

**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
PRACTICES, AND PRODUCTS LIABILITY
LITIGATION

MDL No. 2936

Master Case No. 4:20-MD-02936-SRB

ALL ACTIONS

WILLIAM ANDERSON,)
JOE ASFELD,)
JOHN BARTUS, JR.,)
PAT BEAVER,)
ROGER BIAS,)
TERRY BLACKMORE,)
SAMUEL BLAKENEY,)
GEORGE BOLLIN,)
ROBERT BOONE,)
HARRY BOYNTON,)
THOMAS JAMES BRETT,)
SEAN BUFORD,)
STEVE BURGDORF,)
TODD CARUSILLO,)
ED CHAUNCEY,)
EDDIE CHAVIS,)
DOUGLAS CLOUGH,)
BRETT CREGER,)
CLINTON CURRY,)
CHRISTOPHER CURTIS,)
MICHAEL DAHLKE,)
SAWYER DEAN,)
DANIEL DENTON,)
ALDEN DILL,)
WILL DOBSON,)
CRAIG DOW,)
KIRK EGNER,)
MARK ENGDAHL,)
JOSHUA FARLEY,)
CODY FARNER,)
RUSSELL FAUBION,)
KYLE FELDKAMP,)
COSIMO FERRANTE,)
NORMAN FOHNE,)

JURY TRIAL(S) DEMANDED

CLINE (TOMMY) FRICKS,)
MICHAEL GALLEGOS,)
CLYDE GARDUNO,)
PATRICK GISI,)
GARY GOODSON,)
ROBERT GOSCHE,)
ARNO GRAVES,)
JOSEPH GRIFFITHS,)
TIM GRISSOM,)
JIM GUIRE,)
MICHAEL HAMM,)
RICK HARDIN,)
ALAN HARGRAVES,)
JEFFERY HARRISON,)
BRIAN HAYES,)
MARK HAZELTINE,)
CURTIS HOFF,)
JOE JACKSON,)
JEFF JACOBSON,)
FRANK JAMES,)
EARNEST JENKINS,)
TOM KARNATZ,)
JACK KIMMICH,)
GEORGE KIRVEN,)
JASON KLINGENBERG,)
LARRY LEMPKA,)
JUSTIN LEMONDS,)
JOSH LESKO,)
LARRY AND WYATT LOEFFLER,)
GERALD LUNKWITZ,)
JACOB MABIE,)
JESS METZGER,)
JOHN MILLER,)
KYLE MINICH,)
CAL MOORE,)
VONDA MORELAND,)
ROBERT SHANE MORGAN,)
RON NASH,)
BRYAN NELMS,)
MATT ORTNER,)
DONALD OUELETTE,)
JOE PATE,)
MIKE PING,)
TER PUSKARICH,)
JOHN RABURN,)
STANLEY RICHARDSON,)

BRIAN RIESSLAND,)
 PETE RUMORE,)
 WAYNE RUPE,)
 LEONARD SAATHOFF,)
 KENNETH SEEVER,)
 ADAM SEVY,)
 ANTHONY SHAW,)
 RUSTY SHAW,)
 BURNIS "MATTHEW" SICKELTON,)
 DAN SMITH,)
 ROBERT STANTON,)
 HOWARD STEMBRIDGE,)
 JAMES STILL,)
 CHARLES STRICKLAND,)
 TIM SULLIVAN,)
 TRACY SULLIVAN,)
 JERRY TERRY,)
 TIM TOWLE,)
 SIMON VICKNAIR,)
 LAWRENCE WACHHOLDER,)
 ROSS WATERMANN,)
 WAYNE WELLS,)
 DALE WENDT,)
 WILLIAM WHITE,)
 SUSAN WHITEHEAD,)
 CHARLES "BUBBA" WOODS,)
 DWAYNE WURTH,)
 TERRY ZORNES,)
 Plaintiffs, on behalf of themselves)
 and all others similarly situated,)
))
 v.)
))
 SMITTY'S SUPPLY, INC.,)
 CAM2 INTERNATIONAL, LLC,)
 ATWOOD DISTRIBUTING, LP,)
 TRACTOR SUPPLY COMPANY,)
 RURAL KING ADMINISTRATION, INC.,)
 RURAL KING DISTRIBUTION &)
 MANAGEMENT, INC.,)
 RURAL KING HOLDING CO.,)
 ORSCHELN FARM AND HOME LLC)
 d/b/a ORSCHELN FARM AND HOME),)
 ED SMITH and)
 CHAD TATE,)
 Defendants.)

FOURTH AMENDED CONSOLIDATED COMPLAINT

COME NOW Plaintiffs William Anderson, Joe Asfeld, John Bartus, Jr., Pat Beaver, Roger Bias, Terry Blackmore, Samuel Blakeney, George Bollin, Robert Boone, Harry Boynton, Thomas James Brett, Sean Buford, Steve Burgdorf, Todd Carusillo, Ed Chauncey, Eddie Chavis, Douglas Clough, Brett Creger, Clinton Curry, Christopher Curtis, Michael Dahlke, Sawyer Dean, Daniel Denton, Alden Dill, Will Dobson, Craig Dow, Kirk Egner, Mark Engdahl, Josh Farley, Cody Farner, Russell Faubion, Kyle Feldkamp, Cosimo Ferrante, Norman Fohne, Cline (Tommy) Fricks, Michael Gallegos, Clyde Garduno, Patrick Gisi, Gary Goodson, Robert Gosche, Arno Graves, Joseph Griffiths, Tim Grissom, Jim Guire, Michael Hamm, Rick Hardin, Alan Hargraves, Jeffery Harrison, Brian Hayes, Mark Hazeltine, Curtis Hoff, Joe Jackson, Jeff Jacobson, Frank James, Earnest Jenkins, Tom Karnatz, Jack Kimmich, George Kirven, Jason Klingenberg, Larry Lempka, Justin Lemonds, Josh Lesko, Larry and Wyatt Loeffler, Gerald Lunkwitz, Jacob Mabie, Jess Metzger, John Miller, Kyle Minich, Cal Moore, Vonda Moreland, Robert Shane Morgan, Ron Nash, Bryan Nelms, Matt Ortner, Donald Ouelette, Joe Pate, Mike Ping, Ter Puskarich, John Raburn, Stanley Richardson, Brian Riessland, Pete Rumore, Wayne Rupe, Leonard Saathoff, Kenneth Seever, Adam Sevy, Anthony Shaw, Rusty Shaw, Burnis “Matthew” Sickelton, Dan Smith, Robert Stanton, Howard Stenbridge, James Still, Charles Strickland, Tim Sullivan, Tracy Sullivan, Jerry Terry, Tim Towle, Simon Vicknair, Lawrence Wachholder, Ross Watermann, Wayne Wells, Dale Wendt, William White, Susan Whitehead, Charles “Bubba” Woods, Dwayne Wurth, and Terry Zornes, on behalf of themselves and all others similarly situated, and for their Fourth Amended Consolidated Complaint state and allege as follows:

NATURE OF THIS CONSOLIDATED COMPLAINT

1. This Fourth Amended Consolidated Complaint (“4th ACC”) sets forth the putative class and individual claims subsumed within this multidistrict litigation proceeding for claims relating to Smitty’s/Cam2 303 Tractor Hydraulic Fluid Marketing, Sales Practices, and Product Liability Litigation (“Smitty’s/Cam2 303 THF MDL”). This 4th ACC is filed pursuant to the Court’s Orders of July 8, 2020 ([Doc. 25](#)), August 3, 2020 ([Doc. 46](#)), other Orders of the MDL Court, and Rule 15(a)(1)(B).

2. For the class and individual claims from the following cases which were transferred into this Smitty’s/Cam2 303 THF MDL, the transferor forums’ choice-of-law principles will apply with respect to each class and individual Plaintiff’s claims, notwithstanding this filing of this 4th ACC:

- (a) *Zornes, et al. v. Smitty’s Supply, Inc., et al.*
Case No. 19-cv-2257-JAR-TJJ (D. Kan.)
(Kansas Purchasers)
 - (i) Plaintiffs/Class Representatives: Terry Zornes, Adam Sevy, George “Butch” Bolin, and Ross Watermann.

- (b) *Wurth, et al. v. Smitty’s Supply, Inc., et al.*
Case No. 19-cv-00092-TBR (W.D. Kent.)
(Kentucky Purchasers)
 - (i) Plaintiffs/Class Representatives: Dwayne Wurth, Kirk Egner, Tim Sullivan, Tracy Sullivan, and Howard Stembridge.

- (c) *Buford v. Smitty’s Supply, Inc., et al.*
Case No. 1:19-cv-00082-BRW (E.D. Ark.)
(Arkansas Purchasers)
 - (i) Plaintiffs/Class Representatives: Sean Buford, William Anderson, Alan Hargraves, and Jeffrey Harrison.

- (d) *Mabie v. Smitty's Supply, Inc., et al.*
Case No. 4:19-cv-03308 (S.D. Tex.)
(Texas Purchasers)
 - (i) Plaintiffs/Class Representatives: Jacob Mabie, Daniel Denton, and Stanley Richardson.

- (e) *Blackmore, et al. v. Smitty's Supply, Inc., et al.*,
Case No. 5:19-cv-04052 (N.D. Iowa)
(Iowa Purchasers)
 - (i) Plaintiffs/Class Representatives: Terry Blackmore, Jason Klingenberg, Wayne Rupe, and Russell Faubion.

- (f) *Fosdick, et al. v. Smitty's Supply, Inc., et al.*
Case No. 2:19-cv-01850-MCE-DMC (E.D. Cal.)
(California Purchasers)
 - (i) Plaintiffs/Class Representatives: Jack Kimmich.

- (g) *Klingenberg v. Smitty's Supply, Inc., et al.*
Case No. 19-cv-2684-ECT/ECW (D. Minn.)
(Minnesota Purchasers)
 - (i) Plaintiffs/Class Representatives: Jason Klingenberg, Joe Asfeld and Brett Creger.

- (h) *Graves, et al. v. Smitty's Supply, Inc., et al.*
Case No. 34:19-cv-05089-SRB (W.D.Mo.)
(Multi-State Class for Purchaser in 42 States Including Missouri)
 - (i) Plaintiffs/Class Representatives: Arno Graves, Ron Nash, Gary Goodson, and Mark Hazeltine.

- (i) *Feldkamp, et al. v. Smitty's Supply, Inc., et al.*
Case No. 2:20-cv-02177-CSB-EIL
(Nationwide and Illinois Purchasers)
 - (i) Plaintiffs/Class Representatives: Kyle Feldkamp, Steve Burgdorf, Norman Fohne, and Joshua Lesko.

3. For the class and individual claims which were directly and originally filed in this MDL through the 1st ACC or 2nd ACC, the choice-of-law principles of the forum where those

claims would have originally been filed were it not for the direct filing in this Smitty's/Cam2 303 THF MDL, apply as follows:

- (a) Alabama: Plaintiffs Joe Jackson, Robert Shane Morgan, Brian Nelms and the Alabama Purchasers Class;
- (b) Arizona: Plaintiffs Mark Engdahl, Michael Gallegos, Susan Whitehead, and the Arizona Purchasers Class;
- (c) Colorado: Plaintiffs Jim Guire, Larry Lempka, Ross Watermann, and the Colorado Purchasers Class;
- (d) Connecticut: Plaintiff Todd Carusillo and the Connecticut Purchases Class;
- (e) Florida: Plaintiffs Thomas James Brett, John Raburn, Pete Rumore, Charles Strickland, and the Florida Purchasers Class;
- (f) Georgia: Plaintiffs Cody Farner, Cline (Tommy) Fricks, Anthony Shaw, Rusty Shaw, Eddie Chavis, and the Georgia Purchasers Class;
- (g) Indiana: Plaintiffs Frank James, Rick Hardin, and the Indiana Purchasers Class;
- (h) Louisiana: Plaintiffs Pat Beaver, Simon Vicknair, and the Louisiana Purchasers Class;
- (i) Maine: Plaintiffs Harry Boynton, Christopher Curtis, Donald Ouelette, and the Maine Purchasers Class;
- (j) Maryland: Plaintiff Vonda Moreland and the Maryland Purchases Class;
- (k) Massachusetts: Plaintiff Cosimo Ferrante and the Massachusetts Purchasers Class;
- (l) Michigan: Plaintiffs Douglas Clough, Michael Dahlke, Craig Dow and the Michigan Purchasers Class;

- (m) Mississippi: Plaintiffs Samuel Blakeney, James Still, Charles “Bubba” Woods, and the Mississippi Purchasers Class;
- (n) Montana: Plaintiff Tom Karnatz and the Montana Purchases Class;
- (o) Nebraska: Plaintiffs Ed Chauncey, Larry and Wyatt Loeffler, Gerald Lunkwitz, Brian Riessland, Jeff Jacobson, and the Nebraska Purchasers Class;
- (p) Nevada: Plaintiff Jeff Jacobson and the Nevada Purchases Class;
- (q) New Hampshire: Plaintiffs Alden Dill, Joseph Griffiths, Tim Towle, Donald Oulette, and the New Hampshire Purchasers Class;
- (r) New Jersey: Plaintiffs Jess Metzger, John Miller, and the New Jersey Purchasers Class;
- (s) New Mexico: Plaintiff Clyde Garduno and the New Mexico Purchases Class;
- (t) New York: Plaintiffs Sawyer Dean, John Miller, Lawrence Wachholder, and the New York Purchasers Class;
- (u) North Carolina: Plaintiffs Cody Farner, Justin Lemonds, Burnis “Matthew” Sickleton, William White, and the North Carolina Purchasers Class;
- (v) North Dakota: Plaintiff Brett Creger and the North Dakota Purchasers Class;
- (w) Ohio: Plaintiffs Robert Gosche, Brian Hayes, Matt Ortner and the Ohio Purchasers Class;
- (x) Oklahoma: Plaintiffs Arno Graves, Ron Nash, Joe Pate, Wayne Wells, and the Oklahoma Purchasers Class;
- (y) Pennsylvania: Plaintiffs Joshua Farley, Earnest Jenkins, Kyle Minich, Ter Puskarich, Robert Stanton and the Pennsylvania Purchasers Class;

- (z) South Carolina: Plaintiffs Eddie Chavis, George Kirven, Mike Ping, and the South Carolina Purchasers Class;
- (aa) South Dakota: Plaintiffs Ed Chauncey, Patrick Gisi, Curtis Hoff, Leonard Saathoff, and the South Dakota Purchasers Class;
- (bb) Tennessee: Plaintiffs Will Dobson, Cody Farner, Tim Grissom, Kenneth Seever, Howard Stembridge, Jerry Terry, and the Tennessee Purchasers Class;
- (cc) Virginia: Plaintiffs John Bartus, Jr., Robert Boone, Cal Moore, Burnis “Matthew” Sickleton, and the Virginia Purchasers Class;
- (dd) West Virginia: Plaintiffs Roger Bias, Clinton Curry, Earnest Jenkins, Vonda Moreland, and the West Virginia Purchasers Class;
- (ee) Wisconsin: Plaintiffs Michael Hamm, Dale Wendt and the Wisconsin Purchasers Class.
- (ff) Wyoming: Plaintiff Dan Smith and the Wyoming Purchasers Class.

4. Plaintiffs agree that the filing of this 4th ACC does not waive any Party’s venue or jurisdictional objections pursuant to *Lexecon, Inc. v. Milberg Weiss Bershad Hynes & Lerach*, [523 U.S. 26](#) (1988).

SUMMARY OF THIS ACTION

5. Plaintiffs, by and through the undersigned counsel, bring this action each on their own behalf and on behalf of State Classes asserted herein (collectively referred to as “Classes”) defined below to redress the negligent, wrongful, unlawful, unfair, unconscionable and/or deceptive practices, acts, and/or omissions of Defendants in connection with their manufacturing, marketing, and/or sale of Smitty’s/Cam2 303 Tractor Hydraulic Fluid and the economic loss and

common property damage each Plaintiff and Class Member experienced as a result of Defendants' conduct.

6. More specifically, Plaintiffs seek, on behalf of themselves and all others similarly situated, relief for Defendants' negligence, breach of express warranties, breach of implied warranties or merchantability and fitness for a particular purpose, unjust enrichment, fraudulent and negligent misrepresentations, and for their violation of various statutes, all as set forth more fully below. Plaintiffs also seek, on behalf of themselves and all others similarly situated, disgorgement of Defendants' profits from the sale of the Smitty's/Cam2 303 Tractor Hydraulic Fluid Products at issue in this MDL. Plaintiffs further seek other economic damages, including recovery for amounts paid for the 303 Tractor Hydraulic Fluid Products and the property damages that Defendants' conduct and products commonly caused to each Plaintiff's and Class Member's tractors and other equipment. Plaintiffs also seek punitive and statutory additional damages. Plaintiffs seek injunctive relief precluding Defendants from engaging in similar wrongful conduct in the future, including an injunction against the continued sale of any current products in which Defendants Smitty's and/or Cam2 are utilizing used oils or line flush/line wash as ingredients without full disclosure to potential purchasers.

7. Plaintiffs also seek to impose individual liability on Ed Smith and Chad Tate, two of the owners and controlling officers of Smitty's Supply, Inc. ("Smitty's") who intentionally and knowingly engaged in some or all of the wrongful acts alleged herein for personal profit and benefit.

BACKGROUND AND GENERAL FACTUAL ALLEGATIONS

8. For years, Defendants have deceptively and misleadingly labeled, marketed and sold tractor hydraulic fluid as "303" fluid meeting "303" specifications when, in fact, the "303"

designation is obsolete and 303 specifications have not been available for over forty (40) years. Defendants have also deceptively and misleadingly labeled, marketed and sold tractor hydraulic fluid as meeting certain manufacturer specifications and providing certain anti-wear and protective benefits when, in fact, Defendants knew, or should have known, the fluid they are selling does not meet all listed manufacturer specifications and does not contain the anti-wear and protective properties required in Tractor Hydraulic Fluid. Instead, the “303” fluid is a fluid mixed from line wash and other lubricant products (including some used products) that are not suitable for use as ingredients in a tractor hydraulic fluid.

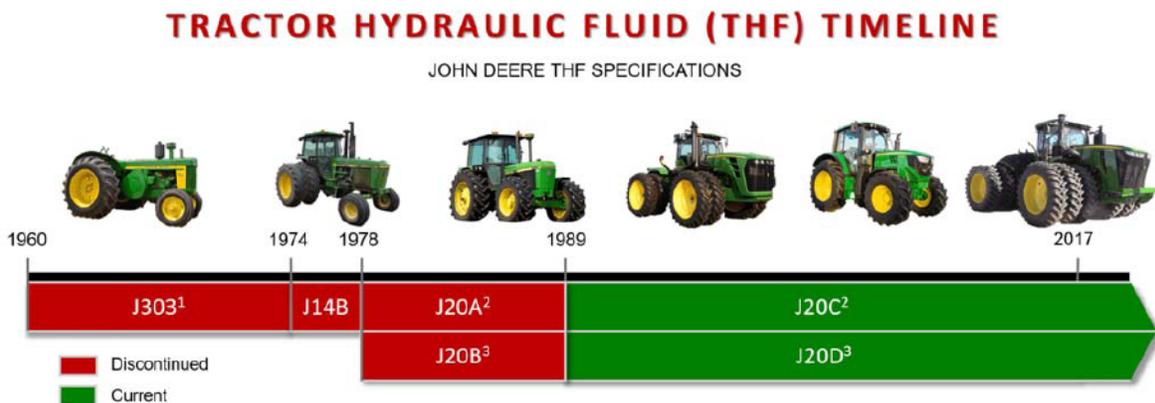
9. Tractor Hydraulic Fluid (THF) is a multifunctional lubricant that has been manufactured for and used in tractors and equipment for over fifty (50) years. It is designed to act as a hydraulic fluid, transmission fluid and gear oil for this equipment. In the 1960s and early 1970s, John Deere (Deere) manufactured a popular and widely used THF called JD-303 or simply “303,” and the term “303” became synonymous with the John Deere name and this high-quality and effective THF product.

10. Sperm whale oil was an essential ingredient in Deere’s 303 THF. In the mid-1970s, the passage of laws protecting endangered species outlawed the use of sperm whale oil. Deere’s “303” formula could no longer be manufactured or sold, and because its essential ingredient—sperm whale oil—could no longer be used, the designation became obsolete and there are no specifications now available for “303” tractor hydraulic fluids. Deere was forced to manufacture a new tractor hydraulic fluid with different additives that would be both effective and affordable.

11. After it stopped producing and selling its 303 THF, Deere manufactured and sold several THF products with certain ingredient, viscosity, anti-wear and detergent additive specifications, including initially offering J14B, J20A and J20B. Many other manufacturers

created and sold fluids that purported to be similar to these new products while others continued to offer what they termed a “303” product. The J14B specification became obsolete in the late 1970s. J20A and J20B were then offered and, during the time the J20A/B specifications were in use, Deere used a licensing program called Quatrol to police the quality of THF products in the marketplace. The Quatrol program required blenders and sellers of competing THF products to submit test data to Deere prior to the use of the J20A/B specification on their product labels, to ensure the products met the advertised specifications.

12. In the late 1980s or early 1990s, Deere abandoned the J20A/B specification as well. John Deere then and now manufactures and sells THF meeting a specification called J20C or J20D (low viscosity). The J20C fluid is sold under the name “Hy-Gard,” and many other manufacturers market and sell products which they contend meet the J20C specification in order to compete with John Deere. The following timeline illustrates the history of 303 THF:



Footnotes:

1. There are no specifications available for 303 Tractor Hydraulic Fluids and, as such, products making only “303” claims cannot be tested to assure compliance with any known specifications.
2. Transmission/Hydraulic Fluid with Anti-Brake Chatter Properties (For Summer or warm weather climates)
3. Low Viscosity Transmission/Hydraulic Fluid with Anti-Brake Chatter Properties (For Winter or cold weather climates)

John Deere Specification	Comment	JD Issue Date
JDM J20D ³	THF for cold climates	1989 - Current
JDM J20C ²	Primary THF specification	1989 - Current
JDM J20B ³	DISCONTINUED – replaced by JDM J20D	1978 - 1989
JDM J20A ²	DISCONTINUED – replaced by JDM J20C	1978 - 1989
JDM J14B	DISCONTINUED – replaced by JDM J20A/B	1974 - 1978
JDM J303 ¹	DISCONTINUED – replaced by JDM J14B	1960 - 1974

13. John Deere discontinued the Quatrol program around the time J20A was discontinued (approximately 1989). The subsequent lack of a quality control program or policing

of the products in the market resulted in a “free for all” with respect to the THF manufactured and sold in the open market and the opportunity for unscrupulous manufacturers and sellers to falsely use the Deere specifications (and other manufacturers’ specifications) on the labels of the THF products they sell.

14. Defendants deceptively and illegally traded on the obsolete and non-existent “303” designation, the other obsolete J14B and J20A specifications, and the John Deere trade name that was and has continued to be so prevalent in the industry. This was deceptive as there is no known “303” specification, and there is no way for manufacturers, sellers, or anyone else to truthfully claim the products meets or is in compliance with any such specification. This was also deceptive because Defendants knew their 303 THF Products did not meet the J20A specification Defendants advertised on the label.

15. Nonetheless, Defendants manufactured and sold their Super S Super Trac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 Promax 303 Tractor Hydraulic Oil, and Cam2 303 Tractor Hydraulic Oil (together referred to as “303 THF Products”) as a lower cost alternative, and offered them for sale as economically priced tractor hydraulic fluids that met or had an equivalency to many (or in some cases all) manufacturers’ specifications, had effective lubricant and anti-wear additives and properties, and were safe for use in purchasers’ equipment. The Cam2 Promax 303 Tractor Hydraulic Oil was the same fluid as Super S 303 Tractor Hydraulic Fluid, Super S Super Trac 303 Tractor Hydraulic Fluid, and Cam2 303 Tractor Hydraulic Oil, all also manufactured by Smitty’s and Cam2 (hereinafter referred to collectively as “Manufacturer Defendants”) and labeled, marketed, distributed and sold by those Manufacturer Defendants. Defendants sold their 303 THF Products with eye-catching photos of modern tractors and industrial equipment and in bright, yellow 5-gallon buckets. By name dropping a list of

equipment manufacturers, Defendants sought to create an impression of quality and take advantage of consumers' lack of understanding of the multitude of complex manufacturer specifications that were being ignored.

16. In addition to deceptively promoting a designation that was obsolete, Defendants used poor quality base oils, waste oil, line flush, and used oils and diluted additive packages, if any, in their 303 THF Products in order to keep production costs down and increase profits. As a result of the inferior ingredients and this "down-treating" of any additive packages, Defendants' 303 THF Products not only lacked the required lubricant and protective benefits offered to purchasers, the fluids actually exposed each purchaser's equipment to increased wear and risk of damage to the spiral gear, excessive wear in the planetaries, improper and poor shifting, seal leakage, and improper operation of the wet brakes. Despite use of these inferior ingredients and inadequate protective additives, the 303 THF Products were labeled and marketed to unsuspecting purchasers as meeting or having an equivalency to manufacturer specifications and providing certain benefits and anti-wear properties.

17. In November 2017, because of the deceptive nature of the 303 THF Products, the failures of the 303 THF Products to meet any published specification, and the damage the products could cause to consumers' equipment, the State of Missouri's Department of Agriculture, Division of Weights and Measures, banned Defendants and all other manufacturers and sellers from offering these types of "303" tractor hydraulic fluid products for sale in Missouri. The states of Georgia and North Carolina followed suit.

18. Despite the ban of "303" THF in several states and the increased scrutiny on those products throughout the country, Defendants continued for some time to sell their 303 THF Products in all states where the fluid had not been banned.

19. Defendants' conduct has harmed purchasers, including each Plaintiff, who each purchased Defendants' 303 THF Products that were offered and sold as acceptable tractor hydraulic fluids that met or had an equivalency to certain manufacturer specifications, as fluids that were safe for use in farm, construction and logging equipment, and as having certain characteristics and qualities that protected equipment from wear and damage.

20. In reality, instead of receiving a product that was an acceptable tractor hydraulic fluid that met or had an equivalency to manufacturers' specifications, each Plaintiff and other purchaser received 303 THF Products that, contrary to Defendants' labeling, had no known or industry-approved specifications, had contents and additives that varied, were unknown, were obsolete, did not possess the claimed protective characteristics and/or did not meet one or more of the manufacturers' specifications on these products. These products therefore exposed each of the Plaintiff's, Class Member's and purchaser's equipment to common impacts and harm, increased wear and damage, and caused each Plaintiff, Class Member, and purchaser to overpay for a product that was worthless and/or worth much less than the sale price.

21. In late 2017, around the time of the stop sale order and ban of 303 THF in Missouri and other states, the Manufacturer Defendants modified the label of their Super S Super Trac 303 Tractor Hydraulic Fluid and Cam2 Promax 303 Tractor Hydraulic Oil, changing the names to "Super S 303 Tractor Hydraulic Fluid" and "Cam2 303 Tractor Hydraulic Oil." Because the photos of the equipment on certain labels were deceptive and misleading, the Manufacturer Defendants removed the pictures of the modern equipment and replaced those pictures with images of older, simpler tractors on the front of the label.

22. At that time, however, no other changes were made to the labels despite the fact that management employees at Smitty's and Cam2 knew of the deceptive and misleading

representations about the physical and performance properties of the fluid, the representations about the testing that was purportedly performed on the fluid, and the list of equipment manufacturers' names contained on the Super S 303 and Cam 2 303 labels. Incredibly, the Manufacturer Defendants continued to sell the 303 THF Products in all states in which it had not been banned, with those misrepresentations knowingly being made to purchasers like Plaintiffs.

23. Like many other purchasers and consumers throughout Alabama, Arizona, Arkansas, California, Colorado, Connecticut, Florida, Georgia, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Maryland, Massachusetts, Michigan, Minnesota, Mississippi, Missouri, Montana, Nebraska, Nevada, New Hampshire, New Jersey, New Mexico, New York, North Carolina, North Dakota, Ohio, Oklahoma, Pennsylvania, South Carolina, South Dakota, Tennessee, Texas, Virginia, West Virginia, Wisconsin, Wyoming, and other states throughout the United States, each of the Plaintiffs purchased Defendants' 303 THF Products and each suffered purchase price and damage to equipment as a result.

24. In October 2017, in connection with its issuance of a stop sale order and the ban on 303 THF Products, the State of Missouri's Department of Agriculture, Division of Weights and Measures, stated publicly that it had performed testing on the 303 THF Products and that the testing revealed that the products did not meet any manufacturers' current tractor hydraulic fluid specifications and were underperforming to the point damage was likely to result from use.

25. Defendants continued to sell their products and concealed any internal test data and the truth about the 303 THF products at all relevant times. Defendants continue to manufacture and sell the same fluid without disclosing the used oil and line wash/line flush ingredients, selling it under product names such as "Ag Fluid" and "Agriculture Fluid."

PARTIES

26. Plaintiff William Anderson is a citizen and resident of Devalls Bluff, Arkansas. He is a member of the Arkansas Class alleged herein.

27. Plaintiff Joe Asfeld is a citizen and resident of Sauk Centre, Minnesota. He is a member of the Minnesota Class alleged herein.

28. Plaintiff John Bartus, Jr. is a citizen and resident of South Hill, Virginia. He is a member of the Virginia Class alleged herein.

29. Plaintiff Pat Beaver is a citizen and resident of Louisiana. He is a member of the Louisiana Class alleged herein.

30. Plaintiff Roger Bias is a citizen and resident of West Virginia. He is a member of the West Virginia Class alleged herein.

31. Plaintiff Terry Blackmore is a citizen and resident of Plymouth County, Iowa. He is a member of the Iowa Class alleged herein.

32. Plaintiff Samuel Blakeney is a citizen and resident of Bay Springs, Mississippi. He is a member of the Mississippi Class alleged herein.

33. Plaintiff George Bollin is a citizen and resident of Leavenworth, Kansas. He is a member of the Kansas Class alleged herein.

34. Plaintiff Robert Boone is a citizen and resident of Christiansburg, Virginia. He is a member of the Virginia Class alleged herein.

35. Plaintiff Harry Boynton is a citizen and resident of Maine. He is a member of the Maine Class alleged herein.

36. Plaintiff Thomas James Brett is a citizen and resident of Mocatee, Florida. He is a member of the Florida Class alleged herein.

37. Plaintiff Sean Buford is a citizen and resident of Jackson County, Arkansas. He is a member of the Arkansas Class alleged herein.

38. Plaintiff Steve Burgdorf is a citizen and resident of Redbud, Illinois. He is a member of the Illinois Class alleged herein.

39. Plaintiff Todd Carusillo is a citizen and resident of Goshen, Connecticut. He is a member of the Connecticut Class alleged herein.

40. Plaintiff Ed Chauncey is a citizen and resident of South Dakota. He is a member of the South Dakota Class and Nebraska Class alleged herein.

41. Plaintiff Eddie Chavis is a citizen and resident of South Carolina. He is a member of the South Carolina Class and the Georgia Class alleged herein.

42. Plaintiff Douglas Clough is a citizen and resident of Boon, Michigan. He is a member of the Michigan Class alleged herein.

43. Plaintiff Brett Creger is a citizen and resident of Minnesota. He is a member of the Minnesota Class and the North Dakota Class alleged herein.

44. Plaintiff Clinton Curry is a citizen and resident of Kanawha County, West Virginia. He is a member of the West Virginia Class alleged herein.

45. Plaintiff Christopher Curtis is a citizen and resident of Monmoth, Maine. He is a member of the Maine Class alleged herein.

46. Plaintiff Michael Dahlke is a citizen and resident of Michigan. He is a member of the Michigan Class alleged herein.

47. Plaintiff Sawyer Dean is a citizen and resident of Fort Edward, New York. He is a member of the New York Class alleged herein.

48. Plaintiff Daniel Denton is a citizen and resident of Plantersville, Texas. He is a member of the Texas Class alleged herein.

49. Plaintiff Alden Dill is a citizen and resident of New Hampshire. He is a member of the New Hampshire Class alleged herein.

50. Plaintiff Will Dobson is a citizen and resident of Tennessee. He is a member of the Tennessee Class alleged herein.

51. Plaintiff Craig Dow is a citizen and resident of Michigan. He is a member of the Michigan Class alleged herein.

52. Plaintiff Kirk Egner is a citizen and resident of Kevil, Kentucky. He is a member of the Kentucky Class alleged herein.

53. Plaintiff Mark Engdahl is a citizen and resident of New River, Arizona. He is a member of the Arizona Class alleged herein.

54. Plaintiff Joshua Farley is a citizen and resident of Pennsylvania. He is a member of the Pennsylvania Class alleged herein.

55. Plaintiff Cody Farner is a citizen and resident of Tennessee. He is a member of the Tennessee Class, the North Carolina Class, and the Georgia Class alleged herein.

56. Plaintiff Russell Faubion is a citizen and resident of Blockton, Iowa. He is a member of the Iowa Class alleged herein.

57. Plaintiff Kyle Feldkamp is a citizen and resident of Altamount, Illinois. He is a member of the Illinois Class alleged herein.

58. Plaintiff Cosimo Ferrante is a citizen and resident of Massachusetts. He is a member of the Massachusetts Class alleged herein.

59. Plaintiff Norman Fohne is a citizen and resident of Troy, Illinois. He is a member of the Illinois Class alleged herein.

60. Plaintiff Cline (Tommy) Fricks is a citizen and resident of Georgia. He is a member of the Georgia Class alleged herein.

61. Plaintiff Michael Gallegos is a citizen and resident of Gilbert, Arizona. He is a member of the Arizona Class alleged herein.

62. Plaintiff Clyde Garduno is a citizen and resident of New Mexico. He is a member of the New Mexico Class alleged herein.

63. Plaintiff Patrick Gisi is a citizen and resident of South Dakota. He is a member of the South Dakota Class alleged herein.

64. Plaintiff Gary Goodson is a citizen and resident of Carl Junction, Missouri. He is a member of the Missouri Class alleged herein.

65. Plaintiff Robert Gosche is a citizen and resident of Tiffin, Ohio. He is a member of the Ohio Class alleged herein.

66. Plaintiff Arno Graves is a citizen and resident of Ottawa County, Oklahoma. He is a member of the Missouri Class and Oklahoma Class alleged herein.

67. Plaintiff Joseph Griffiths is a citizen and resident of New Hampshire. He is a member of the New Hampshire Class alleged herein.

68. Plaintiff Tim Grissom is a citizen and resident of Tennessee. He is a member of the Tennessee Class alleged herein.

69. Plaintiff Jim Guire is a citizen and resident of Colorado. He is a member of the Colorado Class alleged herein.

70. Plaintiff Michael Hamm is a citizen and resident of Waupaca, Wisconsin. He is a member of the Wisconsin Class alleged herein.

71. Plaintiff Rick Hardin is a citizen and resident of Loogootee, Indiana. He is a member of the Indiana Class alleged herein.

72. Plaintiff Alan Hargraves is a citizen and resident of Helena, Arkansas. He is a member of the Arkansas Class alleged herein.

73. Plaintiff Jeffery Harrison is a citizen and resident of Haskell, Arkansas. He is a member of the Arkansas Class alleged herein.

74. Plaintiff Brian Hayes is a resident of Ohio. He is a member of the Ohio Class alleged herein.

75. Plaintiff Mark Hazeltine is a citizen and resident of Troy, Missouri. He is a member of the Missouri Class alleged herein.

76. Plaintiff Curtis Hoff is a citizen and resident of South Dakota. He is a member of the South Dakota Class alleged herein.

