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

JESSE YOAKUM, *et al.*, *on behalf of themselves and all others similarly situated,*	)	
Plaintiffs,	)	
v.	)	Case No. 4:19-cv-00718-BP
GENUINE PARTS COMPANY, *et al.,*	)	
Defendants.	)	

PLAINTIFFS' SUGGESTIONS IN SUPPORT OF MOTION FOR FINAL APPROVAL OF CLASS SETTLEMENT AGREEMENT

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COME NOW Plaintiffs, by and through their attorneys of record, and submit the following Suggestions in Support of Plaintiffs' Motion for Final Approval of Class Settlement Agreement.

I. INTRODUCTION

On July 26, 2022, this Court granted preliminary approval of the Class Settlement Agreement between Plaintiffs and Defendants. (Doc. 229). The Class Settlement Agreement makes substantial monetary relief available Settlement Class Members 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 (collectively referred to as "Warren THF") during the Class Period.

The Class Representatives and Class Counsel now respectfully request the Court's entry of its Final Approval Order of the class action settlement set forth in the Class Settlement Agreement, including all exhibits thereto, 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 July 26, 2022. (Doc. 229). Notice has now been carried out and the claims period ended on February 20, 2023. There have been no objections to the Class Settlement Agreement, and only one (1) Class Member timely opted out. The Class Settlement Agreement is fair, reasonable and adequate. The Fairness Hearing is set for March 9, 2023. Accordingly, Plaintiffs respectfully request the Court grant final approval to the Class Settlement Agreement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

With regard to the five Warren THF products at issue in this case, Plaintiffs allege (1) that the Warren THF did not meet the equipment manufacturers' specifications or provide the performance benefits listed on the product labels, (2) that the Warren THF was made with inappropriate ingredients, and (3) that use of the Warren THF in equipment causes damage to various parts of the equipment.

Plaintiffs allege that the Defendants' conduct in connection with the manufacture and sale of the Warren THF violated state consumer laws and constituted breaches of warranty, negligent misrepresentations, negligence, and unjust enrichment. Defendants vigorously deny all these claims of wrongdoing.

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 Fifth Amended 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. Litigation, Discovery, and Mediation History

On July 26, 2019, Plaintiff Jesse Yoakum initiated this class action lawsuit against Defendants. In subsequent complaints, Plaintiffs Raymond Rushley, Tyler Clenin, Robert Brandes, Paul Deshon, and Mike Defries were joined as additional Plaintiffs. Plaintiffs' Fifth Amended Class Action Complaint includes the following Counts:

- Count I – Breach of Express Warranty
- Count II – Breach of Implied Warranty of Merchantability
- Count III – Breach of Implied Warranty of Fitness for Particular Purpose
- Count VI – Fraud/Misrepresentation

- Count V – Negligent Misrepresentation
- Count VI – Unjust Enrichment
- Count VII – Negligence
- Count VIII – Missouri Merchandising Practice Act Violations
- Count IX – Kansas Consumer Protection Act Violations

Prior to the Parties engaging in the settlement discussions that have culminated in the entry of this Settlement Agreement, Class Counsel devoted substantial time in pursuit of the claims. Plaintiffs' Counsel conducted extensive discovery for many months. Thousands of pages of documents were produced by Defendants and reviewed and analyzed by Plaintiffs and their experts. Plaintiffs have taken multiple depositions of Defendants' witnesses, and Defendants started depositions of the Class Representatives. Defendants and their experts inspected many pieces of equipment owned by the Class Representatives; Plaintiffs' and Defendants' experts issued reports; and, the Parties started expert depositions. In April 2022, Plaintiffs filed their motion for class certification and briefing in support.

The Parties engaged in extensive and arm's length negotiations trying to resolve the issues and claims asserted by Plaintiffs in the class action complaint. On April 27 and 28, 2022, the Parties engaged in two days of mediation and reached an agreement to settle all claims in this litigation. On May 12, 2022, the Parties executed a term sheet memorializing their agreement, and further detailed negotiations of the full Settlement Agreement took place over the following month, culminating in the signing of the Settlement Agreement and then the Amended Settlement Agreement attached as Exhibit 1 to Plaintiffs' Motion and for which this Court's Final Approval Order is now sought.

