

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

IN RE: SMITTY’S/CAM2 303 TRACTOR)	
HYDRAULIC FLUID MARKETING, SALES)	MDL No. 2936
PRACTICES, AND PRODUCTS LIABILITY)	
LITIGATION)	Master Case No. 4:20-MD-02936-SRB

ORDER

Before the Court is Defendants Smitty’s Supply, Inc. (“Smitty’s”) and CAM2 International, LLC (“CAM2”) (collectively, “Defendants”) Motion for Summary Judgment on the Claims of Plaintiff Joe Jackson. ([Doc. #840.](#)) For the reasons discussed below, the motion is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

This MDL arises from Defendant’s manufacture, sale, and marketing of tractor hydraulic fluid (“THF”), a multifunctional lubricant designed to offer certain protective benefits when used in tractors and heavy equipment as a hydraulic fluid, transmission fluid, and gear oil. Plaintiffs represent a putative class of consumers who purchased at least one of four allegedly defective products at issue in this case: Smitty’s Super S Super Trac 303 Tractor Hydraulic Fluid (“Smitty’s Super Trac 303”), Smitty’s Super S 303 Tractor Hydraulic Fluid (“Smitty’s Super S 303”), Cam2’s Promax 303 Tractor Hydraulic Oil (“Cam 2 Promax 303”), and Cam2’s 303 Tractor Hydraulic Oil (“Cam2 303”) (collectively, the “303 THF Products”). Defendants Smitty’s and CAM2 manufactured the 303 THF Products, which were sold nationwide by multiple retailers under various label names.

A. Plaintiff Joe Jackson

Plaintiff Joe Jackson (“Jackson”) is an Alabama resident who purchased Smitty’s 303 THF Products in Alabama.

Jackson has purchased tractor hydraulic fluid from various manufacturers since the 1990s. Jackson cannot recall exactly when he began purchasing Smitty's 303 THF Products. From 2000–2010, Jackson does not recall the brand of tractor hydraulic fluid he purchased, but remembers he predominantly purchased a brand that came in a yellow bucket, which he believes to be either Smitty's Super S 303 or Super Trac 303. On his class membership form, Jackson represented that he purchased 70 five-gallon buckets of Smitty's 303 THF Products between 2014 and 2019. Jackson produced a photo of 34 buckets of tractor hydraulic fluid, some with the visible labels indicating they are Smitty's 303 THF Products.

Jackson primarily purchased tractor hydraulic fluid from Tractor Supply stores. Often Jackson would purchase tractor hydraulic fluid at a discount price due to pallet damage or, if Tractor Supply only had one brand in stock, he would purchase that brand. Tractor Supply began carrying Defendants' 303 THF Products exclusively sometime between late 2013 and early 2014. In his deposition, Jackson testified that he was unaware Tractor Supply didn't sell Smitty's 303 THF Products between 2010 and late 2013, and that he did not remember Tractor Supply ever switching the brands of tractor hydraulic fluid it sold.

Jackson testified that he read the labels on Smitty's 303 THF Products, but would not re-read them before subsequent purchases because he assumed that the same brand of oil would have the same label. Jackson recognized a Smitty's Super S 303 label and purchased products bearing that label. Jackson was shown a Smitty's Super Trac 303 label at his deposition, and he testified that the "label didn't look the same" and that he didn't "remember any green" being on the label. ([Doc. #841-1, p. 59.](#)) The following are photos of the Smitty's Super S 303 label:



(Doc. #841-4.) The following are photos of the Smitty's Super Trac 303 label:



303 TRACTOR HYDRAULIC FLUID

SUPER TRAC® 303 Tractor Hydraulic Fluid has been field tested and is suitable as a replacement fluid for the following manufacturers where a tractor hydraulic fluid of this quality is recommended:

• Allis Chalmers	• Ford Tractor	• Kubota
• Allison	• International Harvester	• Massey Ferguson
• Caterpillar	• JI Case/David Brown	• Oliver
• Deutz	• John Deere 303	• White

SUPER TRAC® 303 Tractor Hydraulic Fluid will provide excellent results in the areas of:

• Anti-Wear Properties	• PTO Clutch Performance
• Brake Chatter	• Rust Protection
• Extreme Pressure Properties	• Water Sensitivity
• Foam Suppression	

WARNING! AVOID SKIN CONTACT WITH USED OIL! Used oils have caused skin cancer in laboratory animals when repeatedly applied and left in place between applications. In case of skin contact, promptly wash affected area with soap and water very thoroughly. Oil soiled clothing should be cleaned before reuse.

