timely written objections in the manner specified herein, shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Retailer Settlement.

90. Appearance at Fairness Hearing. Any Retailer Settlement Class Member who has timely filed a written objection, as provided for herein, may appear at the Final Fairness Hearing, either in person or through an attorney hired at the Retailer Settlement Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the Retailer Settlement. A Retailer Settlement Class Member, or his, her, or its attorney, intending to make an appearance at the Fairness Hearing must: (i) file a notice of appearance with the Court no later than ten (10) business days prior to the Final Fairness Hearing, or as the Court may otherwise direct; and (ii) serve a copy of such notice of appearance on counsel for all Parties.

B. Requests for Exclusion from the Settlement

91. Opting Out of the Settlement. Retailer Settlement Class Members may elect to be excluded from the settlement (opt out), thereby relinquishing their rights to benefits under the Retailer Settlement. Retailer Settlement Class Members wishing to opt out of the Retailer Settlement must send a written request to be excluded from the Retailer Settlement to the Settlement Administrator by fax, United States mail, e-mail, or electronically via the Settlement Website on or before the Bar Date or the opt-out deadline otherwise provided in the Court's Preliminary Approval Order. Any request for exclusion or opt out sent to the Settlement Administrator by United States mail must be postmarked on or before the Bar Date or the opt-out deadline otherwise provided in the Court's Preliminary Approval Order. The date of the

postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion sent by United States mail has been timely submitted. Retailer Settlement Class Members who fail to submit a valid and timely request for exclusion on or before the Bar Date or the date otherwise specified in the Court's Preliminary Approval Order shall be bound by all terms of this Settlement Agreement and the Final Approval Order, regardless of whether they have requested exclusion from the Settlement.

92. Content of Opt-Out Notice. The request to be excluded from the Retailer Settlement Class must include the Retailer Settlement Class Member's name, address, and telephone number and provide a clear statement communicating that he, she, or it elects to be excluded from the Retailer Settlement Class, does not wish to be a Retailer Settlement Class Member, and elects to be excluded from any judgment entered pursuant to the Retailer Settlement Agreement.

93. Effect of Submitting a Valid Opt-Out Notice. Any potential member of the Retailer Settlement Class who submits a valid and timely request for exclusion or opt out of the Retailer Settlement Class may not file an objection to the Retailer Settlement and shall be deemed to have waived any rights or benefits under this Settlement Agreement. Potential members of the Retailer Settlement Class who opt out of the Retailer Settlement will not release their claims against the Released Parties by operation of this Retailer Settlement Agreement. No Retailer Settlement Class Member or potential member may, at this time, opt out of the ongoing litigation against the Manufacturer Defendants, which is not being released or resolved by this Retailer Settlement Agreement.

94. Reporting Opt-Outs. Not later than three (3) business days after the deadline for submission of requests for exclusion or opt out, the Settlement Administrator shall provide to Class Counsel and Retailer Defendants' Counsel a complete opt-out list together with copies of

the opt-out requests.

95. Opt-Outs Cannot Object. Potential members of the Retailer Settlement Class who opt out of the Retailer Settlement shall not have standing to object to the settlement.

96. Termination Based on Opt-Outs. Notwithstanding any other provision of this Settlement Agreement, if two thousand (2,000) or more Retailer Settlement Class Members opt out of the Settlement, Retailer Defendants, in their sole discretion, may rescind and revoke the entire Retailer Settlement and this Settlement Agreement, thereby rendering the Retailer Settlement null and void in its entirety. In order to exercise this right, Retailer Defendants must send written notice to Class Counsel that Defendants revoke the Settlement pursuant to this paragraph within ten (10) business days following the date the Settlement Administrator reports to Class Counsel and Defense Counsel a number and identity of the opt outs that exceeds 2,000. Such a written notice to revoke the Settlement pursuant to this paragraph shall constitute an Event of Termination.

IX. FINAL REPORT AND FAIRNESS HEARING

97. Final Approval of Retailer Settlement. On the date set forth in the Preliminary Approval Order, a Final Fairness Hearing shall be conducted to determine final approval of the Retailer Settlement.

