

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

JESSE YOAKUM, <i>et al.</i> ,)	
<i>on behalf of themselves and all others similarly</i>)	
<i>situated,</i>)	
)	
Plaintiffs,)	
v.)	No. 19-00718-CV-W-BP
)	
GENUINE PARTS COMPANY, <i>et al.</i> ,)	
)	
Defendants.)	

PRELIMINARY APPROVAL ORDER

The parties to this case have reached a class action settlement. The Court has considered the parties’ consent Motion for Preliminary Approval of the Proposed Amended Class Action Settlement, along with the accompanying materials, including the Settlement Agreement. (Doc. 227 and exhibits.)¹ The motion is **GRANTED** and the Court orders as follows:

1. The Court has carefully reviewed the Amended Class Settlement Agreement, as well as the files, records, and proceedings to date in the above-captioned action (the “Action”). The definitions in the Amended Class Settlement Agreement are hereby incorporated as though fully set forth in this Order, and capitalized terms shall have the meanings attributed to them in the Amended Class Settlement Agreement.

2. Plaintiffs and Defendants have agreed to settle the Action upon the terms and conditions set forth in the Amended Class Settlement Agreement, which has been filed with the

¹ There are several pending motions in this case which this ruling renders moot: Plaintiffs’ previous motion for class certification, (Doc. 218), along with two motions to seal and a motion for leave to file excess pages, (Docs. 218, 219, 220, 221). Additionally, Plaintiffs filed an earlier version of their Motion for Preliminary Approval, (Doc. 225), to which the Court requested several changes; those changes are reflected in the updated motion. Thus, all of these prior motions are **DENIED AS MOOT**.

Court. The Amended Class Settlement Agreement, including all exhibits thereto, is preliminarily approved as fair, reasonable and adequate.

3. Appointed as Class Representatives are the persons and entities identified in Appendix A to the Amended Class Settlement Agreement. The Class Representatives, by and through their counsel, have investigated the facts and law relating to the matters alleged in the Fifth Amended Class Action Complaint, including extensive legal research as to the sufficiency of the claims, and an evaluation of the risks associated with continued litigation, class certification, trial, and potential appeal.

4. The settlement was reached as a result of extensive arm-length negotiations between counsel for Plaintiffs, on the one hand, and counsel for Defendants, on the other hand, including, but not limited to, mediation through Nancy Kenner which concluded these negotiations with this proposed settlement.

5. The settlement confers substantial benefits upon the Settlement Class and does so without the costs, uncertainties, delays, and other risks associated with continued litigation, class certification, trial, and potential appeal.

6. The Court conditionally certifies, for settlement purposes only, the following settlement class:

“All persons and other entities who purchased NAPA *Quality* Tractor Hydraulic & Transmission Fluid, Warren 303 Tractor Fluid, Carquest 303 Tractor Hydraulic Fluid, Coastal 303 Tractor Fluid, and/or Lubriguard Tractor Hydraulic and Transmission Oil in the United States, its territories, and/or the District of Columbia at any point in time from July 26, 2014 to present, excluding any persons and/or entities who purchased for resale. Also excluded from the Settlement Class are

Defendants, including any parent, subsidiary, affiliate or controlled person of Defendants, Defendants' officers, directors, agents, employees and their immediate family members, as well as the judicial officers assigned to this litigation and members of their staffs and immediate families.”

7. The Court conditionally finds, for settlement purposes only and conditioned upon entry of the Judgment and Order of Dismissal as to Defendants and the occurrence of the Effective Date, 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) for purposes of settlement, 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) for purposes of settlement, a class action is superior to the other available methods for the fair and efficient adjudication of the controversy. The Court also concludes that, because Plaintiffs and Defendants are settling and not litigating, the Court need not consider manageability issues that might be presented by the trial of a nationwide class action involving the issues in this case. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 620 (1997). In making these findings, the Court has exercised its discretion in conditionally certifying, for settlement purposes only, the Settlement Class on a nationwide basis.

