

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, )  
v. ) Case No. 18-00941-CV-W-BP  
ORSCHELN FARM AND HOME LLC )  
d/b/a ORSCHELN FARM AND HOME, )  
et al., )  
Defendants. )

**PLAINTIFFS’ UNOPPOSED MOTION FOR FINAL APPROVAL  
OF CLASS ACTION SETTLEMENT**

COME NOW Plaintiffs Shawn Hornbeck, Monte Burgess, Raymond Bieri, Dan Chevalier, James Kircher, Adam Sevy, Wayne Rupe, Randy Rohrscheib, James Spencer, James Milligan, Ryan Milligan, George Bollin, Randy Vilela, Rex Carlson, David Carlson, Todd Vohs, Twin Mills Timber & Tie Co., Inc., Mike Keller, and Jay Simpson (“Plaintiffs”), by and through Class Counsel, and move the Court for entry of an order and judgment substantially in the form attached hereto as Exhibit 1 granting final approval of the Parties’ Settlement Agreement and Release. In support of their Motion, Plaintiffs respectfully state as follows:

**Introduction/Summary of Settlement Administration/Proposed Final Approval Order**

1. On or about February 3, 2020, the Parties entered into a Settlement Agreement and Release in this matter (the “Settlement Agreement”). The Settlement Agreement makes substantial relief available to thousands of proposed Settlement Class Members comprised of persons who have purchased the following “303” Tractor Hydraulic Fluid products in the United States during the Class Period: (a) CITGO-Manufactured MileMaster 303 Tractor Hydraulic Fluid; (b) Orscheln Premium 303 Tractor Hydraulic & Transmission Fluid; (c) CITGO-manufactured H-K 303 Tractor

Transmission Hydraulic Fluid; and (d) CITGO-manufactured SuperTech 303 Tractor Hydraulic Oil (referred to collectively as “303 THF Products”). The Settlement Agreement, with the following exhibits thereto, was attached as Exhibit 1 to the Motion for Preliminary Approval. (Doc. No. 126).

2. On March 6, 2020, this Court entered its Preliminary Approval Order granting preliminary approval of the Settlement Agreement (the “Preliminary Approval Order”). (See Doc. No. 135). The following Settlement Class was conditionally certified:

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.

3. Since that time, the Court-appointed Settlement Administrator, RG/2 Claims Administration LLC (“RG/2”) has implemented the Court-approved notice and claims administration process, as set forth in the Settlement Agreement and the Preliminary Approval Order. (Ex. 2, Declaration of Tina Chiango).

4. With the claims period now closed, Plaintiffs, pursuant to the Settlement Agreement and the Court’s Preliminary Approval Order, now respectfully request that the Court enter an order, in substantially the form of the proposed Final Approval Order and attached hereto as Exhibit 1, granting final approval of the class action settlement memorialized in the Settlement Agreement. As set forth more fully in Exhibit 1, the requested order finally approves the Settlement Agreement and, among other things:

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

5. In support of the adequacy and appropriateness of the Settlement Agreement, including the notice provided to Settlement Class Members, the processing of claims, and the expected distribution of the Class Settlement Fund, the Declaration of Tina Chiango, Director of Claims Administration, Securities, and Antitrust for RG/2, the Court-approved Settlement Administrator, is attached hereto as Exhibit 2.

**Direct Mailed/E-Mailed Notice**

6. Pursuant to this Court's Preliminary Approval Order, on April 3, 2020, the Mailed Class Notice with Purchase Data was mailed to 33,978 Members of the Settlement Class who were identified by Orscheln's records as having purchased the Orscheln Premium 303 Tractor Hydraulic & Transmission Fluid product during the time period of September 3, 2014 to August 16, 2017. These notices provided each recipient with the number of 5-gallon buckets purchased based on Orscheln's records. The number of 5-gallon bucket purchases represented by these 33,978 Class Members was 233,009 buckets with an award value of \$6,291,243.00. (Ex. 2, ¶¶ 9-10).

