

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

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| 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 Tim Sullivan. ([Doc. #842.](#)) 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 Tim Sullivan

Plaintiff Tim Sullivan (“Sullivan”) is a Kentucky resident who purchased the 303 THF Products in Kentucky. Sullivan originally filed suit against Defendants in *Wurth v. Smitty’s Supply Inc.*, No. 19-cv-00092 (W.D. Ky.), which was later consolidated into this MDL.

Sullivan alleges he purchased 40 buckets of Smitty’s Super S 303 and Super Trac 303 between October 2014 and May 2019. In discovery, Sullivan produced a document from Tractor Supply Company documenting a March 2018 purchase of a five-gallon bucket of 303 THF Product.

In purchasing Smitty’s 303 THF Products, Sullivan testified he read the back of the label and looked for what manufacturers the product listed as compatible. ([Doc. #941-1, p. 26.](#))

Smitty’s Super Trac 303’s used the following labels during the class period (“the Super Trac 303 Label”):



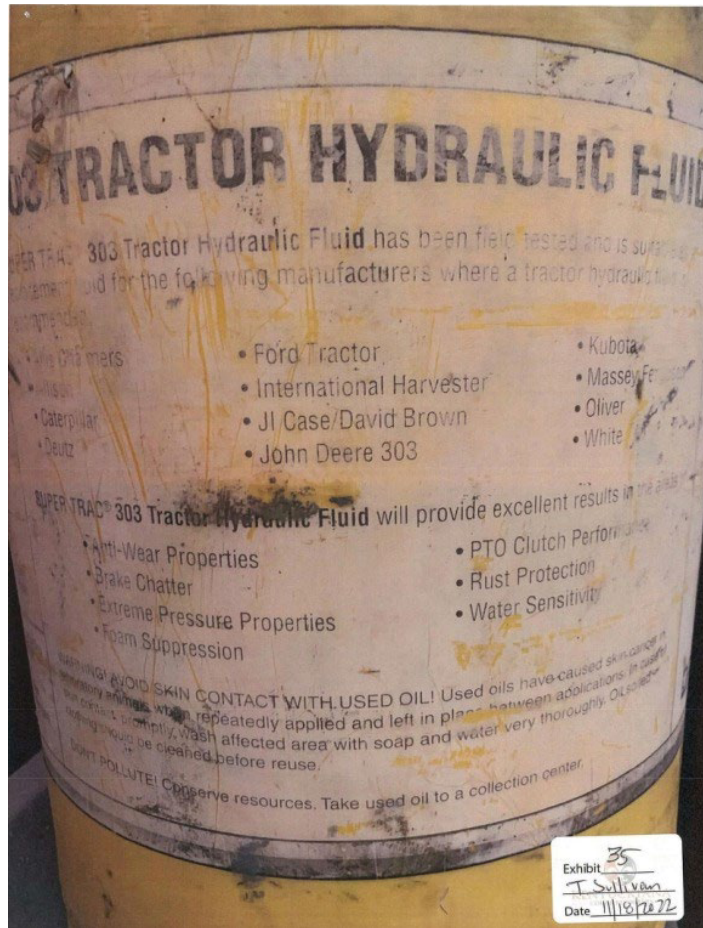
([Doc. #843-6, pp. 3–4.](#))

Smitty’s Super S 303 used the following labels during the class period (“the Super S 303 Label”):



(Doc. #843-7, pp. 3–4.)

Sullivan testified that many 303 products had the same labels, and that he “read the labels on each to compare.” (Doc. #843-1, p. 16.) During his deposition, Sullivan was shown the following photo of a Smitty’s Super Trac 303 bucket and testified that he relied upon the label in purchasing the 303 THF Products (“Exhibit 35”):



([Doc. #843-13, p. 2.](#)) Exhibit 35 was discontinued in 2012, prior to the class period, which began in 2013. Exhibit 35 omits the following language that now appears on the Smitty's Super Trac 303 Label ("the Super Trac 303 Disclaimer"):

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).

([Doc. #843-6, p. 4](#)) (emphasis in original).

Sullivan was shown the Super Trac 303 Label, and said he thinks he purchased a product under that label, but can't say for certain and that "a sticker looks a lot different than a bucket."

([Doc. #843-1, p. 70.](#)) Sullivan testified that he read the labels of all 303 products offered for sale at the stores he visited and that the "[t]he picture on the front" of the labels changed, but he believes "the back never did." ([Doc. #843-1, pp. 15–16.](#)) He testified that, when the label was switched from Exhibit 35 to the Super Trac 303 Label, he wouldn't have read the new label because "it was a yellow bucket, same as all the rest of them." ([Doc. #843-1, p. 71.](#)) Sullivan testified that the Super Trac 303 Label was not something he relied on in making his purchasing decisions.

