



Release, including all exhibits thereto (“Settlement” or “Settlement Agreement”), which was attached as Exhibit 1 to the Motion for Preliminary Approval of Proposed 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 March 6, 2020. (Doc. 135). Notice has now been carried out and the claims period has ended. More than 30,000 Class Members are scheduled to receive substantial monetary awards from this Settlement. There have been no objections to the Settlement, and only twenty-six (26) Class Members opted out. The Settlement Agreement is fair, reasonable and adequate. The Fairness Hearing is set for October 13, 2020. Accordingly, Plaintiffs respectfully request the Court grant final approval to the Settlement.

## **II. SUMMARY OF THE LITIGATION AND SETTLEMENT**

### **A. Litigation History and Plaintiffs’ Claims**

On May 30, 2018, Plaintiffs Shawn Hornbeck, Monte Burgess, Raymond Bieri, and Dan Chevalier initiated a class action lawsuit against certain Defendants in the Circuit Court of Cass County, State of Missouri, Case No. 18CA-CC00106. The Plaintiffs asserted claims for alleged Missouri Merchandising Practices Act violations, breach of warranty, fraudulent and negligent misrepresentations, negligence, and unjust enrichment on behalf of a class of individuals who purchased certain 303 THF Products in the State of Missouri. On November 29, 2018, Defendants removed the above-referenced action to the United States District Court for the Western District

of Missouri, Case No. 18-00941-cv-W-BP. In June 2019, Plaintiff James Kircher was added as a class representative and a Second Amended Complaint was filed in this action.

On May 24, 2019, Plaintiff Adam Sevy initiated a class action lawsuit against some of the same Defendants in the United States District Court for the District of Kansas, Case No. 2:19-cv-02259. On June 6, 2019, Plaintiff Wayne Rupe initiated a class action lawsuit against some of the same Defendants in the United States District Court for the Southern District of Iowa, Case No. 4:19-cv-00163-RGE-RAW. On September 12, 2019, Plaintiff Randy Rohrscheib initiated a class action lawsuit against some of the same Defendants in Macon County, Illinois, Case No. 2019 L74. Each of these class actions involved nearly identical allegations, claims and damage related to Defendants' manufacture and sale of the 303 THF Products.

In January of 2020, the Kansas, Iowa, and Illinois actions were dismissed without prejudice, and on January 16, 2020, a Third Amended Consolidated Class Action Complaint was filed in this action which included the claims previously filed in Iowa, Kansas, and Illinois, and which also added Class Representatives and class claims for all purchasers of Defendants' 303 THF Products throughout the United States. Plaintiffs' Third Amended Consolidated Class Action Complaint includes claims against Defendants for negligence, unjust enrichment, breach of warranty, fraudulent and negligent misrepresentations, and consumer protection violations arising out of Settlement Class Members' purchase and use of these 303 THF Products.

Plaintiffs allege, among other things, that the labels for the 303 THF Products were deceptive and misleading for the reasons set forth in the Third Amended Consolidated Class Action Complaint. Plaintiffs also allege that use of the 303 THF Products in equipment causes damage to various parts of the equipment, including damage to the spiral gear in the drive, excess wear, seal leakage, high pump leakage, and damage from deposits, sludging and thickening.

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 Third Amended 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.

#### **B. Discovery Conducted in Missouri Action**

Prior to the Parties engaging in the settlement discussions that culminated in the Settlement, Plaintiffs' Counsel conducted extensive discovery. Plaintiffs served on Defendants CITGO and Orscheln First Interrogatories and First Requests for Production of Documents. Plaintiffs also served Defendants CITGO and Orscheln First Requests for Admissions, Second Interrogatories, and Second Requests for Production of Documents. Extensive search terms were utilized for ESI and email discovery. All totaled, more than 100,000 pages of documents were produced by Defendants CITGO and Orscheln and reviewed and analyzed by Plaintiffs. Plaintiffs took seven depositions of Defendants CITGO's and Orscheln's witnesses, with several other depositions scheduled when meaningful resolution talks began. Defendants took the depositions of two of the Class Representative Plaintiffs, with other Representative depositions set to take place when meaningful resolution talks began. Plaintiffs also retained and involved expert witnesses to analyze the 303 THF Products and manufacturing process and to draft extensive expert reports.

