

2. On July 29, 2020, this Court entered its Preliminary Approval Order granting preliminary approval of the Settlement Agreement (the “Preliminarily Approval Order”). The following Settlement Class was conditionally certified:

All persons and other entities who purchased Martin 303 Tractor Hydraulic Fluid from any retailer in Missouri at any point in time from April 5, 2014 to the present, excluding purchases made for resale;

-and-

All persons and other entities who purchased Orscheln Premium 303 Tractor Hydraulic Fluid manufactured by Martin Lubricants from Orscheln Farm and Home retail locations in Missouri during the time period May 25, 2013 through and including September 2, 2014, excluding purchases made for resale.

3. Since the Court’s Preliminary Approval Order in July 2020, the Court-appointed Settlement Administrator, RG/2 Claims Administration LLC (“RG/2”), has implemented the Court-approved notice and claims administration process, as set forth in the Settlement Agreement and the Preliminarily Approval Order. (Ex. 2, Declaration of Tina Chiango).

4. With the claims period now closed, Plaintiffs, pursuant to the Settlement Agreement and the Court’s Preliminary Approval Order, now respectfully request that the Court enter an order, in substantially the form of the proposed Final Approval Order and attached hereto as Exhibit 1, granting final approval of the class action settlement memorialized in the Settlement Agreement. As set forth more fully in Exhibit 1, the requested order finally approves the Settlement Agreement and, among other things:

- (a) finds that the notice provided satisfies the requirements of due process and Rule 52.08(e) of the Missouri Rules of Civil Procedure;
- (b) finds that Settlement Class Members have been adequately represented by the Class Representatives and Class Counsel;
- (c) finds that the Settlement Agreement is fair, reasonable and adequate to the Settlement Class, that each Settlement Class Member shall be bound by the

Settlement Agreement, including the release and the covenant not to sue set forth in the Settlement Agreement, and that the Settlement Agreement should be and is finally approved;

- (d) dismisses on the merits and with prejudice this action, including all claims of the Settlement Class Members asserted against Defendants, with each Party waiving all rights to appeal and waiving all rights to seek reimbursement of attorneys' fees or costs (except as expressly provided in the Settlement Agreement);
- (e) permanently enjoins each and every Settlement Class Member from bringing, joining, or continuing to prosecute any Released Claims against any of the Released Parties; and,
- (f) retains jurisdiction of all matters relating to the interpretation, administration, implementation, effectuation and enforcement of the Settlement Agreement.

5. In support of the adequacy and appropriateness of the Settlement Agreement, including the notice provided to Settlement Class Members, the processing of claims, and the expected distribution of the Class Settlement Fund, the Declaration of Tina Chiango, Director of Claims Administration, Securities, and Antitrust for RG/2, the Court-approved Settlement Administrator, is attached hereto as Exhibit 2.

Direct Mailed/E-Mailed Notice

6. Pursuant to this Court's Preliminary Approval Order, on October 9, 2020, the Mailed Class Notice was mailed to 12,107 Members of the Settlement Class who were identified by Orscheln's records as having purchased the Orscheln Premium 303 Tractor Hydraulic & Transmission Fluid product during the time period of May 25, 2013 to September 2, 2014. These Notices provided each recipient with the number of 5-gallon buckets purchased based on Orscheln's records. The number of 5-gallon bucket purchases represented by these 12,107 Class Members was 48,242 buckets with an award value of \$253,270.50. (Ex. 2, ¶ 10).

7. Of the 12,107 Mailed Class Notices mailed to Class Members, a total of 890 were

returned by the USPS as undeliverable. Of those returned, ten (10) contained a forwarding address, and those Mailed Class Notices were immediately re-mailed. RG/2 performed address verification searches (also referred to as “skip tracing”) for those returned as undeliverable without a forwarding address. Re-mails were promptly sent to 663 Class Members via U.S. First Class mail at the updated addresses located via skip tracing. After these efforts, 210 remained undeliverable. These 210 Class Members represent 747 buckets or a value of \$3,921.75. (Ex. 2, ¶ 15).

Publication of Summary Notice

8. In addition to emailing and mailing the Notices and in order to reach additional potential Settlement Class Members, Summary Notice was published in daily and weekly newspapers in several counties throughout Missouri. (Ex. 2, ¶ 11).

9. A media notice campaign was also implemented that included Facebook and Google Ads where potential Class Members could click on the add and be linked to the settlement website. (Ex. 2, ¶ 12).