77. Plaintiff Joe Jackson is a citizen and resident of Alabama. He is a member of the Alabama Class alleged herein.

78. Plaintiff Jeff Jacobson is a citizen and resident of Nevada. He is a member of the Nevada Class and the Nebraska Class alleged herein.

79. Plaintiff Frank James is a citizen and resident of Crawfordsville, Indiana. He is a member of the Indiana Class alleged herein.

80. Plaintiff Earnest Jenkins is a citizen and resident of West Virginia. He is a member of the West Virginia Class and the Pennsylvania Class alleged herein.

81. Plaintiff Tom Karnatz is a citizen and resident of Montana. He is a member of the Montana Class alleged herein.

82. Plaintiff Jack Kimmich is a citizen and resident of California. He is a member of the California Class alleged herein.

83. Plaintiff George Kirven is a citizen and resident of South Carolina. He is a member of the South Carolina Class alleged herein.

84. Plaintiff Jason Klingenberg is a citizen and resident of Lyon County, Iowa. He is a member of the Iowa Class and Minnesota Class alleged herein.

85. Plaintiff Larry Lempka is a citizen and resident of Colorado. He is a member of the Colorado Class alleged herein.

86. Plaintiff Justin Lemonds is a citizen and resident of Robbins, North Carolina. He is a member of the North Carolina Class alleged herein.

87. Plaintiff Josh Lesko is a citizen and resident of Sheridan, Illinois. He is a member of the Illinois Class alleged herein.

88. Plaintiff Larry and Wyatt Loeffler are citizens and residents of Mitchell, Nebraska. They are each members of the Nebraska Class alleged herein.

89. Plaintiff Gerald Lunkwitz is a citizen and resident of Gothenburg, Nebraska. He is a member of the Nebraska Class alleged herein.

90. Plaintiff Jacob Mabie is a citizen and resident of Michigan. He is a member of the Texas Class alleged herein.

91. Plaintiff Jess Metzger is a citizen and resident of New Jersey. He is a member of the New Jersey Class alleged herein.

92. Plaintiff John Miller is a citizen and resident of New Jersey. He is a member of the New York Class and the New Jersey Class alleged herein.

93. Plaintiff Kyle Minich is a citizen and resident of Rimersburg, Pennsylvania. He is a member of the Pennsylvania Class alleged herein.

94. Plaintiff Cal Moore is a citizen and resident of Crew, Virginia. He is a member of the Virginia Class alleged herein.

95. Plaintiff Vonda Moreland is a citizen and resident of Maryland. She is a member of the Maryland Class and the West Virginia Class alleged herein.

96. Plaintiff Robert Shane Morgan is a citizen and resident of Alabama. He is a member of the Alabama Class alleged herein.

97. Plaintiff Ron Nash is a citizen and resident of Cherokee County, Kansas. He is a member of the Missouri Class and Oklahoma Class alleged herein.

98. Plaintiff Bryan Nelms is a resident of Tuscaloosa, Alabama. He is a member of the Alabama -Class alleged herein.

99. Plaintiff Matt Ortner is a resident of Ohio. He is a member of the Ohio Class alleged herein.

100. Plaintiff Donald Ouelette is a citizen and resident of Maine. He is a member of the Maine Class and the New Hampshire Class alleged herein.

101. Plaintiff Joe Pate is a citizen and resident of Texoma, Oklahoma. He is a member of the Oklahoma Class alleged herein.

102. Plaintiff Mike Ping is a citizen and resident of Rock Hill, South Carolina. He is a member of the South Carolina Class alleged herein.

103. Plaintiff Ter Puskarich is a citizen and resident of Pennsylvania. He is a member of the Pennsylvania Class alleged herein.

104. Plaintiff John Raburn is a citizen and resident of Florida. He is a member of the Florida Class alleged herein.

105. Plaintiff Stanley Richardson is a citizen and resident of Marshall, Texas. He is a member of the Texas Class alleged herein.

106. Plaintiff Brian Riessland is a citizen and resident of Amherst, Nebraska. He is a member of the Nebraska Class alleged herein.

107. Plaintiff Pete Rumore is a citizen and resident of Florida. He is a member of the Florida Class alleged herein.

108. Plaintiff Wayne Rupe is a citizen and resident of Wapello County, Iowa. He is a member of the Iowa Class alleged herein.

109. Plaintiff Leonard Saathoff is a citizen and resident of South Dakota. He is a member of the South Dakota Class alleged herein.

110. Plaintiff Kenneth Seever is a citizen and resident of Tennessee. He is a member of the Tennessee Class alleged herein.

111. Plaintiff Adam Sevy is a citizen and resident of Cass County, Missouri. He is a member of the Kansas Class alleged herein.

112. Plaintiff Anthony Shaw is a resident of Byron, Georgia. He is a member of the Georgia Class alleged herein.

113. Plaintiff Rusty Shaw is a resident of Byron, Georgia. He is a member of the Georgia Class alleged herein.

114. Plaintiff Matthew Sickelton is a citizen and resident of Virginia. He is a member of the Virginia Class and the North Carolina Class alleged herein.

115. Plaintiff Dan Smith is a citizen and resident of Wyoming. He is a member of the Wyoming Class alleged herein.

116. Plaintiff Robert Stanton is a citizen and resident of Pennsylvania. He is a member of the Pennsylvania Class alleged herein.

117. Plaintiff Howard Stenbridge is a citizen and resident of Tennessee. He is a member of the Tennessee Class and the Kentucky Class alleged herein.

118. Plaintiff James Still is a citizen and resident of Mississippi. He is a member of the Mississippi Class alleged herein.

119. Plaintiff Charles Strickland is a citizen and resident of Fort White, Florida. He is a member of the Florida Class alleged herein.

120. Plaintiff Tim Sullivan is a citizen and resident of Kevil, Kentucky. He is a member of the Kentucky Class alleged herein.

121. Plaintiff Tracy Sullivan is a citizen and resident of Kevil, Kentucky. He is a member of the Kentucky Class alleged herein.

122. Plaintiff Jerry Terry is a citizen and resident of Springfield, Tennessee. He is a member of the Tennessee Class alleged herein.

123. Plaintiff Tim Towle is a citizen and resident of New Hampshire. He is a member of the New Hampshire Class alleged herein.

124. Plaintiff Simon Vicknair is a citizen and resident of Louisiana. He is a member of the Louisiana Class alleged herein.

125. Plaintiff Lawrence Wachholder is a citizen and resident of New York. He is a member of the New York Class alleged herein.

126. Plaintiff Ross Watermann is a citizen and resident of Vona, Colorado. He is a member of the Colorado Class and Kansas Class alleged herein.

127. Plaintiff Wayne Wells is a citizen and resident of Oklahoma. He is a member of the Oklahoma Class and the Kansas Class alleged herein.

128. Plaintiff Dale Wendt is a citizen and resident of Weyauwega, Wisconsin. He is a member of the Wisconsin Class alleged herein.

129. Plaintiff William White is a citizen and resident of Crouse, North Carolina. He is a member of the North Carolina Class alleged herein.

130. Plaintiff Susan Whitehead is a citizen and resident of Casa Grande, Arizona. She is a member of the Arizona Class alleged herein.

131. Plaintiff Charles “Bubba” Woods is a citizen and resident of Pope, Mississippi. He is a member of the Mississippi Class alleged herein.

132. Plaintiff Dwayne Wurth is a citizen and resident of Paducah, Kentucky. He is a member of the Kentucky Class alleged herein.

133. Plaintiff Terry Zornes is a citizen and resident of Allen County, Kansas. He is a member of the Kansas Class alleged herein.

134. Defendant Smitty’s Supply, Inc. is a for-profit company incorporated in Louisiana and with its principal place of business in Roseland, Louisiana. Defendant Smitty’s Supply, Inc. has at times purported to own and/or be affiliated with Cam2 International, L.L.C., but Smitty’s and Cam2 are and were at all relevant times distinct legal entities. Smitty’s and Cam2 have advertised and sold their products, including the 303 THF Products throughout the United States,

including at Atwoods, Tractor Supply Company, Rural King, Orscheln, and other retail stores. In this 4th ACC, claims are stated against Smitty's on behalf of each of the state-specific Classes.

135. Defendant Cam2 International, L.L.C. ("Cam2") is a for-profit company incorporated in Louisiana and with its principal place of business in Roseland, Louisiana. Cam2 and Smitty's have advertised and sold the 303 THF Products throughout the United States at various retail stores, including those owned and operated by Atwood Distributing, LP, Tractor Supply Company, Rural King, and other retail stores. In this 4th ACC, claims are stated against Cam2 on behalf of each of the state-specific Classes.

136. Defendant Tractor Supply Company ("Tractor Supply") is a for-profit company with its principal place of business in Brentwood, Tennessee. Defendant Tractor Supply Company has advertised and sold the 303 THF Products throughout the United States at its retail stores. In this 4th ACC, claims are stated against Tractor Supply on behalf of each of the state-specific Classes.

137. Defendants Rural King Administration, Inc. Rural King Distribution & Management, Inc., and Rural King Holding Co. (collectively "Rural King") are for-profit companies with their principal place of business located at 4216 DeWitt Avenue, Mattoon, Illinois 61938. Rural King has advertised and sold the 303 THF Products at its retail stores in several states including Alabama, Florida, Illinois, Indiana, Kentucky, Tennessee, Ohio, Michigan, Missouri, North Carolina, Pennsylvania, Virginia, and West Virginia. In this 4th ACC, claims are stated against Rural King on behalf of state-specific Classes from the following states: Alabama, Florida, Illinois, Indiana, Kentucky, Tennessee, Ohio, Michigan, North Carolina, Pennsylvania, Virginia, and West Virginia.

138. Defendant Orscheln Farm and Home LLC (“Orscheln”) is a for-profit limited liability company with its principal place of business in Moberly, Missouri. Orscheln has advertised and sold the 303 THF Products in several states including Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Ohio, Oklahoma, Nebraska, and Texas. In this 4th ACC, claims are stated against Orscheln on behalf of the state-specific Classes from the following states: Arkansas, Illinois, Indiana, Iowa, Kansas, Kentucky, Ohio, Oklahoma, Nebraska, and Texas.

139. Defendant Atwood Distributing, LP (“Atwoods”) is a for-profit limited liability company incorporated in Oklahoma and with its principal place of business in Enid, Oklahoma. Defendant Atwoods has advertised and sold the 303 THF Products at its Atwoods Ranch and Home retail stores in several states including Arkansas, Kansas, Missouri, Oklahoma, and Texas. In this 4th ACC, claims are stated against Atwoods on behalf of the state-specific Classes from the following states: Arkansas, Kansas, Missouri, Oklahoma, and Texas.

140. Defendants Ed Smith and Chad Tate direct and control Smitty’s and Cam2’s hydraulic fluid manufacturing and marketing operations, as more fully described below. At all times during the Class Period, Ed Smith and Chad Tate each had knowledge of and directed the wrongful conduct alleged herein. Plaintiffs seek to trace and recover for the Class Members all monies paid out and all other items of value provided by Smitty’s and/or Cam2 to Ed Smith and Chad Tate, that were derived from the sale of 303 THF Products, during the Class Period. In addition, because of their individual participation in the wrongful acts alleged herein, each are personally liable for the damages caused to Class Members. Ed Smith and Chad Tate knew and directed that line flush, used oils, and other waste oil be disposed of through the process of blending those materials into the 303 THF Products during the manufacturing process. Ed Smith and Chad Tate also each knew about the true and harmful nature of the 303 THF Products, yet nonetheless

directed that such nature be concealed and undisclosed to purchasers and that numerous false statements be placed on and/or remain on the 303 THF Products labels.

141. Defendants' conduct has harmed purchasers, including each Plaintiff, by inducing them to purchase and use Defendants' 303 THF Products through the false promise that the 303 THF Products met or had an equivalency to certain specifications (including JD-303 and J20A) and by directly or implicitly representing that the products were safe for use in farm, construction and logging equipment and had certain characteristics and qualities that protected equipment from wear and damage when, in reality, the products did not meet any specifications, were worthless or had a negative benefit, and caused harm, increased wear and damage to Plaintiffs' equipment. The impacts and harm that each Plaintiff's and each purchaser's equipment suffered was common to all, regardless of the particular OEM or the particular tractor model in which the 303 THF Products were used, or the particular use or maintenance practices of each Plaintiff and Class Member.

JURISDICTION AND VENUE

142. Federal Jurisdiction is proper pursuant to the Class Action Fairness Act ("CAFA"), [28 U.S.C. § 1332\(d\)](#), because at least one Class Member is a citizen of a state different from any Defendant, there are more than 100 Class Members, and the amount in controversy exceeds \$5,000,000.00 exclusive of interest and costs.

143. Venue is proper in this District Court for all pretrial proceedings pursuant to [28 U.S.C. § 1407](#) and pursuant to the June 2, 2020 Transfer Order of the Judicial Panel on Multidistrict Litigation.

144. With regard to the transferred action of *Zornes, et al. v. Smitty's Supply, Inc., et al.*, Case No. 19-cv-2257-JAR-TJJ (D. Kan.), the United States District Court for the District of Kansas is an appropriate venue for trial because the false representations, deceptive, dishonest,

and misleading practices and the unjust enrichment occurred in Kansas and elsewhere. The United States District Court of Kansas has personal jurisdiction over Defendants Smitty's, Cam2, Tractor Supply, and Orscheln, and Atwoods because those Defendants transact business in Kansas, through their various advertising methods and product sales directed toward Kansas residents. Additionally, Plaintiffs Zornes, Sevy, Bollin, and Watermann purchased the 303 THF Products at issue in Kansas. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

145. With regard to the transferred action of *Wurth, et al. v. Smitty's Supply, Inc., et al.*, Case No. 19-cv-00092-TBR (W.D. Kentucky), the United States District Court for the Western District of Kentucky is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the Western District of Kentucky and elsewhere. The United States District Court for the Western District of Kentucky has personal jurisdiction over Defendants Smitty's, Cam2, Tractor Supply, Orscheln, and Rural King because those Defendants transact business in Kentucky, through their various advertising methods and product sales directed toward Kentucky. Additionally, Plaintiffs Wurth, Egner, Tim Sullivan, Tracy Sullivan, and Stenbridge purchased the 303 THF Products at issue in Kentucky. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

146. With regard to the transferred action of *Buford v. Smitty's Supply, Inc., et al.* Case No. 1:19-cv-00082-BRW (E.D. Ark.), the United States District Court for the Eastern District of Arkansas is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the Eastern District of Arkansas and elsewhere. The United States District Court for the Eastern District of Arkansas has personal

jurisdiction over Defendants Smitty's, Cam2, Tractor Supply, Orscheln, and Atwoods because those Defendants transact business in Arkansas, through their various advertising methods and product sales directed toward Arkansas. Additionally, Plaintiffs Buford, Anderson, Hargraves, and Harrison purchased the 303 THF Products at issue in Arkansas. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

147. With regard to the transferred action of *Mabie v. Smitty's Supply, Inc., et al.*, Case No. 4:19-cv-03308 (S.D. Tex.), the United States District Court for the Southern District of Texas is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the Southern District of Texas and elsewhere. The United States District Court for the Southern District of Texas has personal jurisdiction over Defendants Smitty's, Cam2, Tractor Supply, Orscheln, and Atwoods because those Defendants transact business in Texas, through their various advertising methods and product sales directed toward Texas. Additionally, Plaintiffs Mabie, Denton, and Richardson purchased the 303 THF Products at issue in Texas. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

148. With regard to the transferred action of *Blackmore, et al. v. Smitty's Supply, Inc., et al.*, Case No. 5:19-cv-04052 (N.D. Iowa), the United States District Court for the Northern District of Iowa is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the Northern District of Iowa and elsewhere. The United States District Court for the Northern District of Iowa has personal jurisdiction over Defendants Smitty's, Cam2, Tractor Supply, and Orscheln because those Defendants transact business in Iowa, through their various advertising methods and product sales directed toward Iowa. Additionally, Plaintiffs Blackmore, Klingenberg, Rupe, and Faubion,

purchased the 303 THF Products at issue in Iowa. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

149. With regard to the transferred action of *Fosdick, et al. v. Smitty's Supply, Inc., et al.*, Case No. 2:19-cv-01850-MCE-DMC (E.D. Cal.), the United States District Court for the Eastern District of California is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the Eastern District of California and elsewhere. The United States District Court for the Eastern District of California has personal jurisdiction over Defendants Smitty's, Cam2, and Tractor Supply because those Defendants transact business in California, through their various advertising methods and product sales directed toward California. Additionally, Plaintiff Kimmich purchased the 303 THF Products at issue in California. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

150. With regard to the transferred action of *Klingenberg v. Smitty's Supply, Inc., et al.*, Case No. 19-cv-2684-ECT/ECW (D. Minn.), the United States District Court for the District of Minnesota is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the District of Minnesota and elsewhere. The United States District Court for the District of Minnesota has personal jurisdiction over Defendants Smitty's, Cam2, and Tractor Supply because those Defendants transact business in Minnesota, through their various advertising methods and product sales directed toward Minnesota. Additionally, Plaintiffs Klingenberg, Asfeld, and Creger purchased the 303 THF Products at issue in Minnesota. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

151. With regard to the transferred action of *Graves, et al. v. Smitty's Supply, Inc., et al.*, Case No. 4:19-cv-05089-SRB (W.D.Mo.), the United States District Court for the Western District of Missouri is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the Western District of Missouri and elsewhere. The United States District Court for the Western District of Missouri has personal jurisdiction over Defendants Smitty's, Cam2, Tractor Supply, Orscheln, Rural King, and Atwoods because those Defendants transact business in Missouri, through their various advertising methods and product sales directed toward Missouri. Additionally, Plaintiffs Graves, Nash, Goodson, and Hazeltine purchased the 303 THF Products at issue in Missouri. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

152. With regard to the transferred action of *Feldkamp, et al. v. Smitty's Supply, Inc., et al.*, Case No. 2:20-cv-02177-CSB-EIL, the United States District Court for the Central District of Illinois is an appropriate venue for trial because the false representations, deceptive, dishonest, and misleading practices and the unjust enrichment occurred in the Central District of Illinois and elsewhere. The United States District Court for the Central District of Illinois has personal jurisdiction over Defendants Smitty's, Cam2, Tractor Supply, Orscheln, and Rural King because those Defendants transact business in Illinois, through their various advertising methods and product sales directed toward Illinois. Additionally, Plaintiffs Feldkamp, Lesko, Fohne, and Burgdorf purchased the 303 THF Products at issue in Illinois. Federal jurisdiction is appropriate under the Class Action Fairness Act of 2005, [28 U.S.C. §1332\(d\)](#).

153. With regard to the claims directly filed in the 3rd ACC, the following are the respective appropriate venues for trial:

- (a) Plaintiffs Joe Jackson, Robert Shane Morgan, Brian Nelms and the Alabama Purchasers Class: United States District Court, Northern District of Alabama;
- (b) Plaintiffs Mark Engdahl, Michael Gallegos, Susan Whitehead, and the Arizona Purchasers Class: United States District Court, District of Arizona.
- (c) Plaintiffs Jim Guire, Larry Lempka, Ross Watermann, and the Colorado Purchasers Class: United States District Court, District of Colorado;
- (d) Plaintiff Todd Carusillo and the Connecticut Purchasers Class: United States District Court, District of Connecticut;
- (e) Plaintiffs Thomas James Brett, John Raburn, Pete Rumore, Charles Strickland, and the Florida Purchasers Class: United States District Court, Middle District of Florida;
- (f) Plaintiffs Cody Farner, Cline (Tommy) Fricks, Anthony Shaw, Rusty Shaw, Eddie Chavis, and the Georgia Purchasers Class: United States District Court, Middle District of Georgia;
- (g) Plaintiffs Frank James, Rick Hardin, and the Indiana Purchasers Class: United States District Court, North District of Indiana;
- (h) Plaintiffs Pat Beaver, Simon Vicknair and the Louisiana Purchasers Class: United States District Court, Middle District of Louisiana;
- (i) Plaintiffs Christopher Curtis, Harry Boynton, Donald Ouelette, and the Maine Purchasers Class: United States District Court, District of Maine;
- (j) Plaintiff Vonda Moreland and the Maryland Purchasers Class: United States District Court, District of Maryland.

- (k) Plaintiff Cosimo Ferrante and the Massachusetts Purchasers Class: United States District Court, District of Massachusetts.
- (l) Plaintiffs Douglas Clough, Michael Dahlke, Craig Dow and the Michigan Purchasers Class: United States District Court, Western District of Michigan;
- (m) Plaintiffs Samuel Blakeney, James Still, Charles “Bubba” Woods, and the Mississippi Purchasers Class: United States District Court, Southern District of Mississippi;
- (n) Plaintiff Tom Karnatz and the Montana Purchasers Class: United States District Court, District of Montana.
- (o) Plaintiffs Ed Chauncey, Larry and Wyatt Loeffler, Gerald Lunkwitz, Brian Riessland, Jeff Jacobson, and the Nebraska Purchasers Class: United States District Court, District of Nebraska;
- (p) Plaintiff Jeff Jacobson and the Nevada Purchasers Class: United States District Court, District of Nevada.
- (q) Plaintiffs Alden Dill, Joseph Griffiths, Tim Towle, Donald Oulette, and the New Hampshire Purchasers Class: United States District Court, District of New Hampshire.
- (r) Plaintiffs Jess Metzger, John Miller, and the New Jersey Purchasers Class: United States District Court, District of New Jersey.
- (s) Plaintiff Clyde Garduno and the New Mexico Purchasers Class: United States District Court, District of New Mexico.
- (t) Plaintiffs Sawyer Dean, John Miller, Lawrence Wachholder and the New York Purchasers Class: United States District Court, Northern District of New York;

- (u) Plaintiffs Justin Lemonds, William White, Cody Farner, Matthew Sickelton, and the North Carolina Purchasers Class: United States District Court, Middle District of North Carolina;
- (v) Plaintiff Brett Creger and the North Dakota Purchasers Class: United States District Court, District of North Dakota;
- (w) Plaintiffs Robert Gosche, Brian Hayes, Matt Ortner and the Ohio Purchasers Class: United States District Court, Southern District of Ohio;
- (x) Plaintiffs Arno Graves, Ron Nash, Joe Pate, Wayne Wells, and the Oklahoma Purchasers Class: United States District Court, Northern District of Oklahoma;
- (y) Plaintiffs Joshua Farley, Earnest Jenkins, Kyle Minich, Ter Puskarich, Robert Stanton, and the Pennsylvania Purchasers Class: United States District Court, Western District of Pennsylvania;
- (z) Plaintiffs Mike Ping, Eddie Chavis, George Kirven, and the South Carolina Purchasers Class: United States District Court, District of South Carolina;
- (aa) Plaintiffs Ed Chauncey, Patrick Gisi, Curtis Hoff, Leonard Saathoff, and the South Dakota Purchasers Class: United States District Court, District of South Dakota;
- (bb) Plaintiffs Jerry Terry, Will Dobson, Cody Farner, Tim Grissom, Kenneth Seever, Howard Stembridge and the Tennessee Purchasers Class: United States District Court, Middle District of Tennessee;
- (cc) Plaintiffs John Bartus, Jr., Robert Boone, Cal Moore, Burnis “Matthew” Sickleton, and the Virginia Purchasers Class: United States District Court, District of Virginia;

- (dd) Plaintiffs Roger Bias, Clinton Curry, Earnest Jenkins, Vonda Moreland, and the West Virginia Purchasers Class: United States District Court, Southern District of West Virginia;
- (ee) Plaintiffs Michael Hamm, Dale Wendt and the Wisconsin Purchasers Class: United States District Court, Eastern District of Wisconsin; and
- (ff) Plaintiff Dan Smith and the Wyoming Purchasers Class: United States District Court, District of Wyoming.

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

154. Defendants Tractor Supply, Rural King, Orscheln, and Atwoods are in the business of selling and advertising for sale certain merchandise or retail products in trade or commerce at retail stores throughout the United States.

155. Defendant Smitty's is in the business of manufacturing certain merchandise or retail products which are to be sold in trade or commerce at retail stores and through distributors throughout the United States.

156. Defendant Cam2 is in the business of manufacturing certain merchandise or retail products which are to be sold in trade or commerce at retail stores and through distributors throughout the United States.

157. During some or all of the time period from 2013 to present, Defendants Tractor Supply, Rural King, Orscheln, Atwoods, and other retailers sold and advertised in yellow buckets the 303 THF Products. These products were sold throughout the United States.

158. During some or all of the time period from 2013 to the present, Defendants Smitty's and Cam2 manufactured and advertised these 303 THF Products which were sold by Tractor Supply, Rural King, Orscheln, Atwoods, and other retailers.

Defendants' Deceptive Labeling, Marketing and Advertising

159. During some or all of the time from 2013 to the present, Defendants offered the 303 THF Products for sale at stores all over the United States as products suitable for use as tractor hydraulic fluid and as fluids that provided certain performance benefits and met or had equivalency to a wide number of manufacturers' specifications. The average sale price for a five (5) gallon bucket of Defendants' 303 THF Products was generally between \$20.00 and \$25.00.

160. Defendants falsely and deceptively labeled, marketed and offered for sale the 303 THF Products, including (1) as meeting manufacturer specifications and being acceptable for use as hydraulic fluid, transmission fluid, and gear oil in older tractors and other equipment; (2) as a substitute for and satisfying John Deere's JD-303 and J20A specifications; (3) as a fluid that provides extreme pressure and anti-wear protection for tractor transmission, axles and hydraulic pumps; (4) as a fluid that protects against rust and corrosion; and (5) as a fluid designed for use in equipment manufactured by Allis-Chalmers, Massey Ferguson, Deutz, JI Case/David Brown, Allison, International Harvester, White, Kubota, John Deere, Oliver, Ford and Caterpillar.

161. Defendants' labeling, marketing, advertising and sale of the 303 THF Products was widespread, continuous and contained on various signs, labels and advertisements throughout the United States for years.

162. Up until late 2017 or early 2018, Defendants' Cam2 ProMax 303 Tractor Hydraulic Oil was specifically labeled, marketed and advertised as follows:



163. These representations were also contained in Defendants’ advertising circulars and/or on Defendants’ websites, such as the following:

PROMAX™ 303 Tractor Hydraulic Oil

CAM2 PROMAX™ TRACTOR HYDRAULIC 303 OIL is general-purpose lubricant for farm and industrial tractors and construction equipment. CAM2 PROMAX™ Tractor Hydraulic 303 Oil provides performance in the areas of anti-wear, PTO clutch, rust protection, extreme pressure properties, water sensitivity, foam suppression and brake chatter reduction. CAM2 PROMAX™ Tractor Hydraulic 303 Oil is recommended for ambient temperatures between +32°F and 104°F (0°C to 40°C). For ambient temperatures outside this range or where a premium tractor hydraulic/transmission oil is required, please use a CAM2 Premium Tractor Hydraulic Fluid. CAM2 PROMAX™ Tractor Hydraulic 303 Fluid is suitable as a replacement for the following manufacturers where a tractor hydraulic fluid of this performance level is recommended:

Allis Chalmers®	Ford® Tractor	Kubota®
Allison®	International Harvester®	Massey Ferguson®
Caterpillar®	J. Case®/David Brown®	Olin®
Deutz®	John Deere® 303, J20A	White®

Misapplication may cause severe performance problems. CAM2® PROMAX™ tractor Hydraulic 303 Fluid has not been recommended by any OEM for model years later than 1974. For equipment built after 1974 requiring multi-functional fluid, use a CAM2® Premium Tractor Hydraulic Fluid.

3/1 GAL	80565-16731
3/2 GAL	80565-16732
5 GAL	80565-16705
55 GAL	80565-16795
BULK	80565-16711



164. Up until late 2017 or early 2018, Defendants’ Super S Super Trac 303 Tractor Hydraulic Fluid was specifically labeled, marketed and advertised as follows:

Super S® SuperTrac® 303 Tractor Hydraulic Fluid

TECHNICAL PRODUCT INFORMATION



Super S SuperTrac 303 Tractor Hydraulic Fluid

Super S SuperTrac 303 Tractor Hydraulic Fluid is designed to lubricate the transmission, differential and final drive gears in tractors and implements. It is a multi-functional fluid used as a hydraulic medium, and as a power steering, power brake, power take-off (PTO), and implement drive fluid.

FEATURES/ BENEFITS

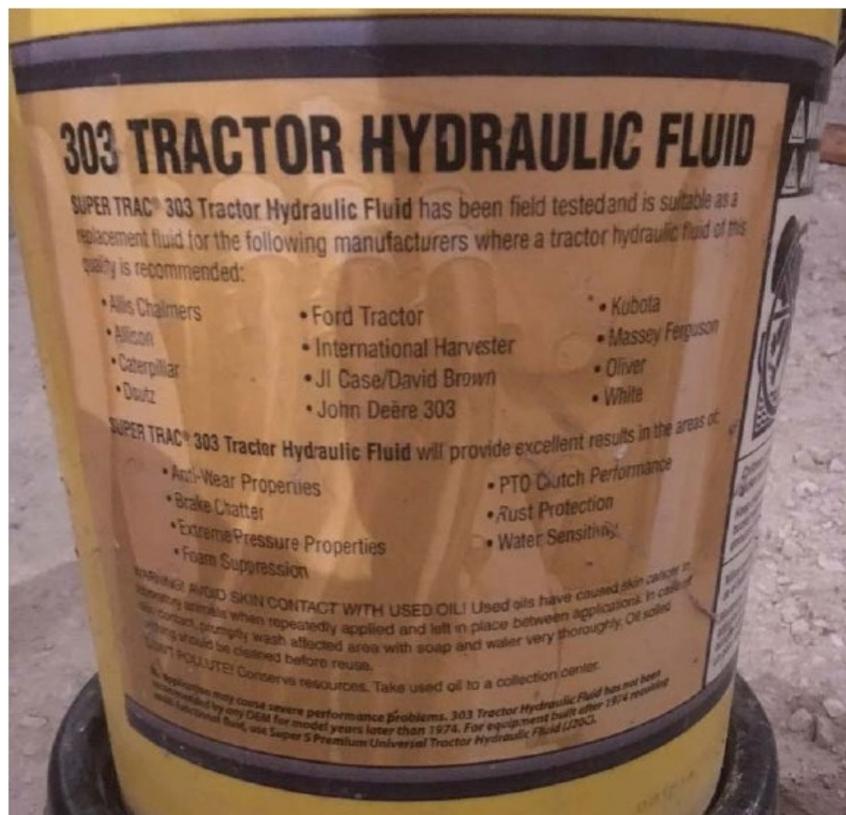
- Lubricates the transmission, differential and final drive gears in tractors and implements
- Provides extreme pressure and anti-wear protection for tractor transmission, axles and hydraulic pump
- Protects against rust and corrosion
- Provides excellent results for foam suppression and water sensitivity
- Controlled frictional characteristics permit the wet brakes to hold properly, reduces brake chatter and provides for smooth engagement of power take-off (PTO) clutches.

APPLICATIONS

SuperTrac 303 Tractor Hydraulic Fluid is designed for use as a replacement fluid for the hydraulic, wet brake, and transmission requirements of equipment manufacturers where a product of this quality is recommended, including:

Allis Chalmers	Allison	Caterpillar
Deutz	Ford Tractor	International Harvester
J I Case/David Brown	John Deere 303, J20A	Kubota
Massey Ferguson	Oliver	White

165. The Super S Super Trac 303 buckets contain the following, similar information:



166. These representations regarding Super S Supertrac 303 Tractor Hydraulic Fluid were also contained in Defendants' advertising circulars and/or on Defendants' websites.

167. Defendants' labeling thus specifically represented that the 303 THF Products being sold were acceptable for use and were:

- Field Tested
- Suitable as a replacement fluid for the following manufacturers where a tractor hydraulic fluid of this quality is recommended: Allis Chalmers, Allison, Caterpillar, Deutz, Ford Tractor, International Harvester, JI Case/David Brown, John Deere 303, Kubota, Massey Ferguson, Oliver, White
- Providing excellent results in the areas of:
 1. Anti-wear properties
 2. Brake Chatter
 3. Extreme Pressure Properties
 4. Foam Suppression
 5. PTO Clutch Performance
 6. Rust Protection
 7. Water Sensitivity

168. By naming, labeling, marketing, advertising and selling the 303 THF Products in the foregoing manner, and by describing the products using words such as "303," "tractor hydraulic fluid," "tractor hydraulic oil" and "multi-functional," Defendants sought to create, and did create, an image of the 303 THF Products in the minds of Plaintiffs and other purchasers that would lead a reasonable purchaser to conclude that Defendants' 303 THF Products were completely safe and effective for use in their equipment and in all equipment made by the listed manufacturers.

169. Defendants' name, labeling, advertising and marketing of their 303 THF Products were material to the reasonable purchaser.

170. At the time of Defendants' labeling, advertisements, marketing and other representations, and as Defendants already knew or should have known, the representations regarding 303 THF Products were false, deceptive and misleading to consumers and others seeking to purchase tractor hydraulic fluid.

171. The John Deere "303" designation is over 50 years old and has been obsolete for many years. Certain ingredients of the original John Deere 303 fluid—such as sperm whale oil—have been banned since the 1970s and are no longer available for use. As a result, manufacturers have been unable to make and sell true "303" fluid for over forty (40) years and there are no longer any specifications for 303 fluid. Defendants knew or should have known that at the time they were marketing and selling the 303 THF Products during the Class Period, there were no specifications available for "303" tractor hydraulic fluid and, therefore, claims that the 303 THF Products met "303" specifications could not possibly be true, and Defendants had no way to ensure the accuracy of representations that their 303 THF Products were in compliance with any known specifications and in fact knew their 303 THF Products did not meet the J20A specifications.

172. As Defendants knew, or should have known, the 303 THF Products manufactured by Defendants and sold in the yellow buckets lacked some or all of the additives required to provide the advertised "results," "features" and "benefits." For example:

- a. In a February 2014 email, Cam2's Vice President of Sales and Marketing, Lindsey Baker, discussed what information to provide a retailer and the public about 303 THF, and admitted to other employees that Smitty's 303 THF Product had "no additives in it really" and that it was "totally line wash in a bucket."
- b. In deposition testimony, Smitty's Technical Director Jeremy Schenk testified in this litigation that Smitty's marketing materials were universally inaccurate in claiming that the 303 THF Product "was formulated from a blend of highly refined base oils and a superior additive package."

- c. Mr. Schenk also admitted in deposition testimony in this litigation that he had recommended to Smitty's that the list of OEMs be removed from Smitty's 303 THF Product label, and further admitted, "[t]here are several performance benefits that are listed here that we felt should be removed," including "[t]alking about PTOs, talking about the transmission, differential, final gears."

173. As Defendants knew, or should have known, the 303 THF Products manufactured by Defendants and sold in the yellow buckets were made using flush oil, line wash, used transformer oil, used turbine oil, and/or other waste oil products containing motor oil components and other additives and contaminants that are never appropriate for use in a tractor hydraulic fluid, making the 303 THF Product a worthless hydraulic fluid that could actually harm equipment. In deposition testimony in this case in October 2019, Smitty's Technical Director Jeremy Schenk testified that he had determined that Smitty's 303 THF Product was not suitable for use as tractor hydraulic fluid in any tractors.