#### **C. Mediation and Settlement**

Over many months, the Parties engaged in extensive and arm's length negotiations trying to resolve the issues and claims asserted by Plaintiffs in the class action complaints. On March 21, 2019, the Parties participated in mediation with experienced class-action mediator Phil Miller. The Parties, however, were unable to reach a resolution at that time. After extensive

document and deposition discovery continued following mediation, the Parties resumed settlement discussions in September of 2019. An agreement in principle for this Settlement Agreement was reached on December 3, 2019. Further detailed negotiations of the full Settlement Agreement took place between December 3, 2019 and February 3, 2020, culminating in the signing of the Settlement Agreement for which Preliminary Approval has been granted and Final Approval is now sought.

**D. The Proposed Settlement**

1. *The Settlement Class, Class Representatives, and Class Counsel*

The Settlement Class under the Parties' Settlement Agreement consists of the same Class definition pled in Plaintiffs' Third Amended Consolidated Class Action Complaint:

All Persons and other entities who purchased CITGO-manufactured MileMaster 303 Tractor Hydraulic Fluid in the United States from Orscheln Farm and Home LLC, Blain Supply Company, Fleet Wholesale Company, Inc., Mid-States Distributing Company, Inc., and/or other retailers at any point in time in the following package sizes during the following periods: (1) 3/2 gal. from January 23, 2017 to present; (2) 5 gal. from May 25, 2013 to present; or (3) 55 gal. from May 25, 2013 to present;

-and-

All Persons and other entities who purchased CITGO-manufactured H-K 303 Tractor Transmission Hydraulic Fluid in the United States from Orscheln Farm and Home LLC, Blain Supply Company, Fleet Wholesale Company, Inc., Mid-States Distributing Company, Inc., and/or other retailers at any point in time in the following package sizes during the following periods: (1) 3/2 gal. from May 25, 2013 to April 30, 2016; (2) 5 gal. from May 25, 2013 to March 21, 2019;

-and-

All Persons and other entities who purchased Orscheln Premium 303 Tractor Hydraulic & Transmission Fluid in the United States from Orscheln Farm and Home LLC at any point in time from September 3, 2014 to August 16, 2017;

-and-

All Persons and other entities who purchased CITGO-manufactured SuperTech 303 Tractor Hydraulic Oil in the United States from Walmart Inc. and/or other retailers at any point in time from February 17, 2016 to February 10, 2018.

To represent the Settlement Class for purposes of the Settlement, the Court's Preliminary Approval Order appointed as Class Representatives the nineteen (19) Plaintiffs identified as Representative Plaintiffs in the Settlement Agreement. The Court also appointed Plaintiffs' Counsel as Counsel for the Settlement Class.

2. *Settlement Payments and Benefits to Class Members*

Under the terms of the Settlement Agreement, CITGO will establish a Class Settlement Fund in the amount of \$18,825,000.00. CITGO has initially paid \$1,000,000.00 of that amount, and the remaining \$17,825,000.00 payment will be due from CITGO approximately 45 days after this Court's Final Approval Order.

The Class Settlement Fund provides significant payments of money damages to the Settlement Class in a way that addresses the fundamental issues underlying this case and compensates Settlement Class Members for actual damages suffered. The Class Settlement Fund of \$18,825,000.00 will be used to pay: (a) claims of Qualified Settlement Class Members, (b) all reasonable settlement administration and notice costs, and (c) all incentive awards to Class Representatives as Ordered by the Court. Class Counsel's attorneys' fees and expenses are to be paid separately by CITGO and will not reduce the Class Settlement Fund.