DON'T POLLUTE! Conserve resources. Take used oil to a collection center.

Misapplication may cause severe performance problems. 303 Tractor Hydraulic Fluid has not been recommended by any OEM for model years later than 1974. For equipment built after 1974 requiring multi-functional fluid, use Super S Premium Universal Tractor Hydraulic Fluid (J20C).

WARNING
AVISO

Children can fall into bucket and drown. Keep children away from bucket with even a small amount of liquid.

Niños pueden caer adentro de el balde y ahogarse. Mantenga los niños alejados de los baldes, aunque solamente tengan un poco de liquido.

(Doc. #841-5.) Jackson testified that he did not remember reading the “Warning” or

“Misapplication” language on either label.

Jackson used Smitty's 303 THF Products in the following equipment: a 1985 Ford 6000 Tractor, a 1990 Mack Dump Truck, a 1990 Mini Motor Grader, a 1996 Ford Pack Garbage Truck, a 2000 Beaver Wood Chipper, a 2000 JCB Excavator, a 2000 Case 580 Backhoe, a 2002 Mahindra 2310 Tractor, a 2004 Bobcat S300 Skid Steer, a 2004 Bobcat T300 Skid Steer, a 2006 Bobcat T300 Skid Steer, a 2007 Brush Cutter, and a 2016 Mahindra 2555 Tractor.

Jackson's standard practice is to change equipment's filter and fluid every 250 working hours. The manuals for the 2004 Bobcat S300 Skid Steer, 2004 Bobcat T300 Skid Steer, and 2006 Bobcat T300 Skid Steers state the hydraulic fluid should be topped-off every 50 hours and replaced once a year. The manual for the 2000 Case 580 Backhoe states the hydraulic fluid should be changed every 1,000 hours or every year, whichever comes first.

In 2010, Jackson experienced a leak with the hydraulic fitting in his 2007 Brush Cutter. In 2016, Jackson began experiencing leaks in his 2000 Case 580 Backhoe, 2000 JCB Excavator,¹ 2002 Mahindra 2310 Tractor, 2004 Bobcat S300 Skid Steer, 2004 Bobcat T300 Skid Steer, and 2006 Bobcat T300 Skid Steer. Jackson testified that he researched the cause of the leaks online but was "stumped on what was wrong." ([Doc. #841-1, p. 26.](#)) Jackson sold the 2004 Bobcat T300 Skid Steer and the 2000 Case 580 Backhoe before the instant suit was initiated. After the instant suit was filed, Jackson sold the 1985 Ford 6000 Tractor, the 2002 Mahindra 2310 Tractor, and the 2016 Mahindra 2555 Tractor. Jackson stopped using Smitty's 303 THF Products in late 2020 or early 2021.

B. The Instant Action

Plaintiffs initiated suit against Defendants in multiple federal district courts where the 303 THF products were sold. On February 11, 2020, Defendants requested all pending actions

¹ Jackson also testified that he started experiencing hydraulic fluid leaks in his 2000 JCB Excavator in 2014.

be consolidated and transferred pursuant to [28 U.S.C. § 1407](#). On June 2, 2020, the J.P.M.L. consolidated and transferred the eight then-pending actions to the Western District of Missouri.² *See In re: Smitty's/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices & Prod. Liab. Litig.*, No. 2936, [2020 WL 2848377](#), at *1 (J.M.P.L. June 2, 2020). Following the creation of this MDL, Plaintiffs filed another lawsuit, *Feldkamp v. Smitty's Supply, Inc.*, No. 20-cv-02177, in the U.S. District Court for the Central District of Illinois, which was subsequently transferred to this Court. Pursuant to this Court's order dated August 3, 2020, Plaintiffs were permitted to file a Consolidated Amended Complaint that would serve to supersede all prior pleadings in the individual cases that were consolidated. Further, this Court's August 3, 2020 Order permitted direct joinder of new claims through the Consolidated Amended Complaint.