8. The Court appoints Tom Bender and Dirk Hubbard from the law firm Horn Aylward & Bandy, LLC in Kansas City, Missouri; Bryan White, Gene Graham, and Bill Carr from

the law firm White, Graham, Buckley & Carr, L.L.C. in Independence, Missouri; and Clayton Jones of the Clayton Jones Law Firm in Raymore, Missouri to serve as Class Counsel. For purposes of these settlement approval proceedings, the Court finds that Class Counsel are competent and capable of exercising their responsibilities as Class Counsel. The Court designates named Plaintiffs in Appendix A to the Amended Class Settlement Agreement as the representatives of the Settlement Class. The Court further appoints RG/2 Claims Administration LLC to serve as the Settlement Administrator.

9. The Court preliminarily approves the Plan of Allocation and the timing of distributions as set forth in the Settlement Agreement and Exhibits, subject to further Order of the Court.

10. The Final Fairness Hearing shall be held before this Court on February 9, 2023, at 10:00 a.m., to determine whether the Class Settlement Agreement is fair, reasonable, and adequate and should receive final approval. At that time, the Court will also rule on Class Counsel's application for an award of attorneys' fees and expenses (the "Fee Application"), payments of incentive awards to Settlement Class Representatives, and make any further Orders regarding the Plan of Allocation and timing of distribution to Settlement Class Members. Papers in support of final approval of the Amended Class Settlement Agreement and the Fee Application shall be filed with the Court according to the schedule set forth below. The Final Fairness Hearing may be postponed, adjourned, or continued by order of the Court without further notice to the Settlement Class. After the Final Fairness Hearing, the Court may enter a Judgment and Order of Dismissal as to Defendants in accordance with the Amended Class Settlement Agreement that will adjudicate the rights of the Settlement Class Members (as defined in the Amended Class Settlement Agreement) with respect to the claims being settled.

11. The Court approves, as to form and content, Summary Class Notice and Mailed Class Notice, attached as Exhibit D and Exhibit E, respectively, to the Class Settlement Agreement. The Court further approves the form and content of Exhibit C- Long Form Settlement Notice. The Court also approves the Claim Form attached as Exhibit F to the Class Settlement Agreement. The Court approves the Repair/Parts/Specific Equipment Damage Claims Review Process attached as Exhibit G to the Class Settlement Agreement. The Court approves the Settlement Administration and Notice Plan attached as Exhibit H to the Class Settlement Agreement.

12. The Court finds that the Long Form Notice, Summary Notice, and Mailed Class Notice are reasonable, that they constitute due, adequate, and sufficient notice to all persons entitled to receive notice, and that they meet the requirements of due process and Rule 23 of the Federal Rules of Civil Procedure. Specifically, the Court finds that the manner of dissemination of the Long Form Notice, Summary Notice, and Mailed Class Notice described in the Settlement Administration and Notice Plan and herein, complies with Rule 23(e) of the Federal Rules of Civil Procedure it is a reasonable manner of providing notice to those Settlement Class Members who would be bound by the Settlement. The Court also finds that the manner of dissemination of the Long Form Notice, Summary Notice, and Mailed Class Notice described in the Settlement Administration and Notice Plan and herein, complies with Rule 23(c)(2), as it is also the best practicable notice under the circumstances, provides individual notice to all Settlement Class Members who can be identified through a reasonable effort, and 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.

13. Settlement Class Members for whom contact information is available will receive a Mailed Class Notice by mail and, where possible, by email. All Settlement Class Members will have until the date identified herein to submit their Claim Forms, which is due, adequate, and sufficient time.