Thus, in addition to funding settlement administration/notice and incentive awards to Class Representatives, the Class Settlement Fund is sufficient to provide each Settlement Class Member with substantial monetary compensation for actual damage suffered. Each Settlement Class Member for whom purchase information is available and each Settlement Class Member who has

submitted a valid Claim Form will receive payment of up to 100% of the average purchase price for the units of the 303 THF Products purchased by those Settlement Class Members. This Purchase Price Relief from the Reimbursement Fund for each Qualified Settlement Class Member will be an amount based on an average purchase price of: \$18 for each 3/2-gallon jugs purchased; \$27 for each 5-gallon bucket purchased; and \$200 for each 55-gallon drum purchased. At present and prior to completion of the claim evaluation/determination process, the following are the approximate numbers and amounts of claims (including automatic awards) for Purchase Price Relief from the Reimbursement Fund:

<u>Size</u>	<u>Number of Units</u>	<u>Amount</u>
3/2-Gallon Jugs	3,944	\$70,992
5-Gallon Buckets	264,683	\$7,146,441
55-Gallon Drums	15,252	\$3,050,400
<b>TOTAL CLAIMED FOR PURCHASE PRICE RELIEF</b>		<b>\$10,267,833</b>

As noted and pursuant to the Settlement Agreement's terms, the claims for Purchase Price Relief are in the process of being evaluated, with final determinations to be made in the next 60-90 days.

In addition to this Purchase Price Relief, the Class Settlement Fund will also provide substantial and additional compensation to Settlement Class Members for the actual damage suffered to Settlement Class Members' equipment as a result of use of the 303 THF Products. The Repairs/Parts/Specific Equipment Damage Relief Fund will pay claims submitted by Qualified Settlement Class Members for the costs of any 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.

Such repairs, parts, and specific 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 the Settlement Class Member contends occurred as a result of damage and increased or excessive wear resulting from, in whole or in part, use of the 303 THF Products during the Class Period. Such increased wear and damage may include, without limitation, scratching, corrosive wear, rippling, ridging, pitting, spalling and scoring of 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. If the damage to equipment resulted in part from other causes and in part from the 303 THF Product's use, then that damage is recoverable under the terms of the Settlement.

At present, and prior to completion of the claim evaluation/determination process, the following is a breakdown of the claims submitted for relief from this Repairs/Parts/Specific Equipment Damage Fund:

<b><u>Claim Category</u></b>	<b><u>Repair Claims/Total Claims</u></b>	<b><u>Amount</u></b>
Part B Claim - Paper	462/462	\$5,935,708.12
Part B Claim - Online	99/99	\$782,140.81
Full Claim – Paper	206/452	\$5,424,036.09
Full Claim - Online	435/3388	<u>\$1,755,157.40</u>
<b>TOTAL CLAIMED FOR REPAIRS/PARTS RELIEF</b>		<b>\$13,897,042.42</b>

Overall, the following are the numbers of claims received from potential Class Members/Class Members:

<u>Claim Form Category</u>	<u>Number Submitted</u>
Automatic Awards	33,203
Part B Claim – Paper	462
Part B Claim - Online	99
Full Claim – Paper	454
Full Claim - Online	3383
Correction Forms – Paper	129
Correction Forms – Online	294

[Note that a single Class Member could file more than one of the above forms such that the total number of unique claimants/potential class members is less than the total of the above claim forms.] Overall, Class Counsel note to the Court that the total number of potential Class Members is now estimated to be approximately 100,000 as opposed to prior estimate of 215,000. This is based on an extrapolation of the 33,000 identified Class Members/Orscheln purchasers having purchased approximately 33% of the total 303 THF Product sales.