Sullivan seeks to recover repair costs for the following equipment: a 1980s John Deere 4430 Tractor; a 1985 Ford 8200 Tractor; a 1991 Case 580 Super K Backhoe; a 1995 John Deere 4440 Tractor; a 2002-2003 Caterpillar 120 Track Hoe; and a 35 John Deere Track Hoe (collectively, "the Equipment"). Sullivan testified that he doesn't know the exact dates he owned the Equipment, and can't say for sure whether he used Smitty's 303 THF Products in each of them. Sullivan has sold all his Equipment sometime between late 2015 and 2018, except for the 35 John Deere Track Hoe.

In Sullivan's damages claim form, he lists the following repairs:

| Equipment | Repair | When Repair Conducted |
|-------------------------------------|--|-----------------------|
| 2002-2003 Caterpillar 120 Track Hoe | Hydraulic Pump Repair | 2014-2015 |
| 2002-2003 Caterpillar 120 Track Hoe | Ten (10) Cylinder Repairs | 2014-2018 |
| 1980s John Deere 4430 Tractor | Clutch Pack Replacement | 2015-2016 |
| 1995 John Deere 4440 Tractor | Minor Repairs, including seals, steering, cylinder, valves, and other hydraulics | 2014-2018 |
| 1985 Ford 8200 Tractor | Major Repairs, including seals, steering cylinders, hydraulic pump, and other hydraulics | 2014-2015 |
| 1991 Case 580 Super K Backhoe | Hydraulic Pump Replacement | 2015 |

([Doc. #843-9, pp. 3–7.](#)) Sullivan has no documentation relating to a replacement of his 2002-2003 Caterpillar 120 Track Hoe’s hydraulic pump. Sullivan has no documentation relating to any repairs of his 1980s John Deere 4430 Tractor; 1985 Ford 8200 Tractor; or 1995 John Deere 4440 Tractor.

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 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.¹ *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

¹ 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.).

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, 2022.² *See* ([Doc. #451](#).) On April 21, 2023, Plaintiffs filed a Fifth Amended Consolidated Complaint ("5ACC"). On July 14, 2023, the Court granted CAM2's motion for summary judgment and dismissed Sullivan's claims against CAM2. ([Doc. #985](#).)

Sullivan asserts the following claims against Smitty's: Count I, negligence; Count V, unjust enrichment; Count VI, fraudulent misrepresentation; and Count 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.

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

² Relevant to this motion, the Court dismissed Count XIV, the Kentucky Plaintiffs' claim under the Kentucky Consumer Protection Act, Ky. Rev. Stat. § 367.170.

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 Sullivan’s Count I, negligence; Count V, unjust enrichment; Count VI, fraudulent misrepresentation; and Count VII negligent misrepresentation, and claim for property damages.³ The parties’ arguments are addressed separately below.

A. Reliance

Smitty’s argues it is entitled to summary judgment on Counts I and V–VII because Sullivan cannot show he relied on the Super Trac 303 Label or Super S 303 Label. The Court will address the parties’ arguments as to Counts VI and VII and Counts I and V separately below.

1. Counts VI and VII

Smitty’s argues it is entitled to summary judgment on Counts VI and VII, alleging misrepresentation, because Sullivan cannot “demonstrate that there is evidence from which a reasonable factfinder could find that he read and relied on the on Smitty’s 303 THF labels when purchasing Smitty’s 303 THF during the class period.” ([Doc. #843, p. 11.](#)) Sullivan disagrees, arguing Defendants misstate the facts and that Sullivan “read and relied on Defendants’ 303 THF bucket labels’ listing of OEMs[.]” ([Doc. #941, p. 38.](#))

³ As the Court has already dismissed Sullivan’s claims against CAM2, *see* ([Doc. #985](#)), the Court will refer to only Smitty’s when addressing the arguments put forth in the instant motion.

“Under Kentucky law, both fraud and negligent misrepresentation require that the plaintiff reasonably or justifiably rely on a defendant’s falsehood or misrepresentation.” *Options Home Health of N. Florida, Inc. v. Nurses Registry & Home Health Corp.*, [946 F.Supp.2d 664, 671](#) (E.D. Ky. 2013); *see also Bisig v. Time Warner Cable, Inc.*, [940 F.3d 205, 210](#) (6th Cir. 2019) (“[R]easonable reliance is an element of both fraudulent and negligent misrepresentation in Kentucky.”).

Here, the Court agrees with Smitty’s. The record is clear that Sullivan did not read or rely on the Super Trac 303 Label or the Super S Label in purchasing Smitty’s 303 THF Products. Sullivan testified that he read and relied on Exhibit 35, which is a label previously used on Smitty’s Super Trac 303 and discontinued prior to the class period:

Q: Okay. So tell me, in looking at – you – did you – Exhibit 35, is this the label that you used to – that you relied upon to make your purchases?