98. Report of Settlement Administrator. Within the time period established by the Court, the Settlement Administrator shall serve on counsel for the Parties a declaration verifying that the notice required by this Retailer Settlement Agreement and Preliminary Approval Order has been completed in accordance with their terms, and provide a report stating: (i) the total number of notices mailed to the Retailer Settlement Class Members; (ii) the number of Class Membership Forms received; and, (iii) a list of the valid exclusion requests received by the Settlement Administrator pursuant to this Retailer Settlement Agreement, including the name

and address of each member who validly requested exclusion..

99. Request for Final Approval and Responses to Any Objections. If the Retailer Settlement is approved preliminarily by the Court, and all other conditions precedent to the settlement have been satisfied, no later than ten (10) business days prior to Final Fairness Hearing, or on another date established by the Court, the Parties shall both request, individually or collectively, that the Court enter the Final Approval Order in substantially the form attached hereto as Exhibit B, with Class Counsel filing a memorandum of points and authorities in support of the request. Counsel for the Class and Retailer Defendants may file a memorandum addressing any objections submitted to the Settlement. Any list of potential members of the Retailer Settlement Class who elect to opt out of the Retailer Settlement that is to be filed as part of the final approval process shall be filed with the Court under seal.

100. Final Fairness Hearing. At the Final Fairness Hearing, the Court will consider and determine whether the provisions of this Retailer Settlement Agreement should be finally approved, whether the Settlement should be finally approved as fair, reasonable and adequate, whether any objections to the Settlement should be overruled, whether the fee award and incentive payments to the Class Representatives should be approved, and whether a judgment finally approving the Settlement should be entered.

101. Final Approval Order. This Retailer Settlement Agreement is subject to and conditioned upon the issuance by the Court of a Final Approval Order which grants final approval of this Agreement and:

- 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 Settlement Agreement is fair, reasonable and adequate to the Retailer Settlement Class, that each Retailer Settlement Class Member shall be bound by this Agreement, including the release and the covenant not to sue set forth in this Settlement Agreement, and that this Settlement Agreement should be and is finally approved;
- d. dismisses on the merits and with prejudice the Action against 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 this 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 this Settlement.

X. SCOPE AND EFFECT OF CERTIFICATION OF SETTLEMENT CLASS

102. Certification of Settlement Class for Settlement Purposes Only. For purposes of settlement only, the Parties and their counsel agree that the Court should make preliminary findings and enter the Preliminary Approval Order substantially in the form attached at Exhibit A granting provisional certification of the Retailer Settlement Class subject to final findings and ratification in the Judgment and Order of Dismissal, and appointing Plaintiffs as the representatives of the Settlement Class and Class Counsel as counsel for the Retailer Settlement Class. Provided, however, Retailer Defendants do not consent to certification of the Retailer Settlement Class for any purpose other than to effectuate this Settlement. Retailer Defendants deny that Plaintiffs' claims could be certified as a class action if this case were to proceed in

litigation. Retailer Defendants contend, among other deficiencies, that Plaintiffs' proposed class is not ascertainable, that individual issues predominate over any common ones, and that a class action would be neither superior nor manageable. However, solely for purposes of avoiding the expense and inconvenience of further litigation, Retailer Defendants do not oppose, and agree to, certification of the Retailer Settlement Class for settlement purposes only, pursuant to Fed. R. Civ. P. 23(b)(3). Certification of the Retailer Settlement Class for settlement purposes only shall not be deemed a concession or admission that certification of a litigation class would be appropriate. Retailer Defendants reserve the right to challenge class certification in any other action, and also reserve the right to challenge class certification in any further proceedings in this Action if the Settlement is not finalized or finally approved.

103. Discovery Relevant to Claims in Continuing Class Actions Against Manufacturer Defendants. Retailer Defendants agree to cooperate by providing truthful and accurate information, documents and witness testimony relevant to the issues in the continuing Class Actions against Manufacturing Defendants and acknowledge that it is a material term of this Settlement Agreement. Plaintiffs and Retailer Settlement Class Members agree to work with Retailer Defendants in identifying the relevant information, documents and witness testimony and also in obtaining such information without the need of subpoena.

104. Return to Status Quo. If this Settlement Agreement is terminated pursuant to its terms, or the Effective Date for any reason does not occur, the order certifying the Retailer Settlement Class for purposes of effectuating this Retailer Settlement Agreement, and any and all preliminary and final findings regarding class certification shall be void, no doctrine of waiver, estoppel or preclusion will be asserted in any proceedings involving any of the Retailer Defendants, the Action shall proceed as though the Retailer Settlement Class had never been certified pursuant to this Settlement Agreement and such findings had never been made, and the

Action shall return to the procedural status quo ante settlement.

