

**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’s (“CAM2”) (collectively, “Defendants”) Motion for Summary Judgment on All Claims of Plaintiff Ross Watermann (“Watermann”) and Watermann Land & Cattle, LLC’s (“Land & Cattle”) Kansas Consumer Protection Act Claim. ([Doc. #1012.](#)) For the reasons discussed below, the motion is GRANTED IN PART and DENIED IN PART.

I. BACKGROUND

This MDL arises from Defendants’ 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. Watermann and Land & Cattle

Watermann is a Colorado resident who purchased the 303 THF Products in Colorado and Kansas. Watermann has the sole ownership interest in Land & Cattle, which is registered in Colorado.

In his Class Membership Form, Watermann represented that he purchased 14 buckets of the 303 THF Products from June 2017 to July 2019, which damaged a 1995 Ford Genesis 8970 tractor, a 1998 New Holland 1118 Swather, and 1980 White 2105 Tractor (“the Equipment”). Watermann testified that he purchased the Equipment on behalf of Land & Cattle, and that the 303 THF Products were used in the Equipment owned by Land & Cattle in its operations. Watermann, however, also testified that he did not use the Land & Cattle entity, stating that he did not put the Equipment under Land & Cattle’s name, did not file a separate tax return or income statement on behalf of Land & Cattle, and used his personal credit card to purchase some of the 303 THF Products.

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 Judicial Panel on Multidistrict Litigation 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 this MDL, Plaintiffs filed another lawsuit, *Feldkamp v. Smitty’s*

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 (E. D. Cal.); *Blackmore v. Smitty’s Supply, Inc.*, No. 19-cv-04052 (N.D. Iowa); *Zornes v. Smitty’s Supply, Inc.*, No. 19-cv-02257 (D. Kan.); *Wurth v. Smitty’s Supply, Inc.*, No. 19-cv-00092 (W.D. Ky.); *Mabie v. Smitty’s Supply, Inc.*, No. 19-cv-03308 (S.D. Tx.); *Klingenberg v. Smitty’s Supply, Inc.*, No. 19-cv-02684 (D. Minn.); and *Graves v. Cam2 Int’l, LLC*, No. 19-cv-05089 (W.D. Mo.).

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 supersede all prior pleadings in the individual cases and the Court allowed direct joinder of new claims through the Consolidated Amended Complaint. ([Doc. #46.](#))

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint (“FACC”). See ([Doc. #260.](#)) 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.](#))² On April 21, 2023, Plaintiff filed the Fifth Amended Consolidated Complaint (“5ACC”), which added Land & Cattle as a Plaintiff. The Court notes that the 5ACC does not differentiate between Watermann and Land & Cattle in its allegations, instead treating “[a]ll references . . . to ‘Ross Watermann’ and/or ‘Watermann’ [as] references to Mr. Watermann personally and to his entity, Watermann Land and Cattle, LLC.” ([Doc. #834, p. 29.](#))

Watermann and Land & Cattle seek to represent two classes of purchasers. On behalf of Colorado purchasers, Watermann and Land & Cattle assert the following claims: 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;³ Count VII, Negligent Misrepresentation; and Count XII, Colorado Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.* On behalf of Kansas purchasers, Watermann and Land & Cattle assert the following claims: Count I, Negligence; Count II, Breach of Express Warranty; Count III, Breach of Implied

² Relevant to this motion, the Court dismissed the Kansas Plaintiffs’ Counts I, II, III, IV, VI, VII, and XVIII to the extent they seek property damages.

³ The 5ACC refers to Count VI as Fraud/Misrepresentation, but for the sake of clarity, the Court will refer to Count VI as Fraudulent Misrepresentation.

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; Count XVIII, Kansas Consumer Protection Act (“KCPA”), [K.S.A. § 50-623](#); Count XLVI, Kansas Product Liability Act (“KPLA”)–Design Defect, [K.S.A. § 60-3301](#);⁴ and Count XLVII, KPLA–Failure to Warn, [K.S.A. § 60-3301](#).

On August 2, 2023, Defendants filed the instant motion for summary judgment on Watermann’s claims and Land & Cattle’s KCPA claim, pursuant to [Federal Rule of Civil Procedure 56](#). 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 and citation 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 and citations omitted).

⁴ 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.* ([Doc. #834, p. 104.](#))

III. DISCUSSION

Defendants argue that they are entitled to summary judgment because: (1) Watermann is not a real party in interest; and (2) Land & Cattle cannot pursue a claim under the KCPA. Each argument is addressed separately below.

