

**EXHIBIT 1**

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

SHAWN HORNBECK, et al.	)	
each on behalf of himself	)	
and others similarly situated;	)	
	)	
Plaintiffs,	)	
	)	Case No. 18-00941-CV-W-BP
v.	)	
	)	
ORSCHELN FARM AND HOME LLC	)	
d/b/a ORSCHELN FARM AND HOME,	)	
et al.	)	

**DECLARATION OF THOMAS V. BENDER**  
**IN SUPPORT OF PLAINTIFFS' APPLICATION FOR INCENTIVE AWARDS FOR**  
**CLASS REPRESENTATIVES**  
**AND FOR AWARD OF ATTORNEYS' FEES AND EXPENSES**

I, Thomas V. Bender, declare as follows:

1. I am an attorney licensed to practice in the state of Missouri and in the United States District Court for the Western District of Missouri. I have been in practice for over forty years, including involvement in numerous contingency fee and class action cases.
2. I am lead counsel in the above-captioned litigation, and I make this Declaration in support of Plaintiffs' Application for Incentive Awards for Class Representatives and for Award of Attorneys' Fees and Expenses. I have actively participated in all aspects of this litigation, and I make this Declaration based on my personal knowledge.
3. Class Counsel request that the nineteen (19) Class Representatives each be awarded an incentive award of \$5,000.00. This request is supported by law and by the circumstances of this case. These Class Representatives represented thousands of purchasers across the United States. They actively participated in the case, providing Class Counsel with input in case

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development and responsive documents and information. They produced documents, responded to interrogatories, communicated with counsel and provided key information, and were each prepared for their depositions, if necessary. These Class Representatives understand that the amount of the incentive award, if any, is in the discretion of the Court. Defendants have agreed with payment out of the Class Settlement Fund of the amount awarded by the Court in incentive awards, up to \$5,000.00 per Class Representative.

4. Class Counsel further request reasonable attorneys' fees and expenses to be awarded by the Court to be paid by Defendant CITGO outside the Class Settlement Fund. Counsel for the parties engaged in extensive, arms-length negotiations in an attempt to reach a settlement. After the key terms of the Settlement Agreement were reached for the benefit of the Class, the Parties then attempted to reach an agreement as to the amount of attorneys' fees that would be sought. If no agreement could be reached on attorneys' fees, Class Counsel was prepared and intended to move forward with the settlement and to seek an award from the Court without any parameters or limitations. An agreement was then reached for Defendant CITGO to pay reasonable attorneys' fees and expenses in addition to the \$18,825,000.00 Class Settlement Fund, so long as the amount sought was no more than \$5,900,000.00.

5. As to the case expenses, Class Counsel has incurred in excess of \$160,000.00 in expenses and costs, and a summary of some of the expenses incurred is attached to this Declaration as Exhibit A. The primary areas of expense were expert charges, deposition expenses, document management/hosting costs, and contract law clerks, paralegal and claim assistants.

6. As to the amount of fees sought, the retention agreement between each of the Class Representatives and Class Counsel calls for payment of a contingency attorneys' fee of 33 and 1/3%, with the reimbursement of litigation expenses also to be contingent upon a recovery in this

case. Based upon the amount sought, the award of \$5,900,000.00, including expenses, would be about 23% of the total Settlement amount of \$24,725,000.00 (the Class Settlement Fund plus separate payment of attorneys' fees and expenses) and 30.5% of the Class Settlement Fund of \$18,825,000.00. The attorneys' fees requested is thus less than the amount called for in Class Counsel's contracts with Class Representatives.

7. The reasonable attorney's fees requested by Class Counsel is supported not only by the Class Representatives' actual contingent fee agreements, but also by customary market rates for cases of this type. It is my opinion, based upon my years of experience and familiarity with the market for legal representation of the type provided to the Class Members in this action, it is not uncommon for litigation of this type to receive a recovery on a contingency agreement of one-third.

8. Because this litigation required a substantial advancement of professional time and expense, because the measure of recoverable damages is uncertain and because the risk of nonpayment or underpayment is significant, it would be financially impossible for the Plaintiff or any Settlement Class Members to have agreed to pursue this matter on any basis other than a contingency fee arrangement, with expenses advance by counsel. Class Counsel undertook the litigation on such a contingent basis and advanced costs bearing the full risk that a recovery would not be realized. No Member of the Settlement Class was asked to pay any fees or advance the expense required to investigate, prepare for filing, and prosecute this litigation.

