

**EXHIBIT 1**

**STATE OF MISSOURI  
CIRCUIT COURT OF CASS COUNTY**

MONTE BURGESS,	)	
DAN CHEVALIER,	)	
ROBERT CAVINESS,	)	
RAYMOND BIERI, and	)	
JAMES KIRCHER,	)	
on behalf of themselves and others	)	
similarly situated,	)	
Plaintiffs,	)	
v.	)	Case No.19CA-CC00084
MARTIN OPERATING PARTNERSHIP, LP	)	
d/b/a MARTIN LUBRICANTS	)	
Defendant.	)	

**AFFIDAVIT OF THOMAS V. BENDER**  
**IN SUPPORT OF PLAINTIFFS' APPLICATION FOR INCENTIVE AWARDS FOR**  
**CLASS REPRESENTATIVES**  
**AND FOR AWARD OF ATTORNEYS' FEES**

I, Thomas V. Bender, hereby declare as follows:

1. I am an attorney licensed to practice in the state of Missouri. I have been in practice for over forty years, including involvement in numerous contingency fee and class action cases.

2. I am lead counsel in the above-captioned litigation, and I make this Declaration in support of Plaintiffs' Application for Incentive Awards for Class Representatives and for Award of Attorneys' Fees. I have actively participated in all aspects of this litigation, and I make this Declaration based on my personal knowledge.

3. Class Counsel request that the five (5) Class Representatives each be awarded an incentive award of \$5,000.00. This request is supported by law and by the circumstances of this case. These Class Representatives represented thousands of purchasers in Missouri. They

actively participated in the case, providing Class Counsel with input in case development and responsive documents and information. They produced documents, communicated with counsel, and provided key information. These Class Representatives understand that the amount of the incentive award, if any, is in the discretion of the Court. Defendant has agreed to separately pay the amount awarded by the Court in incentive awards, up to \$5,000.00 per Class Representative.

4. Class Counsel further request reasonable attorneys' fees to be awarded by the Court to be paid by Defendant separately and in addition to the Class Settlement Fund. Counsel for the parties engaged in extensive, arms-length negotiations in an attempt to reach a settlement. After the key terms of the Settlement Agreement were reached for the benefit of the Class, the Parties then attempted to reach an agreement as to the amount of attorneys' fees that would be sought. If no agreement could be reached on attorneys' fees, Class Counsel was prepared and intended to move forward with the settlement and to seek an award from the Court without any parameters or limitations. An agreement was then reached for Defendant to pay reasonable attorneys' fees in addition to the \$450,000.00 Class Settlement Fund, so long as the amount sought was no more than \$150,000.00.

5. Class Counsel is not seeking a separate award of case expenses.

6. As to the amount of fees sought, the retention agreement between each of the Class Representatives and Class Counsel calls for payment of a contingency attorneys' fee of 33 and 1/3%, with the reimbursement of litigation expenses also to be contingent upon a recovery in this case. Based upon the amount sought, the award of \$150,000.00, including expenses, would be about 25% of the total Settlement amount of \$600,000.00 (the Class Settlement Fund plus separate payment of attorneys' fees and expenses) and 33% of the Class Settlement Fund of \$450,000.00.

The attorneys' fees requested is thus at or below the amount called for in Class Counsel's contracts with Class Representatives.

7. The reasonable attorney's fees requested by Class Counsel is supported not only by the Class Representatives' actual contingent fee agreements, but also by customary market rates for cases of this type. It is my opinion, based upon my years of experience and familiarity with the market for legal representation of the type provided to the Class Members in this action, it is not uncommon for litigation of this type to receive a recovery on a contingency agreement of one-third.

8. Because this litigation required a substantial advancement of professional time and expense, because the measure of recoverable damages is uncertain and because the risk of nonpayment or underpayment is significant, it would be financially impossible for the Plaintiffs or any Settlement Class Members to have agreed to pursue this matter on any basis other than a contingency fee arrangement, with expenses advance by counsel. Class Counsel undertook the litigation on such a contingent basis and advanced costs bearing the full risk that a recovery would not be realized. No Member of the Settlement Class was asked to pay any fees or advance the expense required to investigate, prepare for filing, and prosecute this litigation.

9. From the inception of this litigation, Class Counsel have aggressively prosecuted this case and vigorously represented the best interests of the Plaintiffs and putative Class. The case was prosecuted by attorneys and staff from three Kansas City area Law Firms: Tom Bender and Dirk Hubbard of Horn, Aylward & Band, LLC; Gene Graham, Bill Carr, and Bryan White from White, Graham, Buckley & Carr, LLC; and Clayton Jones of Clayton Jones Law. Pursuit of this case has included investigating the facts, performing legal research, reviewing and analyzing documents, assembling and drafting pleadings, conducting discovery, and communicating with

counsel for Defendants. Discovery and investigations have included requesting and reviewing information from the Missouri Department of Agriculture; exchange of information between the parties; meeting and conferences with Class Representatives; meeting and conferences with representatives of Defendant; and consultation with experts. Overall, more than 300 hours of combined attorney time was spent by Class Counsel's three Law Firms that was directly related to this litigation. Class Counsel anticipates spending many additional hours in connection with the settlement administration process in the final weeks of the notice period and in the distribution period. The lodestar for Class Counsel's time to date is approximately \$150,000.00. In addition, many attorney and assistant hours will be spent in the future through the completion of settlement administration. If viewed under the lodestar approach, the requested award with no multiplier is ~~more than reasonable and well below the average multiplier in cases where results of this type are~~ obtained.


10. The proposed Settlement provides substantial benefit to thousands of Settlement Class Members who have purchased Defendant's 303 Tractor Hydraulic Fluid Products ("303 THF Products") in Missouri during the Class Period. As described in detail in the Settlement Agreement, the Settlement provides significant payments to the Settlement Class in a way that addresses the fundamental issues underlying this case. The Class Settlement Fund of \$450,000.00 is sufficient to provide each Qualified Settlement Class Member with an estimated minimum payment of 25% of the average purchase price for the units of Defendant's 303 THF Products purchased by each such Settlement Class Member during the class period. The Class Settlement Fund also provides Settlement Class Members with additional awards for repairs, parts, and specific equipment damage that the Settlement Class Member contends resulted from, in whole or in part, the use of the 303 THF Products during the Class Period.

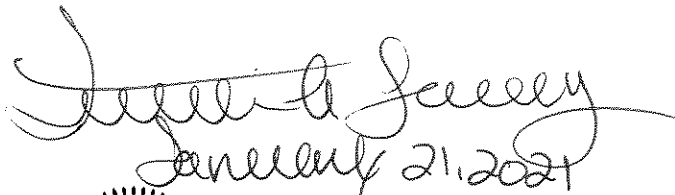
11. Class Counsel have diligently investigated and prosecuted this matter, dedicating substantial time, effort, resources, and expertise to the investigation and prosecution of the claims at issue in the action, and have successfully negotiated the Settlement of this matter to benefit the Settlement Class.

12. I respectfully request the Court find and conclude that incentive awards of \$5,000.00 each are appropriate for each of the five Class Representatives, and that that \$150,000.00 in reasonable attorneys' fees should be awarded to Class Counsel.

13. I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Date Executed: 1/21/21

  
/s/ Thomas V. Bender  
Thomas V. Bender

  
January 21, 2021



THERESA A LOUBEY  
My Commission Expires  
August 10, 2023  
Buchanan County  
Commission #15637198