105. Material Modification of Settlement. In the event the terms or conditions of this Retailer Settlement Agreement, other than terms pertaining to attorneys' fees, costs, expenses, and incentive awards, are materially modified by any court, any party may declare this Settlement Agreement null and void in its sole discretion to be exercised within fourteen (14) days after receiving notice of such a material modification. For purposes of this paragraph, material modifications include, but are not limited to, any material modifications to the definitions of the Retailer Settlement Class, Retailer Settlement Class Members, Released Claims, Released Parties, Releasing Parties, changes to the notice plan and procedure described in this Settlement Agreement, and any material modifications to the terms of the settlement consideration described in paragraphs 44 through 48 of this Settlement Agreement.

XI. SETTLEMENT NOT EVIDENCE AGAINST SETTLING PARTIES

106. The provisions contained in this Settlement Agreement are not, and shall not be deemed to be, a presumption, concession or admission by Retailer Defendants of any alleged or asserted default, liability or wrongdoing as to any claims or allegations asserted, or which could have been asserted, in the Action, or in any actions or proceedings, nor shall they be interpreted, construed, deemed, invoked, offered, or received in evidence or otherwise used against any of the Retailer Defendants by any person in the Action, including Class Counsel, or in any other action or proceeding, whether civil, criminal or administrative. Retailer Defendants do not admit that they or any of the Released Parties has or have engaged in any illegal or wrongful activity or that any person has been harmed by reason of any of Retailer Defendants' alleged conduct or actions. Retailer Defendants do not consent to certification of the Retailer Settlement Class for any purpose other than solely to effectuate the Settlement of the Action.

XII. BEST EFFORTS

107. Class Counsel and counsel for Retailer Defendants shall take all necessary actions to accomplish approval of the Settlement, notice, and dismissal of the Action against Retailer Defendants. The Parties and their counsel agree to cooperate fully with one another and to use their best efforts to effectuate the Settlement, including without limitation in seeking preliminary and final Court approval of the Settlement Agreement and the Settlement embodied herein, carrying out the terms of this Settlement Agreement, and promptly agreeing upon and executing all such other documentation as may be reasonably required to obtain final approval by the Court of the Settlement.

108. Each Party will cooperate with the other Parties in connection with effectuating the Settlement or the administration of claims thereunder. Any requests for cooperation shall be narrowly tailored and reasonably necessary for the requesting party to recommend the Settlement to the Court, and to carry out its terms.

XIII. MISCELLANEOUS PROVISIONS

109. Recitals. The recitals are contractual in nature and form a material part of this Settlement Agreement.

110. Entire Agreement. This Settlement Agreement and its accompanying Exhibits set forth the entire understanding of the Parties. No change or termination of this Settlement Agreement shall be effective unless in writing and signed by Class Counsel and Retailer Defendants' Counsel. Any and all previous agreements and understandings between or among the Parties regarding the subject matter of this Settlement Agreement, whether written or oral, are superseded by this Settlement Agreement.

111. Advice of Counsel. All of the Parties warrant and represent that they are agreeing to the terms of this Settlement Agreement based upon the legal advice of their respective attorneys, that they have been afforded the opportunity to discuss the contents of this Settlement

Agreement with their attorneys and that the terms and conditions of this document are fully understood and voluntarily accepted.

112. Limitation of Waiver. The waiver by any Party of a breach of any term of this Settlement Agreement shall not operate or be construed as a waiver of any subsequent breach by any Party. The failure of a Party to insist upon strict adherence to any provision of the Settlement Agreement shall not constitute a waiver or thereafter deprive such Party of the right to insist upon strict adherence.

113. Headings. The headings and paragraph titles in this Settlement Agreement are inserted merely for the purpose of convenience and shall not affect the meaning or interpretation of this document.

114. Counterparts. This Settlement Agreement may be executed in counterparts, each of which shall be deemed an original and all of which, when taken together, shall constitute one and the same instrument. The date of execution shall be the latest date on which any Party signs the Settlement Agreement.

