

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

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

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**ORDER**

Before the Court is Defendant CAM2 International, LLC’s (“CAM2”) Motion for Summary Judgment as to Certain Claims Against CAM2 International LLC. (Doc. #816.) For the reasons discussed below, the motion is GRANTED.

**I. BACKGROUND**

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

Plaintiffs initiated suit against Defendants in multiple federal district courts where the 303 THF products were sold. On February 11, 2020, Defendants requested all pending actions be consolidated and transferred pursuant to 28 U.S.C. § 1407. On June 2, 2020, the J.P.M.L.

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

On September 24, 2021, Plaintiffs filed the Fourth Amended Consolidated Complaint ("FACC"). On October 25, 2021, Defendants filed a motion to dismiss the FACC, which the Court granted in part and denied in part on March 9, 2022. *See* (Doc. #451.) On April 21, 2023, Plaintiffs filed a Fifth Amended Consolidated Complaint ("5ACC"). On March 29, 2023, Defendants filed the instant motion for summary judgment. Plaintiffs oppose the motion. The parties' arguments are addressed below.

## II. LEGAL STANDARD

Under Rule 56, summary judgment is warranted "if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). The moving party has the burden of identifying "the basis for its motion, and must identify those portions of the record which it believes demonstrate the absence

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<sup>1</sup> The pending actions consolidated before the undersigned are as follows: *Buford v. Smitty's Supply Inc.*, No. 19-cv-00082 (E. D. Ark.); *Fosdick v. Smitty's Supply Inc.*, No. 19-cv-01850 (N. D. Iowa); *Blackmore v. Smitty's Supply Inc.*, No. 19-cv-04052 (N.D. Iowa); *Zornes v. Smitty's Supply, Inc.*, No. 19-cv-0257 (D. Kan.); *Wurth v. Smitty's Supply Inc.*, No. 19-cv-00092 (W.D. Ky.); *Mabie v. Smitty's Supply, Inc.*, No. 19-cv-3008 (S.D. Tx.); *Klingenberg v. Smitty's Supply, Inc.*, No. 19-cv-2684 (D. Minn.); and *Graves v. Smitty's Supply, Inc.*, No. 19-cv-5089 (W.D. Mo.).

of a genuine issue of material fact.” *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (cleaned up). If the moving party makes this showing, “the nonmovant must respond by submitting evidentiary materials that set out specific facts showing that there is a genuine issue for trial.” *Id.* (quotation marks omitted). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Id.* (quotation marks omitted).

### III. DISCUSSION

CAM2 argues it is entitled to summary judgment on the claims of the following Plaintiffs because they did not purchase or use CAM2 303 or Promax 303: Jack Kimmich (“Kimmich”),<sup>2</sup> George Bollin (“Bollin”), Adam Sevy (“Sevy”), Terry Zornes (“Zornes”),<sup>3</sup> Tim Sullivan (“Sullivan”),<sup>4</sup> Brett Creger (“Creger”),<sup>5</sup> Sawyer Dean (“Dean”), John Miller (“Miller”),

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<sup>2</sup> Kimmich seeks to represent a class of California purchasers and asserts the following claims: Count I, negligence; Count II, breach of express warranty; Count V, unjust enrichment; Count VI, fraudulent misrepresentation; Count VII, negligent misrepresentation; Count IX, California Unfair Competition Law, Cal. Bus. Prof. Code § 17200; Count X, California False and Misleading Advertising, Cal. Bus. Prof. Code § 17500; and Count XI, California Consumer Legal Remedies Act, Cal. Civ. Code. § 1770. The Court previously dismissed the California Plaintiffs’ Count III, breach of implied warranty of merchantability, and Count IV, breach of implied warranty of fitness for a particular purpose. *See* (Doc. #451.)

<sup>3</sup> Bollin, Sevy, and Zornes seek to represent a class of Kansas purchasers and assert the following claims: Count I, negligence; Count II, breach of express warranty; Count III, breach of implied warranty of merchantability; Count IV, breach of implied warranty of fitness for a particular purpose; Count V, unjust enrichment; Count VI, fraudulent misrepresentation; Count VII, negligent misrepresentation; Count XVIII, Kansas Consumer Protection Act, K.S.A. § 50-623; Count XLVI, Kansas Product Liability Act (“KPLA”)—Design Defect, K.S.A. § 60-3301;<sup>3</sup> and Count XLVII, KPLA—Failure to Warn, K.S.A. § 60-3301. The Court previously dismissed the Kansas Plaintiffs’ Counts I, II, III, IV, VI, VII, and XVIII to the extent they seek property damages. *See* (Doc. #451.)

<sup>4</sup> Sullivan seeks to represent a class of Kentucky purchasers and asserts the following claims: Count I, negligence; Count V, unjust enrichment; Count VI, fraudulent misrepresentation; and Count VII, negligent misrepresentation. The Court previously dismissed the Kentucky Plaintiffs’ Count XIV, alleging violation of the Kentucky Consumer Protection Act. *See* (Doc. #451.)

