

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

ELLEN ALLICKS, et al., on behalf of)
themselves and others similarly situated;)
)
Plaintiffs,)
)
vs.)
)
OMNI SPECIALTY PACKAGING, LLC,)
O'REILLY AUTOMOTIVE STORES, INC.,)
d/b/a O'REILLY AUTO PARTS, and)
OZARK AUTOMOTIVE)
DISTRIBUTORS, INC.)
)
Defendants.)

Case No.: 4:19-cv-1038-DGK

**PLAINTIFFS' SUGGESTIONS IN SUPPORT OF
FINAL APPROVAL
OF AMENDED CLASS ACTION SETTLEMENT AGREEMENT**

COME NOW PLAINTIFFS, by and through Class Counsel, and submit the following Suggestions in Support of the Parties' Joint Motion for Final Approval of Amended Class Action Settlement Agreement.

I. INTRODUCTION

On November 5, 2020, the Court granted preliminary approval to a nationwide class settlement which will provide substantial monetary relief to approximately 166,000 Class Members who purchased O'Reilly 303 Tractor Hydraulic Fluid in the any state in the United States, other than Missouri, during the Class Period. To represent the Class for purposes of the Settlement, the Court's Preliminary Approval Order appointed Adam Sevy, Shawn Hornbeck, Arno Graves, Ron Nash, Todd Vohs, Wayne Rupe, David Guest, Brian Nelms, Robert Thiry, Larry Muhs, Anthony Shaw, Rusty Shaw, Tim Sullivan, Roger Bias, Robert Withrow, and Ellen Allicks

d/b/a Allicks Excavating as Representative Plaintiffs. The Court's Preliminary Approval Order also appointed Plaintiffs' Counsel as Class Counsel for the Settlement Class.

The Amended Settlement provides for a Class Settlement Fund of \$8,501,361.10. The Class Settlement Fund provides qualifying Settlement Class Members with an initial estimated distribution amount equal to between 30% and 41% of the net sales price paid each such Class Member paid for the units of O'Reilly 303 Tractor Hydraulic Fluid purchased during the Class Period. The final payment percentages are expected to increase, pro rata, for each Settlement Class Member -- to where final payout percentages are expected to be approximately 40 to 50 percent. The Court-approved Settlement Administrator, RG/2 Claims Administration LLC ("RG/2") estimated that approximately 94% of the Class Settlement Fund, an amount equal to approximately \$8,015,361.10, will be distributed to members of the Settlement Class.

Notice has now been carried out, and the claims period has ended. There have been no objections filed to the Amended Settlement, and only 16 individuals/entities have excluded themselves from the settlement. The Class Representatives and Class Counsel now respectfully request the Court's entry of its Final Approval Order of the class action settlement set forth in the Amended Settlement Agreement and Release, including all exhibits thereto ("Amended Settlement" or "Amended Settlement Agreement") which was attached as Exhibit 1 to the Joint Motion for Final Approval of Amended Class Action Settlement Agreement ("Joint Motion").

Settlement of a class action requires judicial approval, which usually consists of three steps: (i) preliminary approval of the terms of the settlement and conditional approval of the settlement class; (ii) dissemination of notice to the class; and (iii) the holding of a formal fairness hearing to determine whether the settlement should be granted final approval as fair, reasonable and adequate. The first two steps have occurred, and the Fairness Hearing is set for May 27, 2021. As further

discussed in these Suggestions, the Amended Settlement Agreement is fair, reasonable and adequate. Again, there have been no objections to the Settlement and only 16 potential Class Members opted out. Accordingly, Plaintiffs respectfully request the Court grant final approval to the Amended Settlement Agreement.

II. SUMMARY OF THE LITIGATION AND SETTLEMENT

A. Plaintiffs' Claims

Plaintiffs assert claims against Defendants in this action for alleged violations of consumer statutes, breach of warranty, fraudulent and negligent misrepresentations, negligence, and unjust enrichment – all arising out of the alleged purchase and use of O'Reilly 303 Tractor Hydraulic Fluid. Plaintiffs allege, among other things, that the label for O'Reilly 303 Tractor Hydraulic Fluid was deceptive and misleading for the reasons set forth in the Class Action Complaint. Plaintiffs assert such claims on behalf of a putative class of purchasers defined in paragraph 28 of the Amended Settlement Agreement as follows:

all persons and other entities who purchased O'Reilly 303 Tractor Hydraulic Fluid during the Class Period, as defined [in paragraph 6 of the Amended Settlement Agreement], in the United States, excluding purchases made in Missouri, and also excluding purchases made for resale.