174. As Defendants knew, or should have known, the 303 THF Products manufactured by Defendants and sold in the yellow buckets did not meet or have an equivalency to all current specifications (and failed to meet certain obsolete specifications) for any manufacturers of farm, logging and construction equipment. Alternatively, Defendants knew, or should have known, they had no basis on which to sell the 303 THF Products as a tractor hydraulic fluid that met or had an equivalency to the specifications of all manufacturers listed on the label because, on information and belief, either 1) Defendants' test data showed the viscosity, pour point and additive levels of the 303 THF Products varied, were inconsistent, and did not meet some or all of the specifications of the manufacturers listed on the labels; or 2) Defendants did not have any test data to confirm the 303 THF Products always had the viscosity, pour point or additive levels that met all manufacturers' specifications or that were needed for a fluid suitable for use in purchasers' equipment. For example:

- a. In an email exchange in July and August 2014, Lindsey Baker noted that one of the salesmen was making false representations about Smitty's 303 THF Product being made with "100% virgin base oils" and "correct additives packages," and explained to a Cam2 salesman, "You and I both know we can't state anything like this." The Cam2 salesman responds: "Ha. You are right we just need some smoke and mirrors...." Vice President Baker responds, in part, "[t]he less we say on this type of product the better."
- b. In a late 2017 email authored by Smitty's technical director Jeremy Schenk, Mr. Schenk advised Smitty's Executive Vice President of Sales Jonathan Lorio and Creative Art Director Cory Trahan, as well as Matt Saragusa, as follows: "Cory and I were talking about the 303 label this morning and if we were going to put the spec that it supposedly meets on the container. Technically, it doesn't meet any specs, so anything that we put on there will just be fluff...."

175. At no point in time on the label of the 303 THF Products did Defendants tell purchasers the truth, including that:

- a. The "303" specification does not exist, is obsolete, could not be tested, and true 303 fluid was banned in the 1970s;
- b. Defendants used low quality base oil, flush oil, line wash, used transformer oil, used turbine oil or other reclaimed oil in the 303 THF Products, all of which are unfit for use in hydraulic systems and should never be contained in a tractor hydraulic fluid and that could actually harm equipment;
- c. The 303 THF Products contained a "down-treated" and/or no additive package;
- d. Defendants' test data did not confirm that the 303 THF Products met all manufacturers' specifications, including the advertised J20A specification;

- e. Defendants have no idea whether the 303 THF Products they offered for sale met the requirements of, has acceptable anti-wear properties, or is suitable for use in tractors or other equipment; and
- f. The 303 THF Products may expose purchasers' equipment to increased wear and damage.

176. Instead, the 303 THF Products were deceptively offered for sale as “tractor hydraulic” lubricants containing quality base oils, sufficient additives, and meeting or having equivalency to the obsolete J20A specification, the long-defunct and now non-existent “303” specification and many other equipment manufacturer specifications.

The State of Missouri’s Testing of 303 THF

177. Because of the poor, uncertain quality of 303 tractor hydraulic fluids and the deceptive way in which they are manufactured and sold, several private and governmental entities have been concerned about the sale of the fluids, the misleading nature of the labeling, and the damage the fluids can do to tractors and other equipment. The Missouri Department of Agriculture (MDA) is one such entity.

178. In the summer of 2017, the MDA sampled fourteen (14) different “303” tractor hydraulic fluid products, many of which claimed to meet manufacturers’ specifications and claimed to work in almost every tractor. Defendants’ 303 THF Products Super S Supertrac 303 and Cam2 Promax 303 were purchased in Missouri by the MDA in 2017 and were two of the products tested.

179. The MDA tested the fluids’ viscosity, pour point, and additive and detergent levels to determine whether those levels met any current industry tractor hydraulic fluid specifications, namely, John Deere’s J20C specifications.

180. As a result of the testing, the MDA concluded that all fourteen (14) of these “303” tractor hydraulic fluid products failed to meet any current specifications and were found to be underperforming to the point that damage was likely to result from use.

181. Defendants’ 303 THF Products were two of the fluids that failed to meet current specifications. More specifically, Defendants’ Super S Supertrac 303 THF Product had a viscosity (Kinematic Viscosity @ 100C) level of 7.647, and Cam2 Promax 303 THF Product had a viscosity (Kinematic Viscosity @ 100C) level of 7.633. The J20C and J20A specifications for KV@100C requires a minimum of 9.1 and therefore Defendants’ 303 THF Products fell short of the standard.

182. Defendants’ 303 THF Products were also found to have additive levels of calcium, phosphorous and zinc that were well below (50% or more less than) the additive levels found in fluids meeting the J20C specification.

183. Furthermore, Defendants’ 303 THF Products’ Kinematic Viscosity @ 100C level did not meet many or all of the specifications of the other manufacturers Defendants listed on the labels and advertising of their 303 THF Products, including the J20A specification.

184. The MDA’s tests also indicated that Defendants’ THF Products used waste, or “line flush” oil, which contain ingredients inappropriate for use in a tractor hydraulic fluid.

185. In or around October 2017, the MDA notified Defendants, by letter, of its findings regarding the 303 THF Products in the marketplace. The MDA notified Defendants it concluded the 303 THF Products were mislabeled, misbranded, that the labels were deceptive and misleading, and that the products were exposing equipment to increased wear and damage. As a result, the MDA ordered Defendants to stop selling their 303 THF Products in Missouri.

186. Defendants’ misrepresentations and omissions, and the fact of injury to Plaintiffs and the Classes, were not reasonably ascertainable to Class Members. Defendants concealed any

internal test data and the truth about the 303 THF Products at all relevant times during the Class Period.

Defendants Continue to Sell the Deceptive, Poor Quality 303 THF Products

187. Despite receipt of the MDA's stop sale notices, test results and concerns regarding the damage that was being caused to equipment, Defendants continued to manufacture and sell the products in states that had not banned the products. Defendants did not in any way change the formula of the 303 THF Products after the State of Missouri's ban.

188. Rather than pull the 303 THF Products off the market in all states, Defendants decided to continue to sell the 303 THF Products. Other than the slight name changes, they made one additional change: the colorful photos of modern tractors were removed from the labels and were replaced with older, simpler tractors. However, in all other respects, the 303 THF Products were made with the same formula, processes, and improper ingredients, and the labels continued to deceptively list the "303" designation, the equipment manufacturers' names, and the false and misleading claims of field testing and performance results.

189. Despite the MDA findings, Defendants continued to sell the 303 THF Products and make those representations about the quality and performance properties of the product even though they knew the product did not meet or have an equivalency to any manufacturer specifications and that they did not have any data or evidence on which to base or substantiate the performance qualities represented on the label.

190. Smitty's and Cam2 had no support for claims of performance, yet Defendants continued to sell the product to purchasers throughout the United States as a fluid recommended for use in almost all manufacturers' equipment, with representations of excellent performance in

the areas of anti-wear properties, brake chatter, extreme pressure properties, foam suppression, PTO clutch performance, rust protection and water sensitivity.

191. In 2018, in stark contrast to the quality represented to purchasers, Smitty's and Cam2 knew and discussed internally that the 303 THF Products did not provide adequate wear protection and that the products could lead to excess deposit buildup inside transmissions and other parts of equipment, and admitted and acknowledged that the 303 THF Products actually exposed equipment to damage and downtime. In a circular created and distributed by Smitty's, Smitty's wrote that its 303 THF Products had low additive levels and would cause the following problems and damage to equipment:



...

- Equipment may suffer from damage to 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.
- Additional problems include starting the equipment, oil starvation, high pump leakage, deposits, sludging, and thickening
- Costly repair, dreaded downtime or safety issue



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192. Defendants did not take any action to inform purchasers of the State of Missouri's testing and findings concerning Defendants' 303 THF Products, or about Defendants' knowledge of the harmful impacts of the 303 THF Products.

Plaintiffs' Experience with Defendants' Labeling and Products

193. Plaintiffs each purchased Defendants' 303 THF Products on numerous occasions. Plaintiffs each paid an average price of \$20 to \$25 per 5-gallon bucket.

194. As with all Members of the Classes, in the period prior to the filing of this Class Action, Plaintiffs each purchased Defendants' 303 THF Products containing the label representations set forth above.

195. Plaintiff William Anderson purchased Defendants' 303 THF Products in buckets at the Atwoods store in Lonoke, Arkansas and at the Tractor Supply Company store in Stuttgart, Arkansas. William Anderson specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Anderson was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used in Plaintiff Anderson's equipment, including his 2008 Case IH 335; 2001 JD 8410; 2006 Case IH 2388; and 1989 Case IH 9150. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

196. Plaintiff Joe Asfeld purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Asfeld purchased Defendants' THF Products at the Mills Fleet/Fleet Supply Store in Sauk Centre, Minnesota and at the Tractor Supply Company Store in Little Falls, Minnesota. Joe Asfeld specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Asfeld was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Asfeld in his John Deere 4955 Tractor, New Holland Bi TV 140 Tractor, Versatile 500 Tractor, MacDon Draperhead 972, Manure Spreader, and John Deere 9500 Combine. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

197. Plaintiff John Bartus, Jr. purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Bartus purchased Defendants' THF Products at the Tractor Supply Company store in South Hill, Virginia. John Bartus specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Bartus was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Bartus in his 1973

Ford 4000 Tractor, Ford 4630 Tractor, and Vermeer Baler 650C. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

198. Plaintiff Roger Bias purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Bias purchased Defendants' THF Products at the Tractor Supply Company store in Hurricane, West Virginia and at the Rural King store in Cross Lanes, West Virginia. Roger Bias specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Bias was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Bias in his CAT 308 Excavator, Case 550 Dozer Long Track, 190 Bobcat, 78 International 440 Dump Truck, and Massey Ferguson 5545 Tractor. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

199. In the time period of December 1, 2013 to present, Plaintiff Terry Blackmore purchased Defendant's 303 THF Products at Bomgaars in LeMars and Sioux City, Iowa. Mr. Blackmore specifically purchased Cam2 Promax 303 and Cam2 303 and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Cam2 Promax 303 and Cam2 303 purchased by Plaintiff Blackmore was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used in

Plaintiff Blackmore's International 706 Tractor and International 986 Tractor. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

200. Plaintiff Samuel Blakeney purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Blakeney specifically purchased Super S Supertrac 303 at the Tractor Supply Company store in Laurel, Mississippi and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S Supertrac 303 purchased by Plaintiff Blakeney was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used by Plaintiff Blakeney in his John Deere 5520, John Deere 5085, John Deere 955, Caterpillar 320C, Caterpillar D3 and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

201. Plaintiff George Bollin purchased Defendants' 303 THF Products. In the time period since December 1, 2013, Plaintiff Bolin purchased several 5-gallon buckets of the Super S SuperTrac 303 THF Product and the Super S 303 THF Product at the Tractor Supply Company store and the Orscheln Store located in Lansing, Kansas, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Bollin was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Bollin

in his 1964 Caterpillar D8H. Defendants' 303 THF Products caused damage to this piece of equipment.

202. Plaintiff Robert Boone purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Boone purchased Defendants' THF Products at the Tractor Supply Company store in Christiansburg, Virginia and at the Rural King Store in Christiansburg, Virginia. Robert Boone specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Boone was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Boone in his 1988 John Deere 655B Tractor, 1997 John Deere 5400 Tractor, and John Deere 650B Track Loader. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

203. Plaintiff Thomas James Brett purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Brett purchased Defendants' THF Products at the Tractor Supply Company Store in Arcadia, Florida and at the Rural King Store in Arcadia, Florida. Mr. Brett specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Cam2 Promax 303 and Cam2 303 purchased by Plaintiff Brett was falsely and deceptively marketed, sold and labeled as described

herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Brett in his John Deere 4440 Loader and Ford Tractor. Defendants' 303 THF Products have caused damage to each of these pieces of equipment.

204. Plaintiff Sean Buford purchased Defendants' 303 THF Products in buckets at the Tractor Supply Company store in Newport, Arkansas. Sean Buford specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Buford was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used in Plaintiff Buford's equipment including his 8940 Case IH Tractor; 7140 Case IH Tractor, 4840 John Deere Tractor, 4850 John Deere Tractor, 9610 John Deere Tractor, two 2388 Case IH Combines, and other equipment. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

205. Plaintiff Steve Burgdorf purchased one of Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Burgdorf purchased 5-gallon buckets of the Super S Supertrac 303 Tractor Hydraulic Fluid and Super S 303 Tractor Hydraulic Fluid at the Tractor Supply Company Store located in Freeburg, Illinois and from Buchheit in Sparta, Illinois. He purchased Cam2 Promax 303 and Cam2 303 from Rural King in Waterloo, Illinois. Plaintiff Burgdorf's purchases of those 303 THF Products were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303,

Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Bourgdorf was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Burgdorf in his 1963 Case Loader, 1958 International M, International 746, and 1957 International Super M. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

206. Plaintiff Todd Carusillo purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Carusillo specifically purchased Super S Supertrac 303 and Super S 303 at the Tractor Supply Company store in Barkhamstead, Connecticut and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Carusillo was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Carusillo in his 1964 International 706 tractor, his 2002 Kubota Model L48 tractor, his 1976 P&H model 318 excavator and his 1990 Bandit chipper. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

207. Plaintiff Douglas Clough purchased one of Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Clough purchased Super S Supertrac 303 at the Tractor Supply Company store in Cadillac, Michigan, and his purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S Supertrac 303 purchased by Plaintiff Clough was falsely and deceptively marketed, sold and labeled as

described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used by Plaintiff Clough in his 2010 John Deere 3032E Tractor for personal, family or household use on his property, such as moving wood and clearing snow.

208. In the time period of December 1, 2013 to the present, Plaintiff Clinton Curry purchased Cam2 Promax 303 and Cam2 303 at the Rural King retail store in Cross Lanes, West Virginia, and his purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Cam2 Promax 303 and Cam2 303 purchased by Plaintiff Curry was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used in Plaintiff's 200 Komatsu Excavator. Defendants' 303 THF Product caused damage to this piece of equipment.

209. Plaintiff Christopher Curtis purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Curtis purchased Defendants' THF Products at the Tractor Supply Company Store in Augusta, Maine and those purchases were based on the label described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Plaintiff Curtis specifically purchased Super S Supertrac 303 and Super S 303. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Curtis was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Curtis in his Case 1840

skid steer and a T5D tractor. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

210. Plaintiff Sawyer Dean purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Dean purchased Defendants' 303 THF Products at the Tractor Supply Company stores in Queensbury and Greenwich, New York and those purchases were based on the label described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Plaintiff Dean specifically purchased Super S Supertrac 303 and Super S 303. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Dean was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Dean in his Ford TW-15 tractor, Ford TW-35 tractor, Ford A-64 payloader, International 1086, John Deere 2440 tractor, Ford 8830 tractor and John Deere 4440 tractor. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

211. Plaintiff Daniel Denton purchased Defendants 303 THF products several times in the state of Texas, most recently in 2018 when he purchased Super S 303 at the Tractor Supply Company store in Magnolia, Texas and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S 303 purchased by Plaintiff Denton was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used in Plaintiff Denton's John Deere 5065 tractor, for personal use around his home

and property in Plantersville, Texas. Defendants' 303 THF Product caused damage to this piece of equipment.

212. Plaintiff Mark Engdahl purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Engdahl specifically purchased Super S Supertrac 303 and Super S 303 at the Tractor Supply Company Stores in Cave Creek and Douglas, Arizona and those purchases were based on the label described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Engdahl was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Engdahl in his Case 580C backhoe, Massey Ferguson 240 tractor, John Deere 4020 tractor, New Holland 12LA tractor and Terex 840 TLB backhoe. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

213. Plaintiff Kirk Egner purchased one of Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Egner purchased several 5-gallon buckets of Defendants' 303 Products at the Rural King retail store and the Tractor Supply Company store in Paducah, Kentucky. Plaintiff Egner specifically purchased Super S Supertrac 303, Super S 303, Cam2 303 Promax, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Egner was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used by

Plaintiff Egner in his tractors and other equipment. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

214. Plaintiff Kyle Feldkamp purchased Defendants' 303 THF Products. In the time period of Spring 2014 to the present, Plaintiff Feldkamp purchased several 5-gallon buckets of the Cam2 Promax 303 Tractor Hydraulic Oil and the Cam2 303 Tractor Hydraulic Oil at the Rural King retail store located in Effingham, Illinois. Plaintiff Feldkamp's purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Cam2 Promax 303 and Cam2 303 purchased by Plaintiff Feldkamp was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Feldkamp in his 1975 John Deere 4230 Tractor, 1967 John Deere 4020 Tractor, 1965 John Deere 4020 Tractor, 1982 John Deere 4420 Tractor, and 1973 JI Case 1370 Tractor. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

215. Plaintiff Russell Faubion purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Faubion purchased Defendants' THF Products at the Orscheln Store in Cresstown, Iowa. Mr. Faubion specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Faubion was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Faubion

in his 1974 Ford 9600 Tractor and his 1978 Caterpillar D6D Excavator. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

216. Plaintiff Norman Fohne purchased one of Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Fohne purchased 5-gallon buckets of the Cam2 Promax 303 Tractor Hydraulic Oil and the Cam2 303 Tractor Hydraulic Oil at the Rural King retail store located in Collinsville, Illinois. Also, in the time period of December 2013 to the present, Plaintiff Fohne purchased 5-gallon buckets of the Super S Supertrac 303 Tractor Hydraulic Fluid and Super S 303 Tractor Hydraulic Fluid at the Tractor Supply Company store in Belleville, Illinois, as well as at Buchheit in Greenville, Illinois. Plaintiff Fohne's purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303 purchased by Plaintiff Fohne was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Fohne in his 2000 Case IH MX210, 2001 New Holland 115, 1999 New Holland 8360, and 2008 New Holland T 6070. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

217. Plaintiff Michael Gallegos purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Gallegos purchased Super S Supertrac 303 at the Tractor Supply Company Store in Chandler, Arizona and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S Supertrac 303 purchased by Plaintiff Gallegos was falsely and deceptively marketed, sold and labeled as

described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used by Plaintiff Gallegos in his Champ 580 forklift. Defendants' 303 THF Product caused damage to this piece of equipment.

218. Plaintiff Gary Goodson purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Goodson purchased Cam2 Promax 303 at the Atwoods Store in Webb City, Missouri and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Cam2 Promax 303 purchased by Plaintiff Goodson was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Goodson in a Farmall Super M tractor, Farmall 330 tractor, and John Deer brushcutter. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

219. Plaintiff Patrick Gisi purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Gisi purchased Cam2 303 Tractor Hydraulic Oil at the Runnings store in Aberdeen, South Dakota and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Cam2 303 purchased by Plaintiff Gisi was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used by Plaintiff Gisi in his International 706 Tractor. Defendants' 303 THF Product caused damage to this piece of equipment.

220. Plaintiff Robert Gosche purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Gosche purchased Defendants' 303 THF Products at the Tractor Supply Company store and the Rural King retail store in Tiffin, Ohio. Mr. Gosche specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Defendants' 303 THF Products purchased by Plaintiff Gosche were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Gosche in his John Deere 490D Excavator. Defendants' 303 THF Products caused damage to this piece of equipment.

221. Plaintiff Arno Graves purchased Defendants' 303 THF Products. On several occasions in the time period of 2013 through 2017, Plaintiff Graves purchased 5-gallon buckets of the Cam2 ProMax 303 Tractor Hydraulic Oil Product at the Atwoods retail store located in Webb City, Missouri and at the Tiff Store in Tiff City, Missouri. In the time period of December of 2013 to the present, Plaintiff Graves has also purchased Super S 303 and Super S Supertrac 303 at the Tractor Supply Company store in Miami, Oklahoma and Cam2 303 and Cam2 Promax 303 at the Atwoods store in Vinita, Oklahoma. Plaintiff Graves' purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Graves were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Graves in his John Deere

2030, Case 480E Backhoe, and 1066 International Farmall tractor. Defendants' 303 THF Products caused damage to these pieces of equipment.

222. Plaintiff Michael Hamm purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Hamm purchased Defendants' 303 THF Products at the Tractor Supply Company store in New London, Wisconsin, and at auctions, and those purchases were based on the label described above, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Plaintiff Hamm specifically purchased Super S Supertrac 303, Super S 303, and Cam2 303. The Super S Supertrac 303, Super S 303 and Cam2 303 purchased by Plaintiff Hamm was falsely and deceptively marketed, sold and labeled as described here, and were not suitable for use as tractor hydraulic fluid for any new equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Hamm in his International 1086 tractor, International 1486 tractor, two International 1440 combines, International 4786 tractor, International Harvester 756 tractor, International Harvester 1086 tractor, 7801 Gehl skid steer, Kenworth manure truck Case 2890 and New Holland skid steer. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

223. Plaintiff Rick Hardin purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Hardin purchased Defendants' THF Products at the Orscheln Store in Washington, Indiana and at that Rural King Store in Washington, Indiana. Rick Hardin specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Hardin were falsely

and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Hardin in his 1978 Bradley 990 Tractor, Ford 7000 Tractor, 1971 Ford 4500 Tractor, 2005 Heston 540 Haybaler, 1970s Heston 10 Haycutter attachment, and 1979 Backhoe attachment. Defendants' 303 THF Products caused damage to each of these pieces of equipment and attachments.

224. Plaintiff Alan Hargraves purchased Defendants' 303 THF Products in buckets at the Tractor Supply Company store in Greenwood, Arkansas and at Discount Ag in Marvel, Arkansas. Alan Hargraves specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Hargraves were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used in Plaintiff Hargraves' equipment, including his 8120 John Deere Front Wheel Assist Tractor, 8230 John Deere (2006), 580 Case Backhoe, and 315 Case Tractor. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

225. Plaintiff Jeffery Harrison purchased Defendants' 303 THF Products in buckets at the Atwoods stores in Hot Springs and Arkadelphia, Arkansas. Jeffery Harrison specifically purchased Cam2 Promax 303 and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Harrison were falsely and deceptively marketed, sold and labeled

as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used in Plaintiff Harrison's equipment, including his 2004 Case Backhoe, Case 450 Dozer, Bantam B266 Trac Hoe, and LS Tractor. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

226. Plaintiff Brian Hayes purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Hayes purchased Defendants' THF Products at the Rural King retail store in Circleville, Ohio. Brian Hayes specifically purchased Cam2 Promax 303 and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Hayes were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Hayes in his David Brown Tractor and Hyster Forklift. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

227. Plaintiff Mark Hazeltine purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Hazeltine purchased Cam2 Promax 303 at the Rural King Store in Wentzville, Missouri and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Cam2 Promax 303 purchased by Plaintiff Hazeltine was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Product was used by Plaintiff Hazeltine in a Ford 1710 tractor and a log splitter. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

228. Plaintiff Curtis Hoff purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Hoff purchased Defendants' THF Products at the Tractor Supply Company Store in Aberdeen, South Dakota. Mr. Hoff specifically purchased Super S Supertrac 303 and Super S 303, and the purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Hoff were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Hoff in his McCormick MTX 110 Tractor. Defendants' 303 THF Product caused damage to each of this piece of equipment.

229. Plaintiff Frank James purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Frank James purchased Defendants' 303 THF Products at the Tractor Supply Company store and the Rural King retail store in Lafayette, Indiana. Frank James specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and the purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Frank James were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Frank James in his 1990 Caterpillar Excavator, 2004 Komatsu 160 Excavator, 2007 Komatsu 200 Excavator, 480 Case Backhoe Super E, and his log splitter. Defendants' 303 THF Products have caused damage to each of these pieces of equipment.

230. Plaintiff Jack Kimmich purchased Defendants' 303 THF Products at the Tractor Supply Company store in Gilroy, California. Jack Kimmich specifically purchased Super S Supertrac 303 and Super S 303, and the purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Kimmich were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used in Plaintiff Kimmich's L50 Bravo Mobile Loader and his Kubota R400. Defendants' 303 THF Products have caused damage to each of these pieces of equipment.

231. During the time period December 1, 2013 to present, Plaintiff Jason Klingenberg purchased Defendants' 303 THF Products at the Tractor Supply Company store in Worthington, Minnesota. Plaintiff Klingenberg also purchased Defendant's 303 THF Products in Iowa. Mr. Klingenberg specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and the purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Klingenberg were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. The 303 THF Products were used by Plaintiff Klingenberg in the following equipment: 3650 Massey Ferguson Tractor and Loader, 8280 Massey Ferguson Tractor, 8690 Massey Ferguson Tractor, 8450 Massey Ferguson Tractor and Loader, 9895 Massey Ferguson Combine, 2856A Massey Ferguson Round

Baler, 2956A Massey Ferguson Round Baler, and a Fiat Bulldozer. Defendants' 303 THF Products have caused damage to each of these pieces of equipment.

232. Plaintiff Justin Lemonds purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Lemonds specifically purchased Super S Supertrac 303 at the Tractor Supply Company store in Biscoe, North Carolina and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S Supertrac 303 purchased by Plaintiff Lemonds was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Product was used by Plaintiff Lemonds in his Massey Ferguson 3635 tractor, Long 260 tractor, Ford 7000 tractor and John Deere 250 loader. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

233. Plaintiff Josh Lesko purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Lesko specifically purchased 5-gallon buckets of the Cam2 Promax 303 Tractor Hydraulic Oil and the Cam2 303 Tractor Hydraulic Oil at the Rural King retail store located in Plano, Illinois and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Cam2 Promax 303 and Cam2 303 purchased by Plaintiff Lesko was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Lesko in his New Holland LS490 tractor, New Holland C190 tractor, John Deere 4100 tractor, Case 1845 skid steer,

dump trucks and boom trucks, and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

234. Plaintiffs Larry and Wyatt Loeffler purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiffs Larry and Wyatt Loeffler purchased Defendants' 303 THF Products at Bomgaars in Scottsbluff, Nebraska. They specifically purchased Cam2 Promax 303 and Cam2 303, and the purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiffs Larry and Wyatt Loeffler were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiffs Larry and Wyatt Loeffler in their 1990 John Deere 4955, his New Holland TM 165 Tractor, and his Volvo L70f Loader Defendants' 303 THF Product caused damage to each of these pieces of equipment.

235. Plaintiff Gerald Lunkwitz purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Lunkwitz purchased Defendants' THF Products at the Orscheln Stores in Gothenburg and North Platte, Nebraska. Gerald Lunkwitz specifically purchased Super S Supertrac 303 and Super S 303, and the purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Lunkwitz were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff

Lunkwitz in his John Deere 4230 Tractor. Defendants' 303 THF Products caused damage to this piece of equipment.

236. Plaintiff Jacob Mabie purchased Defendants' Super S Supertrac 303 in March of 2017 at the Tractor Supply Company store in Baytown, Texas. Plaintiff Mabie also purchased Super S Supertrac 303 from December 1, 2013 to present at the Tractor Supply store in Escanaba, Michigan. The purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S Supertrac 303 purchased by Plaintiff Mabie was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Product was used in Plaintiff Mabie's Kenworth T8000, Bobcat S250 skid steer, Bobcat 277d skid steer, Ambo grapple rake, and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

237. Plaintiff Kyle Minich purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Minich purchased Super S 303 and Supertrac 303 at the Tractor Supply Company stores in Clarion and Kittanning, Pennsylvania, and the purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Minich were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Minich in his John Deere 7700 Tractor, John Deere 4430 Tractor, John Deere 4620

Tractor, and John Deere 4020 Tractor. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

238. Plaintiff Cal Moore purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Moore specifically purchased Super S 303 at the Tractor Supply Company Store in Farmville, Virginia and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S 303 purchased by Plaintiff Moore was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Moore in his Ford 4630 tractor, John Deere 310 front loader and log splitter. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

239. Plaintiff Ron Nash purchased Defendants' 303 THF Products. On several occasions in the time period of 2013 through 2017, Plaintiff Nash purchased 5-gallon buckets of the Cam2 ProMax 303 Tractor Hydraulic Oil Product at the Atwoods retail store located in Webb City, Missouri. In the time period of December of 2013 to the present, Plaintiff Nash has also purchased Cam2 Promax 303 and Cam2 303 at the Atwoods store in Vinita, Oklahoma. Plaintiff Nash's purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Nash were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as tractor hydraulic fluid for any equipment new or old, as described herein. These 303 THF Products were used by Plaintiff Nash in his International Harvester Backhoe, International Farmall Tractor, Allis

Chalmers Backhoe, and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

240. Plaintiff Bryan Nelms purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Nelms specifically purchased Cam2 Promax 303 Tractor Hydraulic Oil and Cam2 303 Tractor Hydraulic Oil at the Logan's Auto Parts in Fayette, Alabama and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Cam2 Promax 303 and Cam2 303 purchased by Plaintiff Nelms was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Nelms in his Ford 3000 tractor and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

241. Plaintiff Matt Ortner purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Ortner purchased Defendants' THF Products at the Rural King retail stores in Circleville, Ohio and Elyria, Ohio, as well as the Tractor Supply Store in Amherst, Ohio. Plaintiff Ortner specifically purchased Cam2 Promax 303, Cam2 303, Super S 303, and Supertrac 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Ortner were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. These 303 THF Products were used by Plaintiff Ortner in his John Deere 3030 Tractor, John Deere

7700 Combine, and International 1086 Tractor. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

242. Plaintiff Joe Pate purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Pate purchased Defendants' THF Products at the Tractor Supply Company Stores in Guymon, Oklahoma and Texoma, Oklahoma. Plaintiff Pate specifically purchased Super S 303 and Supertrac 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Pate were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Pate in his John Deere 4020 Tractor. Defendants' 303 THF Product caused damage to this piece of equipment.

243. Plaintiff Mike Ping purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Ping specifically purchased Super S Supertrac 303 and Super S 303 at the Tractor Supply Company store in Rock Hill, South Carolina and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Super S Supertrac 303 and Super S 303 purchased by Plaintiff Ping was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Ping in his New Holland LX665 skid steer and Tafe 35DI tractor. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

244. Plaintiff Stanley Richardson purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Richardson specifically purchased Super S Supertrac 303 and Super S 303 at the Tractor Supply Company store in Marshall, Texas, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Richardson was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Richardson in his Ford 5600 tractor and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

245. Plaintiff Brian Riessland purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Riessland purchased Defendants' THF Products at the Orscheln Store in Kearney, Nebraska. Brian Riessland specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Riessland was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein.. These 303 THF Products were used by Plaintiff Riessland in tractors and other equipment, including John Deere 4650 Tractor, John Deere 4520 Tractor, John Deere 4250 Tractor, John Deere 7800 Tractor, John Deere 3020 Tractor, Case IH 140 Puma. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

246. During the time period of December 1, 2013 to present, Plaintiff Wayne Rupe

purchased Defendant's 303 THF Products at Tractor Supply Company in Iowa. Mr. Rupe specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Rupe was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. Mr. Rupe used Defendants' 303 THF Products in his 1985 Mighty Mack 8B Skid Steer and his 1978 Ditch Witch Trencher. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

247. Plaintiff Leonard Saathoff purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Saathoff purchased Defendants' THF Products at the Tractor Supply Company Store in Watertown, South Dakota. Mr. Saathoff specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Saathoff was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Saathoff in his John Deere 7200 Planter, AGCO Allis 9655 Tractor, New Holland 8970 Tractor, Kraus Ripper, Kraus 2290 Disk, and Allis Chalmers 7060 Tractor. Defendants' 303 THF Products caused damage to each of these pieces of equipment.

248. Plaintiff Adam Sevy purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Sevy purchased several 5-gallon buckets of the Super

S Super S Supertrac 303 and Super S 303, including at the Orscheln retail store located in Louisburg, Kansas and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Sevy was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Sevy in his Ford 4000 Tractor, Allis 940 wheel loader, John Deere 240 Skid Steer, Ford L8000 dump truck, and hydraulic concrete buggy. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

249. Plaintiff Anthony Shaw purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Anthony Shaw specifically purchased Super S Supertrac 303 at the Tractor Supply Company store in Byron, Georgia and those purchases were based on the labels described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as a tractor hydraulic lubricant. The Super S Supertrac 303 purchased by Plaintiff Shaw was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Product was used by Plaintiff Anthony Shaw in his John Deere 4020 tractor, John Deere 4840 tractor, Caterpillar 226 skid steer, John Deere 2755 tractor and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

250. Plaintiff Rusty Shaw purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Rusty Shaw specifically purchased Super S Supertrac 303 and Super S 303 at the Tractor Supply Company store in Byron, Georgia, Robins, Georgia or

Perry, Georgia and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Shaw was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Rusty Shaw in his John Deere 2350 tractor, 1963 John Deere 3010 tractor, Massey Ferguson 65 tractor, International 1460 Combine, John Deere 48040 tractor and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

251. Plaintiff Charles Strickland purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Strickland purchased Super S 303 at the Tractor Supply Company store in Lake City, Florida and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the product was suitable for use as tractor hydraulic lubricant, which Plaintiff Strickland viewed in connection with the purchase. The Super S 303 purchased by Plaintiff Strickland was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Product was used by Plaintiff Strickland in his Branson 2910 tractor and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

252. Plaintiff Tim Sullivan purchased one of Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Tim Sullivan purchased several 5-gallon buckets of Defendants' 303 Products at the Tractor Supply Company store in Paducah, Kentucky. Tim Sullivan specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were

based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff Tim Sullivan was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. These 303 THF Products were used by Plaintiff Tim Sullivan in his CAT 120 Trackhoe and his John Deere 4430 Tractor. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

253. Plaintiff Tracy Sullivan purchased one of Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Tracy Sullivan purchased several 5-gallon buckets of Defendants' 303 Products at the Rural King retail store and the Tractor Supply Company store in Paducah, Kentucky. Tracy Sullivan specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Tracy Sullivan were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Product was used by Plaintiff Tracy Sullivan in his John Deere 4440 Tractor, John Deere 4430 Tractor, CAT E110b Excavator, and New Holland E35 Excavator. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

254. Plaintiff Jerry Terry purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Terry purchased Defendants' 303 THF Products at a Tractor Supply Company store in Springfield, Tennessee, and at a Rural King retail store in

Clarksville, Tennessee. Jerry Terry specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Jerry Terry were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. These 303 THF Products were used by Plaintiff Jerry Terry in his 2001 Massey Ferguson 241 Tractor and 2014 Massey Ferguson 2615 Tractor. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

255. Plaintiff Ross Watermann purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Watermann purchased Defendants' 303 THF Products at the Tractor Supply Company store in Bennett, Colorado, at Bomgaars in Burlington, Colorado, and at Orscheln in Goodland, Kansas. Ross Watermann specifically purchased Super S Supertrac 303, Super S 303, Cam2 Promax 303, and Cam2 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Watermann were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. These 303 THF Products were used by Plaintiff Watermann in his 1980 White 2-105 Tractor, 1995 Ford Genesis 8970 Tractor, and 1998 1118 New Holland Swather. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

256. Plaintiff Wayne Wells purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Wells purchased Defendants' THF Products at the Tractor Supply Company Store in Edmunds, Oklahoma. Wayne Wells specifically purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Wells were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. These 303 THF Products were used by Plaintiff Wells in his John Deere 5603 Tractor, as well as his bulldozer, skid steer, and utility tractor. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

257. Plaintiff Dale Wendt purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Wendt specifically purchased Cam2 Promax 303 Tractor Hydraulic Oil and/or Cam2 Tractor Hydraulic Oil at Fleet Farm in Waupaca and Appleton, Wisconsin and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Cam2 Promax 303 and Cam2 303 purchased by Plaintiff Wendt was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Wendt in his Bobcat 742 skid steer, 970 Case tractor, 1175 Case tractor, 990 Brown tractor with loader, and hydraulic manure spreader. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

258. Plaintiff William White purchased Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff White specifically purchased Super S Supertrac 303 and Super S 303 at the Tractor Supply Company store in Lincolnton and Shelby, North Carolina and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 and Super S 303 purchased by Plaintiff White was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff White in his Ford 1720 tractor and other equipment. Defendants' 303 THF Product caused damage to this piece of equipment.

