

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

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

MDL No. 2936

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

This document relates to:
All Class Actions

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

COME NOW Plaintiffs, by and through their attorneys of record, and submit the following Suggestions in Support of Plaintiffs’ Motion for Final Approval of Retailer Class Settlement Agreement.

I. INTRODUCTION AND SUMMARY OF CLASS SETTLEMENT BENEFITS

On June 30, 2021, this Court granted preliminary approval of the Retailer Class Settlement Agreement between Plaintiffs and the four Retailer Defendants. (Doc. 188). 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 Class Representatives and Class Counsel now respectfully request the Court’s entry of its Final Approval Order of the class action settlement set forth in the Retailer Class Settlement

Agreement, including all exhibits thereto, which was attached as Exhibit 1 to the Motion for Preliminary Approval of Proposed Retailer Class Action Settlement.

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

The first two steps have occurred. This Court granted its Preliminary Approval on June 30, 2021. (Doc. No. 188). Notice has now been carried out and the claims period ends December 29, 2021. There have been no objections to the Retailer Class Settlement Agreement, and only fourteen (14) Class Members opted out as of December 21, 2021. The Retailer Class Settlement Agreement is fair, reasonable and adequate, especially given its partial nature. The Fairness Hearing is set for January 6, 2021. Accordingly, Plaintiffs respectfully request the Court grant final approval to the Retailer Class Settlement Agreement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

This lawsuit involves four products made by Smitty's Supply, Inc. and CAM2 International, LLP ("Manufacturer Defendants"): Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and Cam2 303 Tractor Hydraulic Oil. Plaintiffs allege (1) that the Manufacturer Defendants' 303 THF Products did not meet the equipment manufacturers' specifications or provide the performance benefits listed on the product labels, (2) that the Manufacturer Defendants' 303 THF Products were made with inappropriate ingredients including used transformer oil, used turbine oil, and line flush, and (3) that use of the Manufacturer Defendants' 303 THF Products in equipment causes damage to

various parts of the equipment. Because of failures to meet OEM specifications, inadequate viscosity, and the used oil and line flush contained in the Manufacturer Defendants' 303 THF Products, Plaintiffs allege those products should not be used as tractor hydraulic fluid and that the fluid should be flushed from equipment systems.

Plaintiffs allege that the Retailer Defendants' conduct in connection with the sale of the Manufacturer Defendants' 303 THF Products violated state consumer laws and constituted breaches of warranty, negligent misrepresentations, negligence, and unjust enrichment arising out of the advertising, sale, purchase and use of 303 THF Products since December 1, 2013, to present. Retailer Defendants vigorously deny all these claims of wrongdoing, including that they had any knowledge of the defective nature of the 303 THF Products and of the failure of those products to meet OEM specifications.

Plaintiffs acknowledge that the primarily responsible parties, the Manufacturer Defendants, did not appear to provide accurate or truthful information to the Retailer Defendants about the 303 THF Products. The Retailer Defendants agree and have provided testimony or other evidence that the Manufacturer Defendants misrepresented the 303 THF Products and failed to inform the Retailer Defendants of their defective nature. Plaintiffs seek various categories of damages on behalf of themselves and the putative class of purchasers based on claims and purported harms alleged in the Consolidated Class Action Complaint, including: (i) Restitution/Return of Cost of Product; (ii) Benefit of the Bargain Damages; (iii) Cost of Common Remedial Measures; (iv) Other Repair and Parts Costs as Damages; (v) Punitive Damages; and (vi) Attorneys' Fees and Costs.

As noted above, Plaintiffs' claims are primarily against Manufacturer Defendants Smitty's and CAM2, and those claims have not been settled.

B. Litigation, Discovery, and Mediation History

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

Plaintiffs' First Amended Consolidated Class Action Complaint included the following Counts:

- Count I – Negligence
- Count II – Breach of Express Warranty
- Count III – Breach of Implied Warranty of Merchantability
- Count IV – Breach of Implied Warranty of Fitness for Particular Purpose
- Count V – Unjust Enrichment
- Count VI – Fraudulent Misrepresentation
- Count VII – Negligent Misrepresentations
- Counts VIII – XXXVII – Violations of Various State Deceptive Practices Acts

Since that time, Plaintiffs have filed three additional amended complaints. The Fourth Amended Consolidated Class Action Complaint is the current operative Complaint.

Prior to the Parties engaging in the settlement discussions that have culminated in the entry of this Settlement Agreement, Class Counsel devoted substantial time in pursuit of the claims. Plaintiffs' Counsel conducted extensive discovery in multiple cases prior to the MDL consolidation. Extensive search terms were utilized for email discovery, with thousands of pages

of documents produced by Defendants and reviewed and analyzed by Plaintiffs. Plaintiffs took nearly fifteen depositions of Defendants' witnesses. Plaintiffs also retained and involved expert witnesses and served expert reports in certain underlying cases not consolidated here. Plaintiffs have engaged in extensive motion practice and briefed class certification issues in one of the consolidated cases.