Although Plaintiffs believe they will prevail on class certification and at trial, Defendants continue to assert that they have violated no laws and that they have meritorious defenses to class certification and liability. In light of these positions and the risks of litigation for both sides, the

Settlement Agreement provides substantial benefits to Settlement Class Members and represents a reasonable resolution of the claims on a class-wide basis. The Class has shown strong support for and no opposition to the Class Settlement, and this Court should grant its final approval.

C. The Proposed Settlement

1. The Proposed Settlement Class

Plaintiffs now seek final approval of the Parties' proposed Class Action Settlement. The Settlement Class under the Parties' Settlement Agreement consists of the following 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.
>
> The Settlement Class also excludes 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.

To represent the Settlement Class for purposes of the Class Settlement, the Court has appointed the 26 persons and/or entities identified as Representative Plaintiffs as set forth in Appendix A to the Class Settlement Agreement. The Court has also appointed Plaintiffs' Counsel as Counsel for the Settlement Class.

2. Settlement Payments

Under the Class Settlement, Defendants will establish a Class Settlement Fund of $10,850,000.00. In addition to funding settlement administration and notice costs, service awards, and Class Counsel's requested expenses and fees, the Class Settlement Fund should be sufficient

to provide each Settlement Class Member with a significant payment of damages based on the qualifying units of Warren THF Products purchased by each Settlement Class Member and any repairs, parts, or specific equipment damage suffered. Pursuant to the Settlement Agreement's terms, the claims for units purchased and repairs/damages are in the process of being evaluated, with final determinations expected to be made in the next 30-60 days. Based on the total claims and the initial claim review/evaluation, Class Counsel anticipate that Class Members will receive close to 50% of their valid bucket and repair/damages claims.

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 notice and administration costs, fees, and expenses were estimated to be $402,386.00, and the Settlement Administrator has indicated that it will be able to complete administration within that budgeted amount.

4. Class Representatives' Service Awards; Attorneys' Fees and Expenses

The Class Settlement Fund also pays the amounts the Court awards as service awards for the Class Representative Plaintiffs, reimbursement of expenses to Class Counsel, and attorneys' fees to Class Counsel. Class Counsel has filed a separate Application for the Court's approval of: (a) incentive awards to each of the 26 Class Representative Plaintiffs totaling $95,000, (b) $133,729.79 in reimbursement of case expenses, and (c) a 33% contingency fee to Class Counsel in the amount of $3,530,000.00.

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 afford 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 1 to the Motion for Final Approval of Proposed Class Action Settlement, the Class was notified of the settlement by direct mail, newspaper and other print media publication, and digital publication.

Direct notice was mailed to Settlement Class Members whose contact information was maintained by Defendants. 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.

A summary notice of the Settlement was also published in in the following publications, which combined, exceed 1.25 million distributions:

- **Progressive Farmer**
- **Farm & Ranch Living**
- **Farm Journal**
- **Successful Farming**

A media notice campaign was also implemented that included Facebook and Google Ads that allowed potential Class Members to click on the ad and be linked to the settlement website. Overall, this digital media campaign produced over 5 million impressions online.

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.warrentractorhydraulicfluidsettlement.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 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 Service 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); *see also Petrovic v. Amoco Oil Co.*, 200 F.3d 1140, 1148 (8th Cir. 1999) ("A strong public policy favors [settlement] agreements, and courts should approach them with a presumption in their favor."). This preference is particularly strong "in class actions and other complex cases where substantial judicial resources can be conserved by avoiding formal litigation." *See, e.g., Cohn v. Nelson*, 375 F. Supp. 2d 844, 852 (E.D. Mo. 2005)(quoting *In re Gen. Motors Corp. Pick-Up Truck Fuel Tank Prods. Liab. Litig.*, 55 F.3d 768, 784 (3d Cir. 1995)).

"[S]ettlement agreements are presumptively valid." *Little Rock School Distr.*, 921 F.2d 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).

