

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.)

**PLAINTIFFS’ UNOPPOSED MOTION FOR PRELIMINARY APPROVAL
OF PROPOSED 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”), with the non-opposition of Defendants CITGO Petroleum Corporation (“CITGO”), Orscheln Farm and Home LLC (“Orscheln”), Family Center of Harrisonville, Inc., and Blain Supply, Inc. d/b/a Farm and Fleet (sometimes referred to herein collectively as the “Defendants”) (each a “Party,” and together the “Parties”), and move the Court for an Order preliminary approving the Parties’ Settlement Agreement and Release filed herewith. In support of their Motion, Plaintiffs respectfully states as follows:

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 an estimated 215,000 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, is attached as Exhibit 1 to this Joint Motion:

Exhibit A – Preliminary Approval Order

Exhibit B – Final Approval Order and Judgment

Exhibit C – Claim Form and Instructions

Exhibit D – Mailed Class Notice with Purchase Data

Exhibit E – Long Form Class Notice

Exhibit F – Summary Class Notice

Exhibit G – Request for Correction Form

Exhibit H – Repairs/Parts/Specific Equipment Damage Claims Review Process
(See Settlement Agreement and Release, Exhibit 1).

2. Pursuant to that Settlement Agreement, Plaintiffs now respectfully request that the Court enter an Order, in substantially the form of the proposed Preliminary Approval Order attached hereto as Exhibit 1-A, ruling, in summary, as follows:

(a) Preliminarily approving the terms and conditions set forth in the Settlement Agreement, including all exhibits thereto, as fair, reasonable, and adequate.

(b) Conditionally certifying, for settlement purposes only, the following settlement class:

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.

- (c) Conditionally finding, for settlement purposes only and conditioned upon entry of the Final Approval Order, and the occurrence of the Effective Date (as defined in the attached Settlement Agreement), that the prerequisites for a class action under Rules 23(a) and (b)(3) of the Federal Rules of Civil Procedure have been satisfied in that: (a) the number of members of the Settlement Class is so numerous that joinder of all members thereof is impracticable; (b) there are questions of law and fact common to the Settlement Class; (c) the claims of the Plaintiffs are typical of the claims of the Settlement Class for purposes of settlement; (d) Plaintiffs have fairly

and adequately represented the interests of the Settlement Class and will continue to do so, and Plaintiffs have retained experienced counsel to represent them; (e) the questions of law and fact common to the members of the Settlement Class predominate over any questions affecting any individual members of the Settlement Class; and (f) a class action is superior to the other available methods for the fair and efficient adjudication of the controversy.

- (d) Appointing Tom Bender and Dirk Hubbard from the law firm Horn Aylward & Bandy, LLC; Gene Graham, William Carr, and Bryan White from the law firm of White, Graham, Buckley & Carr, LLC; Clayton Jones of the Clayton Jones Law Firm; Paul Lundberg of the Lundberg Law Firm in Sioux City, Iowa; and Jon D. Robinson, Shane M. Mendenhall, Joshua Rohrscheib, and Zachary T. Anderson of Bolen, Robinson & Ellis, LLP in Decatur, Illinois, as counsel for the Settlement Class (“Class Counsel”).
- (e) Designating named 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 as representatives of the Settlement Class.
- (f) Appointing RG/2 Claims Administration LLC to serve as the Settlement Administrator.
- (g) Setting a Final Fairness Hearing (as defined in the attached Settlement

Agreement) to be held before this Court to determine whether the terms and conditions forth in the Settlement Agreement are fair, reasonable, and adequate and should receive final approval.

- (h) Staying, pending the Final Fairness Hearing, all proceedings in this action, other than proceedings necessary to carry out or enforce the terms and conditions of the Settlement Agreement.
- (i) Approving the Mailed Class Notice with Purchase Data (attached hereto as Exhibit 1-D), Long Form Class Notice (attached as Exhibit 1-E), Summary Class Notice (attached hereto as Exhibit 1-F), Claim Form and Instructions (attached hereto as Exhibit 1-C), Request for Correction Form (attached hereto as Exhibit 1-G), Repair/Parts/Specific Equipment Damage Claims Review Process (attached hereto as Exhibit 1-H), and the notice and settlement administration process set forth in Settlement Agreement and exhibits thereto as well as Exhibit 2 (the “Notice Plan”) attached to this Motion, finding that it is the best practicable notice under the circumstances, it provides individual notice to all Settlement Class Members who can be identified through a reasonable effort, and it is reasonably calculated, under all the circumstances, to apprise the members of the Settlement Class of the pendency of this action, the terms of the settlement, and their right to object to the settlement or exclude themselves from the Settlement Class.
- (j) Approving the timetable and process for exclusion from the Settlement Class or objection to the Settlement by any Settlement Class Member.
- (k) Approving the timetable and process for Class Counsel to file their

application for reasonable attorneys' fees and expenses.

3. In further support of the adequacy and appropriateness of the Parties' Notice Plan, the Declaration of a representative of proposed Settlement Administrator RG/2 Claims Administration LLC is attached hereto as Exhibit 3.

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

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

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

Date: February 12, 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
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
bcarr@wagblaw.com
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
claytonjoneslaw.com

LUNDBERG LAW FIRM, P.L.C.

BY: /s/ Paul D. Lundberg
Paul D. Lundberg, IA Bar #W00003339
600 Fourth St., Suite 906
Sioux City, Iowa 51101
Tel: 712-234-3030
paul@lundberglawfirm.com

BOLEN ROBINSON & ELLIS, LLP

BY: /s/ Shane M. Mendenhall
Jon D. Robinson
Joshua Rohrscheib
Shane M. Mendenhall – ARDC No. 6297182
Zachary T. Anderson - ARDC No. 6329384
202 S. Franklin St., 2nd Floor
Decatur, IL 62523
Phone: 217-429-4296
Fax: 217-329-0034
Email: jrohrscheib@brelaw.com
Email: smendenhall@brelaw.com
Email: zanderson@brelaw.com

**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 12th day of February, 2020.

/s/ Dirk Hubbard