Over many months following transfer to this MDL, the Parties engaged in extensive and arm's length negotiations trying to resolve the issues and claims asserted by Plaintiffs in the consolidated class action complaint. On September 30, 2020, the Parties engaged in a global mediation of the case but were unable to reach a resolution at that time. After continued settlement discussions, on May 7, 2021 the Parties reached an agreement in principle for this Retailer Settlement Agreement. Further detailed negotiations of the full Retailer Class Settlement Agreement took place between May 7, 2021, and June 23, 2021, culminating in the signing of the Retailer Class Settlement Agreement attached as Exhibit 1 to Plaintiffs' Motion and to which this Court granted Preliminary Approval.

Although Plaintiffs believe they will prevail on class certification and at trial, Retailer Defendants continue to assert that they have violated no laws and that they have meritorious defenses to class certification and liability. In light of these positions and the risks of litigation for both sides, the Retailer Class Settlement Agreement provides meaningful benefits to Retailer Settlement Class Members, represents a reasonable partial resolution of the claims on a class-wide basis and allows Plaintiffs to continue to proceed against the primarily responsible parties, the Manufacturer Defendants. Therefore, the Parties have agreed to resolve all claims through their proposed settlement.

C. The Proposed Settlement

1. *The Proposed Settlement Class*

Plaintiffs now seek final approval of the Parties' proposed Retailer Class Action Settlement. The Retailer Settlement Class under the Parties' Settlement Agreement consists of the following class:

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 Tractor Supply Company (including Del's Feed & Farm Supply locations), Orscheln Farm and Home, Rural King, and/or Atwood Stores in the United States at any point in time from December 1, 2013 to present, excluding persons and other entities who solely purchased Super S Supertrac 303 Tractor Hydraulic Fluid in Missouri.

To represent the Retailer Settlement Class for purposes of the Retailer Class Settlement, the Court has appointed the 177 persons and/or entities identified as Representative Plaintiffs in Appendix A to the Retailer Class Settlement Agreement. The Court has appointed Plaintiffs' Counsel as Counsel for the Retailer Settlement Class.

2. *Settlement Payments*

Under the Retailer Class Settlement, Retailer Defendants will establish a Class Settlement Fund of \$7,200,000.00. In addition to funding settlement administration and notice costs, partial incentive awards, and Class Counsel's requested expenses and fees, the Class Settlement Fund should be sufficient to provide each Settlement Class Member with a partial payment of damages based on the qualifying units of 303 THF Products purchased by each Retailer Settlement Class Member and any repairs, parts, or specific equipment damage suffered. Pursuant to the Settlement Agreement's terms, the claims for units purchased and repairs/damages are in the process of being evaluated, with final determinations expected to be made in the next 60-90 days.

3. *Notice and Administration Costs*

The Retailer Class Settlement Fund also pays the reasonable costs, fees, and expenses of the Settlement Administrator in providing notice to the Settlement Class and administering the settlement. Those notice and administration costs, fees, and expenses are estimated to be \$925,774.00. That estimate did not include the cost for distribution of settlement proceeds.

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

The Retailer Class Settlement Fund also pays the amounts the Court awards as partial incentive awards for the Retailer Class Representative Plaintiffs, reimbursement of expenses to Class Counsel, and attorneys' fees to Class Counsel. Class Counsel has filed a separate Application for the Court's approval of: (a) a \$500.00 partial incentive award to each of the 177 Retailer Class Representative Plaintiffs, (b) \$400,000.00 in reimbursement of case expenses, and (c) a 30% contingency fee to Class Counsel in the amount of \$2,040,000.00.

5. *Non-Monetary Relief Provided by Retailer Settlement Agreement*

The Retailer Settlement provided for notice to go out to Class Members regarding the potential damage to their equipment in which the Manufacturer Defendants' 303 THF Products are used, so those Class Members can minimize ongoing damage, stop using the defective fluid and flush their equipment if they can afford it. The four Retailer Defendants have also agreed to 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. The Retailer Defendants have also agreed to monitor the quality of the tractor hydraulic fluid sold in their retail stores, to reasonably review customer complaints to identify problems with tractor hydraulic fluid products, and to 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.

III. ARGUMENT

A. Appropriate Notice Was Provided to Settlement Class Members

Due process requires that Class Members be provided the best notice practicable, reasonably calculated to apprise them of the pendency of the action and afford them the opportunity to object. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); Fed. R. Civ. P. 23(c)(2)(B). Here, as detailed in the Declaration of the Settlement Administrator, RG/2 Claims Administration, LLC (“RG/2”), attached as Exhibit 1 to the Motion for Final Approval of Proposed Retailer Class Action Settlement, the Class was notified of the settlement by direct mail, newspaper and other print media publication, digital publication, and radio.