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint ("FACC"). On October 25, 2021, Defendants filed a motion to dismiss the FACC, which the Court granted in part and denied in part on March 9, 2022. *See* ([Doc. #451](#).) On April 21, 2023, Plaintiffs filed a Fifth Amended Consolidated Complaint ("5ACC").

Jackson asserts the following claims against Defendants: (I) negligence; (V) unjust enrichment; (VI) fraudulent misrepresentation; and (VII) negligent misrepresentation. On April 21, 2023, Defendants filed the instant motion for summary judgment. Plaintiffs oppose the motion. The parties' arguments are addressed below.

² The pending actions consolidated before the undersigned are as follows: *Buford v. Smitty's Supply Inc.*, No. 19-cv-00082 (E. D. Ark.); *Fosdick v. Smitty's Supply Inc.*, No. 19-cv-01850 (N. D. Iowa); *Blackmore v. Smitty's Supply Inc.*, No. 19-cv-04052 (N.D. Iowa); *Zornes v. Smitty's Supply, Inc.*, No. 19-cv-0257 (D. Kan.); *Wurth v. Smitty's Supply Inc.*, No. 19-cv-00092 (W.D. Ky.); *Mabie v. Smitty's Supply, Inc.*, No. 19-cv-3008 (S.D. Tx.); *Klingenberg v. Smitty's Supply, Inc.*, No. 19-cv-2684 (D. Minn.); and *Graves v. Smitty's Supply, Inc.*, No. 19-cv-5089 (W.D. Mo.).

II. LEGAL STANDARD

Under Rule 56, summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party has the burden of identifying “the basis for its motion, and must identify those portions of the record which it believes demonstrate the absence of a genuine issue of material fact.” *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (cleaned up). If the moving party makes this showing, “the nonmovant must respond by submitting evidentiary materials that set out specific facts showing that there is a genuine issue for trial.” *Id.* (quotation marks omitted). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Id.* (quotation marks omitted).

III. DISCUSSION

Defendants argue that they are entitled to summary judgment because (1) Jackson did not read or rely on any alleged misrepresentations or omissions on Smitty’s 303 THF Products’ labels; and (2) Jackson’s property damage claims fail because Jackson cannot show causation.³ Each argument is addressed separately below.

³ Defendants argue that they are entitled to summary judgment on Jackson’s claim of property damage to his 2004 Bobcat T300 Skid Steer because Jacked failed to mitigate his damages. However, the Court finds summary judgment is not warranted on this point as this is a question for the jury. *See CSX Transp., Inc. v. Miller*, 46 So.3d 434, 454 (Ala. 2010) (“Generally, the question whether an employee acted reasonably to mitigate his or her damages is a question for the jury.”).

Defendants argue that they are entitled to summary judgment on Jackson’s claim for property damages to his 1975 Ford 3000 Tractor and 1990 Blade Mini Motor Grader. In Jackson’s opposition brief, he states that he has “already corrected several of his specific equipment damage claims, including clarifying that he is not making any damage claims regarding the 1975 Ford 3000 Tractor or the Mini Motor Grader.” (Doc. #951, p. 50 n.1.) As Jackson does not bring claims for property damage for the aforementioned equipment, the Court will not address these arguments.

Defendants also argue they are entitled to summary judgment on Jackson’s claims for flush damages on the equipment he has already sold and no longer owns. In Jackson’s opposition brief, he states that he “does not assert any individual claim seeking flush damages for the equipment he has sold.” (Doc. #951, p. 54.) As Jackson does not bring claim for flush damages to the equipment he has sold, the Court will not address this argument.

A. Reliance

Defendants argue they are entitled to summary judgment on Counts I, V, VI, and VII because Jackson cannot show that “he actually relied on at least one false statement made on Defendants’ 303 THF product labels.” ([Doc. #841, p. 15.](#)) Jackson disagrees, arguing that genuine disputes of material fact preclude summary judgment. The Court will address Counts I, V, and VI–VII separately below.