259. Plaintiff Susan Whitehead purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Whitehead specifically purchased Super S Supertrac 303 at the Tractor Supply Company Store in Casa Grande, Arizona, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. The Super S Supertrac 303 purchased by Plaintiff Whitehead was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Whitehead in a late 1960s-early 1970s Allis Chalmers 170 tractor. Defendants' 303 THF Product caused damage to this piece of equipment.

260. Plaintiff Charles "Bubba" Woods purchased Defendants' 303 THF Products. In the time period of December 1, 2013 to the present, Plaintiff Woods purchased Defendants' THF Products at the Tractor Supply Company Store in Batesville, Mississippi. Mr. Woods specifically

purchased Super S Supertrac 303 and Super S 303, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Woods were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Products were used by Plaintiff Woods in tractors and other equipment. Defendants' 303 THF Product caused damage to each of these pieces of equipment.

261. Plaintiff Dwayne Wurth purchased one of Defendants' 303 THF Products. In the time period of December 2013 to the present, Plaintiff Wurth specifically purchased several 5-gallon of Cam2 Promax 303 and Cam2 303 at the Rural King retail store located in Paducah, Kentucky, and those purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as tractor hydraulic lubricants. Defendants' 303 THF Products purchased by Plaintiff Wurth were falsely and deceptively marketed, sold and labeled as described herein, and were not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Product was used by Plaintiff Wurth in his Caterpillar 277 Skid Steer. Defendants' 303 THF Product caused damage to this piece of equipment.

262. Plaintiff Terry Zornes purchased Defendants' 303 THF Products. In the fall of 2017 and throughout 2018, Plaintiff Zornes purchased at least eight 5-gallon buckets of the Super S 303 Product at the Orscheln retail store located in Iona, Kansas and those purchases were based on the label described herein, including but not limited to the representation on the front of the label stating that the products were suitable for use as tractor hydraulic lubricants, which Plaintiff Zornes

viewed in connection with the purchase. The Super S 303 purchased by Plaintiff Zornes was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein. The 303 THF Product was used by Plaintiff Zornes in his 1972 Caterpillar 955L track loader. Defendants' 303 THF Product caused damage to this piece of equipment.

263. Each of the Plaintiffs added in the 3rd ACC (all of whom remain in this 4th ACC) purchased Defendants' 303 THF Products in the state(s) for which each respective Plaintiff seeks to serve as Class Representative for the respective State Class Claims. The specific products, retailer(s) and location(s) where each of these Plaintiffs purchased Defendants' 303 THF Products is set forth on the attached [Exhibit 1](#), incorporated herein by reference. During the time period December 1, 2013 to the present, each Plaintiff purchased the specific products noted at the specific retailers noted, and each Plaintiff's purchases were based on the labels described herein, including but not limited to the representation on the front of the labels stating that the products were suitable for use as "tractor hydraulic" lubricants, which each viewed in connection with the purchase. Defendants' 303 THF Products purchased by each of those Plaintiffs was falsely and deceptively marketed, sold and labeled as described herein, and was not suitable for use as a tractor hydraulic fluid for any equipment, new or old, as described herein.

264. Each of the Plaintiffs added in the 3rd ACC (all of whom remain in this 4th ACC) used Defendants' 303 THF Products in tractors and other equipment owned by those Plaintiffs. The specific equipment in which each of the Plaintiffs used Defendants' 303 THF Products is also set forth in the attached [Exhibit 1](#). Defendants' 303 THF Products caused damage to each of these pieces of equipment. Defendants' 303 THF Products also caused damage to many attachments used with these pieces of equipment.

265. Exhibit 1 also contains the respective products, states and some retailers and locations of purchase for each of the other Plaintiffs included in this 4th ACC, as well as the equipment in which each of those Plaintiffs used Defendants' 303 THF Products. Defendants' 303 THF Products caused damage to each of these pieces of equipment. Defendants' 303 THF Products also caused damage to many attachments used with these pieces of equipment.

266. As a result of Defendants' manufacturing and offering the 303 THF Products for sale, each Plaintiff purchased a tractor hydraulic fluid that was falsely and deceptively offered for sale as a "303" fluid that contained quality base oils and additives, met or had an equivalency to required specifications and was safe for use in equipment when, in reality, the fluid offered was of uncertain quality, lacked adequate viscosity and additives, contained line wash or flush oil, had a value much less than the price offered for sale and/or was worthless, and was likely to expose equipment to increased risk of wear and damage.

267. Each Plaintiff reasonably relied upon Defendants' representation that the fluid was a "303," "tractor hydraulic" lubricant and Defendants' own labeling, statements and advertisements concerning the particular qualities and benefits of the 303 THF Products, and Plaintiffs would not have paid for the worthless 303 THF Products in the absence of Defendants' unfair acts.

268. All reasonable purchasers would consider based on the label that Defendants' 303 THF Products were suitable for use in tractors and other equipment and would not have any understanding or way to know that Defendants' 303 THF Products were of uncertain quality, lacked adequate viscosity and additives, contained line wash or flush oil, had a value much less than the price offered for sale, were worthless and/or that use of Defendants' 303 THF Products would expose all equipment to increased wear and damage.

269. A reasonable purchaser would consider Defendants' labeling, statements and advertisements when looking to purchase a tractor hydraulic fluid. As a result of using Defendants' 303 THF Products, each Plaintiff and Class Member: (a) paid a sum of money for a product that was not as represented and was worthless; (b) received a lesser product than labeled, advertised and marketed; (c) were deprived of the benefit of the bargain because the 303 THF Products were different than what Defendants represented; (d) were deprived of the benefit of the bargain because the 303 THF Products had less value than what was represented; (e) did not receive a product that measured up to their expectations as created by Defendants; and (f) suffered increased and excessive wear and/or damage to their equipment, including damage to gears, seals and hydraulic systems.

270. More specifically, each of the Plaintiffs and Class Members suffered tangible and concrete harm and damage both in the form of the purchase price paid for the worthless 303 THF Products and in the form of harm and damage to their equipment as a result of using Defendants' 303 THF Products. Because the 303 THF Products did not conform to or have an equivalency to any tractor hydraulic fluid specification, lacked adequate viscosity and did not contain required performance additives, each of the Plaintiffs' and Class Members' equipment suffered negative impacts and increased and excessive wear to their equipment, hydraulic systems, transmissions and other components, regardless of any individual variations in the Plaintiffs' and Class Members' equipment or experiences.

271. Indeed, Smitty's technical director (at the time of his sworn testimony) testified and admitted under oath that viscosity is the most important property of a lubricant fluid, and that when a tractor hydraulic fluid's viscosity is reduced, its effectiveness to prevent wear to moving parts is impaired, and that is true regardless of system design, climate, maintenance practices of the owner

or the age and condition of the equipment. Accordingly, at a minimum each Plaintiff and Class Member has been and/or will be required to remedy the property damage they have suffered, in a common way, through the time and expense required to flush the 303 THF Products from their equipment so as to mitigate ongoing wear and damage.

272. When Defendants manufactured, named, labeled, marketed, advertised, distributed, and sold Plaintiffs and Class Members their 303 THF Products, Defendants knew or should have known that the products (1) did not meet or have an equivalency to manufacturer specifications and were not acceptable for use as hydraulic fluid, transmission fluid, and gear oil in older tractors and other equipment; (2) were not an adequate substitute for and did not satisfy John Deere's JD-303 or J20A specifications; (3) were not adequate to provide extreme pressure and anti-wear protection for tractor transmission, axles and hydraulic pumps; (4) were not adequate to protect against rust and corrosion; and (5) were not appropriate for use in equipment of manufacturers including Allis-Chalmers, Massey Ferguson, Deutz, JI Case/David Brown, Allison, International Harvester, White, Kubota, John Deere, Oliver, Ford and Caterpillar.

273. Plaintiffs used the 303 THF Products in the manner in which Defendants advised they could and should be used and would not have purchased the products in the absence of Defendants' deceptive and unfair acts.

274. As a result of Defendants' 303 THF Products not meeting or being equivalent to specifications as labeled, advertised, marketed, warranted, and promised, Defendants violated consumer protection acts, breached express and implied warranties, fraudulently or negligently induced each Plaintiff and Class Member to purchase their products through material misrepresentations, acted in a negligent manner, and were unjustly enriched.

275. Defendants' manufacture, labeling, and sale of the 303 THF Products was deceptive and misleading in at least the following respects:

- (a) Defendants' use of "303" in the name of the products was deceptive and misleading. The 303 THF Products did not use John Deere 303's formula and would not meet the specifications for John Deere 303. Defendants packaged their 303 THF Products in the yellow bucket with illustrations of modern tractors and equipment so as to further deceive and mislead and create the impression that the 303 THF Products were legitimate tractor hydraulic fluids that met the specifications for John Deere 303 and other John Deere equipment.
- (b) Defendants placed a deceptive and misleading statement on the product labels by claiming that John Deere 303 is one of the specifications for which the 303 THF Products were "[s]uitable as a replacement fluid for the following manufacturers where a tractor hydraulic fluid of this quality is recommended."
- (c) Defendants placed a deceptive and misleading statement on the product labels by claiming that J20A is one of the specifications for which the 303 THF Products were "[s]uitable as a replacement fluid for the following manufacturers where a tractor hydraulic fluid of this quality is recommended."
- (d) Defendants placed a deceptive and misleading statement on the product labels labeling the products as "tractor hydraulic" lubricants and by listing eleven (11) other manufacturers as those for which the 303 THF Products

were “[s]uitable as a replacement fluid for the following manufacturers where a tractor hydraulic fluid of this quality is recommended,” without specifying the equipment/specifications purportedly met for each of those eleven (11) manufacturers.

- (e) Defendants engaged in deceptive and misleading conduct in failing to provide an adequate notice, disclaimer, or warning on the labels.
- (f) Defendants placed a deceptive and misleading statement on the product labels by listing manufacturers of equipment in which the 303 THF Products purportedly may be used, when in reality the product did not meet many of the specifications for the listed manufacturers’ modern or older model equipment.
- (g) Defendants made a deceptive and misleading statement on the product labels by representing that the product had been field tested.
- (h) Defendants made a deceptive and misleading statement on the product labels when claiming that the 303 THF Products “will provide excellent results in the areas of:
 - Anti-wear properties
 - Brake Chatter
 - Extreme Pressure Properties
 - Foam Suppression
 - PTO Clutch Performance
 - Rust Protection
 - Water Sensitivity”
- (i) Defendants engaged in misleading and deceptive conduct with regard to their 303 THF Products in failing to disclose that the products contained

flush oil, line flush, waste oil and/or contained other materials that should never be contained in tractor hydraulic fluid.

276. The conduct listed in paragraph 275(a)-(i) constitutes deceptive and unconscionable business practices in violation of consumer protection laws.

277. Defendants concealed any internal test data and the truth about the 303 THF Products at all relevant times during the class period. Accordingly, Defendants' misrepresentations and omissions, and the fact of injury to Plaintiffs and the Class, were not reasonably ascertainable to Plaintiffs and Class Members.

278. This action is brought by each Plaintiff against Defendants to recover all money paid by each Plaintiff and Class Member to Defendants for purchase of their worthless 303 THF Products which were labeled, marketed, advertised, and sold in the dishonest, misleading, and deceptive manners noted herein, for recovery amounts needed to repair, mitigate and/or otherwise the damage caused to equipment owned by each Plaintiff and the Class Member, including the common remedy of amounts needed to pay for the 303 THF Products to be flushed from each Plaintiff's and each Class Member's equipment, for punitive damages, attorneys' fees, costs, and for all other remedies available to those aggrieved by Defendants' conduct.

CLASS ACTION ALLEGATIONS

279. Plaintiffs bring this Class Action pursuant to Rule 23 of the Federal Rules of Civil Procedure, on behalf of themselves, and on behalf of forty-one (41) state-specific Classes as defined below, to redress the wrongful conduct of Defendants in connection with their manufacturing, marketing, and sale of the 303 THF Products.

280. Plaintiffs each seek, on behalf of themselves and all others similarly situated, relief for the harm and damage caused by Defendants' negligence, breach of warranty, unjust

enrichment, fraudulent and negligent misrepresentations, product liability, and for their violations of various state statutes.

281. Plaintiffs do not seek certification of a Nationwide Class.

282. Plaintiffs also seek certification of the following state-specific Classes of similarly situated persons:

- (a) Alabama: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Alabama at any point in time from December 1, 2013 to present.
- (b) Arizona: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Arizona at any point in time from December 1, 2013 to present.
- (c) Arkansas: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Arkansas at any point in time from December 1, 2013 to present.
- (d) California: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in California at any point in time from December 1, 2013 to present.
- (e) Colorado: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Colorado at any point in time from December 1, 2013 to present.
- (f) Connecticut: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Connecticut at any point in time from December 1, 2013 to present.

- (g) Florida: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Florida at any point in time from December 1, 2013 to present.
- (h) Georgia: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Georgia at any point in time from December 1, 2013 to present.
- (i) Illinois: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Illinois at any point in time from December 1, 2013 to present.
- (j) Indiana: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Indiana at any point in time from December 1, 2013 to present.
- (k) Iowa: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Iowa at any point in time from December 1, 2013 to present.
- (l) Kansas: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Kansas at any point in time from December 1, 2013 to present.
- (m) Kentucky: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Kentucky at any point in time from December 1, 2013 to present.
- (n) Louisiana: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or

Cam2 303 Tractor Hydraulic Oil in Louisiana at any point in time from December 1, 2013 to present.

- (o) Maine: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Maine at any point in time from December 1, 2013 to present.
- (p) Maryland: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Maryland at any point in time from December 1, 2013 to present.
- (q) Massachusetts: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Massachusetts at any point in time from December 1, 2013 to present.
- (r) Michigan: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Michigan at any point in time from December 1, 2013 to present.
- (s) Minnesota: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Minnesota at any point in time from December 1, 2013 to present.
- (t) Mississippi: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Mississippi at any point in time from December 1, 2013 to present.
- (u) Missouri: All persons and other entities who purchased Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Missouri at any point in time from December 1, 2013 to present.
- (v) Montana: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor

Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Montana at any point in time from December 1, 2013 to present.

- (w) Nebraska: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Nebraska at any point in time from December 1, 2013 to present.
- (x) Nevada: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Nevada at any point in time from December 1, 2013 to present.
- (y) New Hampshire: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in New Hampshire at any point in time from December 1, 2013 to present.
- (z) New Jersey: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in New Jersey at any point in time from December 1, 2013 to present.
- (aa) New Mexico: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in New Mexico at any point in time from December 1, 2013 to present.
- (bb) New York: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in New York at any point in time from December 1, 2013 to present.
- (cc) North Carolina: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in North Carolina at any point in time from December 1, 2013 to present.

- (dd) North Dakota: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in North Dakota at any point in time from December 1, 2013 to present.
- (ee) Ohio: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Ohio at any point in time from December 1, 2013 to present.
- (ff) Oklahoma: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Oklahoma at any point in time from December 1, 2013 to present.
- (gg) Pennsylvania: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Pennsylvania at any point in time from December 1, 2013 to present.
- (hh) South Carolina: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in South Carolina at any point in time from December 1, 2013 to present.
- (ii) South Dakota: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in South Dakota at any point in time from December 1, 2013 to present.
- (jj) Tennessee: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Tennessee at any point in time from December 1, 2013 to present.
- (kk) Texas: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or

Cam2 303 Tractor Hydraulic Oil in Texas at any point in time from December 1, 2013 to present.

- (ll) Virginia: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Virginia at any point in time from December 1, 2013 to present.
- (mm) West Virginia: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in West Virginia at any point in time from December 1, 2013 to present.
- (nn) Wisconsin: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Wisconsin at any point in time from December 1, 2013 to present.
- (oo) Wyoming: All persons and other entities who purchased Super S Supertrac 303 Tractor Hydraulic Fluid, Super S 303 Tractor Hydraulic Fluid, Cam2 ProMax 303 Tractor Hydraulic Oil, and/or Cam2 303 Tractor Hydraulic Oil in Wyoming at any point in time from December 1, 2013 to present.

283. Excluded from the Classes are those who purchased the 303 THF Products for resale.

284. Also excluded from the Classes are 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.

285. The 303 THF Products at issue were sold across the United States through retailers. The Class Members may be identified through use of sales receipts, affidavits, or through sales records.

286. The proposed Classes are so numerous that joinder of all Class Members is impracticable. Although the exact number of Members of each Class is not known at this time, there are thousands of Members of each Class.

287. There are questions of fact and law common to each Class which predominate over questions affecting only individual Class Members. The questions of law and fact common to each Class arising from Defendants' actions include, without limitation, the following:

- (a) The components and qualities of Defendants' 303 THF Products, and the cost to Defendants to manufacture, distribute, market and sell their 303 THF Products;
- (b) Whether Defendants were unjustly enriched;
- (c) Whether Defendants were negligent;
- (d) Whether Defendants breached the express warranties provided with regard to the 303 THF Products;
- (e) Whether Defendants breached the implied warranty of merchantability with regard to the 303 THF Products;
- (f) Whether Defendants breached the implied warranty of fitness for particular purpose with regard to the 303 THF Products;
- (g) Whether Defendants deliberately failed to disclose material facts to consumers regarding the quality of the 303 THF Products and the obsolete nature of the products and the specifications the products claimed to meet;
- (h) Whether Defendants' manufacturing, labeling, advertising, marketing, and/or sale of their 303 THF Products was deceptive, unfair, and/or dishonest as alleged above;
- (i) Whether Defendants' 303 THF Products were being labeled, advertised and marketed as alleged above;
- (j) Whether Defendants' 303 THF Products in actuality were as alleged above;
- (k) Whether Defendants studied or tested their labeling and the effect of the labeling on consumers' perceptions, and whether Defendants studied the susceptibility of consumers who might purchase tractor hydraulic fluid;

- (l) Whether Defendants' representations regarding their 303 THF Products were false and made knowingly by Defendants;
- (m) Whether Defendants' representations were false and made negligently by Defendants; and
- (n) Whether use of the 303 THF Products caused and/or exposed equipment to common impacts and damage.

288. The claims of each representative Plaintiff are typical of those in each respective Class because each purchased Defendants' 303 THF Products and was similarly treated.

289. Plaintiffs are adequate representatives of each respective Class because their interests do not conflict with the interests of other Members of the Class. The interests of the other Class Members will be fairly and adequately protected by Plaintiffs and counsel, who have extensive experience prosecuting complex litigation and class actions.

290. A Class Action is the appropriate method for the fair and efficient adjudication of this controversy. It would be impracticable, cost prohibitive, and undesirable for each Member of each Class to bring a separate action. In addition, the presentation of separate actions by individual Class Members creates the risk of inconsistent and varying adjudications, establishes incompatible standards of conduct for Defendants, and/or substantially impairs or impedes the ability of Class Members to protect their interests. A single Class Action can determine, with judicial economy, the rights of the Members of each Class.

291. A Class Action is superior with respect to considerations of consistency, economy, efficiency, fairness and equity, to other available methods for the fair and efficient adjudication of this controversy.

292. Class certification is also appropriate because Defendants have acted or refused to act on grounds generally applicable to each Class. The Class Action is based on Defendants' acts and omissions with respect to each Class as a whole, not on facts or law applicable only to the

representative Plaintiffs. All Class Members who purchased Defendants' products were treated similarly. Thus, all Class Members have the same legal right and interest in relief for damages associated with the violations enumerated herein.

293. Class certification is also appropriate for class-wide injunctive relief pursuant to Rule 23(b)(2).

294. Plaintiffs each assert in Counts I through VII and LV, below, the following claims on behalf of each of the respective State 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 Particular Purpose
- Count V – Unjust Enrichment
- Count VI – Fraud/Misrepresentation
- Count VII – Negligent Misrepresentation
- Count LV – Individual Liability of Ed Smith and Chad Tate

295. Plaintiffs Nelms, Jackson, and Morgan assert Counts I through VII and LV on behalf of themselves and the Alabama Class.

296. Plaintiffs Buford, Anderson, Hargraves, and Harrison assert Counts I through VII and LV as well as the following on behalf of themselves and the Arkansas Class:

Count VIII -- Arkansas Deceptive Trade Practices Act, § 4-88-101

297. Plaintiff Kimmich asserts Counts I through VII and LV as well as the following on behalf of themselves and the California Class:

Count IX -- California Unfair Competition Law, [California Civil Code §17200 et seq.](#)

Count X-- False and Misleading Advertising in Violation of California Business & Professions Code §17500 *et seq.*

Count XI -- California Consumers Legal Remedies Act, California Civil Code §1750 *et seq.*

298. Plaintiffs Watermann, Guire, and Lempka assert Counts I through VII and LV as well as the following on behalf of themselves and the Colorado Class:

Count XII -- Colorado's Consumer Protection Act, Colo. Rev. Stat. § 6-1-101, *et seq.*

299. Plaintiff Carusillo asserts Counts I through VII and LV as well as the following on behalf of himself and the Connecticut Class:

Count XIII – Connecticut Consumer Protection Act, Conn. Gen. Stat. § 42-110g, *et seq.*

Count XXXXIII – Conn. Product Liability Act, Conn. Gen. Stat. §52-572m, *et seq.*

300. Plaintiffs Brett, Raburn, Rumore and Strickland assert Counts I through VII and LV as well as the following on behalf of themselves and the Florida Class:

Count XIV -- Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. § 501.201 *et seq.*

Count XV -- Florida Misleading Advertising Law, Fla. Stat. § 817.41.

301. Plaintiffs Farner, Fricks, Anthony Shaw, Rusty Shaw, and Eddie Chavis assert Counts I through VII and LV on behalf of themselves and the Georgia Class.

302. Plaintiffs Burgdorf, Feldkamp, Fohne, and Lesko assert Counts I through VII and LV as well as the following on behalf of themselves and the Illinois Class:

Count XVI -- Illinois Consumer Fraud and Deceptive Business Practices Act, 815 ILCS 505/1 *et seq.*

303. Plaintiffs Frank James and Hardin assert Counts I through VII and LV as well as the following on behalf of themselves and the Indiana Class:

Count XVII – Indiana Consumer Protection Act, [Ind. Code § 24-5-0.5-5](#).

Count XXXXIV – Indiana Product Liability Act, Design Defect

Count XXXXV – Indiana Product Liability Act, Failure to Warn

304. Plaintiffs Blackmore, Klingenberg, Rupe, and Faubion assert Counts I through VII and LV on behalf of themselves and the Iowa Class.

305. Plaintiffs Bollin, Sevy, Watermann, and Zornes assert Counts I through VII and LV as well as the following on behalf of themselves and the Kansas Class:

Count XVIII – Kansas Consumer Protection Act, [K.S.A. § 50-623](#) *et seq.*

Count XXXXVI – Kansas Product Liability Act – Design Defect

Count XXXXVII -- Kansas Product Liability Act – Failure to Warn

306. Plaintiffs Egner, Tim Sullivan, Tracy Sullivan, Wurth, and Stenbridge assert Counts I through VII and LV as well as the following on behalf of themselves and the Kentucky Class:

Count XIX -- Kentucky Consumer Protection Act, Ky. Rev. Stat. §367.170 (2015).

307. Plaintiffs Clough, Dahlke, and Dow assert Counts I through VII and LV as well as the following on behalf of themselves and the Michigan Class:

Count XX – Michigan Consumer Protection Act, [MCL 445.901](#) *et seq.*

308. Plaintiffs Klingenberg, Asfeld, and Creger assert Counts I through VII and LV as well as the following on behalf of themselves and the Minnesota Class:

Count XXI -- Minnesota Consumer Fraud Act, Minnesota statute § [325F.67](#) *et seq.*

309. Plaintiffs Blakeney, Still, and Woods assert Counts I through VII and LV on behalf of themselves and the Mississippi Class.

310. Plaintiffs Graves, Nash, Goodson, and Hazeltine assert Counts I through VII and LV as well as the following claim on behalf of themselves and the Missouri Class:

Count XXII – Missouri Merchandising Practices Act, Mo. Rev. Stat. §407.010

311. Plaintiffs Chauncey, Loeffler, Lunkwitz, Riessland, and Jacobson assert Counts I through VII and LV as well as the following claims on behalf of themselves and the Nebraska Class:

Count XXIII – Nebraska Consumer Protection Act, Neb. Rev. St. §§59-1601

Count XXIV – Nebraska’s Uniform Deceptive Trade Practices Act, Neb. Rev. St. §§ 87-301 *et seq.*

312. Plaintiffs Dean, Miller and Wachholder assert Counts I through VII and LV as well as the following claim on behalf of themselves and the New York Class:

Count XXV -- New York Consumer Protection Law, N.Y.C.P.L.R. § 214, *et seq.*

313. Plaintiffs Farner, Lemonds, Sickelton and White assert Counts I through VII and LV as well as the following claim on behalf of themselves and the North Carolina Class:

Count XXVI -- North Carolina Consumer Protection Act, N.C.G.S. § 75-1.1 *et seq.*

314. Plaintiffs Gosche, Hayes, and Ortner assert Counts I through VII and LV as well as the following claim on behalf of themselves and the Ohio Class:

Count XXVII – Ohio Consumer Sales Practices Act (“OCSPA”), R.C. 1345.01

Count XXXXVIII – Strict Liability – Design Defect

Count XXXXIX – Strict Liability – Manufacturing Defect

Count L – Strict Liability – Defect Due to Nonconformance with Representation

315. Plaintiffs Graves, Nash, Pate, and Wells assert Counts I through VII and LV as well as the following claim on behalf of themselves and the Oklahoma Class:

Count XXVIII — Oklahoma Consumer Protection Statute.

316. Plaintiffs Farley, Jenkins, Minich, Puskarich, and Stanton assert Counts I through VII and LV as well as the following on behalf of themselves and the Pennsylvania Class:

Count XXIX – Pennsylvania Unfair Trade Practices and Consumer Protection Law, 73 P.S. § 201-1, *et. seq.*

317. Plaintiffs Ping, Chavis, and Kirven assert Counts I through VII and LV on behalf of themselves and the South Carolina Class.

318. Plaintiffs Chauncey, Gisi, Hoff, and Saathoff assert Counts I through VII and LV as well as the following claim on behalf of themselves and the South Dakota Class:

Count XXX – South Dakota Consumer Protection Statute.

319. Plaintiff Terry, Dobson, Farner, Grissom, Seever, and Stenbridge assert Counts I through VII and LV as well as the follow claim on behalf of themselves and the Tennessee Class:

Count LI -- Tennessee Products Liability Act

320. Plaintiffs Mabie, Denton, and Richardson assert Counts I through VII and LV as well as the following claim on behalf of themselves and the Texas Class:

Count XXXI – Texas Deceptive Trade Practices, Texas Business and Commerce Code § 17.41 *et seq.*

321. Plaintiffs Bias, Curry, Jenkins, and Moreland assert Counts I through VII and LV as well as the following claim on behalf of themselves and the West Virginia Class:

Count XXXII – West Virginia Consumer Protection Statute, W. Va. Code Ann. § 55-2-12, et seq.

322. Plaintiffs Hamm and Wendt assert Counts I through VII and LV as well as the following claim on behalf of themselves and the Wisconsin Class:

Count XXXIII – Wisconsin Deceptive Trade Practices Act, Wis. Stat. § 100.18.

323. Plaintiffs Engdahl, Gallegos, and Whitehead assert Counts I through VII and LV as well as the following claim on behalf of themselves and the Arizona Class:

Count XXXIV – Arizona Consumer Fraud Act, Ariz. Rev. Stat. 44-1533.

324. Plaintiffs Curtis, Boynton, and Ouelette assert Counts I through VII and LV as well as the following claim on behalf of themselves and the Maine Class:

Count XXXV – Me. Stat. tit. 5, § 213(1), (2).

325. Plaintiff Garduno asserts Counts I through VII and LV as well as the following claim on behalf of themselves and the New Mexico Class:

Count XXXVI – N.M. Stat. Ann. § 57-12-10.B

326. Plaintiff Creger asserts Counts I through VII and LV as well as the following claim on behalf of themselves and the North Dakota Class:

Count XXXVII – N.D. Cent. Code Ann. § 51-15-09

327. Plaintiffs Boone, Bartus, Moore and Sickleton assert Counts I through VII and LV on behalf of themselves and the Virginia Class.

328. Plaintiffs Beaver and Vicknair, assert Counts I through VII and LV as well as the following claims on behalf of themselves and the Louisiana Purchases Class:

Count LII – Louisiana Product Liability Act – Breach of Express Warranty

Count LIII – Louisiana Product Liability Act – Design Defect

Count LIV -- Louisiana Product Liability Act – Failure to Warn

329. Plaintiff Vonda Moreland asserts Counts I through VII and LV as well as the following claim on behalf of herself and the Maryland Purchases Class:

Count XXXVIII -- Md. Code Ann., Commercial Law Article § 13-101 *et seq.*
and Md. Code Ann. Cts. & Jud. Proc. § 5-101

330. Plaintiff Cosimo Ferrante asserts Counts I through VII and LV as well as the following claim on behalf of themselves and the Massachusetts Purchases Class:

Count XXXIX – Mass. Gen. Laws Ann. Ch. 260, § 5A and Ch. 93A § 9

331. Plaintiff Tom Karnatz asserts Counts I through VII and LV on behalf of himself and the Montana Purchases Class.

332. Plaintiff Jeff Jacobson assert Counts I through VII and LV on behalf of himself and the Nevada Purchases Class:

333. Plaintiffs Alden Dill, Joseph Griffiths, Tim Towle, and Donald Ouelette assert Counts I through VII and LV as well as the following claim on behalf of themselves and the New Hampshire Purchases Class:

Count XXXX -- N.H. Rev. Stat. Ann. § 508:4 and § 358-A:10

334. Plaintiffs Jess Metzger and John Miller assert Counts I through VII and LV as well as the following claim on behalf of themselves and the New Jersey Purchases Class:

Count XXXXI -- [N.J. Stat. Ann. § 58:8-1](#), *et seq.* and 56:8-19

335. Plaintiff Dan Smith assert Counts I through VII and LV as well as the following claim on behalf of himself and the Wyoming Purchases Class:

Count XXXXII -- Wyo. Stat. Ann. § 40-12-109

COUNT I
Negligence

336. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

337. Defendants owed a duty of at least reasonable care to the purchasers of their 303 THF Products, including a duty to use reasonable care in the manufacture, sampling, testing, labeling and marketing of the finished 303 THF Products.

338. Defendants breached this duty and were negligent by the acts and omissions alleged herein, including but not limited to:

- (a) Distributing and using misleading labeling information regarding the 303 THF Products' qualities and OEM specifications met by the products;
- (b) Failing to adequately warn and instruct purchasers about the true nature of the 303 THF Products and potential harm to equipment caused by use of the 303 THF Products in equipment for which it does not meet specifications;
- (c) Failing to adequately ensure the 303 THF Products manufactured and sold met or had an equivalency to the advertised specifications and/or were suitable for use as tractor hydraulic fluid;
- (d) Failing to utilize adequate testing and other controls to ensure the 303 THF Products met the advertised specifications and/or were suitable for use as tractor hydraulic fluid;
- (e) Using low quality base oil, inadequate additive content, flush oil, line wash, used transformer oil, used turbine oil, and/or other waste oil products containing motor oil components and other additives and contaminants that are never appropriate for use in a tractor hydraulic fluid.

- (f) Selling mixtures of flush oil, line wash, used transformer oil, used turbine oil, and/or other waste oil products containing motor oil components and other additives and contaminants as a tractor hydraulic fluid; and
- (g) Instituting and/or allowing careless and ineffective product manufacturing protocols.

339. As a result of Defendants' negligence, Defendants' 303 THF Products had contents and additives that varied, were unknown, were obsolete, did not possess the claimed protective characteristics, were not suitable for use as tractor hydraulic fluid and/or did not meet one or more of the manufacturers' specifications.

340. Defendants' negligence caused or contributed to cause injuries and damages to each Plaintiff and Class Member and caused each Plaintiff's and the Class Member's equipment to suffer harm and damage, including wear, damage and leakage in the seals, exposure to damage in the spiral gear in the drive, improper and poor shifting, wear and damage to the wet brakes, high pump leakage, and damage from deposits, sludging and thickening. Defendants' negligence also caused or contributed to cause each Plaintiff and the Class Member to overpay for a product that was worthless and/or worth much less than the sale price.

341. Defendants concealed any internal test data and the truth about the 303 THF Products at all relevant times during the class period. Accordingly, Defendants' misrepresentations and omissions, and the fact of injury to Plaintiffs and the Class, were not reasonably ascertainable to Plaintiffs or Class Members.

342. Plaintiffs and Class Members are thus entitled to an award of compensatory damages, prejudgment interest and post-judgment interest.

343. Defendants' conduct was grossly negligent and showed a complete indifference to or conscious disregard of the rights of others, including Plaintiffs and Class Members, such that punitive damages are thus warranted.

COUNT II
Breach of Express Warranty

344. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

345. Each Plaintiff and Class Member purchased Defendants' 303 THF Products.

346. As set forth above, Defendants made common statements of facts regarding quality and use in the name and on the label of the 303 THF Products.

347. The common statements Defendants made in the name and on the label of the 303 THF Products were made to induce Plaintiffs and Class Members to purchase the 303 THF Products and/or were a material factor in inducing each Plaintiff and Class Member to purchase the 303 THF Products, and therefore became part of the basis of the benefit of the bargain and an express warranty.

348. As set forth above, the THF 303 Products did not conform to the statements of Defendants. As a result, each Plaintiff and the Class Member did not receive goods as warranted by Defendants.

349. Defendants have received from each Plaintiff and/or other sources such as the MDA timely notification of the defects in their THF 303 Products. Warranty Notice was sent to Defendants, retailers and/or counsel for Defendants on the following dates:

- a. Alabama: Breach of warranty notice for Bryan Nelms was delivered to Defendants' counsel by email on August 30, 2020.

- b. Arkansas: Breach of warranty notice for William Anderson, Kyle Boyd Anderson, Alan Hargraves, Jeffery Harrison and Donald Snyder was delivered to Defendants' counsel by email on May 14, 2020.
- c. California: Breach of warranty notice for Jack Kimmich was mailed to Smitty's Supply, Inc. on August 27, 2019.
- d. Colorado: Breach of warranty notice for Ross Watermann was delivered to Defendants' counsel by email on June 15, 2020.
- e. Florida: Breach of warranty notice for Charles Strickland was delivered to Defendants' counsel by email on June 15, 2020.
- f. Illinois: Breach of warranty notice for Norman Fohne and Steve Burgdorf was delivered to Defendants' counsel by email on June 22, 2020, 2020.
- g. Indiana: Breach of warranty notice for Frank James was delivered to Defendants' counsel by email on March 18, 2020.
- h. Maryland: Breach of warranty notice for Vonda Moreland was delivered to Defendants' counsel by email on May 10, 2021.
- i. Michigan: Breach of warranty notice for Douglas Clough was delivered to Defendants' counsel by email on June 15, 2020.
- j. Minnesota: Breach of warranty notice for Joe Asfeld was delivered to Defendants' counsel by email on August 29, 2020.
- k. Mississippi: Breach of warranty notice for Sam Blakeney was delivered on June 15, 2020 and for Charles Woods was delivered on December 23, 2020, both to Defendants' counsel by email.