7. Also pursuant to this Court's Preliminary Approval Order, on April 3, 2020, the Long Form Class Notice was mailed to 4,952 other potential Members of the Settlement Class who were identified by Orscheln's records as having purchased 303 Tractor Hydraulic Fluid between August 17, 2017 and September 30, 2018. (Ex. 2, ¶ 11).

8. On April 6, 2020, an email was sent to 340 Class Members who had purchases but only an email address was provided. The email advised these Class Members that they were identified as Class Members and provided the number of buckets purchased from the data and noted that they would need to complete a Full Claim Form to be part of the Settlement. The email included a copy of the Summary Notice and referred them to the settlement website [www.303settlement.com](http://www.303settlement.com) to view the case documents. (Ex. 2, ¶ 12).

9. On June 26, 2020, an email was sent to 5,910 potential Class Members for whom only an email address was provided and no purchase data was available. The email advised them that they were identified as a potential Class Member and should file a Full Claim form. (Ex. 2, ¶ 18).

10. On July 7, 2020, Notice and Claim forms were mailed to 772 Class Members identified from a Runnings Supply, Inc. file containing customer contact information. (Ex. 2, ¶¶ 19-20).

11. Of the 33,978 Data Notice Packets and 5,724 Notice and Claims mailed to Class Members/potential Class Members, a total of 2,750 were returned by the USPS as undeliverable. Of those returned, seventeen (17) contained a forwarding address, and those Data Notice Packets or Notice and Claims Forms were immediately re-mailed. RG/2 performed address verification searches (also referred to as “skip tracing”) for those returned as undeliverable without a forwarding address. Re-mails were promptly sent to 1,998 Class Members/potential Class Members via U.S. First Class mail at the updated addresses located via skip tracing. After these efforts, 775 remained undeliverable. Of these, 638 were Class Members with Data Notice Packets representing 4,067 buckets or a value of \$109,809. (Ex. 2, ¶ 23).

#### **Publication of Summary Notice**

12. In addition to emailing and mailing the Notices and in order to reach additional potential Settlement Class Members, Summary Notice was published in the following publications beginning on April 3, 2020:

- **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**

(Ex. 2, ¶ 13).

13. Summary Notice was also published in 252 daily and weekly newspapers in various counties within the states: Arkansas; Illinois; Indiana; Iowa; Kansas; Missouri; Nebraska; and Oklahoma. (Ex. 2, ¶ 14).

14. 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 settlement 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. (Ex. 2, ¶ 15).

15. In addition to the mailed Notice, publications and digital media, notice of the Class Settlement was also provided through the following: 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. (Ex. 2, ¶ 16).

#### **Settlement Website**

16. All Notice and media referred to the Settlement website [www.303settlement.com](http://www.303settlement.com), which was established by RG/2. The website includes the following:

- a. The “Homepage” contains a brief summary of the Settlement and advises potential Settlement Class Members of their rights under the Settlement;
- b. The “Notice and Claim Form” page contains a pdf copy of the Court-Ordered Long Form Notice, Full Claim Form and Request for Correction Form and Part B Claim Form. The page also included a link to the Claims online filing portal and the Repair Parts Specific Equipment Review Process;

- c. The “Court Documents” page contains: the Settlement Agreement and Release; the Motion for Preliminary Approval; Suggestions in Support of Preliminary Approval; the Preliminary Approval Order; the Application for Incentive Awards, and for Attorneys’ Fees and Expenses; and Suggestions in Support of Application for Incentive Awards, and Attorneys’ Fees and Expenses; and the Declaration of Thomas Bender in Support of Application for Incentive Awards, and Attorneys’ Fees and Expenses (any additional documents will be added as requested); and
- d. The “Contact” page contains RG2’s contact information for any questions or requests for information regarding the settlement.

(Ex. 2, ¶ 17).