1. Counts VI and VII

Defendants argue that, because Jackson did not read Smitty’s 303 THF Products’ labels before purchasing, Jackson cannot prove the reliance elements of his misrepresentation claims. Jackson argues “Jackson read and relied upon false statements contained on the Supertrac 303 brand label and the Super S brand 303 label upon his first purchase of those brands.” ([Doc. #951, p. 44.](#))

To prevail on a fraudulent misrepresentation claim under Alabama law, a plaintiff must show “(1) a false representation (2) of material existing fact (3) reasonably relied upon by the plaintiffs (4) who suffered damage as a proximate consequence of the misrepresentation.” *Saia Food Distributors & Club, Inc. v. SecurityLink from Ameritech, Inc.*, [902 So.2d 46, 56](#) (Ala. 2004) (citation and quotations omitted). Similarly, to prove negligent misrepresentation, a plaintiff must show “1) a misrepresentation of material fact, 2) made willingly to deceive, recklessly, without knowledge, or mistakenly, 3) which was justifiably relied on by the plaintiff under the circumstances, and 4) which caused damage as a proximate consequence.” *Foremost Ins. Co. v. Parham*, [693 So.2d 409, 422](#) (Ala. 1997) (citations omitted).

Here, the record shows that Jackson began purchasing tractor hydraulic fluid from Tractor Supply sometime between 2000-2010. Jackson testified he read the label of the tractor hydraulic fluid the first time he bought it, but did not read it again if he recognized the product as

the same one he had been purchasing. Jackson testified that he purchased Smitty's 303 THF from 2010 to 2013:

- Q. Do you recall the brand name you were purchasing from 2010 to 2013?
- A: It would have been Super S or 303.
- Q: When you say Super S or 303 –
- A: Uh-huh.
- Q: – are you referring to Super S or Super Trac 303?
- A: Right. Yes.
- Q: Okay. And I ask that because you understand that there are other manufacturers besides Smitty's who put out other tractor hydraulic fluid that says 303 on it. Do you understand that?
- A: Yes.
- Q: Okay. All right. But from 2010 to 2013, your recollection is you were purchasing the two 303 tractor hydraulic fluids that you're making claims about in this lawsuit, Super Trac and Super S, from Tractor Supply, correct?
- A. Correct.

([Doc. #841-1, p. 8.](#)) Although Jackson believes he purchased Smitty's 303 THF Products since 2010, Tractor Supply began selling Smitty's 303 THF Products sometime between 2013 and 2014. Jackson testified that he does not remember Tractor Supply Co. ever switching the brands it sold:

- Q: And so do you recall Tractor Supply ever switching brands of tractor hydraulic fluid that it was selling?
- A. No.
- Q. Okay.
- A. I don't remember.
- Q. So, really, from the first time you ever went into Tractor Supply in the store – not the warehouse – in the store to buy tractor hydraulic fluid, anytime thereafter, you wouldn't have read the label? . . .
- A. No. There would be no reason for it.

([Doc. #841-1, pp. 61–62.](#)) Because Jackson testified that he only read the label of the tractor hydraulic fluid he purchased when he first began purchasing between 2000 and 2010, and

because Jackson could not have purchased Smitty's 303 THF Products between 2000 and 2010, the record shows that Jackson has not read Smitty's 303 THF Products' labels and therefore could not have relied on them.

Jackson also argues that "the representations on which Jackson relied are among those at issue in this case." ([Doc. #951, p. 44.](#)) Specifically, Jackson testified that when he purchases tractor hydraulic fluid he relies on the label's list of compatible equipment manufacturers. ([Doc. #951-2, p. 11.](#)) Even if the tractor hydraulic fluid that Jackson purchased prior to Tractor Supply selling Smitty's 303 THF Products, Jackson has not put forth any evidence that he relied on Smitty's 303 THF Products' labels. Because Jackson cannot show that Defendants made the alleged misrepresentations that he relied on, the Court finds that summary judgment is warranted on Counts VI and VII.⁴

1. Counts I and V

Defendants argue that Counts I and V are premised, "at least in part, on allegations that he and others were misled by Smitty's 303 THF Product labels" such that they "require evidence that Jackson relied on the label when making his purchase decision." ([Doc. #941, p. 16.](#)) Jackson disagrees, arguing that "reliance is not an element of Plaintiff's negligence or unjust enrichment claim[.]" ([Doc. #951, p. 46.](#))

The Court agrees with Jackson. Despite Defendants' assertion that they "recite, at length, Alabama law demonstrating that reliance is an element of Jackson's negligence [and] unjust enrichment" claims, Defendants' opening and reply briefs contain no citations support their argument. Defendants have presented no authority showing that reliance is an element necessary

⁴ As the Court finds that summary judgment is warranted on Jackson's Counts VI and VII, the Court need not address the parties' other arguments as to Counts VI and VII.

to prevail on claims of negligence and unjust enrichment. As Defendants have presented no law showing they are entitled to summary judgment, their argument is rejected.