Direct notice was mailed to more than 150,000 Settlement Class Members and potential Settlement Class Members whose contact information was maintained by Retailer Defendants and for whom Retailer Defendants had specific purchase information during the Class Period. The initial mailed notice provided substantial information about the Settlement and provided the settlement website address and information. Further notice was provided by email and mail to additional Settlement Class Members and potential Settlement Class Members.

A summary notice of the Settlement was also published in in the following publications, which combined, exceed three million distributions:

- **Progressive Farmer**
- **Farm & Ranch Living**
- **Farm Journal**
- **Successful Farming**
- **Arkansas Agriculture**
- **Iowa Spokesman**
- **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**
- **WV Farm Bureau News**
- **KS Farm Bureau Living**
- **SW Farm Press**
- **OK Farm Bureau Country**
- **Delta Farm Press**

A media notice campaign was also implemented that included Facebook and Google Ads that allowed potential Class Members to click on the ad and be linked to the settlement website. Banner Ads were also placed through digital media at Farm Journal and Progressive Farmer. Overall, this digital media campaign produced over 20 million impressions online. In addition to the mailed Notice, publications and digital media, notice of the Class Settlement was provided through radio spots on the AG Radio Network, producing another 13 million impressions.

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

The substance and methods of notice were adequate and provided the Class with the material information regarding the Settlement and their rights pertaining to it. *See, e.g. Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 908 (8th Cir. 2018).

B. Standard for Final Settlement Approval

A class action may not be settled without the Court's approval and the Court must ensure that "the proposed settlement is fair, reasonable and adequate." *In Re Texas Prison Litigation*, 191 F.R.D. 164, 173 (W.D. Mo. 1999). The law favors settlement, especially in class actions and other complex cases where significant resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See Little Rock School Dist. v. Pulaski County Special School Dist.*, 921 F.2d 1371 (8th Cir. 1990). "[S]ettlement agreements are presumptively valid." *Id.* at 1391. Approval of a class settlement is in the Court's wide discretion. *Id.* In reviewing decisions approving class settlements, the appellate courts simply ask "whether the District Court considered all relevant factors, whether it was significantly influenced by an irrelevant factor, and whether in weighing the factors it committed a clear error of judgment." *Id.* "Strong public policy favors agreements, and courts should approach them with a presumption in their favor." *Id.* at 1388; *see also Rawa v. Monsanto Co.*, 934 F.3d 862, 869 (8th Cir. 2019).

Rule 23(e) requires the Court to review a class settlement agreement "to ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned." *Rawa v. Monsanto Co.*, 2018 WL 2389040 (E.D. Mo. May 25, 2018); *see also, In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018); *Pollard*, 896 F.3d at 908; *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005). A settlement meets the standard for final approval if it is "fair, reasonable

and adequate.” Fed. R. Civ. P. 23(e)(1)(c). In making this determination, the Court should consider the following factors:

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

Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir. 1988); *see also Keil v. Lopez*, 862 F.3d 685, 695 (8th Cir. 2017). “The first factor is the ‘single most important factor.’” *Huyer v. Njema*, 847 F.3d 934, 939 (8th Cir. 2017) (quoting *Van Horn*, 840 F.2d at 607).

It is left to the District Court’s discretion to determine that the Settlement is not the product of fraud or collusion and that it is fair, reasonable, and adequate:

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

Van Horn, 840 F.2d at 606-07; *see also Rawa*, 934 F.3d at 869; *Pollard*, 896 F.3d at 907.

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

Applying these factors, the Court should grant the Settlement final approval.

C. The Settlement Meets the Standard for Final Approval

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

The most important factor in determining the fairness, reasonableness and adequacy of a class settlement is “the strength of the case for Plaintiffs on the merits, balanced against the amount offered in settlement.” *In re Wireless*, 396 F.3d at 933. Although Plaintiffs believe they would have prevailed against the Retailer Defendants in class certification and on the merits if this case had proceeded to trial, Plaintiffs nonetheless recognize the difficulties presented by class certification issues and the risk and uncertainty in this litigation, particularly in view of the fact the Retailer Defendants are not the primarily responsible parties.

Class Counsel conducted adequate discovery and performed a sufficient investigation into the underlying basis of the claims in order to make an intelligent evaluation of the possible outcome of the litigation against the Retailer Defendants and the settlement terms. In connection with this case, Class Counsel performed substantial informal discovery including obtaining documents and test results from the Missouri Department of Agriculture and the states of Georgia and North Carolina, as well as consulting with numerous experts in the tractor hydraulic fluid and lubricant fields. Thousands of pages of documents were produced, and many depositions were taken. Class Counsel further performed extensive research and analysis of the legal principles applicable to the claims against the Retailer Defendants and class certification of those claims, as well as to the potential defenses to those claims and certification.