There is "an initial presumption of fairness when a proposed class settlement, which was negotiated at arm's length by counsel for the class, is presented for court approval." Newberg on Class Actions, § 11.25, at 38-39 (4th ed.); *see also Marshall v. Nat'l Football League*, 787 F.3d 502, 508 (8th Cir. 2015)("A settlement agreement is presumptively valid.'")(quoting *In re Uponor, Inc., F1807 Plumbing Fitting Prods. Liab. Litig.*, 716 F.3d 1057, 1063 (8th Cir. 2013)). In this regard, the judgment of Class Counsel in entering into a proposed class settlement is an important consideration. *Stephens v. U.S. Airways Grp., Inc.*, 102 F. Supp. 3d 222, 229 (D.D.C. 2015)(crediting the judgment of class counsel, who was experienced in litigation and settling complex cases including class actions, that the settlement was fair, reasonable, and adequate); *Bellows v. NCO Fin. Sys., Inc.*, 3:07-CV_01413-W-AJB, 2008 WL 5458986, *8 (S.D. Cal. Dec. 10, 2008)("[I]t is the considered judgment of experienced counsel that this settlement is fair, reasonable, and adequate settlement of the litigation, which should be given great weight.").

Rule 23(e)(2) sets forth the following factors for the Court to consider in evaluating the fairness of a proposed class settlement, which include whether:

> (A) the class representatives and class counsel have adequately represented the class;
>
> (B) the proposal was negotiated at arms's length;

(C) the relief provided for the class is adequate, taking into account: (i) the costs, risks, and delay of trial and appeal; (ii) the effectiveness of any proposed method of distributing relief to the class, including the method of processing class-member claims; (iii) the terms of any proposed award of attorneys' fees, including timing of payment; and (iv) any agreement required to be identified under Rule 23(e)(3); and

(D) the proposal treats class members equitably relative to each other.

Fed. R. Civ. P. 23(e)(2).

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. ("Wireless Fee Litig.")*, 396 F.3d 922, 934 (8th Cir. 2005). A settlement meets the standard for final approval if 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:

i. The merits of the plaintiffs' case, weighed against the terms of the settlement;

ii. The defendant's financial condition;

iii. The complexity and expense of further litigation; and

iv. 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 v. Trickey*, 840 F.2d 604, 607)(8th Cir. 1988).

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. <u>The Settlement Meets the Standard for Final Approval</u>

1. Class Representatives and Class Counsel Have Adequately Represented the Class

The Class Representatives and Class Counsel have vigorously and adequately represented the Class since the start of this litigation. The Class Representatives have actively participated in the litigation, providing allegations for the Complaint and Amended Complaints, gathering information for informal and formal discovery, and working with Class Counsel in the settlement approval process. Class Counsel have likewise diligently pursued the litigation by investigating the factual and legal claims, drafting a comprehensive Complaint and Amended Complaints,

pursuing formal discovery, reviewing thousands of documents, taking depositions, identifying and retaining experts, and in negotiating and administering the settlement.

When certifying a class, Rule 23 requires a court to appoint class counsel that will fairly and adequately represent the class members. Fed. R. Civ. P. 23(g)(1)(B). In making this determination, the Court must consider, among other things, counsel's (i) work in identifying or investigating potential claims; (ii) experience in handling class actions or other complex litigation and the types of claims asserted in the case; (iii) knowledge of the applicable law; and (iv) resources committed to representing the class. Fed. R. Civ. P. 23(g)(1)(A)(i-iv).

Class Counsel in this case satisfy the criteria for having fairly and adequately represented the Class Members. They identified the potential claims, investigated them, and pursued them for a considerable period of time. Class Counsel are experienced in handling class action litigation and have specific experience in the area of tractor hydraulic fluid product litigation such as the present case. They have knowledge and expertise of the applicable law, which they have demonstrated in this case, and they have committed significant time and resources to represent the Class. As a result of Class Counsel's efforts, the Settlement Agreement provides substantial monetary relief to the Class. As such, Class Representatives and Class Counsel have more than adequately represented the Settlement Class.

2. The Settlement Resulted from Arms' Length Negotiation

"The fairness of the negotiating process is to be examined in the light of the experience of counsel, the vigor with which the case was prosecuted, and [any] concern or collusion that may have marred the negotiations themselves." *Ashley v. Reg'l Transp. Dis. & Amalgamated Transit Union Div. 1001 Pension Fund. Tr.*, No. 05-cv-01567, 2008 WL 384579, at *5 (D. Colo. Feb. 11, 2008)(internal quotation omitted). "When a settlement is reached by experienced counsel after

negotiations in an adversarial setting, there is an initial presumption that the settlement is fair and reasonable." *Marcus v. Kansas Dept. of Revenue*, 209 F. Supp. 2d 1179, 1182 (D. Kan. 2002).

The Settlement Agreement before the Court is also the product of intensive, arm's-length negotiations. The negotiations included several mediations over a lengthy period of time. Negotiations 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 complex 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 . . . .") (internal citation omitted).