- l. Missouri: Breach of warranty notice for Gary Goodson was delivered on December 23, 2020 and for Mark Hazeltine was delivered on December 28, 2020, both to Defendants' counsel by email.
- m. Montana: Breach of warranty notice for Tom Karnatz was delivered to Defendants' counsel by email on May 10, 2021.
- n. Nebraska: Breach of warranty notice for Larry Wyatt Loeffler was delivered to Defendants' counsel by email on August 29, 2020.
- o. New Hampshire: Breach of warranty notice for Alden Dill, Joseph Griffiths, and Tom Towle was delivered to Defendants' counsel by email on May 10, 2021.
- p. New Mexico: Breach of warranty notice for Clyde Garduno was delivered to Defendants' counsel by email on May 10, 2021.
- q. New York: Breach of warranty notice for Sawyer Dean was delivered to Defendants' counsel by email on June 10, 2020.
- r. North Dakota: Breach of warranty notice for Trent Guthmiller and Brett Creger was delivered to Defendants' counsel by email on May 10, 2021.
- s. Ohio: Breach of warranty notice for Robert Gosche was delivered to Defendants' counsel by email on August 28, 2020.
- t. South Carolina: Breach of warranty notice for Mike Ping was delivered to Defendants' counsel by email on June 12, 2020.
- u. South Dakota: Breach of warranty notice for Patrick Gisi was delivered on August 30, 2020, for Curtis Horr on December 23, 2020, and for Leonard Saathoof on December 28, 2020, each to Defendants' counsel by email.

- v. Texas: Breach of warranty notice for Stanley Richardson was delivered on June 22, 2020 and for Daniel Denton was delivered on March 18, 2020, both to Defendants' counsel by email.
- w. Virginia: Breach of warranty notice for Cal Moore was delivered to Defendants' counsel by email on December 23, 2020.
- x. West Virginia: Breach of warranty notice for Clinton Curry and Roger Bias was delivered on August 30, 2020, both to Defendants' counsel by email.
- y. Wisconsin: Breach of warranty notice for Mike Hamm was delivered on June 22, 2020 and for Dale Wendt was delivered on August 29, 2020, both to Defendants' counsel by email.
- z. Wyoming: Breach of warranty notice for Dan Smith was delivered to Defendants' counsel by email on May 10, 2021.

350. The failure of the THF 303 Products to conform to the statements of Defendants has caused injury and damage to each Plaintiff and Class Member.

COUNT III
Breach of Implied Warranty of Merchantability

351. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

352. Defendants directly or indirectly sold the 303 THF Products to each Plaintiff and Class Member for use as described above.

353. As set forth above, at the time Defendants sold the 303 THF Products, the products were not fit for their ordinary use and the use described by Defendants.

354. Each Plaintiff and Class Member used the 303 THF Products for their ordinary purpose and the use described by Defendants.

355. Defendants have received from each Plaintiff and/or other sources such as the MDA timely notification of the defects in their 303 THF Products, as described above.

356. The failure of the 303 THF Products to be fit for their ordinary purpose has caused injury and damage to each Plaintiff and Class Member.

COUNT IV
Breach of Implied Warranty of Fitness for Particular Purpose

357. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

358. Defendants directly or indirectly sold the 303 THF Products to each Plaintiff and Class Member for use as described above.

359. As set forth above, at the time Defendants sold the 303 THF Products, the products were not fit for their particular purpose for use as universal hydraulic fluid for tractors and/or other equipment.

360. Defendants knew or should have known of the uses for which the 303 THF Products were purchased.

361. Each Plaintiff and Class Member reasonably relied upon Defendants' judgment that the 303 THF Products were fit for use as universal hydraulic fluid for tractors and/or other equipment.

362. Defendants have received from each Plaintiffs and/or other source such as the MDA timely notification of the defects in their 303 THF Products, as described above.

363. The failure of the 303 THF Products to be fit for their particular purpose has caused injury and damage to each Plaintiff and Class Member.

COUNT V
Unjust Enrichment

364. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC Complaint as if fully set forth herein.

365. As a result of Defendants' deceptive, fraudulent, and misleading naming, labeling, advertising, marketing, and sales of the 303 THF Products, each Plaintiff and the Class Member purchased Defendants' 303 THF Products and conferred a benefit upon Defendants by purchasing obsolete, worthless and harmful fluid, which benefit Defendants appreciated and accepted.

366. Those benefits were obtained by Defendants under false pretenses because of Defendants' concealments, misrepresentations, and other deceptive, misleading, and unfair conduct relating to the 303 THF Products.

367. Defendants were enriched at the expense of each Plaintiff and Class Member through the payment of the purchase price for Defendants' 303 THF Products.

368. As a direct and proximate result of Defendants' wrongful conduct and unjust enrichment, each Plaintiff and Class Member have suffered damages in an amount to be determined at trial.

369. Under the circumstances, it would be against equity and good conscience to permit Defendants to retain the ill-gotten benefits that they received from each Plaintiffs and Class Member, in light of the fact that the 303 THF Products purchased by each Plaintiff and each Member of the Classes were not what Defendants represented them to be. Thus, it would be inequitable or unjust for Defendants to retain the benefit without restitution to each Plaintiff and each Member of the Classes for the monies paid for the 303 THF Products.

370. By reason of the foregoing, Defendants should be required to account for and disgorge all monies, profits, and gains which they have obtained at the expense of Plaintiffs and Class Members.

COUNT VI
Fraudulent Misrepresentation

371. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

372. Defendants made representations regarding their 303 THF Products, as set forth above, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and that the 303 THF Products provided certain qualities, results and benefits.

373. Defendants' representations as set forth above, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and that the 303 THF Products provided certain qualities, results and benefits, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, were false and made knowingly by Defendants, and were therefore fraudulent.

374. Defendants' representations as set forth above, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, and that the 303 THF Products met or had an equivalency to specifications, that the 303 THF Products provided certain qualities, results and benefits, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, were made by each Defendant with the intent that Plaintiffs and other Class Members rely on such representations.

375. Defendants' representations as set forth above, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, that the 303 THF Products provided certain qualities, results and benefits, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, were made by each Defendant despite knowing the representations were false at the time the representations were made, and/or without knowledge of the truth or falsity of the representations.

376. Defendants' representations were material to the purchase of the 303 THF Products.

377. Each Plaintiff and Class Member relied on Defendants' representations, and such reliance was reasonable under the circumstances.

378. Defendants' conduct as set forth herein with regard to the name, labeling, marketing and sale of the 303 THF Products constitutes fraud on each Plaintiff and Class Member.

379. Each Plaintiff and Class Member has been economically damaged by Defendants' fraudulent conduct with regard to the marketing and sale of the 303 THF Products.

380. As a direct and proximate result of Defendants' illegal conduct, each Plaintiff and Class Member has suffered ascertainable losses of money and other damages.

381. Defendants concealed any internal test data and the truth about the 303 THF Products at all relevant times during the class period. Accordingly, Defendants' misrepresentations and omissions, and the fact of injury to Plaintiffs and the Classes, were not reasonably ascertainable to Plaintiffs and Class Members.

382. Defendants' conduct as described herein was intentional and/or in reckless disregard for the rights of Plaintiffs and other Class Members.

383. Defendants' conduct is such that an award of punitive damages against each Defendant is appropriate.

COUNT VII
Negligent Misrepresentation

384. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

385. Defendants made representations regarding their 303 THF Products, as set forth above, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and that the 303 THF Products provided certain qualities, results and benefits.

386. Such representations were made by Defendants with the intent that Plaintiffs and the Class Members rely on such representations in purchasing Defendants' 303 THF Products.

387. Such representations were material to each Plaintiff's and each Class Member's purchase of Defendants' 303 THF Products.

388. Such representations were false.

389. Defendants failed to use ordinary care and were negligent in making and/or allowing to be made the representations set forth above.

390. Each Plaintiff and Class Members relied on such representations and such reliance was reasonable under the circumstances.

391. Each Plaintiff and Class Member has been economically damaged by Defendants' negligent conduct with regard to the marketing and sale of the 303 THF Products.

392. Defendants concealed any internal test data and the truth about the 303 THF Products at all relevant times during the class period. Accordingly, Defendants'

misrepresentations and omissions, and the fact of injury were not reasonably ascertainable to Plaintiffs and the Classes.

393. As a direct and proximate result of Defendants' negligent conduct, each Plaintiff and Class Member has suffered ascertainable losses of money.

394. Defendants concealed any internal test data and the truth about the 303 THF Products at all relevant times during the class period. Accordingly, Defendants' misrepresentations and omissions, and the fact of injury to Plaintiffs and the Classes, were not reasonably ascertainable to Plaintiffs and Class Members.

395. Defendants' conduct as described herein was intentional and/or in reckless disregard for the rights of Plaintiffs and other Class Members.

396. Defendants' conduct is such that an award of punitive damages against each Defendant is appropriate.

COUNT VIII
Violation of Arkansas Deceptive Trade Practices Act

397. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

398. The Arkansas Deceptive Trade Practices Act, § 4-88-101, *et. seq.* (the "Act"), prohibits unfair or deceptive acts or practices in connection with a consumer transaction. For example, the Act prohibits suppliers from representing that goods have characteristics or uses or benefits which they do not have. The Act also prohibits suppliers from representing that their products or goods are of a particular standard, quality, or grade they are not; that the products or goods have been supplied in accordance with a previous representation, if they have not; and that the transaction involves a warranty, rights, remedies, or obligations if that representation is false.

399. Defendants' actions as described throughout this 3rd ACC violate the Act, specifically A.C.A. §§ 4-88-107(a)(1), (a)(3), and (a)(10); as well as the provisions found in A.C.A. § 4-88-108(a)(1) and (a)(2).

400. Defendants have violated (and continue to violate) each one of these provisions by misrepresenting that the 303 THF Products have or had certain characteristics, are or were of a particular standard, quality, or grade, and committed and continue to commit various other acts of deception, false pretense, false promise, or misrepresentations in connection with consumer transactions, including, among other things:

- (a) Manufacturing, selling and/or distributing 303 THF Products that fail to meet product specifications as generally understood in the industry;
- (b) Manufacturing, importing, selling and/or distributing 303 THF Products that fail to comply with all applicable laws and regulations; and
- (c) Making false and misleading statements and omitting to disclose material information regarding defects in their 303 THF Products including, without limitation, the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and that the 303 THF Products provided certain qualities, results and benefits.

401. Plaintiffs and members of the Arkansas Class have suffered actual financial loss as a result of Defendants' misconduct as alleged herein. Plaintiffs and other members of the Arkansas Class paid for defective products based on their reliance on Defendants' representations that the 303 THF Products were fit for their intended use as found on Defendants' packaging, in their advertising and marketing materials, and/or other publicly available information.

402. Accordingly, Plaintiffs and the members of the Arkansas Class are entitled to recover their damages, attorneys' fees, and punitive damages pursuant to [A.C.A. § 4-88-113](#).

COUNT IX
Violation of the California Unfair Competition Law
California Civil Code §17200 et seq.

403. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

404. This Count is brought on behalf of the entire California Class.

405. The UCL prohibits any "unlawful," "fraudulent," or "unfair" business act or practice and any false or misleading advertising. Cal. Bus. Prof. Code §17200.

406. Defendants' business acts and practices complained of herein were centered in, emanated from and were carried out, effectuated and perfected in the United States and from within the State of California.

407. Beginning in at least December 2013, Defendants committed acts of unfair competition, as defined by [California Business and Professions Code § 17200 et seq.](#), by engaging in the acts and practices specified herein.

408. Defendants engaged in "unfair" and deceptive business acts and practices by, among other things, marketing, distributing, and/or selling 303 THF Products, ostensibly under and pursuant to California law while, in truth, intending to commit and in fact committing wholesale violations of California law, including the False Advertising act, the Consumer Legal Remedies Act, and other violations relating to the misleading labelling of 303 THF Products.

409. Plaintiffs and all members of the California Class were harmed by Defendants' aforementioned unlawful unfair and fraudulent business acts and practices occurring in the State of California. As alleged herein, Plaintiffs have been victimized by, and have suffered injury in

fact and lost money or property as a result of, Defendants' conduct associated with the distribution, marketing, and sale of 303 THF Products.

410. Defendants' actions and practices, as alleged in this 3rd ACC, were unfair, deceptive, misleading and likely to deceive the consuming public within the meaning of Business & Professions Code §17200 *et seq.*

411. As stated in this 3rd ACC, Defendants' violations of consumer protection laws and their unfair competition resulted in harm to consumers that is ongoing. Defendants' acts constitute violations of the unfair prong of Business & Professions Code §17200 *et seq.*

412. There were reasonably available alternatives to further Defendants' legitimate business interests, other than the conduct described herein.

413. As a result of their deception, Defendants have been able to reap unjust revenue and profit.

414. Plaintiffs, on behalf of themselves and all other California Class Members, seek restitution and disgorgement of all money obtained from Plaintiffs and the members of the Class collected as a result of Defendants' misconduct and injunctive relief in the form of an order prohibiting Defendants from undertaking such practices in the future and requiring Defendants to engage in and undertake corrective measures, and all such other and further relief this Court deems appropriate, consistent with Business & Professions Code §17203.

COUNT X
False and Misleading Advertising in Violation of California Business
& Professions Code §17500 et seq.

415. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

416. This Count is brought on behalf of the entire California Class.

417. Throughout the period during which they have marketed, distributed, and/or sold 303 THF Products, Defendants engaged in unlawful and/or fraudulent conduct under California Business & Professions Code §§ 17500, *et seq.*, by engaging in the sale of 303 THF Products based on publicly disseminated advertisements, and terms and conditions that Defendants knew or reasonably should have known were unfair, deceptive, untrue and/or misleading. Defendants committed such violations of the False Advertising Law with actual knowledge or knowledge fairly implied on the basis of objective circumstances.

418. Defendants' advertisements, representations, and labeling as described herein were designed to, and did, result in the purchase and use of the 303 THF Products and Defendants profited from the sales of these products to unwary consumers.

419. As a direct result of Defendants' violations, Plaintiffs and the California Class Members suffered injury in fact and lost money.

420. Accordingly, Plaintiffs, on behalf of themselves and all other California Class Members, seek restitution and injunctive relief against Defendants in the form of an order prohibiting Defendants from engaging in the alleged misconduct described herein, and other relief as specifically prayed for herein.

COUNT XI
Violation of the Consumers Legal Remedies Act,
California Civil Code §1750 *et seq.*

421. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

422. This Count is brought on behalf of California Class Members who purchased 303 THF Products for personal, family, or household use.

423. Defendants are “persons” within the meaning of [California Civil Code §§ 1761\(c\)](#) and 1770, and Defendants provide “goods” within the meaning of Civil Code §§ 1761(a) and 1770. Defendants’ customers, including Plaintiffs and California Class Members, are “consumers” within the meaning of Civil Code §§ 1761(d) and 1770. Each purchase of Defendants’ 303 THF Products by Plaintiff and each California Class Member as alleged herein constitutes a “transaction” within the meaning of Civil Code §§ 1761(e) and 1770. Each California Class Member purchased goods from Defendants that was primarily for personal, family, or household purposes.

424. The Consumer Legal Remedies Act makes it unlawful for a company to:

- (a) Misrepresent the certification of goods. [Cal. Civ. Code § 1770\(a\)\(2\)\(3\)](#);
- (b) Represent that goods have characteristics or approval that they do not have. Cal. Civ. Code § 1770(a)(5);
- (c) Represent that goods are of a particular standard, quality, or grade, if they are of another. [Cal. Civ. Code § 1770\(a\)\(7\)](#);
- (d) Advertise goods with intent not to sell them as advertised. Cal. Civ. Code § 1770(a)(9); and,
- (e) Represent that the subject of a transaction has been supplied in accordance with a previous representation when it has not. [Cal. Civ. Code § 1770\(a\)\(16\)](#).

425. Defendants’ conduct that violated and continues to violate the CLRA includes, without limitation, deceptively representing that 303 THF Products meet or have an equivalency to the obsolete and non-existent “303” designation, meet or have an equivalency to the other obsolete J14B and J20A specifications, and/or provide the other advertised benefits and are suitable for use as a tractor hydraulic fluid. This was deceptive because Defendants did not possess

generally accepted data to substantiate the claims on the product labels and because there is no known “303” specification and there is no way for manufacturers, sellers, or anyone else to truthfully claim the products meet or are in compliance with any such specification.

426. Defendants violated the CLRA by representing that 303 THF Products provided the benefits listed on the label, were suitable for use as a tractor hydraulic fluid and/or met or had an equivalency to the “303 designation,” as described above when it knew, or should have known, that the representations and advertisements were unsubstantiated, false and misleading.

427. Throughout the period during which they have marketed, distributed, or sold and offered for sale 303 THF Products, Defendants violated and continue to violate the above-mentioned provisions.

428. As a direct and proximate result of Defendants' violations, Plaintiff Kimmich and California Class Members have suffered and are continuing to suffer harm.

429. Defendants’ wrongful business practices constituted, and constitute, a continuing course of conduct in violation of the CLRA because Defendants are continuing to engage in the practices complained of herein and which have injured Plaintiffs and California Class Members.

430. Pursuant to §1782 of the CLRA, by letters dated September 13, 2019, counsel for Plaintiff Kimmich notified Defendants in writing by certified mail of the particular violations of §1770 of the CLRA and demanded that Defendants rectify the problems associated with the actions detailed above and give notice to all affected consumers of its intent to so act. Copies of the letters are attached hereto as “Exhibit A.”

431. Plaintiff Kimmich, on behalf of himself and other California Class Members similarly situated, seeks a court order enjoining the above-described wrongful acts and practices of Defendants and further seek an order and awards for restitution, disgorgement, and for such

other relief, including attorneys' fees and costs, as provided in Civil Code § 1780 and the Prayer for Relief.

COUNT XII
Violation of the Colorado Consumer Protection Act,
Colo. Rev. Stat. § 6-1-101, *et seq.*

432. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

433. Defendants are designers, manufacturers, promoters, marketers, developers, sellers, and/or distributors of the harmful 303 THF Products.

434. Defendants sold the harmful 303 THF Products in Colorado and throughout the United States during the Class Period.

435. Defendants knew or should have known that the 303 THF Products caused their customers, in reasonable probability, to be deceived.

436. Defendants have violated the Colorado Deceptive Trade Practice Act, Sec. 6-1-105. In selling the 303 THF Products at issue to Plaintiffs and the Members of the Colorado Class, Defendants have used deception, fraud, false pretense, misrepresentation or the concealment, suppression or omission of material facts, either expressly or by implication, by the representations and concealment set forth herein, including, without limitation, representing that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and that the 303 THF Products provided certain qualities, results and benefits, and through Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications.

437. Defendants intentionally and knowingly used deception, false pretense, false promise, misrepresentation and/or concealment of material facts regarding the harmful 303 THF Products with intent to mislead Plaintiffs and Members of the Colorado Class.

438. As a result of Defendants' unlawful business practices, Plaintiffs and the Members of the Colorado Class are entitled to an order enjoining such future conduct and to such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore to Plaintiffs and Colorado Class Members any money paid for the harmful 303 THF Products.

439. Plaintiffs have standing to pursue this claim as each has suffered actual economic damages as a proximate result of Defendants' actions set forth herein.

COUNT XIII
Violation of the Connecticut Consumer Protection Act,
Conn. Gen. Stat. § 42-110g, et seq.

440. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

441. Defendants are each a "person" as defined by Conn. Gen. Stat. § 42-110a(3).

442. Defendants are engaged in "trade" or "commerce" as those terms are defined by Conn. Gen. Stat. § 42-110a(4).

443. Plaintiffs have sent notice to the Attorney General and Commissioner of Consumer Protection pursuant to Conn. Gen. Stat. § 42-110g(c). Plaintiffs will provide a file-stamped copy of this 3rd ACC to the Attorney General and Commissioner of Consumer Protection.

444. Defendants advertised, offered, or sold goods or services in Connecticut, and engaged in trade or commerce directly or indirectly affecting the people of Connecticut.

445. Defendants engaged in deceptive acts and practices and unfair acts and practices in the conduct of trade or commerce, in violation of [Conn. Gen. Stat. § 42-110b](#), by misrepresenting Defendants' 303 THF Products, concealing the 303 THF Products' defects, concealing the risks associated with use of Defendants' 303 THF Products, and also concealing and misrepresenting the true nature of Defendants' 303 THF Products.

446. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiff Carusillo and the Connecticut Class Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing Defendants' 303 THF Products, and increased time and expense in dealing with the damages from the use of Defendants' 303 THF Products.

447. Defendants' deceptive acts and practices caused substantial, ascertainable injury to Plaintiff Carusillo and the Connecticut Class Members, which they could not reasonably avoid, and which outweighed any benefits to consumers or to competition.

448. Defendants' violations of Connecticut law were done with reckless indifference to the Plaintiff Carusillo and the Connecticut Class Members or were done with an intentional or wanton violation of those rights.

449. Plaintiff Carusillo and the Connecticut Class Members request damages in an amount to be determined at trial, including statutory and common law damages, attorneys' fees, and punitive damages.

COUNT XIV
**Violation of the Florida Deceptive and Unfair Trade Practices Act,
Fla. Stat. § 501.201, et seq.**

450. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

451. **Violation No. 1 – Deceptive Acts or Practices.** Plaintiffs and the Florida Class Members are “consumers” within the meaning of Part II of Chapter 501, Florida Statutes, relating to Florida’s Deceptive and Unfair Trade Practices Act (“FDUTPA”).

452. Defendants each qualify as a “person” or “entity” as used in the FDUTPA.

453. Pursuant to the FDUTPA, unfair methods of competition, unconscionable acts or practices, and unfair or deceptive acts or practices in the conduct of any trade or commerce are unlawful.

454. As set forth above, Defendants have, in the course of trade or commerce, engaged in unconscionable, unfair and/or deceptive acts or practices harming Plaintiffs and Members of the Florida Class, as described herein.

455. Plaintiffs and Members of the Florida Class purchased the 303 THF Products as part of a consumer transaction.

456. Defendants engaged in deceptive conduct in violation of FDUTPA when they made representations and/or omissions regarding the usability and suitability of the 303 THF Products that are likely to mislead consumers acting reasonably under the circumstances, to the consumer’s detriment.

457. In selling the 303 THF Products at issue to Plaintiffs and the Members of the Florida Class, Defendants have used deception, fraud, false pretense, misrepresentation or the concealment, suppression or omission of material facts, either expressly or by implication, by the

representations and concealment set forth herein, including, without limitation, representing that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and that the 303 THF Products provided certain qualities, results and benefits, and through Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications.

458. Defendants had a duty to disclose the material characteristics of their 303 THF Products because they (i) knew about these characteristics at the time that Plaintiffs and other Florida Class Members purchased Defendants' 303 THF Products; (ii) had exclusive knowledge of material facts that were not known to Plaintiffs and other Florida Class Members; and (iii) made representations regarding the 303 THF Products without adequately disclosing that their 303 THF Products were not suitable for use as tractor hydraulic fluid.

459. Reasonable consumers would, as a result of Defendants' misrepresentations and omissions, be misled and believe that the 303 THF Products were suitable for use as tractor hydraulic fluid.

460. It is highly probable that these representations and omissions are likely to cause injury to a reasonable consumer, and Defendants' misrepresentations and omissions are likely to mislead consumers.

461. As a direct and proximate result of Defendants' deceptive conduct, Plaintiffs and other Florida Class Members have suffered damages.

462. Plaintiffs and the Florida Class Members have been injured in their property by reason of Defendants' deceptive acts alleged herein. The injury consists of purchasing a worthless product that they would not have paid for in the absence of the deceptive acts, as well as the damage

done to tractors and other equipment. This injury is of the type that [Fla. Stat. § 501.201](#), *et. seq.* was designed to prevent and directly results from Defendants' deceptive and unlawful conduct.

463. In addition to actual damages, Plaintiffs and the Florida Class Members are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and costs pursuant to [Fla. Stat. § 501.201](#), *et seq.*

464. **Violation No. 2 – Unfair Acts or Practices.** Defendants further violated FDUTPA by engaging in unfair practices against Plaintiff Strickland and the Florida Class Members.

465. Given the unsuitability of Defendants' 303 THF Products for use as tractor hydraulic fluid, Defendants' sale of the 303 THF Products, especially accompanied by misrepresentations and omissions as described herein, is a practice that is immoral, unethical, oppressive, unscrupulous, and/or substantially injurious to consumers. Defendants have been preying on consumers of their 303 THF Products, deceiving them into paying for an unsuitable product.

466. The practices described herein also offend established public policy regarding the protection of consumers against companies, like Defendants, who engage in unfair methods of competition.

467. Defendants' conduct, which caused substantial injury to Plaintiffs and the Florida Class Members, could have been avoided and is not outweighed by countervailing benefits to any consumers or competitors.

468. Defendants' business acts and practices are also unfair because they have caused harm and injury-in-fact to Plaintiffs and Class Members and for which Defendants have no justification other than to increase, beyond what Defendants would have otherwise realized, their market share and revenue from the sale of 303 THF Products.

469. Defendants' conduct lacks reasonable and legitimate justification. Defendants have benefited from such conduct and practices while Plaintiffs and Florida Class Members have been misled as to the nature, suitability, and integrity of the 303 THF Products and have lost money, including the purchase price of the 303 THF Products and the costs of common repairs.

470. In addition, Defendants' *modus operandi* constitutes an unfair practice in that Defendants knew and should have known that consumers care about maintaining their tractors and equipment but are unlikely to be aware of and/or able to detect the means by which Defendants were conducting themselves in a manner adverse to their commitments and their customers' interests.

471. While Defendants conveyed the impression to reasonable consumers that their 303 THF Products were safe to use in their tractors and other equipment, in actuality, their 303 THF Products were not suitable for use as tractor hydraulic fluid.

472. The practices complained of herein are not limited to a single instance but are done pervasively and uniformly at all times against Plaintiffs and the Florida Class Members.

473. As a direct and proximate result of Defendants' unfair conduct, Plaintiffs and the Florida Class Members have suffered damages.

474. Plaintiffs and Florida Class Members have been injured in their property by reason of Defendants' unfair acts alleged herein. The injury consists of purchasing a worthless product that they would not have paid for in the absence of the deceptive acts, as well as the damage done to tractors and other equipment. This injury is of the type that [Fla. Stat. § 501.201](#), *et. seq.* was designed to prevent and directly results from Defendants' deceptive and unlawful conduct.

475. In addition to actual damages, Plaintiffs and the Florida Class Members are entitled to declaratory and injunctive relief as well as reasonable attorneys' fees and costs pursuant to [Fla. Stat. § 501.201](#), *et seq.*

476. **Violation No. 3 – Unlawful Conduct Premised on MAL.** Defendants further violated FDUTPA by violating a “statute ... which proscribes unfair methods of competition, or unfair, deceptive, or unconscionable acts or practices.” [Fla. Stat. 501.203\(3\)\(c\)](#). Here, Defendants violated Florida's Misleading Advertising Law ([Fla. Stat. 817.41](#)), as described below.

477. Defendants' misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, as described herein as violating FDUTPA, would deceive an objectively reasonable consumer.

478. As a result of Defendants' misrepresentations, omissions, deceptive acts, unfair practices, and/or violations of other rules or statutes, Plaintiffs and Florida Class Members have suffered actual damages by losing money and by common damage to equipment. Defendants' 303 THF Products were worthless and thus Plaintiffs and the Florida Class Members' damages are the purchase price of the product. Defendants 303 THF Products were also commonly harmful to equipment.

479. As a result of these FDUTPA violations, Plaintiffs and Florida Class Members are entitled to actual damages, attorneys' fees, costs, declaratory relief, and injunctive relief.

COUNT XV
Violation of the Florida Misleading Advertising Law,
Fla. Stat. § 817.41, et seq.

480. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

481. Through the misrepresentations and omissions made on Defendants' product labels regarding the suitability of Defendants' 303 THF Products for use as tractor hydraulic fluid, Defendants unlawfully disseminated or caused to be made misleading advertisements in Florida, in violation of [Fla. Stat. 817.41](#).

482. Defendants' misleading labels and advertising is described above and throughout this 3rd ACC.

483. The misrepresentations and omissions as to the suitability of Defendants' 303 THF Products for use as tractor hydraulic fluid are material to Plaintiffs, the Florida Class Members, and average consumers.

484. Defendants knew or should have known (through the exercise of reasonable care or investigation) that the advertisements were false, untrue, or misleading.

485. Defendants' misrepresentations and omissions were designed and intended, either directly or indirectly, for obtaining money from Plaintiffs and the Florida Class Members under false pretenses by inducing them to purchase Defendants' 303 THF Products. Defendants intended that the representations would induce Plaintiffs and the Florida Class Members to rely upon it and purchase Defendants' 303 THF Products.

486. Plaintiffs and the Florida Class Members relied to their detriment on Defendants' false advertising, by purchasing Defendants' 303 THF Products that they would not otherwise (but for the false advertising) have purchased.

487. Pursuant to [Fla. Stat. 817.41](#), Plaintiffs and the Florida Class Members are entitled to costs, reasonable attorney's fees, actual damages, and punitive damages.

488. Punitive damages are appropriate here, given that Defendants knowingly misled consumers, including Plaintiffs and the Florida Class Members, and engaged in the willful,

wanton, and/or reckless conduct described herein. Here, Defendants engaged in intentional conduct (or alternatively, gross negligence) as to the misrepresentations and omissions concerning the suitability of the 303 THF Products for use as tractor hydraulic fluid.

COUNT XVI

**Violation of the Illinois Consumer Fraud and Deceptive Business Practices Act,
815 ILCS 505/1, *et seq.***

489. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

490. Plaintiffs and Illinois Class Members are “persons” and “consumers” under the Illinois Consumer Fraud and Deceptive Business Practices Act (“ICFA”), 815 ILCS 505/1 (c) and (e).

491. Defendants engaged in “trade” or “commerce” within the meaning of the ICFA, 815 ILCS 505/1 (f).

492. Section 2 of the ICFA provides, in pertinent part:

Unfair methods of competition and unfair or deceptive acts or practices, including but not limited to the use or employment or any deception, fraud, false pretense, false promise, misrepresentation or the concealment, suppression or omission of any material fact, with intent that others rely upon the concealment, suppression or omission of such material fact, or the use or employment of any practice described in Section 2 of the “Uniform Deceptive Trade Practices Act”, approved August 5, 1965, in the conduct of any trade or commerce are hereby declared unlawful whether any person has in fact been misled, deceived or damages thereby.”

493. Defendants sold the obsolete and harmful THF Products in Illinois and throughout the United States during the Class Period.

494. Defendants’ sales of the THF Products meet the definition of “sale” within the meaning of the ICFA, 815 ILCS 505/1 (d). Defendants’ THF Products at issue meet the definition of “merchandise” for purposes of the ICFA, 815 ILCS 505/1 (b).

495. In selling their THF Products and by virtue of the conduct set forth above, Defendants have used deception, fraud, false pretense, misrepresentation or the concealment, suppression or omission of material facts, either expressly or by implication.

496. Defendants intentionally and knowingly used deception, false pretense, false promise, misrepresentation and/or concealment of material facts regarding the 303 THF Products with intent to mislead Plaintiffs and all Illinois Class Members.

497. At all times material hereto, it was reasonably foreseeable that Plaintiffs and others similarly situated, would rely on the false and fraudulent statements made by Defendants. Said reliance has caused Plaintiffs and others similarly situated, to be damaged.

498. The actions of Defendants were done willfully, intentionally and with reckless disregard for harm that would be caused to Plaintiffs and others similarly situated, and Defendants' conduct warrants imposition of exemplary damages to deter Defendants, and others in similar circumstances, from committing such actions in the future.

499. In addition, as a result of Defendants' unlawful, unfair and deceptive business practices, Plaintiffs and Illinois Class Members, pursuant to 815 ILCS 505/1 (a), are entitled to an order enjoining such future conduct and such other orders and judgments which may be necessary to disgorge Defendants' ill-gotten gains and to restore Plaintiffs and Illinois Class Members any money paid for the 303 THF Products.

500. Plaintiffs have standing to pursue this claim as each has suffered actual economic damage as a proximate result of Defendants' actions as set forth herein.

501. An award of punitive damages is also appropriate.

COUNT XVII
Violation of the Indiana Consumer Protection Act,
Ind. Code § 24-5-0.5-1, et seq.

502. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

503. Defendants are each a “person” as defined by Ind. Code § 24-5-0.5-2(a)(2). Defendants are also each a “supplier” as defined by Ind. Code § 24-5-0.5-2(a)(3) because each regularly engages in or solicits “consumer transactions” within the meaning of Ind. Code § 24-5-0.5-2(a)(3)(A).

504. Defendants engaged in unfair, abusive, and deceptive acts, omissions, and practices in connection with consumer transactions, in violation of Ind. Code § 24-5-0.5-3(a).

505. Defendants’ acts and practices were unfair because they caused or were likely to cause substantial injury to consumers which was not reasonably avoidable by consumers themselves and not outweighed by countervailing benefits to consumers or to competition. The injury to consumers was and is substantial because it was non-trivial and non-speculative, and it involved a monetary injury. The injury to consumers was substantial not only because it inflicted harm on a significant number of consumers, but also because it inflicted a significant amount of harm on each consumer.

506. Defendants’ acts and practices were “abusive” for numerous reasons: (a) because they materially interfered with consumers’ ability to understand a term or condition in a consumer transaction, interfering with consumers’ decision-making; (b) because they took unreasonable advantage of consumers’ lack of understanding about material risks and costs; (c) because they took unreasonable advantage of consumers’ inability to protect their own interests based on

consumers lack of complete information; and, (d) because they took unreasonable advantage of consumers' reasonable reliance that Defendants were providing truthful and accurate information.

507. Defendants also engaged in "deceptive" acts and practices in violation of Ind. Code § 24-5-0.5-3(a) and § 24-5-0.5-3(b) by: (a) misrepresenting that the subject of a consumer transaction has sponsorship, approval, performance, characteristics, accessories, uses, or benefits it does not have which the supplier knows or should reasonably know it does not have; and, (b) misrepresenting that the subject of a consumer transaction is of a particular standard, quality, grade, style, or model, if it is not and if the supplier knows or should reasonably know that it is not.

508. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers.

509. Defendants received notice pursuant to Ind. Code § 24-5-0.5-5(a) concerning their wrongful conduct as alleged herein by Plaintiffs and the Indiana Class Members. Defendants' conduct includes incurable deceptive acts that Defendants engaged in as part of a scheme, artifice, or device with intent to defraud or mislead, under Ind. Code § 24-5-0.5-2(a)(2)(a)(8).

510. As a direct and proximate result of Defendants' uncured or incurable unfair, abusive, and deceptive acts or practices, Plaintiffs and the Indiana Class Members have suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including from not receiving the benefit of their bargain in purchasing Defendants' 303 THF Products and from the damage being done to tractors and equipment by Defendants' 303 THF Products.

511. Defendants' violations present a continuing risk to Plaintiffs and the Indiana Class Members as well as to the general public.

512. Plaintiffs and the Indiana Class Members seek all monetary and non-monetary relief allowed by law, including the greater of actual damages of \$500 for each non-willful violation; the greater of treble damages or \$1,000 for each willful violation; restitution; reasonable attorneys' fees and costs; injunctive relief; and punitive damages.

COUNT XVIII
Violation of the Kansas Consumer Protection Act,
K.S.A. § 50-623, et seq.

513. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

514. The Kansas Consumer Protection Act ("KCPA), K.S.A. § 50-623 et seq., prohibits deceptive and unconscionable acts and practices in connection with consumer transactions.

515. Plaintiffs and the Kansas Class Members are "consumers" and "persons" for purposes of the KCPA, K.S.A. §50-624(b) and (i).