Defendants also argue that Counts I and V should be dismissed insofar as they rely on allegations that Defendants failed to warn Jackson of Smitty's 303 THF Products' defects. Defendants present no legal authority for their argument as to Count V. However, as to Count I, the Court agrees with Defendants. As discussed above, Jackson did not read Smitty's 303 THF Products' labels. "[A] plaintiff who does not read an allegedly inadequate warning cannot maintain a negligent-failure-to-adequately-warn action[.]" *E.R. Squibbs & Sons, Inc. v. Cox*, [477 So.2d 963, 971](#) (Ala. 1985). Accordingly, the Court finds that summary judgment on Jackson's Count I is warranted insofar as it is premised on Defendant's failure to adequately warn of defects.

B. Causation

Defendants argue they are entitled to summary judgment on Counts I and V–VII because Jackson cannot show "that Defendants' 303 THF products actually caused the alleged damage to his equipment" as "he actually experienced hydraulic leaks and other issues on some of the equipment earlier, including long before he could have bought Defendants' 303 THF products." ([Doc. #841, p. 19.](#)) Jackson disagrees, arguing that "Jackson's evidence is that he used Defendants' 303 THF in several pieces of equipment that suffered damage of the type caused by Defendants' 303 THF, based on expert opinions and Defendants' admissions." ([Doc. #951, p. 49.](#))

Here, the Court finds that Jackson has shown evidence from which a reasonable factfinder could infer evidence such that summary judgment is inappropriate. Jackson has produced evidence creating a genuine dispute of material fact as to whether Smitty's 303 THF Products cause the type of damage Jackson's equipment exhibited. For example:

Q: And this document that was sent by Ms. Vernon, at Smitty's, to Tractor Supply says that Super S 303, when used, equipment may suffer from damage in the spiral gear in the final drive, excessive wear in the planetaries, improper and poor shifting, seal leakage, and improper operation of the wet brakes. Right?

A. Correct . . .

Q. That document . . . says that Super S 303 could cause additional problems including starting the equipment, oil starvation, high pump leakage, deposits, sludging, and thickening. Right? . . .

A. That's correct.

([Doc. #951-18, p. 9.](#)) Thus, and for the reasons stated in Jackson's brief, the Court rejects Defendant's argument.

Defendants also argue that Jackson cannot show causation as to claims for damage to equipment he has sold and no longer owns because "his own actions have made it impossible for him to prove, or Defendants to rebut, the essential element of causation." ([Doc. #841, p. 21.](#)) Jackson disagrees, arguing that "most of the equipment had been repaired long before it was sold[.]" ([Doc. #951, p. 52.](#))

Where "the defendants will be able to mount an adequate defense even in the absence of the missing evidence, . . . summary judgments [should not be granted] on the basis of spoliation[.]" *Vesta Fire Ins. Corp. v. Miliam & Co. Const. Inc.*, [901 So.2d 84, 99](#) (Ala. 2004). Beyond bare assertions that Defendants cannot rebut causation, Defendants do not show that they are unable to mount an adequate defense to Jackson's claims. Jackson still bears the burden of showing causation at trial, and Defendants may seek an adverse inference instruction. *See id.* ("[I]f an evidentiary basis for an adverse-interest charge premised on a finding by the jury of a *wrongful* destruction of evidence by the plaintiffs is established at trial, an instruction could be formulated related to the inference the jury could draw adverse to the plaintiffs' theory of causation."). Accordingly, Defendants' argument is rejected.

IV. CONCLUSION

Accordingly, Defendants Partial Motion for Summary Judgment on the Claims of Plaintiff Joe Jackson ([Doc. #840](#)) is GRANTED IN PART and DENIED IN PART.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: July 21, 2023