115. No Construction against Drafter. This Settlement Agreement has been negotiated among and drafted by Class Counsel and Defense Counsel. To the extent there is any uncertainty or ambiguity in this Settlement Agreement, none of the Parties will be deemed to have caused any such uncertainty or ambiguity. Accordingly, this Settlement Agreement should not be construed favor of or against one Party as to the drafter.

116. Governing Law. This Agreement shall be governed by the laws of the State of Missouri without regard to choice of law principles.

117. Continuing Jurisdiction. The Court shall retain continuing and exclusive jurisdiction over the Parties to this Settlement Agreement, including Plaintiffs and all Retailer Settlement Class Members, for purposes of the administration and enforcement of this Settlement

Agreement.

118. Notices. Unless otherwise stated herein, any notice required or provided for under this Settlement Agreement shall be in writing and may be sent by electronic mail, fax, hand delivery, or United States mail postage prepaid, as follows:

If to Class Counsel:

Thomas V. Bender
Horn Aylward & Bandy, LLC
2600 Grand Boulevard, Ste. 1100
Kansas City, MO 64108
816-421-0899 (fax)
tbender@hab-law.com

If to all Retailer Defendants and/or only TSC, Orscheln and Rural King:

Nikki Cannezzaro
Franke Schultz & Mullen, PC
8900 Ward Parkway
Kansas City, MO 64114
F: 816.421.7915
ncannezzaro@fsmllawfirm.com

If to all Retailer Defendants and/or only Atwood:

Joseph Swift
Baker Sterchi Cowden & Rice LLC
100 North Broadway, 21st Floor
St. Louis, MO 63102
314.345.5055 (fax)
jswift@bscr-law.com

119. Fairness and Adequacy of Settlement. The parties believe that this Settlement is a fair, adequate, and reasonable settlement of the Action, and they have arrived at this Settlement through arms-length negotiations, taking into account all relevant factors, present and potential.

120. CAFA Notice. Pursuant to the Section 3(b) of the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715(b), Retailer Defendants' Counsel shall provide timely notice of this Settlement to all appropriate State and Federal officials.

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing Settlement Agreement and Release.

By: Tom Bender
Tom Bender, Lead Class Counsel

Date: 6/23/21

By: _____
Representative of Orscheln

Date: _____

By: _____
Representative of Tractor Supply Company

Date: _____

By: _____
Representative of Rural King

Date: _____

By: _____
Representative of Atwood

Date: _____

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing Settlement Agreement and Release.

By: Tom Bender
Tom Bender, Lead Class Counsel

Date: 6/23/21

By: [Signature]
Representative of Orscheln

Date: 6-23-21

By: _____
Representative of Tractor Supply Company

Date: _____

By: _____
Representative of Rural King

Date: _____

By: _____
Representative of Atwood

Date: _____

IN WITNESS WHEREOF, and intending to be legally bound, the Parties have executed the foregoing Settlement Agreement and Release.

By: _____
Tom Bender, Lead Class Counsel

By: _____
Representative of Orscheln

Date: _____

Date: _____

By: NONI ELLISON
Noni Ellison (Jun 23, 2021 09:49 CDT)
Representative of Tractor Supply Company
General Counsel

By: _____
Representative of Rural King

Date: June 23, 2021

Date: _____

By: _____
Representative of Atwood

Date: _____

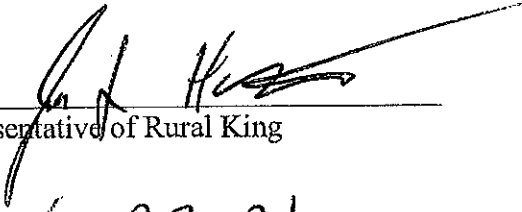
By: _____
Tom Bender, Lead Class Counsel

By: _____
Representative of Orscheln

Date: _____

Date: _____

By: _____
Representative of Tractor Supply Company

By:  _____
Representative of Rural King

Date: _____

Date: 6-23-21

By: _____
Representative of Atwood

Date: _____

By: _____
Tom Bender, Lead Class Counsel

By: _____
Representative of Orscheln

Date: _____

Date: _____

By: _____
Representative of Tractor Supply Company

By: _____
Representative of Rural King

Date: _____

Date: _____

By: W. Johnson
Representative of Atwood

Date: 06-23-2021