516. Defendants are each a "supplier" as defined by K.S.A. § 50-624(l).

517. The purchase of Defendants' 303 THF Products was and is a "consumer transaction" as defined by K.S.A. § 50-624(c).

518. Under the KCPA, Defendants have a statutory duty to refrain from both "deceptive acts and practices" and "unconscionable acts and practices."

519. Defendants engaged in deceptive and unconscionable acts and practices, including, but not limited to, the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice and the concealment, suppression, or omission of material facts in connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of Kansas and throughout the United States.

520. Defendants' conduct set forth herein, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, and that the 303 THF Products met specifications, were deceptive, unconscionable, false and misleading and made knowingly by Defendants or without knowledge as to their truth or falsity.

521. Defendants' conduct set forth herein, including without limitation the label representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met specifications, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, were also deceptive and unconscionable in omitting or suppressing a material fact in that Defendants' 303 THF Products were not appropriate for use and did not meet specifications as labeled, advertised, marketed and sold.

522. Defendants' conduct as set forth herein with regard to the marketing and sale of the 303 THF Products constitutes deceptive and unconscionable acts and practices.

523. Defendants engaged in deceptive and unconscionable practices including deception, false promises, misrepresentation, and/or the concealment, suppression or omission of material facts in connection with the marketing and sale of the 303 THF Products.

524. Defendants falsely represented these facts, knowingly or with reason to know, that the 303 THF Products had sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, and/or quantities that it did not have, in violation of [K.S.A. § 50-626\(b\)\(1\)\(A\)](#).

525. Defendants falsely represented, knowingly or with reason to know, that the 303 THF Products were of a particular standard, quality, grade, style and/or model when the products materially differed from that representation, in violation of [K.S.A. § 50-626\(b\)\(1\)\(D\)](#).

526. Defendants willfully used in a written representation an exaggeration, falsehood, innuendo, and/or ambiguity as to a material fact, in violation of [K.S.A. § 50-626\(b\)\(2\)](#).

527. Defendants willfully failed to state material facts regarding their 303 THF Products and willfully concealed, suppressed, and omitted material facts, in violation of K.S.A. § 50-626(b)(3).

528. Defendants engaged in a pattern of conduct toward Plaintiffs and all Kansas Class Members that, when taken in its totality, is and was deceptive, in violation of K.S.A. § 50-626(a).

529. Defendants engaged in a pattern of conduct toward Plaintiffs and all Kansas Class Members that, when taken in its totality, is and was unconscionable, in violation of K.S.A. § 50-627(a).

530. Defendants' conduct with regard to their 303 THF Products was materially deceptive and unconscionable, and was a proximate cause of economic damage to purchasers.

531. Plaintiffs and Kansas Class Members have suffered economic and other damages as a result of Defendants' conduct with regard to the marketing and sale of the 303 THF Products.

532. As a direct and proximate result of Defendants' illegal conduct, Plaintiffs and Kansas Class Members have suffered ascertainable losses of money.

533. Defendants' conduct as described herein was intentional, done knowingly, and was in conscious disregard of the rights of Plaintiffs and other Kansas Class Members.

534. Defendants' conduct is such that an award of punitive damages against each Defendant is appropriate.

COUNT XIX
Violation of the Kentucky Consumer Protection Act,
Ky Rev. Stat. § 367.170, *et seq.*

535. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

536. The Kentucky Consumer Protection Act (“KCPA”) prohibits unfair, false, misleading, or deceptive acts and practices in the conduct of any trade of commerce. Ky. Rev. STAT. §367.170 (2015).

537. Defendants sold THF Products to Plaintiffs, Kentucky residents, and to other Kentucky Class Members who reside in Kentucky, and the sales occurred in Kentucky.

538. Plaintiffs and other Kentucky Class Members purchased Defendants’ 303 THF Products primarily for personal, family, or household purposes.

539. Defendants engaged in unfair, false, misleading and/or deceptive acts and practices, including, but not limited to, the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice and the concealment, suppression, or omission of material facts in connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of Kentucky and throughout the United States.

540. Defendants’ conduct set forth herein, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment and that the 303 THF Products met or had an equivalency to specifications, were unfair, false, misleading, and/or deceptive and made knowingly by Defendants or without knowledge as to their truth or falsity.

541. Defendants’ conduct set forth herein, including without limitation the label representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and Defendants’ failure to inform consumers of the true nature of the product and the obsolete specifications, were also unfair, false, misleading, and/or deceptive in omitting or suppressing a material fact in that Defendants’

303 THF Products were not appropriate for use and did not meet specifications as labeled, advertised, marketed and sold.

542. Defendants intentionally engaged in the above course of conduct knowing that such conduct was unfair, false, misleading and/or deceptive. The deceptive acts and practices engaged in by Defendants were and are consumer related.

543. As a result of Defendants' unfair, false, misleading, and/or deceptive acts or practices when selling the 303 THF Products, Plaintiffs and other Kentucky Class Members have incurred financial damages as well as damage to equipment.

544. An award of punitive damages to Plaintiffs and Kentucky Class Members is also appropriate.

COUNT XX
Violation of the Michigan Consumer Protection Act,
MCL 445.901, *et seq.*

545. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

546. As alleged herein, Defendants' conduct in connection with the manufacturing, distribution, marketing and sale of the 303 THF Products to Plaintiff Clough and the Michigan Class constitutes unfair, unconscionable, and deceptive acts or practices in the conduct of trade and commerce in violation of the provisions of the Michigan Consumer Protection Act, MCL 445.901 *et seq.*, as follows:

- (a) Defendants' conduct violates MCL 445.903(1)(c), by representing that the 303 THF Products have characteristics and benefits that they do not have;

- (b) Defendants' conduct violates [MCL 445.903\(1\)\(e\)](#), by representing that the 303 THF Products are of a particular standard, quality or grade, when it is of another;
- (c) Defendants' conduct violates [MCL 445.903\(1\)\(s\)](#), by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;
- (d) Defendants' conduct violates [MCL 445.903\(bb\)](#), by representing material facts such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is; and/or
- (e) Defendants' conduct violates [MCL 445.903\(cc\)](#), by failing to reveal facts that are material to the transaction in light of representations of fact made in positive manner.

547. As a result of such unfair, unconscionable and deceptive conduct, Plaintiffs and the Michigan Class Members have suffered, and will continue to suffer, damages.

548. This Court has the power to enjoin the continuation of the unfair, unconscionable and deceptive conduct alleged herein pursuant to [MCL 445.911\(1\)](#).

549. Plaintiffs and the Michigan Class Members are therefore entitled to damages in an amount to be determined at trial, and to equitable relief in the form of appropriate injunctive relief, as a result of the unfair business conduct alleged herein.

COUNT XXI
Violation of the Minnesota Consumer Fraud Act,
Minnesota Statute § [325E.67](#), *et seq.*

550. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

551. The Minnesota Consumer Fraud Act, Minnesota statute § [325F.67](#) *et seq.*, prohibits deceptive and unconscionable acts and practices in connection with consumer transactions, including asserting false statements in advertising.

552. Plaintiffs and the Minnesota Class Members are “persons” for purposes of the MCFA, M.S.A. §[325F.68](#)(3).

553. The goods supplied by Defendants in this matter are “merchandise” as defined by M.S.A. § [325F.68](#)(2).

554. The purchase of Defendants’ 303 THF Products was and is a “sale” as defined by M.S.A. § [325F.68](#)(4).

555. Under the MCFA, M.S.A. § [325F.69](#), Defendants have a statutory duty to refrain from all manner of deceptive and/or unconscionable acts and practices when selling merchandise, including, but not limited to, acts or use of fraud, false pretense, false promise, misrepresentation, or misleading statement.

556. Defendants engaged in deceptive and unconscionable acts and practices, including, but not limited to, the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice and the concealment, suppression, or omission of material facts in connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of Minnesota and throughout the United States.

557. Defendants’ conduct set forth herein, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, and that the 303 THF Products met or had an equivalency to specifications, were deceptive, unconscionable, false and misleading and made knowingly by Defendants or without knowledge as to their truth or falsity.

558. Defendants' conduct set forth herein, including without limitation the label representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, were also deceptive and unconscionable in omitting or suppressing a material fact in that Defendants' 303 THF Products were not appropriate for use and did not meet specifications as labeled, advertised, marketed and sold.

559. Defendants' conduct as set forth herein with regard to the marketing and sale of the 303 THF Products constitutes deceptive and unconscionable acts and practices.

560. Defendants engaged in deceptive and unconscionable practices including fraud, false pretense, false promise, misrepresentation, misleading statement, deception, and/or the concealment, suppression or omission of material facts in connection with the marketing and sale of the 303 THF Products.

561. Defendants falsely represented these facts, knowingly or with reason to know, that the 303 THF Products had sponsorship, approval, accessories, characteristics, ingredients, uses, benefits, and/or quantities that it did not have, in violation of M.S.A. § [325F.67](#) and [325F.69\(1\)](#).

562. Defendants falsely represented, knowingly or with reason to know, that the 303 THF Products were of a particular standard, quality, grade, style and/or model when the products materially differed from that representation, in violation of M.S.A. § [325F.67](#) and [325F.69\(1\)](#).

563. Defendants willfully used in a written representation an exaggeration, falsehood, innuendo, and/or ambiguity as to a material fact, in violation of M.S.A. § [325F.67](#) and [325F.69\(1\)](#).

564. Defendants willfully failed to state material facts regarding their 303 THF Products and willfully concealed, suppressed, and omitted material facts, in violation of M.S.A. § [325F.67](#) and [325F.69\(1\)](#).

565. Defendants engaged in a pattern of conduct toward Plaintiffs and all Minnesota Class Members that, when taken in its totality, is and was deceptive, in violation of M.S.A. § [325F.67](#) and [325F.69\(1\)](#).

566. Defendants engaged in a pattern of conduct toward Plaintiffs and all Minnesota Class Members that, when taken in its totality, is and was unconscionable, in violation of M.S.A. § [325F.67](#) and [325F.69\(1\)](#).

567. Defendants' conduct with regard to their 303 THF Products was materially deceptive and unconscionable, and was a proximate cause of economic damage to purchasers, including Plaintiffs and Minnesota Class Members.

568. Plaintiffs and Minnesota Class Members have suffered economic and other damages as a result of Defendants' conduct with regard to the marketing and sale of the 303 THF Products.

569. As a direct and proximate result of Defendants' illegal conduct, Plaintiffs and Minnesota Class Members have suffered ascertainable losses of money.

570. Defendants' conduct as described herein was intentional, done knowingly, and was in conscious disregard of the rights of Plaintiffs and other Minnesota Class Members.

571. Defendants' conduct is such that an award of punitive damages against each Defendant is appropriate.

COUNT XXII
Violations of Missouri Merchandising Practices Act

572. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

573. Plaintiffs and Missouri Class Members purchased Defendants' 303 THF Products for personal, family, or household purposes.

574. Plaintiffs and Missouri Class Members are "person[s]" for purposes of the Missouri Merchandising Practices Act ("MMPA"). [Mo. Rev. Stat. § 407.010.](#)

575. Defendants' Cam2 Promax 303 THF Product meets the definition of "merchandise" for purposes of the MMPA. [Mo. Rev. Stat. § 407.010.](#)

576. Defendants' sale of their Cam2 Promax 303 THF Product is a "sale" within the meaning of the MMPA. [Mo. Rev. Stat. § 407.010.](#)

577. Defendants engaged in "trade" or "commerce" within the meaning of the MMPA. [Mo. Rev. Stat. § 407.010.](#)

578. Under the MMPA, Defendants have a statutory duty to refrain from deceptive acts and practices.

579. Pursuant to the MMPA, an unlawful practice is the use of "any deception, fraud, false pretense, false promise, misrepresentation, unfair practice or the concealment, suppression, or omission of any material fact in connection with the sale or advertisement of any merchandise in trade or commerce . . . in or from the State of Missouri." [Mo. Rev. Stat. § 407.020.](#)

580. Defendants used and employed deception, fraud, false pretense, false promise, misrepresentation, unfair practice and the concealment, suppression, or omission of material facts in connection with the sale or advertisement of their Cam2 Promax 303 THF Product in trade or commerce in the State of Missouri, in violation of the MMPA.

581. Defendants' conduct set forth above, including without limitation the representations that the Cam2 Promax 303 THF Product was fit to be used in older tractors and other equipment, and that the Cam2 Promax 303 THF Product met or had an equivalency to specifications, were unfair, deceptive, false and misleading and made knowingly by Defendants or without knowledge as to their truth or falsity and were therefore deceptions, frauds, false pretenses, false promises, and misrepresentations as described at [§ 407.020 RSMo.](#), and therefore a violation of the MMPA.

582. Defendants' conduct set forth above, including without limitation the label representations that the Cam2 Promax 303 THF Product was fit to be used in older tractors and other equipment, that the Cam2 Promax 303 THF Product met or had an equivalency to specifications, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, also constituted the omission or suppression of a material fact in violation of [§ 407.020 RSMo](#) in that Defendants' Cam2 Promax 303 THF Product was not appropriate for use and did not meet specifications as labeled, advertised, marketed, and sold.

583. Defendants' conduct as set forth herein with regard to the marketing and sale of the Cam2 Promax 303 THF Product constitutes unlawful, unfair and/or fraudulent business practices in violation of the MMPA.

584. Defendants engaged in unlawful practices including deception, false promises, misrepresentation, and/or the concealment, suppression or omission of material facts in connection with the marketing and sale of the Cam2 Promax 303 THF Product, all in violation of [§407.020 RSMo.](#)

585. Defendants' conduct with regard to their Cam2 Promax 303 THF Product was materially misleading and deceptive, and was a proximate cause of economic damage to purchasers.

586. Plaintiffs and the Missouri Class Members have suffered economic and other damages as a result of Defendants' conduct with regard to the marketing and sale of the Cam2 Promax 303 THF Product.

587. As a direct and proximate result of Defendants' illegal conduct, Plaintiffs and the Missouri Class Members have suffered ascertainable losses of money.

588. Defendants' conduct as described herein was intentional, done knowingly, in conscious disregard of the rights of Plaintiffs and other Missouri Class Members, and in violation of [§ 407.020 RSMo](#), and the regulations of the Attorney General of Missouri promulgated thereunder.

589. Defendants' conduct is such that an award of punitive damages against each Defendant is appropriate.

COUNT XXIII
Violations of Nebraska Consumer Protection Act
Neb. Rev. St. §§ 59-1601 *et seq*

590. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

591. Plaintiffs, other Nebraska Class Members, and Defendants are all "person[s]" for purposes of the NCPA. Neb. Rev. St. §§ 59-1601 *et seq*.

592. Defendants' sale of their 303 THF Products constitutes "Trade or Commerce" as contemplated in the NCPA. Neb. Rev. St. § 59-1601.

593. In selling their 303 THF Products to Plaintiffs and the Nebraska Class, Defendants have engaged in unfair and/or deceptive acts or practices by making misrepresentations of material facts, including without limitation, the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and the other representations set forth above.

594. Pursuant to the NCPA, Plaintiffs have standing to pursue this claim as each has suffered actual economic damages as a proximate result of Defendants' actions as set forth herein. Plaintiffs are seeking recovery of actual damages, together with the costs of suit, including reasonable attorney fees, punitive and/or treble damages, and for such further relief as this Court deems just. Neb. Rev. St. §59-1609.

595. These representations were materially misleading and deceptive, and were a producing cause of economic damages to consumers.

596. Defendants violated the NCPA by failing to adequately warn Plaintiffs and Nebraska Class Members of the true nature of Defendants' 303 THF Products, of the use of line flush and used oils as components of Defendants' 303 THF Products, of Defendants' failure to meet any equipment manufacturer specifications, and of other limitations to appropriate uses of the 303 THF Products.

597. Defendants' actions as described herein were done knowingly with conscious disregard of the rights of Plaintiffs and the Nebraska Class Members, and Defendants were wanton and malicious in their concealment of the same.

598. Defendants' false, deceptive and misleading business practices constitutes a continuing course of conduct under the NCPA.

599. Neither Plaintiffs nor the Nebraska Class Members nor any reasonable consumer would have purchased Defendants' 303 THF Products if they were informed that it was obsolete, failed to meet specifications, made with improper ingredients, did not have the performance benefits listed, and/or would cause damage to their tractors or equipment.

600. Plaintiffs and the Nebraska Class Members are entitled to injunctive relief pursuant to Neb. Rev. St. § 59-1609 in the form of enjoining Defendants from (1) selling obsolete tractor hydraulic fluid; (2) expressly or implicitly representing to potential purchasers that their tractor hydraulic fluid products are suitable for use in tractors or other equipment; and (3) providing inadequate warning on tractor hydraulic fluid products as to appropriate uses and potential harm to equipment. Plaintiffs and other Nebraska Class Members are also entitled to injunctive relief in the form of corrective advertising requiring Defendants to disseminate truthful, adequate disclosures and warnings about the actual uses, if any, of Defendants' 303 THF Products.

601. Plaintiffs and the Nebraska Class Members will be irreparably harmed if such an Order is not granted.

COUNT XXIV
Violations of Nebraska Uniform Deceptive Trade Practices Act
Neb. Rev. St. §§ 87-301 *et seq.*

602. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

603. Plaintiffs bring this claim under Neb. Rev. St. §§ 87-301 *et seq.*, on behalf of themselves and the Nebraska Class Members, who were subject to Defendants' above-described deceptive trade practices.

604. The actions of Defendants set forth above constitute a deceptive trade practice in that Defendants represented their 303 THF Products as having characteristics, ingredients, uses,

or benefits that those 303 THF Products do not have, all of which is actionable under Neb. Rev. St. § 87-302(a)(5).

605. The actions of Defendants set forth above constitute a deceptive trade practice in that Defendants represented their 303 THF Products were of a particular standard, quality, or grade that the 303 THF Products were not, all of which is actionable under Neb. Rev. St. § 87-302(a)(7).

606. The actions of Defendants set forth above constitute an unconscionable action or course of action which was committed knowingly, and which was the producing cause of economic damages to Plaintiffs and Nebraska Class Members, all of which is actionable under Neb. Rev. St. § 87-302.

607. Plaintiffs and the Nebraska Class Members are entitled to injunctive relief pursuant to Neb. Rev. St. § 87-303 in the form of enjoining Defendants from (1) selling obsolete tractor hydraulic fluid; (2) expressly or implicitly representing to potential purchasers that their tractor hydraulic fluid products are suitable for use in tractors or other equipment; and (3) providing inadequate warnings on tractor hydraulic fluid products as to appropriate uses and potential harm to equipment. Plaintiffs and other Nebraska Class Members are also entitled to injunctive relief in the form of corrective advertising requiring Defendants to disseminate truthful, adequate disclosures and warnings about the actual uses, if any, of Defendants' 303 THF Products.

COUNT XXV
Violation of the New York Deceptive Sales Practices Act
N.Y. Gen. Bus. § 349 and § 350

608. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

609. New York's General Business Law § 349 makes unlawful “[d]eceptive acts or practices in the conduct of any business, trade or commerce ... in this state.” N.Y. Gen Bus. L. § 349(a).

610. Defendants willfully or knowingly engaged in deceptive and misleading representations and omissions aimed at causing reasonable consumers and the public in the State of New York to be deceived about the suitability of the 303 THF Products for use in tractors and other equipment as tractor hydraulic fluid. Defendants' conduct described herein constitutes deceptive acts or practices in the conduct of business, trade or commerce.

611. Defendants' unlawful conduct was consumer-oriented in that it was designed to, had the capacity to, and did, deceive consumers and affect consumer purchase decisions in the State of New York.

612. Defendants' conduct described herein affected the public interest, and in particular, the public interest in New York State, because that conduct perpetrated a fraud on consumers in New York.

613. As a direct and proximate cause of Defendants' deception in the State of New York, Plaintiffs and the New York Class Members have been injured by the violation of § 349 described herein. This injury is separate from, and not derivative of, the injury to any other person or entity that may have resulted from Defendants' conduct. The injury suffered by Plaintiffs and the New York Class Members includes, without limitation, the cost of the useless and harmful 303 THF Products, and economic injuries flowing from the damage to tractors and other equipment caused by Defendants' 303 THF Products and/or by the use of Defendants' 303 THF Products instead of a tractor hydraulic fluid that would actually protect tractors and equipment.

614. By reason of the foregoing, Defendants are liable to each of Plaintiffs and each New York Class Member for actual damages suffered resulting from the above-described violation of New York General Business Law § 349, or, for any whose damages are less than \$50, then \$50 minimum for each, trebling of those damages, and reasonable attorneys' fees.

615. Plaintiffs, along with the New York Class Members, are entitled to injunctive relief pursuant to § 349 enjoining Defendants from (1) selling 303 THF Products or other similar products; (2) expressly or impliedly representing to past, current, and/or potential customers that 303 THF Products are suitable for use as tractor hydraulic fluid; and, (3) providing inadequate warnings as to the harm the 303 THF Products can cause. Plaintiffs and Members of the New York Class are also entitled to injunctive relief in the form of corrective advertising and notice to purchasers and requiring Defendants to disseminate truthful, adequate disclosures and warning about use of Defendants' 303 THF Products.

616. New York's General Business Law § 350 declares unlawful "[f]alse advertising in the conduct of any business, trade or commerce" "False advertising" is defined as "advertising, *including labeling*, of a commodity ... if such advertising is misleading in a material respect." N.Y. Gen. Bus. Law § 350-a.

617. The labeling on the packages of Defendants' 303 THF Products constitutes "advertising" within the meaning of N.Y. Gen. Bus. Law §§ 350 and 350-a.

618. The labeling on the packages of Defendants' 303 THF Products was misleading in one or more material respects, as detailed above.

619. The labeling on the packages of Defendants' 303 THF Products constitutes "false advertising" within the meaning of §§ 350 and 350-a.

620. Plaintiffs and New York Class Members each were injured by reason of Defendants' violations of §§ 350 and 350-a. in that each of them purchased useless and harmful 303 THF Products as a result of the misleading product labels.

621. By reason of the foregoing, Defendants are liable to Plaintiffs and the New York Class Members for their actual damages, or for statutory damages of \$500 for each violation, whichever is greater, in a total amount to be proved at trial, along with trebling of those damages, and reasonable attorneys' fees.

622. Plaintiffs and New York Class Members, as well as the consuming public of the State of New York, will suffer irreparable injury if Defendants are permitted to continue the deceptive practices described herein.

623. By reason of the foregoing, Plaintiffs and the New York Class Members are entitled to pursuant to § 350 enjoining Defendants from (1) selling 303 THF Products or other similar products; (2) expressly or impliedly representing to past, current, and/or potential customers that 303 THF Products are suitable for use as tractor hydraulic fluid; and, (3) providing inadequate warnings as to the harm the 303 THF Products can cause. Plaintiffs and Members of the New York Class are also entitled to injunctive relief in the form of corrective advertising and notice to purchasers and requiring Defendants to disseminate truthful, adequate disclosures and warning about use of Defendants' 303 THF Products.

COUNT XXVI
Violation of the North Carolina Consumer Protection Act,
N.C.G.S. § 75-1.1, et seq.

624. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

625. As alleged herein, Defendants' conduct in connection with the distribution, marketing and sale of the 303 THF Products to Plaintiffs and the North Carolina Class Members constitutes unfair, unconscionable and deceptive acts or practices in conduct or trade and commerce in violation of the provisions of the North Carolina Consumer Protection Act, N.C.G.S. § 75-1.1, *et seq*, as follows:

- (a) by representing that the 303 THF Products have characteristics and benefits that they do not have;
- (b) by representing that the 303 THF Products are of a particular standard, quality or grade, when it is of another;
- (c) by failing to reveal a material fact, the omission of which tends to mislead or deceive the consumer, and which fact could not reasonably be known by the consumer;
- (d) by representing material facts such that a person reasonably believes the represented or suggested state of affairs to be other than it actually is;
- (e) by failing to reveal facts that are material to the transaction in light of representations of facts made in positive manner; and/or
- (f) by causing confusion or misunderstanding as to the legal rights, obligations or remedies of a party to a transaction.

626. As a result of such unfair, unconscionable and deceptive conduct, Plaintiffs and the North Carolina Class Members have suffered, and will continue to suffer, damages.

627. This Court has the power to enjoin the continuation of the unfair, unconscionable and deceptive conduct alleged herein.

628. Plaintiffs and the North Carolina Class Members are therefore entitled to damages in an amount to be determined at trial, and to equitable relief in the form of appropriate injunctive relief, as a result of the unfair business conduct alleged herein.

COUNT XXVII
Violations of Ohio Consumer Sales Practices Act

629. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

630. Plaintiffs, Ohio Class Members, and Defendants are all “person[s]” for purposes of OCSPA, R.C. 1345.01 *et seq.*

631. Plaintiffs and Ohio Class Members are all “consumer[s]” for purposes of the OCSPA, R.C. 1345.01 *et seq.*

632. Defendants are all “supplier[s]” for purposes of the OCSPA, R.C. 1345.01 *et seq.*

633. Defendants’ sale of 303 THF Products constitutes a “Consumer transaction” for purposes of the OCSPA, R.C. 1345.01 *et seq.*

634. Pursuant to the OCSPA, “no supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction.” R.C. 1345.01.

635. Under the OCSPA, the act or practice of a supplier in representing that the subject of a consumer transaction has performance characteristics, uses or benefits that it does not have is deceptive. R.C. 1345.2(B)(1).

636. Under the OCSPA, the act or practice of a supplier in representing that the subject of a consumer transaction is of a particular standard, quality, grade, style, prescription or model that it is not, is deceptive. R.C. 1345.2(B)(2). Defendants’ practices as described herein were also characterized as unfair or deceptive at the time of the transactions by Rule promulgated under R.C. 1345.05, in that Ohio Admin. Code 109:4-3-10 states that it is a deceptive act for a supplier to

“[m]ake any representations, claims, or assertions of fact...which would cause a reasonable consumer to believe such statements are true, unless...the supplier possesses or relies upon a reasonable basis in fact such as factual, objective, quantifiable, clinical or scientific data or other competent and reliable evidence which substantiates such representations, claims, or assertions of fact.” Ohio state courts have likewise held that representing that the subject of a consumer transaction is of a particular standard, quality or grade, if it is not, is deceptive. *See, e.g., Amato v. Gen. Motors Corp.*, [11 Ohio App. 3d 124, 131, 463 N.E.2d 625, 633](#) (1982)

637. Pursuant to the OCSPA, “no supplier shall commit an unconscionable act or practice in connection with a consumer transaction.” R.C. 1345.03.

638. Under the OCSPA, an unconscionable act occurs where a supplier knew at the time the consumer transaction was entered into that the consumer was unable to receive a substantial benefit from the subject of the consumer transaction. R.C. 1345.03(B)(3).

639. In selling the 303 THF Products at issue to Plaintiffs and the Ohio Class Members, Defendants have engaged in deceptive and/or unconscionable acts or practices by misrepresenting material facts, including without limitation, making the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and the other representations set forth above, when in fact Defendants did not possess or rely upon a reasonable basis in fact such as factual, objective, quantifiable, clinical or scientific data or other competent and reliable evidence which substantiated such representations, claims, or assertions of fact.

640. Pursuant to the NCPA, Plaintiffs have standing to pursue this claim as each has suffered actual economic damages as a proximate result of Defendants’ actions as set forth herein. R.C. 1345.09(A).

641. These representations were materially misleading and deceptive, and were a producing cause of economic damages to consumers.

642. Defendants violated the OCSPA by failing to adequately warn Plaintiffs and Ohio Class Members of the true nature of Defendants' 303 THF Products, of the use of line flush and used oils as components of Defendants' 303 THF Products, of Defendants' failure to meet any equipment manufacturer specifications, and of other limitations to appropriate uses of the 303 THF Products.

643. Defendants' actions as described herein were done knowingly with conscious disregard of the rights of Plaintiffs and the Ohio Class Members, and Defendants were wanton and malicious in their concealment of the same.

644. Defendants' false, deceptive and misleading business practices constitute a continuing course of conduct under the OCSPA.

645. Neither Plaintiffs, the Ohio Class Members nor any reasonable consumer would have purchased Defendants' 303 THF Products if they were informed that it was obsolete, failed to meet specifications, made with improper ingredients, did not have the performance benefits listed, and/or would cause damage to their tractors or equipment.

646. Plaintiffs and the Ohio Class Members are entitled to injunctive relief pursuant to R.C. 1345.09(D) in the form of enjoining Defendants from (1) selling obsolete tractor hydraulic fluid; (2) expressly or implicitly representing to potential purchasers that their tractor hydraulic fluid products are suitable for use in tractors or other equipment; and (3) providing inadequate warning on tractor hydraulic fluid products as to appropriate uses and potential harm to equipment. Plaintiffs and other Ohio Class Members are also entitled to injunctive relief in the form of

corrective advertising requiring Defendants to disseminate truthful, adequate disclosures and warnings about the actual uses, if any, of Defendants' 303 THF Products.

647. Plaintiffs and the Ohio Class Members will be irreparably harmed if such an Order is not granted.

COUNT XXVIII
Violations of Oklahoma Consumer Protection Statute

648. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

649. Plaintiffs and other Oklahoma Class Members are consumers under the Oklahoma Consumer Protection Act.

650. Defendants' sale of their 303 THF Products constitute practices in the course of Defendants' businesses under the Oklahoma Consumer Protection Act.

651. Defendants' conduct set forth above constitutes unlawful practices under the Oklahoma Consumer Protection Act.

652. In selling their 303 THF Products to Plaintiffs and the Oklahoma Class, Defendants have engaged in unfair trade practices and/or deceptive trade practices under the Oklahoma Consumer Protect Act, by misrepresentations of material facts, including without limitation, the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and the other representations set forth above.

653. These representations were materially misleading and deceptive, and were a producing and proximate cause of damages to consumers.

654. Defendants violated the Oklahoma Consumer Protection Act by failing to adequately warn Plaintiffs and the Oklahoma Class Members of the true nature of Defendants' 303

THF Products, of the use of line flush and used oils as components of Defendants' 303 THF Products, of Defendants' failure to meet any equipment manufacturer specifications, and of other limitations to appropriate uses of the 303 THF Products.

655. Defendants' actions as described herein were done knowingly with conscious disregard of the rights of Plaintiffs and the Oklahoma Class Members, and Defendants were wanton and malicious in their concealment of the same.

656. Neither Plaintiffs, nor the Oklahoma Class Members, nor any reasonable consumer would have purchased Defendants' 303 THF Products if they were informed that it was obsolete, failed to meet specifications, made with improper ingredients, did not have the performance benefits listed, and/or would cause damage to their tractors or equipment.

COUNT XXIX

**Violation of the Pennsylvania Unfair Trade Practices and Consumer Protection Law
73 P.S. § 201-1, et seq.**

657. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

658. The Pennsylvania Unfair Trade Practices and Consumer Protection Law Act prohibits "unfair or deceptive acts or practices in the conduct of any trade or commerce...." 73 P.S. § 201-3. Defendants' deceptive acts and practices include:

- (a) Knowingly designing, developing, manufacturing, advertising, and selling Defendants' 303 THF Products with false claims and significant defects that result in risks when used so that consumers did not receive the benefit of their bargain;

- (b) Marketing and selling Defendants' 303 THF Products that relied upon false claims, while at the same time exposing consumers to risks solely to increase profits;
- (c) Making affirmative public representations about the alleged benefits of Defendants' 303 THF Products while, at the same time, not ensuring those benefits were provided and while not ensuring safety with respect to the use of the 303 THF Products;
- (d) Concealing material information from consumers regarding the true nature of the defects in Defendants' 303 THF Products in order to impact consumer purchasing behavior.

659. Defendants violated 73 P. S. § 201-3's prohibition against engaging in unlawful acts and practices by engaging in false and misleading advertising and by omitting material facts from purchasers of Defendants' 303 THF Products.

660. As alleged herein, Defendants' marketing and sale of the 303 THF Products, and more specifically the failure to inform customers of the risks inherent in Defendants' 303 THF Products, violated 73 P. S. § 201-3, common law, and other statutes. Plaintiffs and the Pennsylvania Class Members reserve the right to allege other violations of the law, which constitute other unlawful business acts and practices. As alleged herein, Defendants continue to misrepresent the 303 THF Products' abilities and continue to deny that the 303 THF Products pose risks. Defendants have not recalled the 303 THF Products nor provided any remedial efforts including a warning disclosing possible risks.

661. Defendants violated 73 P. S. § 201-3's prohibitions against unfair conduct by failing to inform customers about Defendants' 303 THF Products' abilities and their potential

risks; engaging in a pattern and practice of concealing those facts and continuing to sell those 303 THF Products despite knowledge that they are misrepresented and carry risks; and depriving customers of the value of Defendants' 303 THF Products as represented. This conduct is substantially injurious to consumers, offends public policy, is immoral, unethical, oppressive, and unscrupulous as the gravity of the conduct outweighs any alleged benefit. Defendants engaged in this conduct at the expense of their customers' rights when other, lawful alternatives were available (such as providing customers with full information about Defendants' 303 THF Products, including the known risks and potential side effects of use, prior to purchase).

662. Defendants engaged in this conduct to gain an unfair commercial advantage over their competitors, seeking to avoid public knowledge of the true content and abilities of Defendants' 303 THF Products and their defects to avoid damage to their sales and reputation. Defendants withheld critical and material information from Plaintiffs and the Pennsylvania Class Members, competitors, and the marketplace, all to Defendants' unfair competitive advantage.

663. Defendants' business practices, as alleged herein, constitute fraudulent conduct because they were likely to deceive, and did deceive, Plaintiffs and the Pennsylvania Class Members into purchasing Defendants' 303 THF Products when those products were misrepresented and defective and otherwise did not perform as advertised.

664. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers.

665. As a direct and proximate result of Defendants' unfair, unlawful, and fraudulent act and practices, Plaintiffs and the Pennsylvania Class Members were injured and lost money and property, including from not receiving the benefit of their bargain in purchasing Defendants' 303

THF Products, and increased time and expense in dealing with the tractor and equipment damage caused from the use of Defendants' 303 THF Products.

666. Defendants recklessly disregarded Plaintiffs and the Pennsylvania Class Members' rights. Defendants' knowledge of the false claims and risks associated with Defendants' 303 THF Products put Defendants on notice that the 303 THF Products were not as advertised.

667. Pursuant to 73 P. S. § 201-9.2, Plaintiffs and the Pennsylvania Class Members seek an order enjoining Defendants' unfair and/or deceptive acts or practices, and awarding damages, punitive and/or treble damages, costs and reasonable attorneys' fees, and any other just and proper relief available under the Pennsylvania Unfair Trade Practices and Consumer Protection Act.

COUNT XXX
Violations of South Dakota Consumer Protection Act

668. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

669. Plaintiffs and other South Dakota Class Members are persons covered by the South Dakota Consumer Protection Act.

670. Defendants' conduct set forth above constitutes unlawful practices under the South Dakota Consumer Protection Act.

671. In selling their 303 THF Products to Plaintiffs and the South Dakota Class, Defendants have engaged in deceptive practices under the South Dakota Consumer Protection Act, by misrepresentations of material facts, including without limitation, the representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and the other representations set forth above.

672. These representations were materially misleading and deceptive, and were a proximate cause of damages.

673. Defendants violated the South Dakota Consumer Protection Act by failing to adequately warn Plaintiffs and the South Dakota Class Members of the true nature of Defendants' 303 THF Products, of the use of line flush and used oils as components of Defendants' 303 THF Products, of Defendants' failure to meet any equipment manufacturer specifications, and of other limitations to appropriate uses of the 303 THF Products.

674. Defendants' actions as described herein were done knowingly and intentionally and with conscious disregard of the rights of Plaintiffs and the South Dakota Class Members, and Defendants were wanton and malicious in their concealment of the same.