<sup>5</sup> Kreger seeks to represent a class of Minnesota purchasers and asserts the following claims: Count I, negligence; Count II, breach of express warranty; Count III, breach of implied warranty of merchantability; Count IV, breach of implied warranty of fitness for a particular purpose; Count V, unjust enrichment; Count VI, fraudulent misrepresentation; and Count VII, negligent misrepresentation. The Court previously dismissed the California Plaintiffs’ Count XXI, alleging violation of the Minnesota Consumer Fraud Act. *See* (Doc. #451.)

and Lawrence Wachholder (“Wachholder”)<sup>6</sup> (collectively, “Plaintiffs”).<sup>7</sup> Plaintiffs argue that genuine disputes of material fact preclude summary judgment.

The parties agree that Plaintiffs did not purchase or use CAM2’s 303 THF Products, and only purchased or used Smitty’s 303 THF Products. The Court finds, and the parties appear to agree, that all of the following claims at issue require Plaintiffs to prove that they purchased or were injured by a CAM2 product:<sup>8</sup>

- Count I negligence;<sup>9</sup>
- Count II breach of express warranty;<sup>10</sup>
- Count III breach of implied warranty of merchantability;<sup>11</sup>
- Count IV breach of implied warranty of fitness for a particular purpose;<sup>12</sup>
- Count V unjust enrichment,<sup>13</sup>

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<sup>6</sup> Dean, Miller, and Wachholder seek to represent a class of New York Purchasers and assert the following claims: Count I, negligence; Count II, breach of express warranty; Count V, unjust enrichment; Count VI, fraudulent misrepresentation; and Count XXV, New York Consumer Protection Law, N.Y. Gen. Bus. Law § 349. The Court previously dismissed the New York Plaintiffs’ Count III, breach of implied warranty of merchantability; Count IV, breach of implied warranty of fitness for a particular purpose; and Count VII, negligent misrepresentation. *See* (Doc. #451.)

<sup>7</sup> The Court acknowledges that the instant motion for summary judgment does not concern all Plaintiffs in this action. However, for clarity and the purposes of this motion only, the Court will refer to Kimmich, Bollin, Sevy, Zomes, Sullivan, Creger, Dean, Miller, and Wachholder collectively as “Plaintiffs.”

<sup>8</sup> As discussed at length in the Court’s prior Order on Defendants’ motion to dismiss, the Court must apply the state law of each Plaintiff’s respective state (*e.g.*, California law will apply to Kimmich’s claims).

<sup>9</sup> *O’Neil v. Crane Co.*, 53 Cal.4th 335, 362, 266 P.3d 987, 1005 (Cal. 2012) (requiring proof “[t]hat the defendant manufactured, sold, or supplied the injury-causing product”) (California); *Miller v. Pfizer, Inc.*, 196 F.Supp.2d 1095, 1120–21 (D. Kan. 2002) (Kansas); *Collins v. Ansell Inc.*, No. CIV.A. 3:98-CV-259-H, 2003 WL 22769266, at \*2 (W.D. Ky. Nov. 19, 2003) (Kentucky); *Fireman’s Fund Ins. Co. v. Canon U.S.A., Inc.*, 394 F.3d 1054, 1060 (8th Cir. 2005) (Minnesota); *Goldych v. Eli Lilly and Co.*, No. 5:04CV1477(GLS/GJD), 2006 WL 2038436, at \*2 n.3 (N.D.N.Y. July 19, 2006) (New York).

<sup>10</sup> *Moncada v. Allstate Ins. Co.*, 471 F.Supp.2d 987, 997 (N.D. Cal. 2006) (requiring the defendant to have issued the warranty) (California); Kan. Stat. Ann. 84-2-313(1)(a); *Fireman’s Fund*, 394 F.3d at 1060 (Minnesota); *Cavanaugh v. Ford Motor Co.*, No. 13-CV-4584(JS)(SIL), 2017 WL 2805057, at \*5 (E.D.N.Y. June 9, 2017) (New York).

<sup>11</sup> *Marksberry v. FCA US LLC*, 606 F.Supp.3d 1075, 1086–87 (D. Kan. 2022) (Kansas); *Solheim Farms, Inc. v. CNH Am., LLC*, 503 F.Supp.2d 1146, 1152 (D. Minn. 2007) (Minnesota).

<sup>12</sup> *Danaher v. Wild Oats Markets, Inc.*, No. CIV.A. 08-2293-DJW, 2011 WL 2969314, at \*4 (D. Kan. July 20, 2011) (Kansas); *Solheim Farms*, 503 F.Supp.2d at 1152 (Minnesota).