17. Potential Class Members were able to utilize online claims portals for the Full Claim Form, the Request for Correction Form, and the Part B repairs/parts/specific equipment damage claim form. Through these portals, RG/2 is made aware of any time a person starts a claim form but does not finish or submit the claim. At the request of Class Counsel, RG/2 sent an email on July 24, 2020 to potential Class Members who did not complete and submit the claim they started, advising them of the filing deadline to submit a claim and to consult with Class Counsel if they need assistance. (Ex. 2, ¶ 21).

**No Objections to the Settlement Have Been Asserted by Class Members**

18. In accordance with this Court’ Preliminary Approval Order, Class Members had until August 31, 2020 by which to file objections to the Settlement. No Class Member has filed an objection. (Ex. 2, ¶ 24).

**Opt-Outs/Requests for Exclusion**

19. In accordance with this Court’s Preliminary Approval Order, Class Members had until August 31, 2020 by which to opt-out of the Settlement. Twenty-Six (26) Class Members opted out. (Ex. 2, ¶ 24).

**Summary of Claims**

20. All totaled, there are \$10,267,833 in automatic and/or timely-filed claims for Part A Purchase Price Relief and \$13,897,042.42 in claims for Part B Repairs/Parts/Specific Damage Fund Relief. (Ex. 2, ¶¶ 25-26). The Settlement Administrator, Class Counsel, and Defendants' Counsel are in the process of reviewing and evaluating these claims pursuant to the terms of the Settlement Agreement. Claim denial emails and/or letters will be sent to claimants whose claims are denied.

21. The Settlement Administrator RG/2 has provided the following summary of the claims:

**Automatic Reimbursements:**

**33,203** Class Members will be paid \$6,181,434 - after the deduction of \$109,809 in returned mailings that could not be re-mailed due to insufficient address information.

**Full Claim Forms Submitted:**

The total number of timely claims submitted: **3,835**

3/2 gal	1,849 units claimed with a value of \$33,282
5 gal	30,027 units claimed with a value of \$810,729
55 gal	14,898 units claimed with a value of \$2,979,600
Repairs	\$7,179,193.49 claimed by 640 of these Class Members

**Part B Repairs/Parts/Specific Equipment Damage Claim Forms Submitted:**

The total number of timely claims submitted: **561**

Repairs \$6,717,848.93 claimed

**Correction Forms Submitted:**

The total number of timely claims submitted: **423**

3/2 gal	2,095 units claimed with a value of \$37,710
5 gal	5,714 units claimed with a value of \$154,278
55 gal	354 units claimed with a value of \$70,800

(Ex. 2, ¶ 26).

22. Thus, at present and prior to completion of the claim evaluation/determination process, the following are the approximate numbers and amounts of timely 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>

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

<u>Claim Category</u>	<u>Repair Claims/Total Claims</u>	<u>Amount</u>
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>

24. The Settlement Administrator has also received twenty-four (24) untimely claims filed seeking \$8,006 in Part A Purchase Price Relief and seeking \$25,290.42 in Part B Fund Relief. (Ex. 2, ¶ 27).

**Settlement Administration and Notice Costs to Date**

25. 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. (Ex. 2, ¶ 28).

**Conclusion**

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

27. Defendants' counsel has indicated that Defendants do not oppose Plaintiffs' Motion for Final Approval, and such Motion is in accord with the terms of the Settlement Agreement.

WHEREFORE, Plaintiffs respectfully request the Court enter the proposed Final Approval Order attached hereto as Exhibit 1 and for such other and further relief as is just and proper.

Date: September 29, 2020

Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFFS  
AND SETTLEMENT CLASS MEMBERS**

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that this document was filed electronically with the United States District Court for the Western District of Missouri, with notice of case activity to be generated and sent electronically by the Clerk of the Court to all designated persons this 29<sup>th</sup> day of September, 2020.

/s/ Dirk Hubbard