A: Yes.

([Doc. #843-1, p. 67.](#)) Sullivan testified that he did not rely on the Super Trac 303 Label, marked in his deposition as Exhibit 13, in deciding to purchase Smitty’s 303 THF Products:

Q: . . . So in terms of Exhibit 13, the label that’s reflected there, and that’s not something you relied upon in making your decision to purchase the 303 product?

A: No.

([Doc. #843-1, p. 72.](#)) Although Exhibit 35 and the Super Trac 303 Label have language in common, Sullivan has presented no case law indicating that his claim may go forward based on a different label where the two product labels are substantially similar. Therefore, the Court must grant summary judgment as to Sullivan’s Counts VI and VII.

2. Counts I and V

Smitty’s argues that, “[w]hile reliance is not an explicit element of Sullivan’s negligence and unjust enrichment claims, causation certainly is” and that “Sullivan must produce evidence

that he actually read and relied on the labels for causation to exist.” ([Doc. #843, p. 11.](#)) Sullivan argues that Smitty’s “cite[s] zero authority for the proposition that reliance comes into such claims through a back door of causation.” ([Doc. #941, p. 40.](#))

The Court agrees with Sullivan. Smitty’s cites zero cases in support of its argument that reliance is an element of negligence and unjust enrichment claims that involve allegations of misrepresentation. As Smitty’s argument is not supported by law, the Court declines to grant summary judgment as to Counts I and V.

B. Causation

Defendants argue they are entitled to summary judgment on Counts I and V because “Sullivan cannot identify – either through memory or documentation – when he purchased Smitty’s 303 THF or if he used Smitty’s 303 THF in any particular piece of equipment[.]”⁴ Sullivan disagrees, arguing Smitty’s argument is “meritless” and that “[f]act issues preclude partial summary judgment on Mr. Sullivan’s equipment damage claims.” ([Doc. #941, pp. 40, 41.](#))

The Court will first address Count I, Sullivan’s negligence claim. In order to prove negligence, a plaintiff must show “the existence of a direct, distinct, and identifiable nexus between the defendant’s breach of duty (negligence) and the plaintiff’s damages[.]” *Patton v. Bickford*, [592 S.W.3d 717, 730](#) (Ky. 2016). Here, the Court finds that Sullivan has shown a genuine dispute of material fact precluding summary judgment. Sullivan testified that he purchased Smitty’s 303 THF Products, used them in his Equipment, and had to repair his Equipment. Viewing the evidence presented in a light most favorable to Sullivan, the Court finds summary judgment is not warranted.

⁴ As the Court finds above that Smitty’s is entitled to summary judgment on Counts VI and VII, the Court need not address the parties’ arguments regarding Counts VI and VII here.

As to Count V, Sullivan’s unjust enrichment claim, Smitty’s cites no case law to support the contention that causation is an element of unjust enrichment. To prevail on a claim of unjust enrichment in Kentucky, a plaintiff must show “(1) benefit conferred upon defendant at plaintiff’s expense; (2) a resulting appreciation of benefit by defendant; and (3) inequitable retention of benefit without payment for its value.” *Jones v. Sparks*, 297 S.W.3d 73, 78 (Ky. App. 2009) (citation omitted). Even if Smitty’s argument was properly supported, the Court finds that Sullivan has created a genuine dispute of material fact precluding summary judgment. Sullivan has provided evidence, the receipt and his testimony, that he purchased Smitty’s 303 THF Products and therefore conferred a benefit on Smitty’s. Sullivan has also provided evidence creating a genuine dispute of material fact as to whether the benefit was wrongfully retained, as Sullivan has provided evidence from which a reasonable factfinder could infer that Smitty’s 303 THF Products were not of the represented quality.

Accordingly, the Court finds that summary judgment on Counts I and V is not warranted.⁵

IV. CONCLUSION

Accordingly, Defendants Partial Motion for Summary Judgment on the Claims of Plaintiff Tim Sullivan (Doc. #842) is GRANTED IN PART and DENIED IN PART. Defendants’ motion is GRANTED as to Sullivan’s Counts VI and VII, and DENIED as to Sullivan’s Counts I and V.

IT IS SO ORDERED.

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

Dated: July 19, 2023

⁵ Smitty’s also moves for summary judgment on any flush damages claimed. Sullivan, in his opposition brief, states that he “has not made a claim for flush damages to any of his equipment.” (Doc. #941, p. 42.) Accordingly, as this is an uncontested point, Smitty’s motion is granted as to Sullivan’s claims for flush damages.