The Class Period is determined by the longest applicable statute of limitations under the law of the state in which the unit of O'Reilly 303 Tractor Hydraulic Fluid was purchased with respect to claims for breach of warranty, fraud, unjust enrichment, personal property damage, and for violation of any applicable consumer protection statute permitting class-wide relief. The specific period for each State is set forth on Appendix A to the Settlement Agreement.

B. Litigation and Settlement History

i. The Missouri Action

On July 20, 2018, plaintiffs Joe Miller and Kenny Higgs, represented by Class Counsel, initiated a class-action lawsuit against Defendants and O'Reilly Automotive, Inc. in the Circuit

Court of Cass County, State of Missouri, Case No. 18CA-CC00153, asserting the above-described claims arising out of the alleged purchase and use of O'Reilly 303 Tractor Hydraulic Fluid. Defendants timely removed that action to the United States District Court for the Western District of Missouri, Case No. 4:18-cv-687-ODS (the "Missouri Action"). On December 11, 2018, plaintiffs Joe Miller, Kenny Higgs, Raymond Bieri, and Don Sherwood filed their First Amended Complaint in the Missouri Action. The plaintiffs in the Missouri Action, on behalf of themselves and a putative class of persons and entities that purchased O'Reilly 303 Tractor Hydraulic Fluid in Missouri since July 20, 2013, asserted the above-described claims against Defendants for alleged violations of the Missouri Merchandising Practices Act, breach of warranty, fraudulent and negligent misrepresentations, negligence, and unjust enrichment.

Plaintiffs in the Missouri Action, through Class Counsel, and Defendants engaged in significant and extensive fact investigation and discovery, including, for example: Plaintiffs' counsel obtaining and reviewing documents from the Missouri Department of Agriculture, the State of Georgia and the State of North Carolina relating to the testing and evaluation of 303 tractor hydraulic fluids; Plaintiffs' retaining expert witnesses to review and analyze investigative and discovery materials and discuss the analysis with Plaintiffs' Counsel; Defendants and Plaintiffs serving and responding to multiple sets of written discovery requests; and Defendants' production of more than 30,000 pages of documents that Plaintiffs' counsel reviewed and analyzed, including e-mail communications and substantial technical documents on the composition, blending, testing, and labelling of O'Reilly 303 Tractor Hydraulic Fluid.

Following some of the discovery efforts described above, the parties engaged in extensive, arms-length negotiations between counsel for Plaintiffs and counsel for Defendants in the Missouri Action, including a mediation in Kansas City, Missouri. After continued, post-mediation

settlement discussions, the parties reached a class-wide settlement of the Missouri Action, which was finally approved by the United States District Court for the Western District of Missouri on December 16, 2019.

ii. Subsequent Actions Filed Across the United States

On April 4, 2019, Plaintiffs Adam Sevy and Shawn Hornbeck, on behalf of themselves and a putative class of persons and entities that purchased O'Reilly 303 Tractor Hydraulic Fluid in Kansas, initiated a class-action lawsuit against Defendants in the United States District Court for the District of Kansas, Case No. 2:19-cv-02192-DDC-GEB, asserting claims for damages under Kansas law arising out of the purchase and use of O'Reilly 303 Tractor Hydraulic Fluid.

On June 6, 2019, Plaintiff Wayne Rupe, on behalf of himself and a putative class of persons and entities that purchased O'Reilly 303 Tractor Hydraulic Fluid in Iowa, initiated a class action lawsuit against Defendants in the United States District Court for the Southern District of Iowa, Case No. 4:19-cv-00164-RGE-SBJ, asserting claims for damages under Iowa law arising out of the purchase and use of O'Reilly 303 Tractor Hydraulic Fluid.

On June 25, 2019, Plaintiff David Guest, on behalf of himself and a putative class of persons and entities that purchased O'Reilly 303 Tractor Hydraulic Fluid in Alabama, initiated a class action lawsuit against Defendants in Jefferson County, Alabama, Case No. 01-CV-2019-902837, asserting claims for damages under Alabama law arising out of the purchase and use of O'Reilly 303 Tractor Hydraulic Fluid, which action Defendants timely removed to the United States District Court for the Northern District of Alabama on or about July 24, 2019, becoming Case No. 2:19-CV-01172-RDP.