Settlement Website

10. All Notice and media referred to the Settlement website, www.martin303settlement.com, which was established by RG/2. The website includes the following:

- a. The “Homepage” contains a brief summary of the Settlement and advises potential Settlement Class Members of their rights under the Settlement;
- b. The “Notice and Claim Form” page contains a .pdf copy of the Court-Ordered Long Form Notice, Claim Form and Request for Correction Form. The page also includes a link to the Claims online filing portal and the Repair Parts Specific Equipment Review Process;
- c. The “Court Documents” page contains: the Settlement Agreement and Release; the Motion for Preliminary Approval; Suggestions in Support of Preliminary Approval; the Preliminary Approval Order; the Application for Incentive Awards, and for Attorneys’ Fees and Expenses; and Suggestions in Support of

Application for Incentive Awards, and Attorneys' Fees and Expenses; and the Declaration of Thomas Bender in Support of Application for Incentive Awards, and Attorneys' Fees and Expenses (any additional documents will be added as requested); and

- d. The "Contact" page contains RG2's contact information for any questions or requests for information regarding the settlement.

(Ex. 2, ¶ 13).

11. Potential Class Members were able to utilize online claims portals for the Full Claim Form, the Request for Correction Form, and the Part B repairs/parts/specific equipment damage claim form. (Ex. 2, ¶ 14).

No Objections to the Settlement Have Been Asserted by Class Members

12. In accordance with this Court's Preliminary Approval Order, Class Members had until February 8, 2021 by which to file objections to the Settlement. No Class Member has filed an objection. (Ex. 2, ¶ 17).

Opt-Outs/Requests for Exclusion

13. In accordance with this Court's Preliminary Approval Order, Class Members had until February 8, 2021 by which to opt-out of the Settlement. Three (3) Class Members opted out. (Ex. 2, ¶ 16).

Summary of Claims

14. The Settlement Administrator and Class Counsel are in the process of completing the review, evaluations, and determinations on these claims pursuant to the terms of the Settlement Agreement. All totaled, and subject to final evaluations and determinations, there are approximately \$255,000.00 in automatic and/or timely-filed valid claims for Part A Purchase Price Relief and \$170,000.00 in valid claims for Part B Repairs/Parts/Specific Damage Fund Relief submitted by approximately 50 claimants. (Ex. 2, ¶ 18). Claim denial emails and/or letters will

be sent to claimants whose claims are denied.

15. Thus, at present and prior to completion of the claim evaluation/determination process, the following will be approximately \$255,000.00 paid out on valid claims (including automatic awards) for Purchase Price Relief from the Reimbursement Fund. (Ex. 2, ¶ 18).

16. At present and prior to completion of the claim evaluation/determination process, there are approximately 50 valid Part B claims for relief from the Repairs/Parts/Specific Equipment Damage Fund. Those valid claims seek a total of \$170,000.00, once those claims are reduced by amounts any of those Class Members received in other similar 303 Tractor Hydraulic Fluid Class Settlements. (Ex. 2, ¶ 18).

Settlement Administration and Notice Costs

16. It is anticipated that RG/2 will complete the Settlement Administration within the budgeted amount of \$50,000.00.

Conclusion

17. In further support of this Motion, Plaintiffs file concurrently herewith their Suggestions in Support of Unopposed Motion for Final Approval of Class Action Settlement.

18. Defendants' counsel has indicated that Defendants do not oppose Plaintiffs' Motion for Final Approval, and such Motion is in accord with the terms of the Settlement Agreement.

WHEREFORE, Plaintiffs respectfully request the Court enter the proposed Final Approval Order attached hereto as Exhibit 1 and for such other and further relief as is just and proper.

Date: March 9, 2021

Respectfully Submitted,

HORN AYLWARD & BANDY, LLC

BY: /s/ Thomas V. Bender
Thomas V. Bender MO 28099
Dirk Hubbard MO 37936
2600 Grand, Ste. 1100
Kansas City, MO 64108
(816) 421-0700
(816) 421-0899 (Fax)
tbender@hab-law.com
dhubbard@hab-law.com

**WHITE, GRAHAM, BUCKLEY,
& CARR, L.L.C**

BY: /s/ Gene P. Graham, Jr.
Gene P. Graham, Jr. MO 34950
William Carr MO 40091
Bryan T. White MO 58805
19049 East Valley View Parkway
Independence, Missouri 64055
(816) 373-9080 Fax: (816) 373-9319
ggraham@wagblaw.com
bcarr@wagblaw.com
bwhite@wagblaw.com

CLAYTON JONES, ATTORNEY AT LAW

BY: /s/ Clayton A. Jones
Clayton Jones MO 51802
405 Foxwood Dr.
Raymore, MO 64083
Office: (816) 318-4266
Fax: (816) 318-4267
claytonjoneslaw.com

**ATTORNEYS FOR PLAINTIFFS
AND CLASS MEMBERS**