14. The Court Orders that notice shall be provided to the Settlement Class in compliance with the following procedure:

- (a) Within thirty (30) days after entry of this Order, August 26, 2022, Defendants shall provide to the Settlement Administrator, to the extent available, the full name and contact information as called for in the Amended Class Settlement Agreement, for each member of the Settlement Class for whom Defendants have electronically stored purchase information.
- (b) Within sixty (60) days after receipt of the information set forth in the immediately preceding paragraph, the Settlement Administrator shall mail by bulk mailing, Mailed Class Notices in substantially the form attached to the Amended Class Settlement Agreement as Exhibit E, to the last known mailing address of each member of the Settlement Class. For any initial direct mail notice that is returned as undeliverable within twenty-one (21) days after mailing, the Settlement Administrator shall attempt to locate a new address through an address search or any other reasonably available means. If a new address is located, the Settlement Administrator shall promptly re-mail the initial notice. If, after a second mailing, the notice is again returned, no further efforts need be taken by the Settlement Administrator to send the direct mail notice.
- (c) Within thirty (30) days after entry of this Order, but no later than the Notice Date, the Settlement Administrator shall (i) secure and maintain a Post Office Box or similar

mailing address for the receipt of Class Membership Forms, Repair/Parts/Specific Equipment Damage Claim Forms, Correction Forms, opt-out notices, and any other correspondence related to the Settlement; and (ii) establish a unique, case-specific email address for online receipt of Claim Forms, opt-out notices, and any other correspondence related to the Settlement.

- (d) Within thirty (30) days after entry of this Order, but no later than the Notice Date, the Settlement Administrator shall create and maintain an operating website that: (i) contains downloadable copies of the Preliminary Approval Order, Long Form Class Notice, the Summary Notice, the Mailed Class Notice, the Class Settlement Agreement, Claim Form – Part A and Part B, and, when filed, Class Counsels’ motions for attorneys’ fees and for incentive awards for the Plaintiffs; (ii) will post any subsequent notices approved by the Court; and (iii) allows members of the Settlement Class to submit Claim Forms. This website shall be referred to as the “Warren THF Settlement Website.”
- (e) Within thirty (30) days after entry of this Order, but no later than the Notice Date, the Claims Administrator shall set up a toll-free telephone number for receiving toll-free calls related to the Settlement. That telephone number shall be maintained until sixty (60) calendar days after the “Bar Date.”² After that time, and for a period of ninety (90) calendar days thereafter, either a person or a recording will advise any caller to the toll-free telephone number that the deadline for submitting claims has passed and the details regarding the Settlement may be reviewed on the Warren THF Settlement Website.

² As detailed throughout this Order and in the Settlement Agreement, “Bar Date” refers to a date 150 days after the Notice Date, before which (1) all claim forms must be received, (2) all objections must be filed, and (3) all requests by a class member to exclude him- or her- self from the class must be mailed.

- (f) On or before August 26, 2022, the publication and other dissemination of notice shall proceed as set forth in the Settlement Administration and Notice Plan, subject to reasonable modification, as necessary, by agreement of the Parties and with the approval of the Settlement Administrator. August 26, 2022, shall be considered the “Notice Date.”
- (g) The Settlement Administrator shall mail a Claim Form to each person and/or entity that makes such request.
- (h) Claim Forms shall also be available through the Settlement Website.

15. Each Settlement Class Member who wishes to be excluded from the Settlement Class and follows the procedures set forth in this Paragraph shall be excluded.

- (a) Putative class members wishing to opt out of the Class Settlement must send to the Settlement Administrator on or before the Bar Date by fax, U.S. Mail, e-mail, or electronically via the Warren THF Settlement Website a written request to be excluded from the Class Settlement. The request to be excluded from the Settlement Class must include the member’s name, address, and telephone number and provide a clear statement communicating that he, she, or it elects to be excluded from the Settlement Class, does not wish to be a Settlement Class Member, and elects to be excluded from any judgment entered pursuant to the Class Settlement.
- (b) Any request for exclusion or opt out sent to the Settlement Administrator by United States mail must be postmarked on or before the Bar Date. The date of the postmark on the mailing envelope shall be the exclusive means used to determine whether a request for exclusion sent by United States mail has been timely submitted.

