

**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 Defendant Smitty’s Supply, Inc. (“Smitty’s”) Partial Motion for Summary Judgment on the Claims of Arno Graves, Ronald Nash, and George Bollin (collectively, “Plaintiffs”). ([Doc. #806](#).) 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. The *Hornbeck* Action and Settlement

On May 25, 2018, Shawn Hornbeck and Monte Burgess brought a class action lawsuit against Smitty’s and Tractor Supply Co., asserting claims arising from the purchase and use of

Smitty's Super Trac 303 in Missouri since May 25, 2013 ("the *Hornbeck* Action"). In 2019, the Hornbeck Action was resolved via a settlement agreement ("the *Hornbeck* Settlement"), in which the plaintiffs agreed to release all claims against Smitty's and Tractor Supply Co., in exchange for \$1,700,000. The Court granted approval of the *Hornbeck* Settlement on March 27, 2020. The *Hornbeck* Settlement defined the settlement class as "all persons and other entities who purchased Super Trac 303 . . . in Missouri at any point in time from May 25, 2013 to present."¹

B. Plaintiffs Arno Graves, Ronald Nash, and George Bollin

Plaintiffs Arno Graves ("Graves"), Ronald Nash ("Nash"), and George Bollin ("Bollin") (collectively, "Plaintiffs"), each recovered funds under the *Hornbeck* Settlement.

Graves is a resident of Oklahoma, and a member of the Missouri and Oklahoma classes in the instant action. Graves purchased Smitty's Super Trac 303, CAM 2 Promax 303, and CAM2 303 in both Missouri and Oklahoma. Graves also purchased and used other brands of THF fluid. From the *Hornbeck* Settlement, Graves claimed \$6,817.86 and recovered \$3,553.18 for damages to his equipment, which includes a 1975 John Deere 2030 Tractor, 1984 Case 480E Backhoe, and 1973 International 1066 Tractor. In the instant action, Graves is claiming a total of \$26,612.21 of damages for the same equipment, which excludes the money he received from the *Hornbeck* Settlement.

Nash is a resident of Kansas, and a member of the Missouri and Oklahoma classes in the instant action. Nash purchased Smitty's Super Trac 303 in Missouri, CAM2 Promax 303 in Missouri and Oklahoma, and CAM2 303 in Oklahoma. Nash purchased approximately 10

¹ Defendants cite to a settlement agreement between Hornbeck and Burgess, among other named plaintiffs, and CITGO Petroleum Corporation, Orscheln Farm and Home LLC, Family Center of Harrisonville, Inc. and Blain Supply, Inc. d/b/a Farm and Fleet. ([Doc. #807-1](#).) However, based on Defendants' briefing, the Court believes Defendants intended to cite to the *Hornbeck* settlement. *Hornbeck et al. v. Tractor Supply Co.*, 18-cv-0523-NKL (W.D. Mo.) ([Doc. #127-1](#)).

buckets of Super Trac 303 in July 2013 in Joplin, Missouri. From the *Hornbeck* Settlement, Nash recovered \$793.20 for damages to his Allis Chalmers D15 Backhoe. In the instant action, Nash is seeking \$1008.80 for damages to the same equipment, which excludes the money received from the *Hornbeck* Settlement. Additionally, Nash is seeking \$750 for damages in the instant action to his 1968 International 3514 Backhoe.

Bollin is a resident of Kansas, and a member of the Kansas class. Bollin purchased Smitty's Super Trac 303 and CAM2 Promax 303 in Missouri, and Smitty's Super Trac 303 and Super S 303 in Kansas. Bollin also purchased and used other brands of THF fluids. From the *Hornbeck* Settlement, Bollin claimed \$11,549 and recovered \$6,989.40 for damages to his 1964 Caterpillar D8H Dozer. In the instant action, Bollin is seeking \$322.77 for damages to the same equipment, which excludes the money he received from the *Hornbeck* Settlement. Additionally, Bollin is seeking \$24,091.98 for damages to six other items of equipment.

C. 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 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

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.).

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](#).)³ On April 21, 2023, Plaintiffs filed a Fifth Amended Consolidated Complaint ("5ACC").⁴ On July 14, 2023, the Court granted CAM2's motion for summary judgment and dismissed Bollin's claims against CAM2. *See* ([Doc. #985](#).) On July 18, 2023, the Court granted Defendants' motion for summary judgment in part, and dismissed Bollin's, as to the Kansas Class only, Counts II–IV, as they relate to purchases before May 24, 2015; and Count XVIII, as it relates to purchases made before May 24, 2026.