<sup>13</sup> *Tindell v. Murphy*, 22 Cal. App. 5th 1239, 1254 (Cal. 2018) (holding that the defendant must have retained a benefit conferred by the plaintiff) (California); *Haz-Mat Response, Inc. v. Certified Waste Servs. Ltd.*, 259 Kan. 166, 176, 910

Count VI      fraudulent misrepresentation;<sup>14</sup>  
Count VII     negligent misrepresentation;<sup>15</sup>  
Count IX      California Unfair Competition Law;  
Count X       California False and Misleading Advertising;  
Count XI      California Consumer Legal Remedies Act;<sup>16</sup>  
Count XVIII   Kansas Consumer Protection Act;<sup>17</sup>  
Count XLVI   Kansas Product Liability Act–Design Defect;<sup>18</sup>  
Count XLVII Kansas Product Liability Act –Failure to Warn; and  
Count XXV    New York Consumer Protection Law.<sup>19</sup>

Plaintiffs argue that they are “not pursuing individual claims against CAM2[.]”

(Doc. #883, p. 19.) Accordingly, CAM2’s motion for summary judgment must be granted.

However, even if Plaintiffs asserted the aforementioned claims against CAM2, the Court finds that a grant of summary judgment is warranted here. The applicable law makes clear that an element of each claim requires some involvement between each plaintiff and CAM2 and/or

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P.2d 839, 846 (Kan. 1996) (Kansas); *Guerin v. Fulkerson*, 354 S.W.3d 161, 165 (Ky. App. 2011) (Kentucky); *HomeStar Property Sols., LLC v. Safeguard Props., LLC*, 358 F.Supp.3d 807, 814 (D. Minn. 2019) (Minnesota); *Grynberg v. ENIS.P.A.*, 503 Fed.Appx. 42, 43–44 (2nd Cir. 2012) (New York).

<sup>14</sup> *Sanchez v. Stryker Corp.*, No. 2:10-CV-08831-ODW, 2012 WL 1570569, at \*6 (C.D. Cal. May 2, 2012) (requiring a plaintiff to show that his or her injury was by caused by the defendant and based on the defendant’s misrepresentation) (California); *Miller*, 196 F.Supp.2d at 1120–21 (Kansas); *Collins*, 2003 WL 22769266, at \*2 (Kentucky); *Flynn v. Am. Home Prods. Corp.*, 627 N.W.2d 342, 349–50 (Minn. App. 2001) (Minnesota); *Goldych*, 2006 WL 2038436, at \*6 n.6 (New York).

<sup>15</sup> *Sanchez*, 2012 WL 1570569, at \*6 (requiring a plaintiff to show that his or her injury was by caused by the defendant and based on the defendant’s misrepresentation) (California); *Miller*, 196 F.Supp.2d at 1120–21 (Kansas); *Collins*, 2003 WL 22769266, at \*2 (Kentucky); *Flynn*, 627 N.W.2d at 349–51 (Minnesota).

<sup>16</sup> *Wilson v. Frito-Lay North Am., Inc.*, 260 F.Supp.3d 1202, 1208 (N.D. Cal. 2017) (citation omitted) (holding that a plaintiff bringing a claim under Cal. Bus. Prof. Code § 17200, Cal. Bus. Prof. Code § 17500, and Cal. Civ. Code § 1770 must show that “the defendant’s misrepresentation is an immediate cause of the plaintiff’s conduct”).

<sup>17</sup> *Hernandez v. Pistotnik*, 58 Kan.App.2d 501, 506 (Kan. App. 2020) (holding that a plaintiff must show a “causal connection between the defendant’s conduct and the plaintiff’s damages”).

<sup>18</sup> *Miller*, 196 F.Supp.2d at 1125 (holding that “proof that a product defect caused the injury is a prerequisite to recovery” for KPLA claims).

<sup>19</sup> *Petitt v. Celebrity Cruises, Inc.*, 153 F.Supp.2d 240, 266 (S.D.N.Y. 2001) (holding that a plaintiff must show the defendant’s material deceptive act caused plaintiff’s injury).

CAM2's Products. The Court agrees with CAM2 that Plaintiffs' arguments addressing standing are irrelevant to whether Plaintiffs can actually prove their claims against CAM2. For the reasons stated in CAM2's briefing, and because the parties agree that Plaintiffs never purchased or used CAM2's 303 THF Products, the Court finds that Plaintiffs have failed to create a genuine issue of material fact. Accordingly, CAM2 is entitled to summary judgment.

#### **IV. CONCLUSION**

Accordingly, CAM2's Motion for Summary Judgment as to Certain Claims Against CAM2 International LLC (Doc. #816) is GRANTED as follows:

- California Plaintiff Jack Kimmich's Counts I–II, V–VII, and IX–XI against CAM2 are DISMISSED;
- Kansas Plaintiffs George Bollin, Adam Sevy, and Terry Zornes' Counts I–VII, XVIII, and XLVI–XLVII against CAM2 are DISMISSED;
- Kentucky Plaintiff Tim Sullivan's Counts I and V–VII against CAM2 are DISMISSED;
- Minnesota Plaintiff Brett Creger's Counts I–VII against CAM2 are DISMISSED; and
- New York Plaintiffs Sawyer Dean, John Miller, and Lawrence Wachholder's Counts I–II, V–VI, and XXV against CAM2 are DISMISSED.

This Order does not affect the aforementioned Plaintiffs' claims against Smitty's, as well as the claims of other Plaintiffs not subject to this Order.

**IT IS SO ORDERED.**

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

Dated: July 14, 2023