(c) Members of the Settlement Class who fail to submit a valid and timely request for exclusion on or before the date specified in this Order shall be bound by all terms of this Class Settlement Agreement and the Judgment and Order of Dismissal as to Defendants. All persons or entities who properly elect to opt out of the Settlement shall not be Settlement Class Members and shall relinquish their rights to benefits with respect to the Class Settlement Agreement, should it be approved.

16. Any potential member of the Settlement Class who has not timely submitted a written request for exclusion from the Settlement Class, and thus is a Settlement Class Member, may ask the Court to deny approval by filing an objection. Settlement Class Members cannot ask the Court to order a larger settlement; the Court can only approve or deny the settlement. If the Court denies approval, no settlement payments will be sent out and the lawsuit will continue as to Defendants. If any Settlement Class Member wants that to happen, they must object in accordance with the following procedure:

- (a) Any Settlement Class Member who intends to object to the fairness, reasonableness, or adequacy of the Class Settlement must, no later than the Bar Date: (i) file a written objection with the Court either by mailing them to Office of the Clerk of Court, United States District Court for the Western District of Missouri, 400 E. 9th Street, Kansas City, Missouri, 64106, or by filing them in person at any location of the United States District Court for the Western District of Missouri, or by electronic filing; and (ii) serve a copy of the same on counsel for the Parties at the addresses set forth in this Class Settlement Agreement.
- (b) In the written objection, the Settlement Class Member must list the Warren THF Products purchase information required on the Claim Form, state the Settlement Class

Member's full name or business name as applicable, current address, telephone number, the reasons for the objection, whether he, she, or it intends to appear at the fairness hearing on his or her own behalf or through counsel, and a list of all cases in which the objector or objector's counsel has objected to a class-action settlement in the last five (5) years, including the disposition of those objection(s), and a description of any sanction imposed by any court, master, or tribunal in connection with such objection, and a copy of any order(s) or judgment(s) relating to those sanctions. Any documents supporting the objection must also be attached to the written objection, and if the objecting Settlement Class Member intends to call witnesses at the Final Fairness Hearing, any such witness must be identified, including by providing each such witness's name, address and telephone number. Notwithstanding the foregoing, the Parties to this Settlement each reserve the right to object to the calling of any witness at the Final Fairness Hearing. Objections must be signed by the Settlement Class Member or by his, her, or its counsel. Any Settlement Class Member who fails to file and serve timely written objections in the manner specified herein, shall be deemed to have waived all objections and shall be foreclosed from making any objection (whether by appeal or otherwise) to the Settlement.

- (c) Any Settlement Class Member who has timely filed a written objection, as provided for herein, may appear at the Final Fairness Hearing, either in person or through an attorney hired at the Class Member's own expense, to object to the fairness, reasonableness, or adequacy of the Settlement. A Settlement Class Member, or his, her, or its attorney, intending to make an appearance at the Fairness Hearing must: (i) file a notice of appearance with the Court no later than ten (10) business days prior to the

Final Fairness Hearing, or as the Court may otherwise direct; and (ii) serve a copy of such notice of appearance on counsel for all Parties.

17. Class Counsel shall file their application for attorneys' fees ten (10) business days before the Bar Date.

18. Papers in support of final approval of the Amended Class Settlement Agreement, and in response to any objections to the Amended Class Settlement Agreement or Class Counsel's fee application, shall be filed with the Court ten (10) business days in advance of the date of the Final Fairness Hearing.

19. The Bar Date shall be one hundred fifty (150) calendar days after the Notice Date. The Bar Date may be extended by written agreement of the parties through Class Counsel and Defendants' Counsel with approval of the Court and notice to the Settlement Class through an update to the Warren THF Settlement Website administered by the Settlement Administrator.