3. 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." *Wireless Fee Litig.*, 396 F.3d at 933. Although Plaintiffs believe they would have prevailed against the Defendants 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.

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 against the Defendants 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. Thousands of pages of documents were produced, and many depositions were taken. Class Counsel further performed extensive research and analysis of the legal principles applicable to the claims against the Defendants and class certification of those claims, as well as to the potential defenses to those claims and certification.

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 Class 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 with the Defendants is fair, reasonable and adequate. The Class Representatives have also approved the Settlement. Class Members have also strongly supported, and there has been no objection or opposition to the Class Settlement.

The class-wide financial relief is a significant victory for Settlement Class Members. The Class Settlement provides substantial monetary relief to Class Members, directly addressing the fundamental issues underlying the litigation. The Class Settlement Fund will provide each Class Member a payment based on the units of qualifying Warren THF Products each purchased as well as any repairs, parts, or specific equipment damage suffered by that Settlement Class Member. As noted further below, no Class Member has objected to the Settlement or his/her/its award, and only one (1) Class Member has timely opted out of the Settlement. The substantial monetary benefits available to Class Members is a strong factor in support of the Class Settlement. *See, e.g., Van Horn,* 840 F.2d at 607 (weighing "the terms of the settlement" against "the strength of the plaintiff's case" in affirming settlement approval").

In return for the consideration to be provided under the Settlement, the Defendants receive a reasonable release of liability from the Settlement Class Members related to the purchase and use of the Warren THF Products. The release is not overly broad and only releases Settlement Class Members' claims related to the purchase and use of the Warren 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.

4. *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). *See also In re BankAmerica Corp.*, 210 F.R.D. at 702 (holding "[a]lthough 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.").

5. The Costs, Risks, and Delay of Trial and Appeal; 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. The Class Settlement Agreement strikes an appropriate balance between Plaintiffs' "likelihood of success on the merits" and "the amount and form of the relief offered in the settlement." *See Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n. 14 (1981); *Van Horn*, 840 F.2d at 607 ("the complexity and expense of further litigation" is an important factor to be considered in the settlement process).

"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 a relatively 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.")

6. The Effectiveness of Administration

The Court appointed RG/2 Claims Administration LLC – an experienced class action notice provider and administrator – to serve as the Settlement Administrator in this case. (Doc. 229, ¶ 23). The Settlement Administrator formulated and implemented a robust Notice Plan that

included direct mailed and emailed notice, as well as notice published in agriculture journals, in general digital media, and on the settlement website. This Notice Plan is more than sufficient in a class action such as the present case.

The Notice clearly informed Settlement Class Members of their rights to opt out, to object, and to file a claim, as well as the mechanisms and deadlines for doing so, including all the information required by Rule 23. Pursuant to the Settlement Agreement, the Settlement Administrator and Class Counsel will be responsible for reviewing all claim forms to determine whether a claim is approved. The Settlement Administrator will notify a claimant if his/her/its claim is denied, and the claimant will have 21 days to respond and contest that denial. The claim review and evaluation process for all claims is expected to take 30-60 days.

7. The Experience and Views of Counsel

A court evaluating a proposed settlement "should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation; a presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arm's length negotiations between experienced, capable counsel after meaningful discovery." *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. at 700 (quoting Fed. Judicial Ctr., *Manual for Complex Litig*. § 30.42 (3d ed. 1997)); *see also, Sanderson v. Unilever Supply Chain, Inc.*, No. 10-cv-00775-FJG, 2011 WL 5822413, a *3-4 (W.D. Mo. Nov. 16, 2011)(crediting experienced class counsel's belief that settlement was fair, reasonable, and adequate).

The Class Representatives and Class Counsel strongly believe the Class Settlement Agreement is fair, reasonable, adequate, and in the best interests of the Settlement Class Members. Class Counsel have substantial experience serving as counsel in numerous complex actions, including other large tractor hydraulic fluid class actions. *See Little Rock Sch. Dist. v. N. Little*

Rock Sch. Dist., 451 F.3d 528, 537 (8th Cir. 2006)("Judges should not substitute their own judgement as to optimal settlement terms for the judgment of the litigations and their counsel.")(quoting *Armstrong v. Bd. of Sch. Dirs. of Milwaukee*, 616 F.2d 305, 315 (7th Cir. 1980)). Based on their experience, Class Counsel believe the Settlement provides exceptional results for the Class Members while avoiding the uncertainties of continued and protracted litigation. The overwhelmingly positive response from the Settlement Class supports Class Counsel's initial view that the Settlement would be well received, and further supports final approval.