A. Whether Watermann is a Real Party in Interest

Defendants argue that Watermann is not the real party in interest because “[i]t is undisputed that Land & Cattle, . . . not Watermann personally, owns the at-issue equipment and purchased and used Defendants’ 303 THF.” ([Doc. #1012, p. 9.](#)) Watermann disagrees, arguing that he is a real party in interest because “[t]he evidence supports that . . . Watermann personally paid for Defendants’ 303 THF Products and that he owned/owns the [E]quipment that used Defendants’ 303 THF Products, all despite the existence of [Land & Cattle] — an LLC which has not been used.” ([Doc. #1058, p. 16.](#))

[Federal Rule of Civil Procedure 17\(a\)](#) provides that “[a]n action must be prosecuted in the name of the real party in interest.” “The real party in interest is a party who, under governing substantive law, possesses the rights to be enforced.” *Consul Gen. of Rep. of Indon. v. Bill’s Rentals, Inc.*, [330 F.3d 1041, 1045](#) (8th Cir. 2003) (citation omitted). “Such a requirement is in place ‘to protect the defendant against a subsequent action by the party actually entitled to recover, and to insure generally that the judgment will have its proper effect as res judicata.’” *United HealthCare Corp. v. Am. Trade Ins. Co.*, [88 F.3d 563, 569](#) (8th Cir. 1996) (quoting [Fed. R. Civ. P. 17\(a\)](#), Advisory Committee Note).

Under Kansas law, “[t]he real party in interest is the person who possesses the right sought to be enforced, . . . not necessarily the person who ultimately benefits from the recovery.” *Larson Operating Co. v. Petroleum, Inc.*, [84 P.3d 626, 630](#) (Kan. Ct. App. 2004) (quoting *Thompson v. James*, [597 P.2d 259, 262](#) (Kan. Ct. App. 1979)). Similarly, under Colorado law,

“[t]he real party in interest is the party who, by virtue of the substantive law, has the right to invoke the aid of the court to vindicate the legal interest in question.” *Nat’l Propane Corp. v. Miller*, 18 P.3d 782, 785 (Colo. App. 2000) (citing *Ogunwo v. Am. Nat’l Ins. Co.*, 936 P.2d 606, 609 (Colo. App. 1997)).

Here, the Court finds that Watermann is a real party in interest. When viewing the facts in a light most favorable to the nonmoving party, Watermann presents evidence that he bought the Equipment, which was never under Land & Cattle’s name. *See* (Doc. #1058-2, pp. 4–5, 7.) He further provides that he bought some of the 303 THF Products using funds from his or his wife’s personal bank accounts. *See* (Doc. #1058-1, p. 6–7.) While he acknowledges that a bank account titled Watermann Land and Cattle was used to purchase some of the 303 THF Products, it is unclear whether this account was opened under Land & Cattle, or simply a bank account named to designate purchases on behalf of Watermann’s cattle operation. *See* (Doc. #1058-1, p. 7; Doc. #1058-2, pp. 5, 7.) At the very least, Watermann presented evidence that he personally bought the Equipment and some of the 303 THF Products, which allegedly damaged the Equipment. Thus, Watermann is a real party in interest.

B. Whether Land & Cattle can pursue its KCPA claim

Defendants argue that they are entitled to summary judgment on Land & Cattle’s KCPA claim because, as an LLC, Land & Cattle is not considered “a ‘consumer’ under the KCPA.” (Doc. #1012, p. 10.) Land & Cattle “agrees to dismissal of its . . . KCPA claim.” (Doc. #1058, p. 17.) Accordingly, the Court finds that summary judgment is warranted on Land & Cattle’s KCPA claim.⁵

⁵ The Court finds Defendants’ argument that Watermann cannot assert a KCPA claim based on *Griffitts & Coder Custom Chopping, LLC v. CNH Indus. Am. LLC*, 438 F. Supp. 3d 1206, 1230 (D. Kan. 2020), which is first asserted in their reply brief, unpersuasive. *See* (Doc. #1066, pp. 16-19.) Unlike in *Griffitts*, where the individuals signed the leases for their equipment in their corporate capacity, the funds to pay for the equipment came from the LLC, and the equipment was only used for the LLC’s business purposes, there is evidence that Watermann did not use Land &

IV. CONCLUSION

Accordingly, Defendants Motion for Summary Judgment on All Claims of Plaintiff Ross Watermann and Watermann Land & Cattle, LLC's Kansas Consumer Protection Act Claim ([Doc. #1012](#)) is GRANTED IN PART and DENIED IN PART. The motion is GRANTED as to Land & Cattle's KCPA claim, Count XVIII, and DENIED in all other respects.

IT IS SO ORDERED.

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

Dated: September 20, 2023

Cattle at all in his farming operations as previously discussed. *See* [438 F. Supp. 3d](#) at 1230–33. Thus, the Court declines to grant summary judgment on Watermann's KCPA claim.