Graves, Nash, and Bollin assert the following claims on behalf of themselves and their respective classes: Count I, negligence; Count II, breach of express warranty; Count III, breach of implied warranty of merchantability; Count IV, breach of implied warranty of fitness for a particular purpose; Count V, unjust enrichment, Count VI, fraudulent misrepresentation; Count VII, negligent misrepresentation. Graves and Nash also assert Count XXII, for violation of the Missouri Merchandising Practices Act, [Mo. Rev. Stat. § 407.010](#). Bollin also asserts Count XVIII, Kansas Consumer Protection Act, [K.S.A. § 50-623](#); Count XLVI, Kansas Product

³ Relevant to this motion, the Court dismissed Bollin's Counts I, II, III, IV, VI, VII, and XVIII, to the extent he seeks property damages on those claims.

⁴ The instant motion was filed before the 5ACC. Although an amended complaint supersedes the original complaint, the Court finds that the amended complaint did not affect the substance of this motion and treats the instant motion for summary judgment as a motion for summary judgment on the 5ACC. *See Cartier v. Wells Fargo Bank, N.A.*, [547 Fed. Appx. 800, 804](#) (8th Cir. 2013) (finding a district court did not abuse its discretion in treating a motion to dismiss an original complaint as a motion to dismiss an amended complaint).

Liability Act (“KPLA”)–Design Defect, [K.S.A. § 60-3301](#),⁵ and Count XLVII, KPLA–Failure to Warn, [K.S.A. § 60-3301](#).

On March 17, 2023, Smitty’s filed the instant motion for summary judgment on all claims “for equipment damages that were subject to the release under the *Hornbeck* Settlement Agreement, and therefore barred by *res judicata*,” pursuant to [Federal Rule of Civil Procedure 56](#). ([Doc. #807, p. 1](#).) Plaintiffs oppose the motion.

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

Smitty’s argues that it is entitled to summary judgment on Plaintiff’s claims for equipment damages subject to the *Hornbeck* Settlement agreement because they were released pursuant to the *Hornbeck* Settlement Agreement.⁶ Plaintiffs disagree.⁷

⁵ In the 5ACC, Plaintiffs refer to “Kansas Product Liability Act,” which the Court construes as a claim brought under [K.S.A. § 60-3301](#), *et seq.*

⁶ Smitty’s states that Plaintiffs’ “*non*-property damage claims against Smitty’s are not subject to the instant motion” but notes that it “does not waive” any arguments “that it is entitled to summary judgment on their non-property damage claims on separate grounds.” ([Doc. #807, p. 4](#)) (emphasis in original).

“Under the doctrine of res judicata, a judgment on the merits in a prior suit bars a second suit involving the same parties or their privies based on the same cause of action.” *Parklane Hosiery Co. v. Shore*, [439 U.S. 322, 325 n.5](#) (1979). “When the parties to a previous lawsuit agree to dismiss a claim with prejudice, such a dismissal constitutes a ‘final judgment on the merits’ for purposes of res judicata.” *Larken, Inc. v. Wray*, [189 F.3d 729, 732](#) (8th Cir. 1999).

Pursuant to the *Hornbeck* Settlement Agreement, Plaintiffs agreed to release “all claims . . . that are asserted, or could have been asserted in [the *Hornbeck* Action], arising out of or relating to the purchase of Super Trac 303 Tractor Hydraulic Fluid in Missouri during the Class Period[,]” which is defined as May 25, 2013 to July 30, 2019. *Hornbeck et al. v. Tractor Supply Co.*, 18-cv-0523-NKL (W.D. Mo.) ([Doc. #127-1, pp. 15–16](#)). The Court agrees with Smitty’s that Graves, Nash, and Bollin may not bring claims for property damage stemming from purchases of Super Trac 303 in Missouri from May 25, 2013 to July 30, 2019. For the sake of brevity, and for the purposes of this Order only, the Court will refer to Super Trac 303 purchased in Missouri from May 25, 2013 to July 30, 2019 as “*Hornbeck* Super Trac 303.” The Court will address Nash’s arguments, and then Graves and Bollin’s argument separately.