On September 6, 2019, Plaintiff Robert Thiry, on behalf of himself and a putative class of persons and entities that purchased O'Reilly 303 Tractor Hydraulic Fluid in Texas, initiated a class

action lawsuit against Defendants in the United States District Court for the Southern District of Texas, Case No. 4:19-cv-03366, asserting claims for damages under Texas law arising out of the purchase and use of O'Reilly 303 Tractor Hydraulic Fluid.

On or about December 30, 2019, Plaintiffs Arno Graves, David Guest, Shawn Hornbeck, Wayne Rupe, Adam Sevy, Robert Thiry, Ron Nash, Todd Vohs, Bryan Nelms, Larry Muhs, Anthony Shaw, Rusty Shaw, Tim Sullivan, Roger Bias, Robert Withrow, and Ellen Allicks d/b/a Allicks Excavating, on behalf of themselves and a putative class of persons and entities that purchased O'Reilly 303 Tractor Hydraulic Fluid throughout the United States, excluding Missouri, initiated this class-action lawsuit against Defendants in the United States District Court for the Western District of Missouri, Case No. 4:19-cv-01038, asserting claims for damages under the laws of various different states in which O'Reilly 303 Tractor Hydraulic Fluid was purchased and arising out of the purchase and use of that product.

The claims from each of the Kansas, Iowa, Alabama, and Texas actions were transferred to the Western District of Missouri and subsequently consolidated into this action. The Representative Plaintiffs thus include sixteen (16) Class Representatives who purchased the O'Reilly 303 Tractor Hydraulic Fluid product in numerous states.

C. The Settlement Benefits and Settlement Class

1. The Settlement Class

The Settlement Class defined in the Parties' Amended Settlement Agreement consists of effectively the same class pled in Plaintiffs' Complaint, namely:

all persons and other entities who purchased O'Reilly 303 Tractor Hydraulic Fluid during the Class Period, as defined [in paragraph 6 of the Amended Settlement Agreement], in the United States, excluding purchases made in Missouri, and also excluding purchases made for resale.

2. *Settlement Payments*

Under the terms of the Amended Settlement Agreement, Defendants will establish a Class Settlement Fund in the amount of \$8,501,361.10, which is an amount representing more than 33% of the total net sales of O’Reilly 303 Tractor Hydraulic Fluid in the United States (other than in the State of Missouri) during the Class Period. The Class Settlement Fund provides Settlement Class Members with an estimated minimum payment equal to between 30% and 41% of the net sales price paid for the units of O’Reilly 303 Tractor Hydraulic Fluid purchased during the applicable Class Period. As explained in paragraph 74 and Appendix A of the Amended Settlement Agreement, the variation in award percentages accounts for the different laws of each State in which the product was purchased and limitations periods associated with those laws. As described in detail in paragraph 74 of the Amended Settlement Agreement, purchases fall into three (3) groupings based on the applicability of and remedies provided by various states’ consumer protection statutes.

The following is a summary of the payout amounts that are scheduled for Class Members out of the Settlement Fund:

<u>Distribution Range</u>	<u>Number of Settlement Class Members</u>	<u>Amount</u>
\$5.00 and under	1,361	\$5,584.95
\$5.01 – \$10.00	38,942	\$257,422.70
\$10.01 – \$25.00	63,965	\$1,137,959.19
\$25.01 – \$50.00	31,076	\$1,086,749.31
\$50.01 - \$100.00	17,543	\$1,208,605.88
\$100.01 - \$250.00	9,137	\$1,383,962.97
\$250.01 - \$500.00	2,624	\$901,714.80
Over \$500.00	<u>1,742</u>	<u>\$2,033,361.30</u>
Total	166,390	\$8,015,361.10

After an offset in the amount of \$476,000 to cover RG/2's total estimated settlement administration and notice costs, and \$10,000 to cover any unanticipated adjustments to the calculated distribution amounts to members of the Settlement Class, there will remain sufficient funds to pay the above-noted distribution amounts, with each Settlement Class Member will receive a pro rata increase of approximately 30 percent to his, her, or its distribution amount.

As set forth above, described in detail in the Amended Settlement Agreement, and further discussed below, the Amended Settlement provides significant cash payments to the Class Members in a way that addresses the fundamental issues underlying this case.