Accordingly, the Class Settlement Fund is sufficient to provide thousands of Settlement Class Members with a payment and/or refund in an amount calculated to be up to 100% of the average purchase price paid for the units of the 303 THF Products purchased during the Class Period. In addition, the Class Settlement Fund will provide substantial additional monetary awards to Qualified Settlement Class Members who have incurred repair costs, parts purchases, and/or specific equipment damage as a result, in whole or in part, of use of the 303 THF Products in Settlement Class Members' equipment. The benefits available and to be awarded to Class

Members from this Settlement provide class members nearly full relief for refund and equipment damage claims, which is outstanding in the class action context.

3. *Notice and Administration Costs*

The 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 costs, fees, and expenses were estimated to be \$710,000.00. To date, RG/2 has incurred fees and costs of \$483,707 for Settlement Administration and Notice. It is anticipated that RG/2 will complete the Settlement Administration within the budgeted amount of \$709,000.

4. *Class Representatives' Incentive Awards*

The Class Settlement Fund also pays the amount the Court awards Class Representatives in incentive awards, up to \$5,000.00 each for the Class Representatives. Class Counsel has sought a \$5,000.00 incentive award to each of the nineteen (19) Class Representatives, for a total of \$95,000.00. Defendants do not contest those amounts.

5. *Class Counsel's Attorneys' Fees and Expenses*

The original term sheet agreement entered into by the Parties did not include any agreement with regard to Class Counsel's attorneys' fees and expenses, other than to note that such fees and expenses would be paid separately and would not come out of the Class Settlement Fund. Instead, it noted that CITGO would pay separately whatever amount of reasonable attorneys' fees and expenses were awarded by the Court. Subsequent to the Parties' agreement on the key terms for the Class Settlement Fund and relief described above, the Parties reached an agreement on reasonable attorney's fees and expenses and included those terms in the Settlement Agreement. Pursuant to the Settlement Agreement, Plaintiffs' Counsel has separately applied for an award of attorneys' fees and reimbursement of expenses. Defendants have agreed not to contest the award sought and have agreed that CITGO will separately pay, in addition to the Class Settlement Fund,

Class Counsel's reasonable attorneys' fees and expenses, if awarded by the Court, in the amount of \$5,900,000.00.

6. *Agreement Not To Sell "303" THF Products*

Finally, as part of this Settlement Agreement, Defendants agree not to sell 303 THF Products or any other tractor hydraulic fluid manufactured or distributed by CITGO in the United States that is labeled, or otherwise held out to customers and the public, as "303" or as meeting specifications of only John Deere 303. Defendants agree they will not list John Deere 303 on the label of a tractor hydraulic fluid product manufactured or distributed by CITGO sold in the United States unless the product meets a verifiable John Deere specification, such as JD20A/B or JD20C/D.

**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 affording 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 2 to the Joint Motion for Final Approval of Proposed Class Action Settlement, the Class was notified of the settlement by direct mail, by newspaper and other print media publication, by digital publication, and by television and radio.

Direct notice was mailed to more than 35,000 Settlement Class Members and potential Settlement Class Members whose contact information was maintained by Defendant retailer Orscheln. The initial mailed notice provided substantial information about the Settlement and provided the settlement website address and information. Further notice was provided by email to

Settlement Class Members and potential Settlement Class Members. Subsequent notices were sent to purchasers identified by another retailer, Runnings Supply, Inc.

A summary notice of the Settlement was also published in 252 daily and weekly newspapers in various counties within the states: Arkansas; Illinois; Indiana; Iowa; Kansas; Missouri; Nebraska; and Oklahoma, as well as in the following publications:

- **Farm Journal**
- **Successful Farming**
- **Progressive Farmer**
- **Farm & Ranch Living**
- **Midwest Messenger**
- **OK Farm Bureau Country**
- **MFA Today's Farmer**
- **Iowa Spokesman**
- **Illinois Agrinews**
- **Indiana Agrinews**
- **Arkansas Agriculture**

A media notice campaign was also implemented that included Facebook and Google Ads where potential Class Members could click on the add and be linked to the case website. Banner Ads were also placed through digital media at Farm Journal and Progressive Farmer. Overall, this digital media campaign produced over 33.5 million impressions online.