As an initial matter, the Court finds that Smitty’s has shown summary judgment is warranted as to Nash. Nash asserts property damage claims against Smitty’s.⁸ The record shows that Nash purchased 10 buckets of *Hornbeck* Super Trac 303. As Nash recovered under the *Hornbeck* Settlement, he cannot assert claims arising out of or relating to his *Hornbeck* Super Trac 303. Nash has presented no evidence he purchased any additional Smitty’s 303 THF Product. Thus, any property damage claim Nash asserts against Smitty’s is necessarily for

⁷ Plaintiffs argue that Smitty’s did not properly plead release. However, the Court disagrees for the reasons stated in Smitty’s brief. See ([Doc. #863, pp. 364–65.](#))

⁸ The parties agree with Nash is not seeking purchase price damages related to Nash’s purchases of Super Trac 303 in June 2013.

damage caused by his *Hornbeck* Super Trac 303, which were previously released by the *Hornbeck* Settlement. It is irrelevant that Nash failed to assert such property damages in the *Hornbeck* Action. See *In re Gen. Am. Life Ins. Co. Sales Pracs. Litig.*, [357 F.3d 800, 804](#) (8th Cir. 2004) (“There is no doubt that a person, as a matter of contract, may release, in exchange for consideration she deems adequate, claims existing at the time but not known to her.”).

Accordingly, the Court finds that Smitty’s is entitled to summary judgment on Nash’s property damage claims.

Smitty’s argues that Graves and Bollin cannot distinguish between the damage caused by the *Hornbeck* Super Trac 303 and the damage caused by the other 303 THF Products, meaning that all property damages are related to the *Hornbeck* Super Trac 303 and therefore barred.

Plaintiffs argue that “Defendants’ conduct does not need to be the sole or exclusive cause of Plaintiffs’ injury, only a cause or contributing cause.” ([Doc. #885, p. 38.](#))

Smitty’s presents no case law in support of its position, and the Court agrees with Plaintiffs:

[T]he presence of multiple contributing causes will not preclude a finding of liability against a defendant who has provided a legal cause of a plaintiff’s injury. . . . Juries are capable of finding the facts related to causation and of applying in an appropriate manner the liability-limiting principles of law set forth in the court’s instructions.

Villa v. Burlington Northern and Santa Fe Railway Co., [397 F.3d 1041, 1046–47](#) (8th Cir. 2005) (citation and quotations omitted). The Court agrees that Smitty’s cannot be held liable for damage insofar as it arose from or relates to *Hornbeck* Super Trac 303. However, Smitty’s does not argue that its non-*Hornbeck* 303 THF Products were not a contributing cause to Graves and Bollin’s injuries.

Ultimately, the Court finds that genuine questions of material fact exist as to what extent Graves and Bollin’s damage was caused by the Super Trac 303 subject to the *Hornbeck*

Settlement Agreement. Graves and Bollin each purchased 5 buckets of Super Trac 303 that were subject to release in the *Hornbeck* Settlement, and both state they are not asserting claims related to these purchases.⁹ Additionally, both Graves and Bollin purchased Super Trac 303 (and, in the case of Bollin, Super S 303) outside of Missouri, as well as CAM2 303 THF Products.¹⁰ Both argue that, as a result of the purchases of Super Trac 303 outside of Missouri and other 303 THF Products, they suffered damage to equipment. Smitty's has not show that the damage claimed by Graves and Bollin arose from or is related to the *Hornbeck* Super Trac 303 as a matter of law. Accordingly, Smitty's argument is rejected as to Graves and Bollin.

IV. CONCLUSION

Accordingly, Smitty's Partial Motion for Summary Judgment on the Claims of Arno Graves, Ronald Nash, and George Bollin ([Doc. #806](#)) is GRANTED IN PART and DENIED IN PART. Smitty's motion is GRANTED insofar as Missouri and Oklahoma Plaintiff Ronald Nash's claims for property damage against Smitty's are DISMISSED, and DENIED in all other respects.

IT IS SO ORDERED.

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

Dated: July 25, 2023

⁹ Bollin's *Hornbeck* Settlement claim form states that he used the Super Trac 303 subject to release in the *Hornbeck* Settlement in his 1964 Caterpillar D8H Dozer. In the instant suit, Bollin claims damage to the 1964 Caterpillar D8H Dozer, as well as six other pieces of equipment.

¹⁰ The record shows that Graves also purchased 2 buckets of Super Trac 303 in September 2016 in Miami, Oklahoma; and that Bollin purchased 62 buckets of Super Trac 303 and Super S 303 from Spring 2014 to May 2019 at various stores in Lansing and Atchison, Kansas.