3. *Named Plaintiffs' Incentive Awards, Attorneys' Fees and Expenses*

Pursuant to the Amended Settlement Agreement, Plaintiffs' counsel has separately applied for incentive awards for the Class Representative Plaintiffs and for an award of attorneys' fees and reimbursement of expenses. (Doc. Nos. 31, 32). Defendants have agreed not to contest and to separately pay, in addition to the Class Settlement Fund and the fees and expenses of settlement administration, the following amounts, if awarded by the Court: (a) a \$5,000.00 incentive award to each of the sixteen (16) Class Representative Plaintiffs, (b) an approximate 25% contingency fee to Class Counsel, based on the \$8,501,361.10 Class Settlement Fund, in the amount of \$2,105,340.28, and (c) \$25,000.00 to Class Counsel for expense reimbursements.

III. ARGUMENT

A. Appropriate Notice Was Provided to Settlement Class Members

Due process requires that Class Members be provided the best notice practicable, reasonably calculated to apprise them of the pendency of the action and affording them the opportunity to object. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985); Fed. R. Civ. P. 23(c)(2)(B). Here, as detailed in the Declaration of Tina Chiango of RG/2, attached as Exhibit 2 to the Joint Motion for Final Approval of Proposed Class Action Settlement, the Class was notified

of the settlement by direct mail, by email, by newspaper and other print media publication, and by in-store notice.

Direct notice has been provided to approximately 174,321 members of the Settlement Class, estimated to comprise 61 percent of the total estimated members of the Settlement Class. In conjunction with broad national and regional publication notice reaching an estimated 2.3 million readers and widespread in-store notice at O'Reilly retail locations throughout the country, notice provided to members of the Settlement Class in this matter readily satisfies the requirements of Fed. R. Civ. P. 23 and due process standards.

In terms of direct notice, RG/2 successfully mailed the Mailed Class Notice to 170,583 members of the Settlement Class, and successfully emailed the Mailed Class Notice to an additional 3,738 members of the Settlement Class, making the total number provided direct notice 174,321. The mailed notice provided substantial information about the settlement, provided the settlement website address and information, and contained a specific, personalized listing of the number and size of purchases reflected for the Class Member in Defendants' records, as well as a calculation of the initial total distribution amount determined to be paid that Class Member. In the event that any of the Settlement Class Members believed Defendants' purchase records were not accurate, a Request for Correction Form was available online so that the Class Member could submit what they believed to be the correct purchase information. Also available online with a purchaser-specific password was each Class Member's detailed and specific purchase history information.

RG/2 also provided substantial publication notice as well. RG/2 caused the Summary Class Notice, as modified and ultimately approved by the Court, to be published in six regional publications, 40 weekly newspapers in Mississippi, and three nationally based publications, all

targeted at farmers and the agriculture community—the expected demographics of persons who purchased O’Reilly 303 Tractor Hydraulic Fluid. The six regional publications and newspapers were selected to target states with higher volumes of O’Reilly 303 Tractor Hydraulic Fluid sales to class members, including Alabama, Arkansas, California, Mississippi, Oklahoma, Tennessee, and Texas. There are estimated to be approximately 168,000 or more members of the Settlement Class in these seven states who account for an estimated 59 percent of the total settlement claim amounts. Collectively, the print publications are estimated to have reached over 2.3 million subscribers and newsreaders nationwide, including approximately 1.2 million in the seven states with higher sales volumes.

In addition to this general publication, notice of the settlement was also provided through robust and widespread in-store notice at O’Reilly retail stores throughout the country. As explained in the Third Affidavit of Matt Pickering, attached as Exhibit 3 to the Joint Motion, O’Reilly posted a copy of the Summary Notice in approximately 2,819 O’Reilly stores throughout the country that, together, account for 90 percent or more of both the total claim amount under the settlement and of O’Reilly 303 Tractor Hydraulic Fluid sales to members of the Settlement Class. Those 2,819 stores included all of the stores where O’Reilly 303 Tractor Hydraulic Fluid was sold to members of the Settlement Class in the select seven states with higher volumes of O’Reilly 303 Tractor Hydraulic Fluid sales to Class Members, comprising Alabama, Arkansas, California, Mississippi, Oklahoma, Tennessee, and Texas.

The full form detailed notice, claim form, correction form, settlement agreement, and other key materials were also placed on a website maintained by Settlement Administrator for purposes of providing additional information and documents to Class Members. The website, www.nationwideoreilly303thfsettlement.com, included (i) a Homepage setting forth a brief

summary of the Amended Settlement and potential Class Members' rights under the Settlement; (ii) pdf copies of the Notice, Claim Form, and Request for Correction Form, as well as a link to the Claims online filing portal; and, (iii) Court Documents that included the Settlement Agreement and Release, Preliminary Approval Order, and documents regarding the Application for Incentive Awards and Attorneys' Fees. In addition to the website and claims-filing portal, the Settlement Administrator maintained an email address and toll-free telephone number for the receipt of Settlement Class Member inquiries.