In addition to the mailed Notice, publications and digital media, notice of the Class Settlement was also provided through television and radio as follows: 59 thirty-second spots on RFD-TV network during the notice period; 60 thirty-second radio spots on the Sirius XM 147; and 180 sixty-second radio spots on the AG Radio Network.

The full form detailed notice, claim form, settlement agreement, and other key materials were also placed on a website maintained by Settlement Administrator for purposes of providing additional information and documents to Class Members. The website, [www.303settlement.com](http://www.303settlement.com), included (i) a Homepage setting forth a brief summary of the Settlement and potential Class

Members' rights under the Settlement; (ii) .pdf copies of the Court-Ordered Detailed Notice, and Claim Form, as well as a link to the Claims online filing portal; and, (iii) Court Documents that included the Settlement Agreement and Release, Preliminary Approval Order, and documents regarding the Application for Incentive Awards and Attorneys' Fees. 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 as 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 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. Defendants’ counsel was confident that Defendants had several, strong defenses to class certification and to the claims asserted on behalf of the Class. It was expected that Defendants would strongly oppose class certification. The Parties discussed those defenses in detail throughout the settlement negotiations.

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 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. Class Counsel further

performed extensive research and analysis of the legal principles applicable to the claims against Defendants and class certification of those claims, as well as to the potential defenses to those claims and certification. Thousands of pages of documents were produced by Defendants, and many depositions were taken of Defendants' witnesses. Plaintiffs also retained and involved two expert witnesses.

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 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 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 given the uncertainty of whether Plaintiffs would have prevailed on class certification, at trial, and on appeal. When these risks, as well as the uncertainties and risks inherent in any litigation, are balanced against the benefits provided by the Settlement – here significant cash payments and other benefits to Settlement Class Members beyond what is typically seen in many consumer class actions – Plaintiffs submit that the Settlement is fair and adequate and should receive final approval. In light of these positions and the risks of litigation for both sides, the Settlement provides substantial benefits to Settlement Class Members and represents a reasonable resolution of the claims on a class-wide basis. Even if the Plaintiffs were successful on class certification and at trial, there was a very strong likelihood that Defendants would appeal the result and thus, it could be years before the Class Members would receive any benefits.

The Settlement of this case provides immediate relief to thousands of Class Members. It provides substantial benefits to each of these Class Members: payment in an amount calculated to be up to 100% of the estimated purchase price paid for the 303 THF Products. Qualified Settlement Class Members who submitted valid claim forms for Part B Relief are also receiving significant monies for repairs, parts, and equipment damage that resulted from use of the 303 THF Products.

No Class Member has objected to the Settlement or his/her/its award, and only twenty-six (26) Class Members have opted out of the Settlement.

In return for the consideration to be provided under the Settlement, Defendants receive a reasonable release of liability from the Settlement Class Members related to the purchase and use of the 303 THF Products. Paragraph 39 of the Settlement Agreement specifically provides as follows:

Plaintiffs and the Settlement Class Members, on behalf of themselves and their respective past, present, and future partners, heirs, executors, representatives, personal representatives, legal representatives, officers, directors, employees, agents, distributors, downstream retail customers and/or resellers, attorneys, accountants, insurers, predecessors, successors, assigns, parent companies, subsidiaries, affiliates, stockholders, and shareholders (the “Releasing Parties”), hereby release and forever discharge Defendants, together with their respective past, present, and future partners, heirs, executors, representatives, personal representatives, legal representatives, officers, directors, employees, agents, distributors, downstream retail customers and/or resellers, attorneys, accountants, insurers, predecessors, successors, assigns, parent companies, subsidiaries, affiliates, stockholders, and shareholders (the “Released Parties”) from any and all claims, causes of action, suits, obligations, debts, demands, agreements, promises, liabilities, damages, losses, controversies, costs, expenses, and reasonable attorneys’ fees and expenses of any nature whatsoever that are asserted, or could have been asserted in the Missouri Action and/or the Related Actions, arising out of or relating to the sale advertising, marketing, labelling, promotion, manufacture, distribution, purchase or use of MileMaster 303 Tractor Hydraulic Fluid, Orscheln Premium 303 Tractor Hydraulic & Transmission Fluid, H-K 303 Tractor Hydraulic Fluid (made by CITGO), and SuperTech 303 Tractor Hydraulic Oil (made by CITGO), in any State in the United States during the Class Period (the “Released Claims”). With respect to all Released Claims, the Parties stipulate and agree that the Class Representatives and Settlement Class Members shall expressly waive and relinquish Released Claims to the fullest extent permitted by law, including claims covered by (a) Section 1542 of the California Civil Code, which provides:

A general release does not extend to claims that the creditor or releasing party does not know or suspect to exist in his or her favor at the time of executing the release and that, if known by him or her, would have materially affected his or her settlement with the debtor or released party.

and (b) any law of any state or territory of the United States, federal law, or foreign or international law, which is similar, comparable, or equivalent to Section 1542 of the California Civil Code. As of the Effective Date, the Releasing Parties shall be deemed to have, and by operation of the Final Approval Order and Judgment shall have, fully, finally and forever released, relinquished, and discharged all Released Claims against the Released Parties pursuant to the terms of this Settlement Agreement.

As noted, this release is not overly broad and only releases Settlement Class Members' claims 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. Indeed, the Settlement Agreement provides Settlement Class Members with substantial relief for their actual damages suffered.

## 2. *The Defendants' Financial Condition*

There is no indication that the financial condition of any of the 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 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). "Although 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." *BankAmerica Corp.*, 210 F.R.D. at 702.

## 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 26 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 an initial mediation with experienced class action mediator Phil Miller. When negotiations resumed approximately six (6) months after this initial mediation, they 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 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 complete 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 . . . .”)

#### IV. CONCLUSION

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

Date: September 29, 2020

Respectfully submitted,

**HORN AYLWARD & BANDY, LLC**

BY: /s/ Thomas V. Bender

Thomas V. Bender MO 28099

Dirk Hubbard MO 37936

2600 Grand, Ste. 1100

Kansas City, MO 64108

(816) 421-0700

(816) 421-0899 (Fax)

[tbender@hab-law.com](mailto:tbender@hab-law.com)

[dhubbard@hab-law.com](mailto:dhubbard@hab-law.com)

**WHITE, GRAHAM, BUCKLEY,  
& CARR, L.L.C**

BY: /s/ Gene P. Graham, Jr.

Gene P. Graham, Jr. MO 34950  
William Carr MO 40091  
Bryan T. White MO 58805  
19049 East Valley View Parkway  
Independence, Missouri 64055  
(816) 373-9080  
Fax: (816) 373-9319  
[ggraham@wagblaw.com](mailto:ggraham@wagblaw.com)  
[bcarr@wagblaw.com](mailto:bcarr@wagblaw.com)  
[bwhite@wagblaw.com](mailto:bwhite@wagblaw.com)

**CLAYTON JONES, ATTORNEY AT  
LAW**

BY: /s/ Clayton A. Jones

Clayton Jones MO 51802  
405 Foxwood Dr.  
Raymore, MO 64083  
Office: (816) 318-4266  
Fax: (816) 318-4267  
[clayton@claytonjoneslaw.com](mailto:clayton@claytonjoneslaw.com)

**LUNDBERG LAW FIRM, P.L.C.**

BY: /s/ Paul D. Lundberg

Paul D. Lundberg IA W00003339  
600 Fourth St., Suite 906  
Sioux City, Iowa 51101  
Tel: 712-234-3030  
[paul@lundberglawfirm.com](mailto:paul@lundberglawfirm.com)