Through their investigation, document and test results review, depositions and other discovery in this litigation, as well as through their consultations with experts, Class Counsel have gained a comprehensive knowledge of the facts relating to the respective claims and defenses and have sufficient evidence on which to base an intelligent assessment of the Retailer Class

Settlement. Based on their knowledge of the case and the applicable law, as well as their experience in similar complex litigation and class actions, Plaintiffs' counsel believe the Settlement with the Retailer Defendants is fair, reasonable and adequate. The Class Representatives have also approved the Settlement.

The class-wide financial and non-financial relief is a significant victory for Settlement Class Members. The Retailer Class Settlement provides partial monetary relief and significant nonmonetary relief to Class Members, directly addressing the fundamental issues underlying the litigation. In terms of monetary relief, the Class Settlement Fund will provide each Class Member a partial payment based on the units of qualifying 303 THF Products purchased by each as well as any repairs, parts, or specific equipment damage suffered by that Retailer Settlement Class Member. Each Retailer Settlement Class Members will receive a pro rata share of their Total Claim Value.

The Retailer Class Settlement has also provided important notice to Class Members of the potential for the use of the 303 THF Products to cause equipment damage and increased or excessive wear. 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.

No Class Member has objected to the Settlement or his/her/its award, and only fourteen (14) Class Members have opted out of the Settlement.

In return for the consideration to be provided under the Settlement, the Retailer Defendants receive a reasonable release of liability from the Settlement Class Members related to the purchase

and use of the 303 THF Products. The release is not overly broad and only releases Settlement Class Members' claims as to Retailer Defendants related to the purchase and use of the 303 THF Products during the Class Period.

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

2. *The Defendants' Financial Condition*

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

3. *The Complexity and Expense of Further Litigation*

If the claims asserted in the action were not settled by voluntary agreement among the parties, future proceedings (including appeals) would be protracted and expensive, involve highly complex legal and factual issues relating to, among other things, class certification, liability, and damages, and would involve substantial uncertainties, delays, and other risks inherent in litigation.

"Class actions, in general, place an enormous burden of costs and expense upon parties." *Keil*, 862 F.3d at 698 (quoting *Marshall*, 787 F.3d at 512). With resolution occurring in this case at an early stage, this Court should therefore find that this factor weighs heavily in favor of final approval. *See Keil*, 862 F.3d at 698 (noting that this factor favors settlement where "plaintiffs believe that the claims in the litigation have merit," but "class counsel recognize and acknowledge

the expense and length of continued proceedings necessary to prosecute the litigation through summary judgment, class certification, and appeals.”)

4. *The Amount of Opposition to the Settlement*

The reaction of Class Members to the Settlement has been positive, with only 14 opt outs and no objection filed. Accordingly, this factor strongly favors approval. *See Wiles*, 2011 WL 2416291, at *4 (“Having no objectors demonstrates strong support for the value and benefits delivered by the settlement” and so this “factor weighs heavily in favor of approval of the settlement.”); *McClellan v. Health Sys. Inc.*, 2015 WL 12426091, at *6 (W.D. Mo. June 1, 2015) (finding “final factor strongly favors approval” where “[n]o Class Member filed an objection ... and only fourteen individuals opted out.”)

5. *The Settlement Resulted from Arms’ Length Negotiation*

In addition to the foregoing factors weighing in favor of approval, the Settlement Agreement before the Court is also the product of intensive, arm’s-length negotiations. The negotiations included several mediations over a lengthy period of time. Negotiations were informed by the informal discovery, formal discovery, depositions, documents produced, and other investigation and preparation undertaken by the Parties to that point. Negotiations were conducted by Plaintiffs’ Counsel highly experienced in pursuing and resolving complex litigation and class action matters and Retailer Defendants’ Counsel similarly experienced in defending such cases.

Accordingly, the settlement is entitled to a preliminary presumption of fairness. *See, e.g., In re BankAmerica*, 210 F.R.D. at 700 (“In evaluating the settlement, the Court should keep in mind the unique ability of class and defense counsel to assess the potential risks and reward of litigation; a presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.”); *In re Austrian & German Bank Holocaust Litig.*, 80 F. Supp. 2d 164, 173-74

(S.D.N.Y. 2000) (“If the Court finds that the Settlement is the product of arm’s length negotiations conducted by counsel knowledgeable in complex class litigation, the settlement will enjoy a presumption of fairness. . . . Once the settlement is presumed fair, it is not for the court to substitute its judgment as to a proper settlement for that of such competent counsel”) (internal citation omitted).

IV. CONCLUSION

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

Date: December 24, 2021

Respectfully Submitted,

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