675. Neither Plaintiffs, nor the South Dakota Class Members, nor any reasonable consumer would have purchased Defendants' 303 THF Products if they were informed that it was obsolete, failed to meet specifications, made with improper ingredients, did not have the performance benefits listed, and/or would cause damage to their tractors or equipment.

COUNT XXXI
**Violation of the Texas Deceptive Trade Practices Act,
Texas Business and Commerce Code, § 17.41, *et seq.***

676. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

677. The Texas Deceptive Trade Practices Act ("DTPA") prohibits false, misleading or deceptive acts and practices in connection with a trade or business.

678. Plaintiffs and Texas Class Members are "consumers" within the meaning of § 17.54(4) of DTPA in that they are individuals who acquired by purchase the goods or products that form the basis of this case and suffered damages for which they did not receive compensation from any third party, person, or entity.

679. Plaintiffs and Texas Class Members seek to recover damages against each Defendant under DTPA, § 17.41 *et seq*, because Defendants knowingly and/or intentionally breached their implied warranties with respect to the 303 THF Products and also engaged in false, misleading, or deceptive acts or practices in the conduct of their trade of business, as set forth above and in general by (a) representing that the 303 THF Products had characteristics, ingredients, uses, or benefits which they do not; and (b) representing that the 303 THF Products were of a particular standard, quality, or grade, when they were in fact or another.

680. Defendants engaged in false, misleading or deceptive acts or practices with regard to the 303 THF Products, including, but not limited to, the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice and the concealment, suppression, or omission of material facts in connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of Texas and throughout the United States.

681. Defendants' conduct set forth herein, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, and that the 303 THF Products met specifications, were false, misleading, or deceptive acts or practices.

682. Defendants' conduct set forth herein, including without limitation the label representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met specifications, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, were also false, misleading, or deceptive acts or practices in that Defendants omitted or suppressed material facts in that Defendants' 303 THF Products were not appropriate for use and did not meet specifications as labeled, advertised, marketed and sold.

683. Defendants engaged in a pattern of conduct toward Plaintiffs and all Texas Class Members that, when taken in its totality, is and was false, misleading, or deceptive, in violation of the DTPA.

684. Defendants' conduct in engaging in such false, misleading, or deceptive acts or practices constituted a producing cause of the damages suffered by the Plaintiffs and Texas Class Members such that Plaintiffs and Texas Class Members have the right and standing to maintain an action against Defendants under the DTPA.

685. The Plaintiffs also have the right and standing to maintain an action against Defendants under the DTPA because Defendants breached their implied warranties and that such a breach constituted a producing cause of the damages suffered by the Plaintiffs and Texas Class Members.

686. Plaintiffs and Texas Class Members have suffered economic and other damages as a proximate result of Defendants' conduct with regard to the marketing and sale of the 303 THF Products.

687. Defendants' conduct as described herein was intentional, done knowingly and intentionally, and was in conscious disregard of the rights of Plaintiffs and other Texas Class Members.

688. Defendants' conduct is such that an award of treble damages against each Defendant is appropriate.

689. Pursuant to the DTPA, Plaintiffs and Texas Class Members are entitled to be awarded Court costs and reasonable and necessary attorneys' fees.

690. Plaintiffs provided Defendants notice of the defect in their 303 THF Products, although such notice should be deemed unnecessary in light of the MDA action in 2017.

691. Plaintiffs will provide notice of this 3rd ACC to the Consumer Protection Division.

COUNT XXXII

Violations of West Virginia Consumer Credit and Protection Act

692. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

693. The West Virginia Consumer Credit and Protection Act ("CCPA") prohibits false, misleading or deceptive acts and practices in connection with a trade or business.

694. Plaintiffs and West Virginia Class Members are "consumers" within the meaning of § 46A-6-102(2) of the CCPA in that they are individuals who acquired by purchase the goods or products that form the basis of this case, and suffered damages for which they did not receive compensation from any third party, person, or entity.

695. Plaintiffs and West Virginia Class Members seek to recover damages against each Defendant under the CCPA, §46-A-6-101, *et seq*, because Defendants knowingly and/or intentionally breached their implied warranties with respect to the 303 THF Products and also engaged in false, misleading, or deceptive acts or practices in the conduct of their trade of business, as set forth above and in general by (a) representing that the 303 THF Products had characteristics, ingredients, uses, or benefits which they do not; and, (b) representing that the 303 THF Products were of a particular standard, quality, or grade, when they were in fact or another.

696. Defendants engaged in false, misleading or deceptive acts or practices with regard to the 303 THF Products, including, but not limited to, the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice and the concealment, suppression, or omission of material facts in connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of West Virginia and throughout the United States.

697. Defendants' conduct set forth above, including without limitation the representations that the 303 THF Products were fit to be used in older tractors and other equipment, and that the 303 THF Products met specifications, were false, misleading, or deceptive acts or practices.

698. Defendants' conduct set forth above, including without limitation the label representations that the 303 THF Products were fit to be used in older tractors and other equipment, that the 303 THF Products met or had an equivalency to specifications, and Defendants' failure to inform consumers of the true nature of the product and the obsolete specifications, were also false, misleading, or deceptive acts or practices in that Defendants omitted or suppressed a material fact in that Defendants' 303 THF Products were not appropriate for use and did not meet specifications as labeled, advertised, marketed and sold.

699. Defendants engaged in a pattern of conduct toward Plaintiffs and all West Virginia Class Members that, when taken in its totality, is and was false, misleading, or deceptive, in violation of the CCPA.

700. Defendants' conduct in engaging in such false, misleading, or deceptive acts or practices constituted a producing cause of the damages suffered by the Plaintiffs and West Virginia Class Members such that they have the right and standing to maintain an action against Defendants under the CCPA.

701. The Plaintiffs also have the right and standing to maintain an action against Defendants under the CCPA because Defendants breached their implied warranties and that such a breach constituted a producing cause of the damages suffered by the Plaintiffs and West Virginia Class Members.

702. Plaintiffs and West Virginia Class Members have suffered economic and other damages as a proximate result of Defendants' conduct with regard to the marketing and sale of the 303 THF Products.

703. Defendants' conduct as described herein was intentional, done knowingly and intentionally, and was in conscious disregard of the rights of Plaintiffs and other West Virginia Class Members.

704. Defendants' conduct is such that an award of treble damages against each Defendant is appropriate.

705. Pursuant to the CCPA, Plaintiffs and West Virginia Class Members are entitled to be awarded Court costs and reasonable and necessary attorneys' fees.

706. Plaintiffs provided Defendants notice of the defect in their 303 THF Products, although such notice should be deemed unnecessary in light of the MDA action in 2017.

707. Plaintiffs will provide notice of this 3rd ACC to the Consumer Protection Division.

COUNT XXXIII
Violation of the Wisconsin Deceptive Trade Practices Act,
Wis. Stat. Ann. §100.18, *et seq.*

708. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

709. Defendants are each a "person, firm, corporation or association," as defined by Wis. Stat. § 100.18(1).

710. Plaintiffs and the Wisconsin Class Members are members of "the public," as defined by Wis. Stat. § 100.18(1).

711. With intent to sell, distribute, or increase consumption of merchandise, services, or anything else offered by Defendants to members of the public for sale, use, or distribution,

Defendants made, published, circulated, placed before the public or caused (directly or indirectly) to be made, published, circulated, or placed before the public in Wisconsin advertisements, announcements, statements, and representations to the public which contained assertions, representations, or statements of facts which are untrue, deceptive, and/or misleading, in violation of Wis. Stat. § 100.18(1).

712. Defendants have each also engaged in the above-described conduct as part of a plan or scheme, the purpose or effect of which was to sell, purchase, or use merchandise or services not as advertised, in violation of Wis. Stat. § 100.18(9).

713. Defendants' representations and omissions were material because they were likely to deceive reasonable consumers.

714. Defendants' failure to disclose the facts described herein is the same as actively representing that those facts do not exist.

715. As a direct and proximate result of Defendants' deceptive acts and practices, Plaintiffs and the Wisconsin Class Members have suffered and will continue to suffer injury, ascertainable losses of money and property, and monetary and non-monetary damages, including from not receiving the benefit of the bargain in purchasing Defendants' 303 THF Products, and increased time and expense in treating the damage they cause.

716. Had Defendants disclosed to Plaintiffs and the Wisconsin Class Members that they misrepresented Defendants' 303 THF Products, omitted material information regarding the risk of harm involved and the suitability and true ability of Defendants' 303 THF Products, and were otherwise engaged in common business practices that ultimately hurt consumers, Defendants would have been unable to continue selling the defective 303 THF Products. Instead, Defendants

represented that the 303 THF Products met OEM specifications, provided performance benefits, and could be used as tractor hydraulic fluid.

717. Defendants recklessly disregarded Plaintiffs' and the Wisconsin Class Members' rights. Defendants' knowledge of the false claims and risks associated with Defendants' 303 THF Products put Defendants on notice that the 303 THF Products were not as advertised.

718. Plaintiffs and the Wisconsin Class Members seek an order enjoining Defendants' unfair and/or deceptive acts or practices, and awarding damages, punitive and/or treble damages, attorneys' fees, and any other just and proper relief available under the Wisconsin Deceptive Trade Practices Act.

COUNT XXXIV
Violation of the Arizona Consumer Fraud Act,
Ariz. Rev. Stat. 44-1521, *et seq.*

719. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

720. Plaintiffs and all members of the Arizona Class suffered damages as a result of Defendants' actions in violation of the Arizona Consumer Fraud Act ("the ACFA"), set forth at [Ariz. Rev. Stat. § 44-1521, *et seq.*](#)

721. The Arizona Consumer Fraud Act prohibits the act, use or employment by any person of any deception, deceptive act or practice, fraud, false pretense, false promise, misrepresentation, or concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise whether or not any person has in fact been misled, deceived or damaged.

722. Defendants are each a "person" as defined by [Ariz. Rev. Stat. § 44-1521](#).

723. Defendants' actions as described throughout this 3rd ACC violated and continue to violate the ACFA. Defendants have used deception, deceptive acts or practices, fraud, false pretense, made false promises, made misrepresentations and/or concealed, suppressed or omitted material facts with the intent that others rely on them in connection with the sale or advertisement of the 303 THF Products in the State of Arizona and throughout the United States by the representations and concealment set forth herein, including, without limitation, representing that the 303 THF Products were fit to be used in older tractors and other equipment, provided the benefits listed on the label, were suitable for use as a tractor hydraulic fluid and/or met or had an equivalency to the "303 designation" as described above, and through Defendants' failure to inform consumers of the true nature of the products and the obsolete specifications.

724. Throughout the period during which they have marketed, distributed, or sold and offered for sale 303 THF Products, Defendants violated and continue to violate the above-mentioned provisions.

725. Defendants' violations of the ACFA constitute intentional, malicious, wanton, or reckless conduct or were done with reckless indifference to the Plaintiffs and the Arizona Class Members.

726. Plaintiffs and other members of the Arizona Class purchased Defendants' defective 303 THF products based on their reliance on Defendants' representations that the 303 THF Products were fit for their intended use as found on Defendants' packaging, in their advertising and marketing materials, and/or other publicly available information.

727. As a direct and proximate result of Defendants' deception, unfair acts or practices, fraud, false pretenses, false promises, misrepresentations and/or concealments, suppressions or omissions of material facts as referenced herein, Plaintiffs and the Arizona Class Members have

suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including the purchase price, not receiving the benefit of their bargain in purchasing Defendants' 303 THF Products, equipment damage, and increased time and expense in dealing with the damages from the use of Defendants' 303 THF Products.

728. Plaintiffs and the members of the Arizona Class are entitled to recover their actual damages, attorneys' fees, and punitive damages pursuant to [A.R.S. § 44-1533](#).

COUNT XXXV
Me. Stat. tit. 5, § 205-A, et seq.

729. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

730. Plaintiffs and other Maine Class Members purchased Defendants' 303 THF Products primarily for personal, family, or household purposes.

731. Plaintiffs and all members of the Maine Class suffered damages as a result of Defendants' actions in violation of the Maine Unfair Trade Practices Act ("the UTPA"), set forth at Me. Stat. tit. 5, § 205-A, et seq. Pre-suit notice was not required because "the notice requirements of section 213 (1-A) are not jurisdictional..." and "failure to comply with the express terms of the notice requirement does not bar ... consumer protection claim[s]..." In re New Motor Vehicles Canadian Exp. Antitrust Litig., [350 F. Supp.2d 160, 186](#) (D. Me. 2004).

732. The "UTPA" prohibits unfair methods of competition and unfair or deceptive acts or practices in the conduct of any trade or commerce. Me. Stat. tit. 5, § 205-A, et seq.

733. Defendants are each a person as defined by the UTPA. Me. Stat. tit. 5, §§ 206.

734. Defendants' actions as described throughout this 3rd ACC constitute unfair and/or deceptive acts and practices in connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of Maine and throughout the United States in violation of the

UTPA, as they constitute material representations, omissions, acts, or practices that were likely to mislead consumers acting reasonably under the circumstances and were likely to cause substantial injury to consumers that was not reasonably avoidable by consumers and was not outweighed by any countervailing benefits to consumers.

735. Defendants' conduct in violation of the UTPA includes but is not limited to:

- (a) representing that the 303 THF Products were fit to be used in older tractors and other equipment,
- (b) representing that the 303 THF Products met or had an equivalency to certain manufacturer specifications;
- (c) representing that the 303 THF Products provided certain qualities, results and benefits that protected equipment from damage;
- (d) failing to inform consumers of the true nature of the products and the obsolete specifications; and
- (e) omitting or suppressing a material fact in that Defendants' 303 THF Products were not appropriate for use and did not meet specifications as labeled, advertised, marketed and sold.

736. Defendants intentionally engaged in the above course of conduct knowing that such conduct was unfair, false, misleading and/or deceptive.

737. Throughout the period during which they have marketed, distributed, or sold and offered for sale 303 THF Products, Defendants violated and continue to violate the above-mentioned provisions.

738. As a result of their deception, Defendants have been able to reap unjust revenue and profit.

739. Plaintiffs and other members of the Maine Class were misled by Defendants' deceptive acts or practices and purchased Defendants' defective 303 THF products based on their reliance on Defendants' representations that the 303 THF Products were fit for their intended use as found on Defendants' packaging, in their advertising and marketing materials, and/or other publicly available information.

740. Plaintiffs' and other members of the Maine Class reliance on Defendants' misrepresentations, omissions, acts, and practices was reasonable under the circumstances.

741. As a direct and proximate result of Defendants' deception, unfair acts or practices, fraud, false pretenses, false promises, misrepresentations and/or concealments, suppressions or omissions of material facts in violation of the UTPA as referenced herein, Plaintiffs and members of the Maine Class have suffered injury.

742. Plaintiffs and members of the Maine Class could not have reasonably avoided injury and the injury is not outweighed by any countervailing benefits to them or competition.

743. As alleged herein, Plaintiffs have suffered a loss of money or property as a result of Defendants' unfair and/or deceptive acts or practices in violation of the UTPA associated with the distribution, marketing, and sale of 303 THF Products, including financial damages and damage incurred to equipment from the use of Defendants' 303 THF Products.

744. Plaintiffs, on behalf of themselves and all other Maine Class Members, seek actual damages, restitution and disgorgement of all money obtained from Plaintiffs and the members of the Class collected as a result of Defendants' misconduct, other necessary and proper equitable relief, including injunctive relief in the form of an order prohibiting Defendants from undertaking such practices in the future and requiring Defendants to engage in and undertake corrective

measures, and all such other and further relief this Court deems appropriate, pursuant to Me. Stat. tit. 5, § 213.

COUNT XXXVI
N.M. Stat. Ann. § 52-12-1, *et seq.*

745. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

746. Plaintiffs and all members of the New Mexico Class suffered damages as a result of Defendants' actions in violation of the New Mexico Unfair Practices Act (the "NMUPA"), set forth at N.M. Stat. Ann. § 57-12-1, *et seq.*

747. The New Mexico Unfair Practices Act provides "[u]nfair or deceptive trade practices and unconscionable trade practices in the conduct of any trade or commerce are unlawful." N.M. Stat. Ann. § 57-12-3.

748. Defendants are each a person as defined by the NMUPA. N.M. Stat. Ann. §§ 57-12-2.

749. Defendants' actions as described throughout this 3rd ACC constitute unfair and/or deceptive acts and practices in connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of New Mexico and throughout the United States in violation of the NMUPA.

750. Defendants' conduct in violation of the NMUPA includes but is not limited to the following false and misleading representations:

- (a) Label representations that the 303 THF Products were fit to be used in older tractors and other equipment,
- (b) Label representations that the 303 THF Products met or had an equivalency to certain manufacturer specifications; and

(c) Label representations that the 303 THF Products provided certain qualities, results and benefits that protected equipment from damage.

751. These false and misleading representations were knowingly made by Defendants in connection with the sale of the 303 THF Products as Defendants were aware, or in the exercise of reasonable diligence should have been aware, that the representations were false or misleading.

752. Throughout the period during which they have marketed, distributed, or sold and offered for sale 303 THF Products, Defendants violated and continue to violate the above-mentioned provisions.

753. Defendant's conduct set forth herein occurred in the regular course of Defendants' trade or commerce.

754. The false and misleading representations were the type that mislead or deceive reasonable persons.

755. Plaintiffs and other members of the New Mexico Class were misled by Defendants' unfair or deceptive trade practices and purchased Defendants' defective 303 THF products based on their reliance on Defendants' representations that the 303 THF Products were fit for their intended use as found on Defendants' packaging, in their advertising and marketing materials, and/or other publicly available information and incurred expenses in dealing with the tractor and equipment damage caused from the use of Defendants' 303 THF Products.

756. Plaintiffs' and other members of the New Mexico Class reliance on Defendants' misrepresentations, acts, and practices was reasonable.

757. As a direct and proximate result of Defendants' unfair and/or deceptive acts or practices in violation of the NMUPA associated with the distribution, marketing, and sale of 303 THF Products, including the false and misleading misrepresentations as referenced herein,

Plaintiffs and members of the New Mexico Class have suffered injury in fact and lost money or property.

758. Accordingly, Plaintiffs and the members of the New Mexico Class are entitled to recover their actual damages, including purchase price, cost to repair equipment, and diminution in value of equipment; attorneys' fees; and punitive damages and other necessary and proper equitable relief, including injunctive relief in the form of an order prohibiting Defendants from undertaking such practices in the future and requiring Defendants to engage in and undertake corrective measures, and all such other and further relief this Court deems appropriate, pursuant to N.M. Stat. Ann. § 57-12-10(A)-(E).

COUNT XXXVII
N.D. Cent. Code Ann. § 51-15-01, *et seq.*

759. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

760. Plaintiffs and all members of the North Dakota Class suffered damages as a result of Defendants' actions in violation of the North Dakota Unlawful Sales or Advertising Practices Act (the "USAP"), set forth at N.D. Cent. Code Ann. § 51-15-01, *et seq.*

761. The North Dakota Unlawful Sales or Advertising Practices Act states "[t]he act, use, or employment by any person of any deceptive act or practice, fraud, false pretense, false promise, or misrepresentation, with the intent that others rely thereon in connection with the sale or advertisement of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is declared to be an unlawful practice." NDCC § 51-15-02.

762. Defendants are each a person as defined by N.D.C.C. § 51-15-01.

763. Defendants engaged in deceptive acts and practices, including, but not limited to, the use of deception, fraud, false pretense, false promise, misrepresentation, unfair practice in

connection with the sale or advertisement of their 303 THF Products in trade or commerce in the State of North Dakota and throughout the United States. These deceptive acts and practices are described herein and include but are not limited to:

- (a) Representing that the 303 THF Products were fit to be used in older tractors and other equipment,
- (b) Representing that the 303 THF Products met or had an equivalency to certain manufacturer specifications;
- (c) Representing that the 303 THF Products provided certain qualities, results and benefits that protected equipment from damage;
- (d) Failing to inform consumers of the true nature of the products and the obsolete specifications; and
- (e) Omitting or suppressing a material fact in that Defendants' 303 THF Products were not appropriate for use and did not meet specifications as labeled, advertised, marketed and sold.

764. Defendants conduct in violation of the USAP as described herein was done with the intent that others rely thereon in connection with the sale or advertisement of the 303 THF Products.

765. Defendants intentionally and knowingly committed the conduct described herein in violation of the USAP.

766. Throughout the period during which they have marketed, distributed, or sold and offered for sale 303 THF Products, Defendants violated and continue to violate the above-mentioned provisions.

767. Plaintiffs and other members of the North Dakota Class purchased Defendants' defective 303 THF products based on their reliance on Defendants' representations that the 303 THF Products were fit for their intended use as found on Defendants' packaging, in their advertising and marketing materials, and/or other publicly available information.

768. As a direct and proximate result of Defendants' deceptive acts and practices, fraud, false pretenses, false promises, misrepresentations and/or concealments, suppressions or omissions of material facts as referenced herein, Plaintiffs and other members of the North Dakota Class suffered and will continue to suffer injury, ascertainable losses of money or property, and monetary and non-monetary damages, including the purchase price, not receiving the benefit of their bargain in purchasing Defendants' 303 THF Products, equipment damage, and increased time and expense in dealing with the damages from the use of Defendants' 303 THF Products.

769. Accordingly, Plaintiffs and the members of the North Dakota Class are entitled to recover their actual damages; costs, disbursements, and actual reasonable attorneys' fees incurred in this action; and punitive damages and further relief this Court deems appropriate, pursuant to N.D.C.C. 51-15-09.

COUNT XXXVIII
Maryland Consumer Protection Act (MCPA)
Md. Code Ann., Commercial Law Article § 13-101 *et seq.*
and Md. Code Ann. Cts. & Jud. Proc. § 5-101

770. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

771. Plaintiff brings this claim under Md. Code Ann., Commercial Law Article § 13-101 *et seq.*, on behalf of herself and members of the Maryland Purchases Class, who were subject to Defendants' above-described unfair and deceptive conduct.

772. Plaintiffs and members of the Maryland Purchases Class have standing to pursue this claim as they have each suffered injury in fact and lost money or property as a result of Defendants' actions as set forth herein.

773. Plaintiffs and members of the Maryland Purchases Class are buyers as defined by Md. Code. Ann., Commercial Law Article §2-103(1)(a) *et seq.* Defendants' 303 THF Products are consumer goods within the meaning of Md. Code. Ann., Commercial Law Article §9-102(a)23).

774. Specifically, Defendants made the misrepresentations noted herein, expressly or by implication, regarding Defendants' 303 THF Products. .

775. These representations were materially misleading.

776. Defendants violated and continue to violate the MCPA by engaging in practices noted herein which are proscribed by § 13-301 of the Commercial Law Article in transactions with Plaintiffs and members of the Maryland Purchases Class, which were intended to result in , and did result in, the sale of Defendants' 303 THF Products.

777. By engaging in the deceptive conduct alleged herein, Defendants' untrue and misleading advertising presents a continuing threat to members of the public because their labels and advertisements induce consumers to purchase Defendants' 303 THF Products, which are unsafe and not suitable for use in their tractors and equipment.

778. Defendants violated the MCPA by failing to adequately warn Plaintiffs and members of the Maryland Purchases Class that Defendants' 303 THF Products are not suitable for, and can harm, tractors and equipment.

779. Defendants' actions as described herein were done with conscious disregard of Plaintiffs and the members of the Maryland Purchases Class's rights, and Defendants were wanton and malicious in their concealment of the same.

780. Defendants' wrongful business practices constituted, and constitute, a continuing course of conduct in violations of the MCPA because Defendants continue to sell fluid containing used oils and line wash/line flush without adequate warning or disclosure and to continue to represent Defendants' fluids as having characteristics and abilities which the products do not have, and has thus injured and continues to injure Plaintiffs and the members of the Maryland Purchases Class.

781. Plaintiffs and members of the Maryland Purchases Class have suffered injury in fact and have lost money and suffered equipment damage as a result of Defendants' deceptive conduct. Plaintiffs and members of the Maryland Purchases Class would not have purchased Defendants' 303 THF Products if they had known it was not suitable for their tractors and equipment, did not provide the benefits or protections stated on the label, and could harm their tractors and equipment.

782. As a result of the Maryland law violations described herein, Defendants have been, and will be, unjustly enriched by receipt of millions of dollars in monies received from customers who have purchased and will continue to purchase obsolete and harmful tractor hydraulic fluid made by Defendants Smitty's and Cam2.

783. Defendants' business practices, as alleged herein, are unfair because: (1) the injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) consumers could not reasonably have avoided the injury because Defendants Smitty's and Cam2 intentionally misled the consuming public by means of

label claims, inadequate warnings and other conduct with respect to Defendants' 303 THF Products, all as set forth herein.

784. Defendants' business practices as alleged herein are fraudulent because they are likely to deceive customers into believing that Defendants' 303 THF Products were actually useful for the purpose for which they were sold, and because Defendants failed to provide complete and accurate information regarding components of their 303 THF Products and the damage it will cause to tractors and equipment.

785. Plaintiffs and members of the Maryland Purchases Class were misled into purchasing Defendants' 303 THF Products by Defendants' deceptive and fraudulent conduct as alleged hereinabove.

786. Plaintiffs and members of the Maryland Purchases Class are entitled to an order awarding them restitution of the money wrongfully acquired by Defendants by means of the unfair and deceptive trade practices alleged herein, as well as awarding them other actual and punitive damages.

COUNT XXXIX
Massachusetts Consumer Protection Act
Mass. Gen. Laws Ann. Ch. 260, § 5A and Ch. 93A § 9

787. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

788. Plaintiffs bring this claim on behalf of themselves and members of the Massachusetts Purchases Class, who were subject to Defendants' above-described unfair and deceptive conduct. By statute, pre-suit notice on Defendants was not required because "the demand requirements of [the statute] shall not apply" when the prospective respondents, Smitty's and Cam2, do not maintain a place of business or keep assets within the commonwealth. Mass.

Gen. Laws Ann. Ch. 93A, § 9. Defendants do not maintain a place of business or keep assets in Massachusetts.

789. Defendants engaged in the misrepresentations, omissions, unfair, deceptive, unconscionable and wrongful conduct noted herein regarding Defendants' 303 THF Products.

790. Defendants engaged in these misrepresentations, omissions, unfair, deceptive, unconscionable and wrongful conduct in order to obtain sales of Defendants' 303 THF Products.

791. Defendants' unfair and deceptive conduct, including without limitation, their untrue and misleading labels and advertising, induced consumers to purchase Defendants' 303 THF Products, which are unsafe and not suitable for use in tractors and equipment. Defendants also failed to adequately warn Plaintiffs and members of the Massachusetts Purchases Class that Defendants' 303 THF Products are not suitable for, and can harm, tractors and equipment.

792. Defendants' actions as described herein were done with conscious disregard of Plaintiffs and the members of the Massachusetts Purchases Class's rights, and Defendants were wanton and malicious in their concealment of the same.

793. Defendants' wrongful business practices constituted, and constitute, a continuing course of conduct and violations because Defendants continue to sell fluid containing used oils and line wash/line flush without adequate warning or disclosure and to continue to represent Defendants' fluids as having characteristics and abilities which the products do not have, and has thus injured and continues to injure Plaintiffs and the members of the Massachusetts Purchases Class.

794. Plaintiffs and members of the Massachusetts Purchases Class have suffered injury in fact and have lost money and suffered equipment damage as a result of Defendants' deceptive conduct. Plaintiffs and members of the Massachusetts Purchases Class would not have purchased

Defendants' 303 THF Products if they had known it was not suitable for their tractors and equipment, did not provide the benefits or protections stated on the label, and could harm their tractors and equipment.

795. As a result of the Massachusetts law violations described herein, Defendants have been, and will be, unjustly enriched by receipt of millions of dollars in monies received from customers who have purchased and will continue to purchase obsolete and harmful tractor hydraulic fluid made by Defendants Smitty's and Cam2.

796. Defendants' business practices, as alleged herein, are unfair because: (1) the injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) consumers could not reasonably have avoided the injury because Defendants Smitty's and Cam2 intentionally misled the consuming public by means of label claims, inadequate warnings and other conduct with respect to Defendants' 303 THF Products, all as set forth herein.

797. Defendants' business practices as alleged herein are fraudulent because they are likely to deceive customers into believing that Defendants' 303 THF Products were actually useful for the purpose for which they were sold, and because Defendants failed to provide complete and accurate information regarding components of their 303 THF Products and the damage it will cause to tractors and equipment.

798. Plaintiffs and members of the Massachusetts Purchases Class are entitled to an order awarding them restitution of the money wrongfully acquired by Defendants by means of the unfair and deceptive trade practices alleged herein, as well as awarding them other actual and punitive damages.

COUNT XL
New Hampshire Consumer Protection Act
N.H. Rev. Stat. Ann. § 508:4 and § 358-A:10

799. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

800. Plaintiffs bring this claim on behalf of themselves and members of the New Hampshire Purchases Class, who were subject to Defendants' above-described unfair and deceptive conduct.

801. Defendants engaged in the misrepresentations, omissions, unfair, deceptive, unconscionable and wrongful conduct noted herein regarding Defendants' 303 THF Products.

802. Defendants engaged in these misrepresentations, omissions, unfair, deceptive, unconscionable and wrongful conduct in order to obtain sales of Defendants' 303 THF Products.

803. Defendants' unfair and deceptive conduct, including without limitation, their untrue and misleading labels and advertising, induced consumers to purchase Defendants' 303 THF Products, which are unsafe and not suitable for use in tractors and equipment. Defendants also failed to adequately warn Plaintiffs and members of the New Hampshire Purchases Class that Defendants' 303 THF Products are not suitable for, and can harm, tractors and equipment.

804. Defendants' actions as described herein were done with conscious disregard of Plaintiffs and the members of the New Hampshire Purchases Class's rights, and Defendants were wanton and malicious in their concealment of the same.

805. Defendants' wrongful business practices constituted, and constitute, a continuing course of conduct and violations because Defendants continue to sell fluid containing used oils and line wash/line flush without adequate warning or disclosure and to continue to represent Defendants' fluids as having characteristics and abilities which the products do not have, and has

thus injured and continues to injure Plaintiffs and the members of the New Hampshire Purchases Class.

806. Plaintiffs and members of the New Hampshire Purchases Class have suffered injury in fact and have lost money and suffered equipment damage as a result of Defendants' deceptive conduct. Plaintiffs and members of the New Hampshire Purchases Class would not have purchased Defendants' 303 THF Products if they had known it was not suitable for their tractors and equipment, did not provide the benefits or protections stated on the label, and could harm their tractors and equipment.

807. As a result of the New Hampshire law violations described herein, Defendants have been, and will be, unjustly enriched by receipt of millions of dollars in monies received from customers who have purchased and will continue to purchase obsolete and harmful tractor hydraulic fluid made by Defendants Smitty's and Cam2.

808. Defendants' business practices, as alleged herein, are unfair because: (1) the injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) consumers could not reasonably have avoided the injury because Defendants Smitty's and Cam2 intentionally misled the consuming public by means of label claims, inadequate warnings and other conduct with respect to Defendants' 303 THF Products, all as set forth herein.

809. Defendants' business practices as alleged herein are fraudulent because they are likely to deceive customers into believing that Defendants' 303 THF Products were actually useful for the purpose for which they were sold, and because Defendants failed to provide complete and accurate information regarding components of their 303 THF Products and the damage it will cause to tractors and equipment.

810. Plaintiffs and members of the New Hampshire Purchases Class are entitled to an order awarding them restitution of the money wrongfully acquired by Defendants by means of the unfair and deceptive trade practices alleged herein, as well as awarding them other actual and punitive damages.

COUNT XLI
New Jersey Consumer Fraud Act (NJCFA)
N.J. Stat. Ann. § 58:8-1, et seq. and 56:8-19

811. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

812. The NJCFA declares unlawful “the act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression, or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby.” N.J.S.A. 56:8-2.

813. Plaintiffs and the New Jersey Purchases Class Members are “persons” as defined by N.J.S.A. 56:8-1(d).

814. Defendants engaged in the “sale” of “merchandise” when they offered for sale and in fact sold to Plaintiffs and the New Jersey Purchases Class Members Defendants’ 303 THF Products. N.J.S.A. 56:8-1(c)&(e).

815. Defendants violated the New Jersey Consumer Fraud Act by virtue of the misrepresentations, deceptions, omissions, and unconscionable acts set forth herein.

816. Defendants' acts were calculated and intentional. At the time of the sale to Plaintiffs and the New Jersey Purchases Class Members, Defendants knew or should have known that Plaintiffs and the New Jersey Purchases Class Members would rely on Defendants' misrepresentations, deceptions, omissions, and unconscionable acts set forth herein.

817. Plaintiffs and the New Jersey Purchases Class Members did in fact rely on Defendants' misrepresentations, deceptions, omissions, and unconscionable acts described herein when purchasing Defendants 303 THF Products. Plaintiffs and the New Jersey Purchases Class Members based their decisions to purchase Defendants' 303 THF Products in substantial part on the label misrepresentations, deceptions, and omitted material facts.

818. Defendants' actions described herein are unjust, unfair, materially depart from the standards of good faith, honesty in fact and fair dealing in the public marketplace and are thereby unconscionable under the NJCFA.

819. Defendants' acts caused Plaintiffs and the New Jersey Purchases Class Members to purchase Defendants' worthless and harmful 303 THF Products which they would otherwise not have purchased but for Defendants' unlawful actions.

820. As a result of Defendants' unconscionable, deceptive, fraudulent, false, unlawful, and/or misrepresentations, Plaintiffs and the New Jersey Purchases Class Members were caused to suffer an ascertainable loss including but not limited to the loss of monies spent on the purchase price of Defendants' 303 THF Products and damage to tractors and equipment.

821. Defendants' conduct, which caused substantial injury to Plaintiffs and the New Jersey Purchases Class Members, lacks any reasonable, legitimate justification, could have been avoided, and is not outweighed by countervailing benefits to any consumers or competition.

822. Defendants' act of unconscionable, deceptive, fraudulent, false and/or misleading conduct presents a continuing threat to members of the public in that Defendants continue to induce consumers to purchase tractor hydraulic fluid products such as Ag Fluid and Agriculture Fluid, which is unsafe and not suitable for use in tractors or equipment.

823. Pursuant to N.J.S.A. 56:8-8, N.J.S.A. 56:8-13, and N.J.S.A. 56:8-19, Plaintiffs and the New Jersey Purchases Class Members are entitled to: (a) actual damages; (b) treble damages; (c) declaratory and injunctive relief, including but not limited to an Order requiring Defendants to cease the acts of misconduct alleged herein; (d) an Order enjoining Defendants from continuing to utilize the deceptive scheme; (e) full restitution and disgorgement by Defendants as a result of its wrongful practices; (f) interest at the highest rate allowable by law; (g) costs; and (h) payment of attorneys' fees.

COUNT XLII
Wyoming Consumer Protection Act
Wyo. Stat. Ann. § 40-12-109

824. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

825. Plaintiffs bring this claim on behalf of themselves and members of the Wyoming Purchases Class, who were subject to Defendants' above-described unfair and deceptive conduct. Notice of the deceptive trade practice and damage suffered therefrom under Wyo. Stat. Ann. § 40-12-109 was provided for Dan Smith to Defendants' counsel by email on May 10, 2021.

826. Defendants engaged in the misrepresentations, omissions, unfair, deceptive, unconscionable and wrongful conduct noted herein regarding Defendants' 303 THF Products.

827. Defendants engaged in these misrepresentations, omissions, unfair, deceptive, unconscionable and wrongful conduct in order to obtain sales of Defendants' 303 THF Products.