20. These dates of performance may be extended by order of the Court, for good cause shown, without further notice to the Settlement Class. Settlement Class Members may check the Warren THF Settlement Website regularly for updates and further details regarding extensions of these dates of performance. Settlement Class Members may also access the Court docket in this case through the Court's Public Access to Court Electronic Records (PACER) system at <https://www.mow.uscourts.gov/>, or by visiting the office of the Clerk of the Court for the United States District Court for the Western District of Missouri, 400 E. 9th Street, Kansas City, Missouri, 64106, between 9:00 a.m. and 4:00 p.m., Monday through Friday, excluding Court holidays.

21. If for any reason a Judgment and Order of Dismissal as to Defendants as contemplated in the Amended Class Settlement Agreement is not entered, or the Effective Date does not occur for any reason, the following shall apply:

- (a) All orders and findings entered in connection with the Amended Class Settlement Agreement shall become null and void and have no force and effect whatsoever, shall not be used or referred to for any purposes whatsoever, and shall not be admissible or discoverable in this or any other proceeding;
- (b) The conditional certification of the Settlement Class pursuant to this Order shall be vacated automatically, and the Action shall proceed as though the Settlement Class had never been certified pursuant to the Amended Class Settlement Agreement and such findings had never been made;
- (c) All of the Court's prior Orders having nothing whatsoever to do with the certification of the Settlement Class shall, subject to this Order, remain in force and effect, subject to extensions or modifications of deadlines as appropriate under the circumstances and in the Court's discretion; and
- (d) Nothing in this Order or pertaining to the Amended Class Settlement Agreement, including any of the documents or statements generated or received pursuant to the claims administration process, shall be used as evidence in any further proceeding in this case or in any other action, proceedings, or matter, whether civil, criminal, or administrative.

22. In aid of the Court's jurisdiction to review, approve, and implement the proposed Amended Class Settlement Agreement, all claims asserted by the Class against Defendants are stayed pending further order of the Court, and Plaintiffs and all Settlement Class Members, are preliminarily enjoined from directly, derivatively, in a representative capacity, or in any other capacity, commencing or prosecuting any action against any of the Released Parties in any court or

tribunal asserting any of the Released Claims (as that term is defined in the Amended Class Settlement Agreement).

23. RG/2 Claims Administration LLC is hereby appointed as Settlement Administrator for this settlement and shall perform all of the duties of the Settlement Administrator set forth in the Amended Class Settlement Agreement.

24. Nothing contained in this Order is, or may be construed as, a presumption, concession or admission by or against Defendants, or any Released Party (as that term is defined in the Amended Class Settlement Agreement) of any alleged or asserted default, liability or wrongdoing as to any facts or claims alleged or asserted in the Action, or in any actions or proceedings, whether civil, criminal or administrative.

25. Class Counsel and Defendants' Counsel are hereby authorized to use all reasonable procedures in connection with approval and administration of the Settlement that are not materially inconsistent with this Order or the Amended Class Settlement Agreement, including making, without further approval of the Court, minor changes to the form or content of the Long Form Notice, Summary Notice, Mailed Class Notice, Claim Form, and other exhibits that they jointly agree are reasonable or necessary.

26. If the Amended Class Settlement Agreement is terminated in accordance with its provisions, or is not approved by the Court or any appellate court, then the Amended Class Settlement Agreement and all proceedings had in connection therewith shall be vacated, and shall be null and void, except insofar as expressly provided to the contrary in the Amended Class Settlement Agreement, and without prejudice to the status quo ante rights of Plaintiffs, Defendants, and members of the Class.

27. If the Amended Class Settlement Agreement is terminated or is ultimately not approved, the Court will modify any existing scheduling order to ensure that the parties will have sufficient time to prepare for the resumption of litigation, including but not limited to, class-certification and dispositive motion practice, and preparation for trial.

IT IS SO ORDERED.

Date: July 26, 2022

/s/ Beth Phillips
BETH PHILLIPS, CHIEF JUDGE
UNITED STATES DISTRICT COURT