8. The Proposed Fees, Expenses, and Service Awards

As set forth in Plaintiffs' Application for Service Awards and for Attorneys' Fees and Expenses ("Application"), and the Suggestions in Support, Class Counsel have requested an award of attorneys' fees of 33% of the Settlement Fund, costs and expenses in the amount of $133,729.79, and Class Representative Service Awards ranging from $3,000.00 to $7,500.00 for each of the Settlement Class Representatives.

As explained in Plaintiffs' Application and Suggestions in Support, the requested attorneys' fee award is reasonable and supported by the results achieved, the value of the Class Settlement, the quality of Class Counsel's representation, awards in comparable cases, the contingent nature of the representation, the response of the Class, and Class Counsel's time and expenses incurred. Award of one-third of the settlement fund are typical in class action suits in this Circuit and surrounding District Courts. *See, e.g., Huyer*, 849 F.3d at 398-99 (finding the district court did not abuse its discretion in awarding attorneys' fees that were one-third of the total settlement fund); *In re Life Time Fitness, Inc. Tel. Consumer Prot. Act (TCPA) Litig.*, 847 F.3d 619, 622-624 (8th Cir. 2017)(affirming the district court's fee award of 28% of the settlement fund); *In re U.S. Bancorp. Litig.*, 291 F.3d 1035, 1038 (8th Cir. 2002)(finding the district court did

not abuse its discretion in awarding fees that were 36% of the total settlement fund); *see also Bishop, et al. v. DeLaval Inc.* 5:19-cv-06129-SRF (W.D. Mo. June 7, 2022) at Doc. 268 (approving fee of one-third of the settlement fund) and Doc. 271 (issuing final approval); *In re Syngenta AG MIR 162 Corn Litig.*, 357 F.Sup. 3d 1094, 1110 (D. Kan. 2018)(approving fee of one-third of the settlement fund).

Class Counsel's request for an award of costs and expenses from the Settlement Fund in the amount of $133,729.79 is also reasonable. It is appropriate and customary in class litigation for Class Counsel to be reimbursed for out-of-pocket litigation expenses. *See* Joseph M. McLaughlin, McLaughlin on Class Actions, § 6:24 (8th ed. 2011). Class Counsel kept costs at a reasonable level, and the requested expenses were reasonably and necessarily incurred for items such as depositions, expert fees, mediation fees, and other customary expenditures.

Class Counsel's request for Service Awards in amounts ranging from $3,000.00 to $7.500.00 to each of the 26 Class Representatives is reasonable and appropriate given the important work the Class Representatives performed in the case, including time-consuming gathering of facts and documents, assisting Class Counsel with allegations, responding to formal discovery, providing depositions, making equipment available for inspection, and assisting Class Counsel regarding the Settlement approval and implementation process. Courts routinely approve service awards to compensate class representatives for the services they provide and the risks they incur on behalf of class members, and the requested service awards here are significantly lower than other awards in the Eighth Circuit. *See Caliguiri v. Symantec Corp.*, 855 F.3d 860, 878 (8th Cir. 2017)("[C]ourts in this circuit regularly grant service awards of $10,000 or greater.").

The requests for service awards, attorneys' fees, and expenses are fully addressed in Plaintiffs' Application and Suggestions in Support.

9. Settlement Class Members Are Treated Equitably

The Class Settlement Agreement treats Settlement Class Members equitably relative to each other. All Settlement Class Members are eligible to seek monetary reimbursement for fluid purchased and for repairs/damages to equipment. These are consistent remedies appropriate for all Settlement Class Members. "A nationwide settlement need not account for differences in state laws." *Rawa*, 934 F.3d at 869 (citing *Keil*, 862 F.3d at 700); *see also Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 907 (8th Cir. 2018).

10. The Amount of Opposition to the Settlement

The reaction of Class Members to the Settlement has been positive, with only 1 timely opt out 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."); *McClean 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.")

IV. CONCLUSION

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

Date: February 23, 2023

Respectfully Submitted,

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**ATTORNEYS FOR PLAINTIFFS
AND 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 23rd day of February, 2023.

/s/ Dirk Hubbard