828. Defendants' unfair and deceptive conduct, including without limitation, their untrue and misleading labels and advertising, induced consumers to purchase Defendants' 303 THF Products, which are unsafe and not suitable for use in tractors and equipment. Defendants also failed to adequately warn Plaintiffs and members of the Wyoming Purchases Class that Defendants' 303 THF Products are not suitable for, and can harm, tractors and equipment.

829. Defendants' actions as described herein were done with conscious disregard of Plaintiffs and the members of the Wyoming Purchases Class's rights, and Defendants were wanton and malicious in their concealment of the same.

830. Defendants' wrongful business practices constituted, and constitute, a continuing course of conduct and violations because Defendants continue to sell fluid containing used oils and line wash/line flush without adequate warning or disclosure and to continue to represent Defendants' fluids as having characteristics and abilities which the products do not have, and has thus injured and continues to injure Plaintiffs and the members of the Wyoming Purchases Class.

831. Plaintiffs and members of the Wyoming Purchases Class have suffered injury in fact and have lost money and suffered equipment damage as a result of Defendants' deceptive conduct. Plaintiffs and members of the Wyoming Purchases Class would not have purchased Defendants' 303 THF Products if they had known it was not suitable for their tractors and equipment, did not provide the benefits or protections stated on the label, and could harm their tractors and equipment.

832. As a result of the Wyoming law violations described herein, Defendants have been, and will be, unjustly enriched by receipt of millions of dollars in monies received from customers who have purchased and will continue to purchase obsolete and harmful tractor hydraulic fluid made by Defendants Smitty's and Cam2.

833. Defendants' business practices, as alleged herein, are unfair because: (1) the injury to the consumer is substantial; (2) the injury is not outweighed by any countervailing benefits to consumers or competition; and (3) consumers could not reasonably have avoided the injury because Defendants Smitty's and Cam2 intentionally misled the consuming public by means of label claims, inadequate warnings and other conduct with respect to Defendants' 303 THF Products, all as set forth herein.

834. Defendants' business practices as alleged herein are fraudulent because they are likely to deceive customers into believing that Defendants' 303 THF Products were actually useful for the purpose for which they were sold, and because Defendants failed to provide complete and accurate information regarding components of their 303 THF Products and the damage it will cause to tractors and equipment.

835. Plaintiffs and members of the Wyoming Purchases Class are entitled to an order awarding them restitution of the money wrongfully acquired by Defendants by means of the unfair and deceptive trade practices alleged herein, as well as awarding them other actual and punitive damages.

COUNT XLIII
Violations of the Connecticut Production Liability Act
Conn. Gen. Stat. §52-572m, et seq.)

836. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

837. Defendants designed, manufactured, marketed, distributed and placed into the stream of commerce the 303 THF Products, said products being used by consumers and purchasers for the ordinary purposes associated with tractor hydraulic fluid.

838. At all relevant times, Defendants knew and intended the 303 THF Products would be used by the general public and knew of the specific uses, purposes and requirements for which the 303 THF Products would be utilized. Further, by placing the 303 THF Products on the market for sale, Defendants represented that the products would safely operate and perform the purposes for which they were intended and that, in all respects, the 303 THF Products were of merchantable quality.

839. Plaintiffs purchased the 303 THF Products and at all relevant times the 303 THF Products were used, as intended, by Plaintiffs.

840. The 303 THF Products were not reasonably safe or suitable for its intended use and was defective as a matter of law with respect to its manufacture, formulation, blending and design, all as described more fully above.

841. As a direct and proximate result of the foregoing defects, which were present since the time of manufacture and distribution of the 303 THF Products by Defendants, Plaintiffs suffered financial and economic loss, including amounts paid for the defective 303 THF Products and amounts for repairs and losses associated with increased wear and damage to Plaintiffs' equipment that the 303 THF Products caused or contributed to cause. As such, the defects of the 303 THF Products caused Plaintiffs damage under the ordinary and foreseeable conditions and circumstances of use, making the 303 THF Products defective and not reasonably safe.

842. At all times relevant hereto, Defendants were product sellers as defined by Connecticut General Statutes, §52-572m, *et seq.*

843. At all relevant times, the 303 THF Products were not modified, changed or abused by the Plaintiffs. Plaintiffs at all times used the 303 THF Products in the manner intended and expected by Defendants.

844. The damages and losses suffered by Plaintiffs were caused and/or resulted from the acts and/or omissions of Defendants by and through their agents, servants, employees and/or representatives acting within the course and scope of their employment and/or authority for which Defendants are strictly liable pursuant to Connecticut General Statutes, §52-572m, *et seq.*, in that:

- (a) Defendants were in the business of manufacturing and selling the 303 THF Products at issue;
- (b) The 303 THF Products were sold in a defective condition, which was not reasonably safe for use as a tractor hydraulic fluid;
- (c) The defects in the 303 THF Products caused the damages that Plaintiffs have incurred; and
- (d) The 303 THF Products were expected to and did reach the Plaintiffs without substantial change in condition.

845. The losses and damages sustained by Plaintiffs were caused and/or resulted from the acts and/or omissions of Defendants

COUNT XLIV
Indiana Product Liability Act – Design Defect
(Ind. Code §34-20-1-11)

846. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

847. At all relevant times, the Indiana Product Liability Act (“Indiana PLA”) was in full force and effect.

848. Defendants are engaged in the business of designing, manufacturing, distributing, advertising, marketing, promoting, and/or selling tractor hydraulic fluid, and did design,

manufacture, distribute, advertise, market, promote and/or sell the tractor hydraulic fluid at issue herein.

849. Defendants' 303 THF Products were expected to and did reach the Plaintiffs and Indiana Class Members without substantial change in the condition in which they were manufactured, sold and distributed.

850. The 303 THF Products were in a defective and unreasonably dangerous condition when they left Defendants' possession or control in that, under normal conditions, usage and applications, they could not withstand the use for which they were intended, including but not limited to the fact that they contributed to cause increased wear and damage to equipment. Ind. Code § 34-20-2-1 and § 34-20-9-1.

851. Plaintiffs and Indiana Class Members received the subject 303 THF Products in the conditions in which they were sold and used their 303 THF Products in a manner reasonably intended by Defendants.

852. The 303 THF Products were defective because they were not safe for ordinary and intended use; Defendants failed to provide Plaintiffs and Indiana Class Members either directly or indirectly, with adequate and sufficient warning regarding the known or foreseeable risks and dangers inherent in the 303 THF Products; the 303 THF Products contained material design defect and were not reasonably safe due to such defect; the design, methods of manufacture and testing of the 303 THF Products did not conform to generally recognized and prevailing standards or the state of the art in existence at the time the design was made and the 303 THF Products were manufactured; and at the time the 303 THF Products left Defendants' control, the foreseeable risks associated with the 303 THF Products' design exceeded the benefits associated with that design.

853. Plaintiffs and the Indiana Class Members have suffered property damage and other incidental and consequential damages as a direct and proximate result of the defective condition. Ind. Code § 34-20-2-1.

854. Defendant acted with malice, oppression and/or fraud, and in conscious and flagrant disregard of the safety of their consumers, by manufacturing and selling 303 THF fluid known to them to be defective and unreasonably dangerous. As alleged, Defendants knew or should have known that the defect would cause equipment to suffer increased wear and damage. Defendants knew or was repeatedly informed of the serious defect, yet failed to take any remedial action and instead continued to sell this defective product. Given Defendants' conscious disregard for the safety of the public, Plaintiffs and Indiana Class Members seek exemplary or punitive damages.

COUNT XLV
Indiana Product Liability Act – Failure to Warn
(Ind. Code §34-20-1-11)

855. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein

856. The defective 303 THF Products were designed, manufactured and sold by Defendants in the regular course of business and were expected to and did reach Plaintiffs and Indiana Class Members without substantial change in the condition in which they were manufactured, sold and distributed.

857. The 303 THF Products were in a defective and unreasonably dangerous condition when they left Defendants' possession or control because under normal conditions, usage and applications, they could not withstand the use for which they were intended, including but not limited to the fact that they caused increased wear and damage to equipment.

858. Plaintiffs and Indiana Class Members received the 303 THF Products in the same conditions in which they were sold, and used their 303 THF Products in a manner reasonably intended by Defendants.

859. Defendants had no reason to believe that purchasers of its 303 THF Products would be aware of the foreseeable harm associated with use of them.

860. Pursuant to [Ind. Code § 34-20-2-2](#) and § 34-20-4-2, prior to and after distributing the 303 THF Products to Plaintiffs and Indiana Class Members, Defendants had a legal duty to warn them about the defect in the 303 THF Products and the dangers that such defects would pose.

861. As a direct and proximate result of Defendants' failure to warn of the defective and unreasonably dangerous condition and design of the 303 THF Products, Plaintiffs and Indiana Class Members suffered property damage and other incidental and consequential damages.

862. This Action was brought within ten years of the date Plaintiffs purchased their 303 THF Products, so it is timely pursuant to Ind. PLA § 34-2-3-1(a).

COUNT XLVI
Kansas Products Liability Act – Design Defect

863. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

864. At the time the subject 303 THF Products were formulated, blended, manufactured and sold by Defendants, the products were not reasonably safe or suitable for their intended use and were defective as a matter of law with respect to their manufacture, formulation, blending and design, all as described more fully above.

865. The defective condition of the 303 THF Products existed at the time they left Defendants' control.

866. As a direct and proximate result of the foregoing defects, Plaintiffs were caused and will continue to be caused to suffer financial and economic loss, including amounts paid for the defective 303 THF Products and amounts for repairs and losses associated with increased wear and damage to Plaintiffs' equipment that the 303 THF Products caused or contributed to cause.

867. Defendants are strictly liable to Plaintiffs for designing, manufacturing, marketing, labeling, packaging and selling the defective 303 THF Products.

COUNT XLVII
Kansas Products Liability Act – Failure to Warn

868. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

869. Plaintiffs and Kansas Class Members (or others) used the 303 THF Products in a manner that was reasonably anticipated by Defendants.

870. The defective 303 THF Products were designed, manufactured, and sold by Defendants in the regular course of business and were expected to and did reach Plaintiffs and Kansas Class Members without substantial change in the condition in which they were manufactured, sold and distributed.

871. The 303 THF Products were in a defective and unreasonably dangerous condition when they left Defendants' possession or control because under normal conditions, usage and applications, they could not withstand the use for which they were intended, including but not limited to the fact that they caused increased wear and damage to equipment.

872. Defendants had no reason to believe that consumers of its 303 THF Products would be aware of the foreseeable harm associated with use of them.

873. Prior to and after distributing the 303 THF Products to Plaintiffs and Kansas Class Members, Defendants had a legal duty to warn them about the defects in the 303 THF Products and the dangers that such defects would pose.

874. Prior to and after distributing the 303 THF Products to Plaintiffs and Kansas Class Members, Defendants and its agents who sold the 303 THF Products failed to use reasonable care to provide an adequate warning of the defects to Plaintiffs and Kansas Class Members.

875. As a direct and proximate result of Defendants' failure to warn of the defective and unreasonably dangerous condition and design of the 303 THF Products, Plaintiffs and Kansas Class Members suffered property damage and other incidental and consequential damages.

876. The cause of such damages arose and arises from reasonably anticipated use of the 303 THF Products, occurred and occurs with great frequency, and caused and causes severe damage.

COUNT XLVIII
Ohio Products Liability Act
Strict Liability – Design Defect (ORC §2307.75, et. seq.)

877. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

878. The 303 THF Products were not reasonably safe or suitable for its intended use and was defective as a matter of law with respect to its manufacture, formulation, blending and design, all as described more fully above.

879. As a direct and proximate result of the foregoing defects, Plaintiffs were caused and will continue to be caused to suffer financial and economic loss, including amounts paid for the defective 303 THF Products and amounts for repairs and losses associated with increased wear and damage to Plaintiffs' equipment that the 303 THF Products caused or contributed to cause.

880. Defendants are strictly liable to Plaintiffs for designing, manufacturing, marketing, labeling, packaging and selling the defective 303 THF Products.

COUNT XLIX
Ohio Products Liability Act
Strict Liability – Manufacturing Defect (ORC §2307.74, et. seq.)

881. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

882. The 303 THF Products were not reasonably safe or suitable for its intended use and was defective as a matter of law with respect to its manufacture, formulation, blending and design, all as described more fully above.

883. As a direct and proximate result of the foregoing defects, Plaintiffs were caused and will continue to be caused to suffer financial and economic loss, including amounts paid for the defective 303 THF Products and amounts for repairs and losses associated with increased wear and damage to Plaintiffs' equipment that the 303 THF Products caused or contributed to cause.

884. Defendants are strictly liable to Plaintiffs for designing, manufacturing, marketing, labeling, packaging and selling the defective 303 THF Products.

COUNT L
Ohio Products Liability Act
Strict Liability – Defect Due to Nonconformance with Representation
(ORC §2307.74, et. seq.)

885. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

886. Defendants expected and intended the 303 THF Products to reach users such as Plaintiffs in the condition in which the 303 THF Products were sold.

887. Defendants 303 THF Products' labels made representations to Plaintiffs about the nature and intended use of the 303 THF Products. Among other things, the 303 THF Product

labels represented to Plaintiffs that the 303 THF Products were suitable for use as tractor hydraulic fluid, would work as a fluid in the equipment manufactured by the manufacturers listed on the product label, and possessed the performance properties listed on the labels.

888. At the time of purchase, Plaintiffs reasonably and justifiably relied on the label representations, including the representation that the fluid was suitable for use as a tractor hydraulic fluid.

889. As a direct and proximate result of Defendants' representations about the 303 THF Product, Plaintiffs suffered injuries and damages as described more fully above.

890. Defendants are strictly liable to Plaintiffs for designing, manufacturing, marketing, labeling, packaging and selling the defective 303 THF Products.

COUNT LI
Strict Liability – Tennessee Products Liability Act

891. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

892. Defendants designed, manufactured, marketed, distributed and placed into the stream of commerce the 303 THF Products, said products being used by consumers and purchasers for the ordinary purposes associated with tractor hydraulic fluid.

893. Defendants are manufacturers and sellers under the terms of Tenn. Stat. § 29-28-102.

894. At all relevant times, Defendants knew and intended the 303 THF Products would be used by the general public and knew of the specific uses, purposes and requirements for which the 303 THF Products would be utilized. Further, by placing the 303 THF Products on the market for sale, Defendants represented that the products would safely operate and perform the purposes

for which they were intended and that, in all respects, the 303 THF Products were of merchantable quality.

895. Plaintiffs purchased the 303 THF Products and at all relevant times the 303 THF Products were used, as intended, by Plaintiffs.

896. The 303 THF Products were not reasonably safe or suitable for its intended use and was defective as a matter of law with respect to its manufacture, formulation, blending and design, all as described more fully above.

897. As a direct and proximate result of the foregoing defects, which were present since the time of manufacture and distribution of the 303 THF Products by Defendants, Plaintiffs suffered harm, including financial and economic loss, amounts paid for the defective 303 THF Products and physical damage to property as defined by the Tennessee Product Liability Act, including amounts for repairs and losses associated with increased wear and damage to Plaintiffs' equipment that the 303 THF Products caused or contributed to cause. As such, the defects of the 303 THF Products caused Plaintiffs damage under the ordinary and foreseeable conditions and circumstances of use, making the 303 THF Products defective and not reasonably safe.

898. At all relevant times, the 303 THF Products were not modified, changed or abused by the Plaintiffs. Plaintiffs at all times used the 303 THF Products in the manner intended and expected by Defendants.

899. The damages and losses suffered by Plaintiffs were caused and/or resulted from the acts and/or omissions of Defendants by and through their agents, servants, employees and/or representatives acting within the course and scope of their employment and/or authority for which Defendants are strictly liable, in that:

- (a) Defendants were in the business of manufacturing and selling the 303 THF Products at issue;
- (b) The 303 THF Products were sold in a defective condition, which was not reasonably safe for use as a tractor hydraulic fluid;
- (c) Defendants failed to use reasonable care to provide an adequate warning of the defects to Plaintiffs and Tennessee Class Members.
- (d) The defects in the 303 THF Products caused the physical harm and damages that Plaintiffs have incurred; and
- (e) The 303 THF Products were expected to and did reach the Plaintiffs without substantial change in condition.

900. The losses and damages sustained by Plaintiffs were caused and/or resulted from the acts and/or omissions of Defendants.

COUNT LII

Louisiana Products Liability Act – Breach of Express Warranties

901. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

902. In addition to any and all damages, attorneys' fees and other remedies made available to Plaintiffs and Louisiana Class Members under the warranty of fitness and/or redhibitory defects, Defendants are liable to Plaintiffs and Louisiana Class Members under the Louisiana Products Liability Act ("LPLA"), La. R.S. 9:2800.51, *et seq.*

903. Defendants are each a manufacturer for purposes of the LPLA, and the subject 303 THF Products are products for the purposes of the LPLA.

904. Plaintiffs and Louisiana Class Members (or others) used the 303 THF Products in a manner that was reasonably anticipated by Defendants.

905. The defective 303 THF Products were designed, manufactured, and sold by Defendants in the regular course of business and were expected to and did reach Plaintiffs and Louisiana Class Members without substantial change in the condition in which they were manufactured, sold, and distributed.

906. The 303 THF Products were in a defective and unreasonably dangerous condition when they left Defendants' possession or control because under normal conditions, usage, and applications, they could not withstand the use for which they were intended, including but not limited to the fact they are manufactured using line wash and other improper ingredients, not suitable for use as tractor hydraulic fluid and cause increased wear and damage to equipment.

907. Defendants makes express warranties regarding its 303 THF Products. For example, Defendants expressly warrant that its 303 THF Products are suitable for use as a tractor hydraulic fluid, contains certain performance properties and may be used as a fluid in equipment manufactured by a list of manufacturers contained on the product labels.

908. The 303 THF Products are, in all cases, not reasonably safe by virtue of the previously alleged defects. The defects do not in any way contribute to or enhance the utility of the 303 THF Product but instead pose a material risk to property, the economic value of such property, and the financial wellbeing of the owners of such property.

909. The defects constitute material defects and/or component malfunctions, and otherwise deviate materially from express warranties made by Defendants. The 303 THF Products were in a defective and unreasonably dangerous condition when they left Defendants' possession or control in that, under normal conditions, usage and applications, they could not withstand the use for which they were intended, including but not limited to the fact that they cause increased

wear and damage to equipment. These defects run contrary to express warranties made by Defendants.

910. The unsafe defects have caused damages to Plaintiffs' and Louisiana Class Members' property, the economic value of such property, and the financial wellbeing of the owners of such property.

911. Defendants are liable to Plaintiffs and Louisiana Class Members for all available damages pursuant to the LPLA for breach of express warranties.

COUNT LIII
Louisiana Products Liability Act – Design Defect

912. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

913. In addition to any and all damages, attorneys' fees and other remedies made available to Plaintiffs and Louisiana Class Members under the warranty of fitness and/or redhibitory defects, Defendants are liable to Plaintiffs and Louisiana Class Members under the LPLA.

914. Defendants are each a manufacturer for purposes of the LPLA, and the subject 303 THF Products are products pursuant to the LPLA.

915. Plaintiffs and Louisiana Class Members (or others) used the 303 THF Products in a manner that was reasonably anticipated by Defendants.

916. The defective 303 THF Products were designed, manufactured, and sold by Defendants in the regular course of business and were expected to and did reach Plaintiffs and Louisiana Class Members without substantial change in the condition in which they were manufactured, sold and distributed.

917. The 303 THF Products were in a defective and unreasonably dangerous condition when they left Defendants' possession or control because under normal conditions, usage and applications, they could not withstand the use for which they were intended, including but not limited to the fact that they caused increased wear and damage to equipment.

918. Defendants 303 THF Products are unreasonably dangerous in design, in that, at the time that the 303 THF Products left Defendants' control, there existed an alternative design for the product that was capable of preventing Plaintiffs' and Louisiana Class Members' damages, and the likelihood of the defects causing Plaintiffs' and Louisiana Class Members' damages and the gravity of such harm outweighed the burden (if any) on Defendants in adopting such alternate design and the adverse effect (if any) on the utility of the 303 THF Products.

919. As a direct and proximate result of the alleged design defects, in all cases, of Defendants' 303 THF Products, Plaintiffs and Louisiana Class Members suffered property damage and other incidental and consequential damages.

920. Defendants are liable to Plaintiffs and Louisiana Class Members for all available damages pursuant to the LPLA for the alleged design defects.

COUNT LIV
Louisiana Products Liability Act – Failure to Warn

921. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein.

922. In addition to any and all damages, attorneys' fees and other remedies made available to Plaintiffs and Louisiana Class Members under the warranty of fitness and/or redhibitory defects, Electrolux is liable to Plaintiffs and Class Members under the LPLA.

923. Defendants are each a manufacturer for purposes of the LPLA, and the subject 303 THF Products are products pursuant to the LPLA.

924. Plaintiffs and Louisiana Class Members (or others) used the 303 THF Products in a manner that was reasonably anticipated by Defendants.

925. The defective 303 THF Products were designed, manufactured, and sold by Defendants in the regular course of business and were expected to and did reach Plaintiffs and Louisiana Class Members without substantial change in the condition in which they were manufactured, sold and distributed.

926. The 303 THF Products were in a defective and unreasonably dangerous condition when they left Defendants' possession or control because under normal conditions, usage and applications, they could not withstand the use for which they were intended, including but not limited to the fact that they caused increased wear and damage to equipment.

927. Defendants had no reason to believe that consumers of its 303 THF Products would be aware of the foreseeable harm associated with use of them.

928. Prior to and after distributing the 303 THF Products to Plaintiffs and Louisiana Class Members, Defendants had a legal duty to warn them about the defects in the 303 THF Products and the dangers that such defects would pose.

929. Prior to and after distributing the 303 THF Products to Plaintiffs and Louisiana Class Members, Defendants and its agents who sold the 303 THF Products failed to use reasonable care to provide an adequate warning of the defects to Plaintiffs and Louisiana Class Members.

930. As a direct and proximate result of Defendants' failure to warn of the defective and unreasonably dangerous condition and design of the 303 THF Products, Plaintiffs and Louisiana Class Members suffered property damage and other incidental and consequential damages.

931. The cause of such damages arose and arises from reasonably anticipated use of the 303 THF Products, occurred and occurs with great frequency, and caused and causes severe damage.

932. Defendants are liable to Plaintiffs and Louisiana Class Members for all available damages pursuant to the LPLA for failure to warn.

COUNT LV
Individual Liability of Owners Ed Smith and Chad Tate
For Each Preceding Count

933. Plaintiffs incorporate by reference all other paragraphs of this 4th ACC as if fully set forth herein. Individual Liability is sought against Ed Smith and Chad Tate as Defendants on each of the preceding Counts.

934. Smitty's is not a publicly traded company, but rather a privately-owned family business completely controlled and directed by Ed Smith and Chad Tate.

935. Ed Smith and Chad Tate were directly involved in developing and sanctioning Smitty's deceptive and illegal activities described herein, and they each participated in decisions to mislead purchasers and the public about the 303 THF Products, as described herein.

936. Ed Smith and Chad Tate knew and directed that line flush, used oils, and other waste oil be disposed of by Defendants' using those materials in the manufacturing of the 303 THF Products. Ed Smith and Chad Tate also each knew about the true nature and contents of the 303 THF Products (i.e., that they were not even tractor hydraulic fluid, that they met no OEM specifications, and that they did not provide the benefits listed on the label), and each directed that such nature be concealed and not disclosed on the 303 THF Products labels.

937. Instead, the 303 THF Product labels represented to purchasers that the products were tractor hydraulic fluids and that the products met or had equivalency to the John Deere 303

specification and specifications of the other manufacturers listed on the product labels. Ed Smith and Chad Tate each knew and intended that purchasers would rely on the deceptive labels on the 303 THF Products.

938. Defendants' deliberate actions to mislead purchasers and the public about how the 303 THF Products were/are manufactured using large percentages of line flush and used oils, and Defendants' deliberate actions to mislead purchasers and the public about the true nature and contents of the 303 THF Products (i.e., that the products were not tractor hydraulic fluids, met no OEM specifications, and did not provide the benefits listed on the label) were orchestrated, directed and ratified by Ed Smith and Chad Tate since at least December of 2013.

939. Ed Smith and Chad Tate each individually profited from the deceptive and illegal conduct of Smitty's with regard to the 303 THF Products. As owners with control over Smitty's operations, each was specifically enriched by the monies paid by purchasers of the 303 THF Products.

940. Accordingly, based on Ed Smith's and Chad Tate's individual deceptive and illegal conduct and profits gained off such conduct, each are individually liable in connection with the other Counts asserted in this 4th ACC.

941. Plaintiffs also seek to trace and have returned to the putative Class Member Purchasers all monies paid to Ed Smith and Chad Tate by Smitty's Supply, Inc. from 2013 to present, including all salary, bonus, stocks, and any other form of compensation.

942. On each of the other Counts alleged herein, where punitive damages are allowed, they should also be awarded against Ed Smith and Chad Tate, individually, for their wrongful conduct.

**ADDITIONAL FACTS SUPPORTING PERSONAL AND INDIVIDUAL LIABILITY
OF ED SMITH AND CHAD TATE**

943. Ed Smith and Chad Tate received and approved 303 THF Product information sheets, brochures, labels and other marketing materials for Manufacturer Defendants' 303 THF Products which contained multiple false statements regarding benefits, applications, characteristics, and contents of the product.

944. Throughout the entire Class Period, Ed Smith and Chad Tate specifically knew that there were no specifications available for the obsolete John Deere 303 OEM specification.

945. Throughout the entire Class Period, Ed Smith and Chad Tate were aware that Manufacturer Defendants' 303 THF Products did not meet the specifications for John Deere 303 or any other OEM specification. For example:

- a. In July of 2011, Ed Smith sent an email to another Smitty's employee regarding the sale of fluid to a third-party, and told the employee to make the sale, while also advising the employee "what we put in our 303 pail ... technically does not meet the 40 yr old spec of 303."
- b. Chad Tate admitted in deposition testimony that Smitty's called the Smitty's 303 THF Product "303" with no idea as to whether or not the John Deere 303 specification was actually met, and Chad Tate received an email in November 2013 from additive company Afton that contained a summary of the evolution of some of John Deere's fluids and that advised Chad Tate and Smitty's there was no specification available for John Deere 303.

946. Throughout the entire Class Period, Ed Smith and Chad Tate knew that the 303 THF Products had no additive company and/or other approval for Defendants' 303 THF formula, specifications, and/or ingredients.

947. Ed Smith and Chad Tate directed and approved that Defendants' 303 THF Products be made with line wash and other inappropriate ingredients referenced herein. Each specifically directed that Manufacturer Defendants accept and use inferior and inappropriate ingredients in Manufacturer Defendants' 303 THF Products. For example:

- a. On June 4, 2013, Ed Smith received an email about purchasing six trucks of transformer oil that was previously turned down by another customer; Mr. Smith forwarded the email to Matt Saragusa with the directive that Saragusa pursue purchasing the oil.
- b. On March 31, 2015, Ed Smith was sent information regarding the prospect of purchasing used transformer oils. Although the company selling the oils stated that they cannot say that they would pass oxidation tests and would thus not meet the specifications, Ed Smith continued to pursue the purchase.
- c. On August 30, 2016, Matt Saragusa noted in an email to other employees that Chad Tate ordered blending to move forward on an ingredient purchase: “He said we have to find a place to utilize this. I told him we’re limited because we have sediment issues with it. We’ve about maxed out its value.”

948. Ed Smith routinely waived inspections on loads of line flush, used turbine oil, used transformer oil, and other junk oil that were shipped to Smitty’s Roseland Facility and then used as ingredients in Defendants’ 303 THF Products. For example:

- a. In February of 2014, Smitty’s purchased used transformer oil, with Smitty’s waiving inspection, “per Ed Smith.”
- b. In September of 2015, Smitty’s purchased used transformer oil from trucker John Scoggins, calling it “60 VIS,” with Smitty’s waiving inspection, “per Ed Smith.”
- c. In February of 2016, Smitty’s purchased from Shell line flush referred to as “cut oil,” with Smitty’s waiving inspection, “per Ed Smith.”
- d. In February of 2018, Smitty’s purchased used transformer oil, with Smitty’s waiving inspection, “per Ed Smith.”

949. Ed Smith and Chad Tate received multiple complaints regarding sediment and other problems with Manufacturer Defendants’ 303 THF Products as well as with private label 303 products made by Manufacturer Defendants for others.

950. Ed Smith and Chad Tate knew that the sediment and other issues being experienced by customers with Manufacturer Defendants’ 303 THF Products and private label 303 products

were due to Manufacturer Defendants' use of inappropriate ingredients such as line wash and used oils.

951. Ed Smith and Chad Tate knew that Manufacturer Defendants' 303 THF Products had the potential to and/or were actually causing serious damage to Plaintiffs' and Class Members' tractors and other equipment, yet callously continued mixing and selling this junk oil as Manufacturer Defendants' 303 THF Products.

952. In addition to doing so for their personal monetary gain, Ed Smith and Chad Tate engaged in these wrongful actions in order to obtain a larger segment of the market of line flush and used oils, as well as to gain monetarily from their interests in other companies involved in the generation, sale, procurement, and/or distribution of junk oil such as line flush and used oils. Furthermore, using waste materials allowed Defendants to lower production costs. For example, a May 23, 2016 Smitty's email noted the "reason why we are able to sell those products at the numbers we sell them is because they have flush oil in them," "line wash is what it is," the "moral of the story is that not much flush is good as is," and that the 303 tanks at Roseland are where "dilution is the solution."

953. Following the State of Missouri's ban on the sale of 303 THF Products, Smitty's Technical Director Jeremy Schenk advised upper management of problems with the product labels and the product not meeting any specifications, as set forth in paragraph 174(b), above. Schenk and Matt Saragusa explained to upper management that the State of Missouri believed that label language saying "recommended for" with respect to a tractor hydraulic fluid was misleading.

954. Instead of agreeing to correct the label, Smitty's Executive Vice President of Sales John Lorio responded to Schenk's email as follows: "Thought we would say recommended for; and not that it meets a certain spec?" Jeremy Schenk recognized that Mr. Lorio's response was

contrary to what the Missouri Department of Agriculture had just advised Mr. Lorio and Smitty's: that a company must have test results if it is going to claim to be meeting any OEM specs on its label.

955. Throughout 2018 and 2019, the labels for Defendants' 303 THF Products continued to falsely list the John Deere 303 and other OEM specifications, with Mr. Lorio, Chad Tate, and Ed Smith rejecting the recommendations of Matt Saragusa and Jeremy Schenk and the admonitions of the State of Missouri.

956. Throughout 2018 and 2019, Chad Tate directed that Defendants continue to sell 303 Products throughout the United States, despite being reminded that fluids meeting obsolete specifications could cause damage to equipment. For example, on November 13, 2017, Tate emailed Tractor Supply Company and admitted that Ron Hayes and the Missouri Department of Agriculture were correct with regard to the non-existence of any John Deere 303 specifications, noting as follows:

“Per my conversation with Seth, Ron was correct when he stated there was no specific specification for 303. I sent Seth a presentation from Afton that outlines the John Deere specifications and timelines. The 303 was replaced by J14 and if anything was manufactured today with the J14 specification you would have damage to equipment. Do you have time for a brief call to explain?”

THE 303 PRODUCTS' "MISAPPLICATION" LANGUAGE AND LOCATION WAS DECEPTIVE AND MISLEADING

957. The “misapplication” language listed in small font on the bottom rear of the 303 THF Products was not added to the SuperTrac 303 and Cam2 Promax 303 5-gallon bucket labels until sometime after 2012. Even after it was added, it was deceptive and misleading in its language and location. The language was confusing, unclear, inconsistent with all the label information that preceded it, and inconsistent with the more modern equipment on the front of

the bucket labels. Defendants have admitted the deceptive and misleading nature of the “misapplication” language in deposition testimony taken in this litigation.

958. For example, in 2017 Technical Director Matt Saragusa recommended to Smitty’s management that if the 303 THF Products were going to continue to be sold, the misapplication language should be moved to the front of the 5-gallon buckets so it could be seen. Smitty’s refused to move the misapplication language to the front of the label, and instead continued to sell Defendants’ 303 THF Products in states other than Missouri (which had by then banned any sales) with the “misapplication” language still buried on the lowest part of the back of the label. Mr. Saragusa testified in this litigation as follows:

Q: And so did Mr. Tate and Mr. Lorio disagree with the idea of putting that on the front of the label?

A: They didn’t put it on there. I – I told them and they did what they were going to do.

Q: So you recommended that if Smitty’s believed that there was information the consumer needed to know about what year, what model year this could be used in, it should be on the front of the label, right?

A: That’s correct.

Q: And you told that to Mr. Tate and Mr. Lorio.

A: That’s correct.

Q: And we know from Exhibit 43, which is the new label that came out after these discussions, that that language didn’t get on the front of the label, right?

A: That’s right.

* * * * *

Q: And my question was, you were concerned that you were giving the customer a bunch of information about the benefits of the uses of the tractor and they might not read all the way past all that stuff down to the back of the label, at the very bottom, right?

A: That’s correct.

Q: And am I also right that you were concerned that the information that the consumers were receiving about the product's suitability for use in equipment that you see on the front of the label and in the back, with the manufacturers and the performance benefits, that that was inconsistent with what was being listed on the bottom of the label.

A: That's correct.

Q: And, obviously, the front of the label doesn't say anywhere that this product shouldn't be used in equipment prior to 1974 or 1977, right?

A: That's correct.

959. In addition to its placement in smaller print on the lower back portion of the 303 THF Products labels and its inconsistencies with other information in the label, Defendants' have admitted the misapplication language itself was vague and inadequate.

960. In this litigation, Technical Director Matt Saragusa and former part-owner David Smith both testified they did not know what the "misapplication" language referenced or meant.

961. In this litigation, Smitty's President Chad Tate testified that he is not sure what the consumer would assume by reading the old label's misapplication language. The language merely stated the product was not "recommended for," as opposed to clearly stating the product should not be used in equipment made after 1974. Further, the language did not note any possibility of harm to equipment.

962. After the State of Missouri's ban on 303 fluid in 2017, Smitty's eventually changed the misapplication language on the back of the 303 label to replace the words "not recommended" with "not suitable" and also to mention "harm" to equipment, an act that acknowledged the inadequate nature of the language, but the new misapplication language was still not appropriate in content or placement.

963. Like Mr. Saragusa and Mr. Tate, a reasonable consumer would not understand or know what the "misapplication" language meant, even if they could locate it.

WHEREFORE, Plaintiffs, on behalf of themselves and the Classes described in this Fourth Amended Consolidated Complaint, respectfully request that:

- A. The Court certify the Classes pursuant to Rule 23 of the Federal Rules of Civil Procedure, and adjudge Plaintiffs and counsel to be adequate representatives thereof;
- B. The Court enter an Order requiring each Defendant to pay actual, treble, and punitive damages to Plaintiffs and the other Members of the Classes;
- C. The Court enter an Order awarding Plaintiffs, individually and on behalf of the other Members of the Classes, the expenses and costs of suit, including reasonable attorneys' fees and reimbursement of reasonable expenses, to the extent provided by law;
- D. The Court enter an Order awarding to Plaintiffs, individually and on behalf of other Members of the Classes, pre-and post-judgment interest, to the extent allowable; and,
- E. Such other and further relief as may be just and proper.

DEMAND FOR JURY TRIAL

Plaintiffs and Class Members hereby demand a jury trial on all issues of fact and damages in this action.

Date: September 24, 2021

Respectfully submitted,

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