9. From the inception of this litigation, Class Counsel have aggressively prosecuted this case and vigorously represented the best interests of the Plaintiffs and putative Class. The case was initially prosecuted by attorneys and staff from three Kansas City area Law Firms: Tom Bender and Dirk Hubbard of Horn, Aylward & Band, LLC; Gene Graham, Bill Carr, and Bryan

White from White, Graham, Buckley & Carr, LLC; and Clayton Jones of Clayton Jones Law. Iowa counsel Paul Lundberg from the Lundberg Law Firm in Sioux City, Iowa, and Illinois counsel from Bolen Robinson & Ellis, LLP in Decatur, Illinois were added to Plaintiffs' counsel team as actions were filed in those states. Pursuit of this case has included investigating the facts, performing legal research, reviewing and analyzing documents, assembling and drafting pleadings, conducting discovery, taking depositions, preparing and producing Class Representatives for their depositions, investigating and subpoenaing third-party witnesses and communicating with counsel for Defendants. Discovery and investigations have included requesting and reviewing information from the Missouri Department of Agriculture and other states' agencies; exchange of information between the parties through discovery; meeting and conferences with Class Representatives; meeting and conferences with representatives of Defendants; retention and consultation with experts; and noticing and preparing for depositions. Thousands of pages of documents have been reviewed, many of them highly technical, including test results related to the CITGO-manufactured 303 Tractor Hydraulic Fluid product. Overall, more than 3,500 hours of combined attorney time and nearly 500 hours of in-house assistant time was spent by Class Counsel's five Law Firms that was directly related to this litigation, as well as thousands more hours of other time attributable to investigating the industry as a whole. Class Counsel anticipates spending many additional hours in connection with the settlement administration process in the final weeks of the notice period. The lodestar for Class Counsel's time to date is approximately \$2,000,000.00. In addition, hundreds of attorney and assistant hours will be spent in the future through the completion of settlement administration. If viewed under the lodestar approach, the requested multiplier of less than three for just time to date is reasonable and in line with the average multiplier in cases where results of this type are obtained .

10. The proposed Settlement provides substantial benefit to thousands of Settlement Class Members who have purchased CITGO-manufactured 303 Tractor Hydraulic Fluid Products (“303 THF Products”) in the United States during the Class Period. As described in detail in the Settlement Agreement, the Settlement provides significant payments—in many instances complete relief—to the Settlement Class in a way that addresses the fundamental issues underlying this case. The Class Settlement Fund of \$18,825,000.00 is sufficient to provide each Qualified Settlement Class Member with an estimated minimum payment of up to 100% of the average purchase price for the units of CITGO-manufactured 303 THF Products purchased by each such Settlement Class Member during the class period. This results in Settlement Class Members receiving a full refund. The Class Settlement Fund also provides Settlement Class Members with additional awards for repairs, parts, and specific equipment damage that the Settlement Class Member contends resulted from, in whole or in part, the use of the 303 THF Products during the Class Period.

11. Class Counsel have diligently investigated and prosecuted this matter, dedicating substantial time, effort, resources, and expertise to the investigation and prosecution of the claims at issue in the action, and have successfully negotiated the Settlement of this matter to benefit the Settlement Class.

12. I respectfully request the Court find and conclude that incentive awards of \$5,000.00 each are appropriate for each of the 19 Class Representatives, and that that \$5,900,000.00 in reasonable attorneys’ fees and expenses should be awarded to Class Counsel.

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

Date Executed: 8/17/20

/s/ Thomas V. Bender  
Thomas V. Bender

**EXHIBIT A**

**Hornbeck, et al. v Orscheln Farm and Home LLC, et al.**

**Case #18-00941-CV-W-BP**

<b><u>General Expenses</u></b>	Filing Fees, Service, Mediation	\$3,745.23
<b><u>Complete Legal - Document Management</u></b>		\$8,346.48
<b><u>Experts</u></b>		50,000.00
<b><u>Deposition-Related Expenses</u></b>		\$32,235.00
<b><u>Contract Law Clerk, Paralegal and Claims Assistants</u></b>		\$70,500.00
<b>TOTAL</b>		\$164,827.35