Based on the notice summarized above and explained more fully in Ms. Chiango's declaration, RG/2 has concluded that notice was provided to at least 75 percent of the Settlement Class, and that the provided notice was the best notice practicable under the circumstances, including direct, individual notice to all members of the Settlement Class who could be identified through reasonable effort, in accordance with applicable standards under Fed. R. Civ. P. 23 and due process.

The substance and methods of notice were adequate and provided the Class with the material information regarding the Settlement and their rights pertaining to it. *See, e.g. Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 908 (8th Cir. 2018).

B. Standard for Final Settlement Approval

A class action may not be settled without the Court's approval and the Court must ensure that "the proposed settlement is fair, reasonable and adequate." *In Re Texas Prison Litigation*, 191 F.R.D. 164, 173 (W.D. Mo. 1999). The law favors settlement, especially in class actions and other complex cases where significant resources can be conserved by avoiding the time, cost, and rigor of prolonged litigation. *See Little Rock School Dist. v. Pulaski County Special School Dist.*, 921 F.2d 1371 (8th Cir. 1990). "[S]ettlement agreements are presumptively valid." *Id.* at 1391.

Approval of a class settlement is in the Court's wide discretion. *Id.* In reviewing decisions approving class settlements, the appellate courts simply ask "whether the District Court considered all relevant factors, whether it was significantly influenced by an irrelevant factor, and whether in weighing the factors it committed a clear error of judgment." *Id.* "Strong public policy favors agreements, and courts should approach them with a presumption in their favor." *Id.* at 1388; *see also Rawa v. Monsanto Co.*, 934 F.3d 862, 869 (8th Cir. 2019).

Rule 23(e) requires the Court to review a class settlement agreement "to ensure that the agreement is not the product of fraud or collusion and that, taken as a whole, it is fair, adequate, and reasonable to all concerned." *Rawa v. Monsanto Co.*, 2018 WL 2389040 ((E.D. Mo. May 25, 2018); *see also, In re Target Corp. Customer Data Security Breach Litig.*, 892 F.3d 968, 977 (8th Cir. 2018); *Pollard v. Remington Arms Co., LLC*, 896 F.3d 900, 908 (8th Cir. 2018); *In re Wireless Tel. Fed. Cost Recovery Fees Litig.*, 396 F.3d 922, 934 (8th Cir. 2005). A Settlement meets the standard for final approval as it is "fair, reasonable and adequate." Fed. R. Civ. P. 23(e)(1)(c). In making this determination, the Court should consider the following factors:

1. The merits of the Plaintiffs' case, weighed against the terms of the settlement;
2. The Defendant's financial condition;
3. The complexity and expense of further litigation; and
4. The amount of opposition to the settlement.

Van Horn v. Trickey, 840 F.2d 604, 606 (8th Cir. 1988); *see also, Keil v. Lopez*, 862 F.3d 685, 695 (8th Cir. 2017). "The first factor is the `single most important factor.'" *Huyer v. Njema*, 847 F.3d 934, 939 (8th Cir. 2017)(quoting *Van Horn*, 840 F.2d at 607).

It is left to the District Court's discretion to determine that the Settlement is not the product of fraud or collusion and that it is fair, reasonable, and adequate:

“Such a determination is committed to the sound discretion of the trial judge. Great weight is accorded his views because he is exposed to the litigants, and their strategies, positions and proofs. He is aware of the expense and possible legal bars to success. Simply stated, he is on the firing line and can evaluate the action accordingly.”

Van Horn, 840 F.2d at 606-07; *see also Rawa*, 934 F.3d at 869; *Pollard*, 896 F.3d at 907.

“The district court need not make a detailed investigation consonant with trying the case; it must, however, provide the appellate court with a basis for determining that its decision rests on ‘well-reasoned conclusions’ and is not ‘mere boilerplate.’” *Wireless Fee Litig.* 396 F.3d at 932-33 (quoting *Van Horn*, 840 F.2d at 607). “In evaluating the settlement, the Court ‘should keep in mind the unique ability of class and defense counsel to assess the potential risks and rewards of litigation.’” *In re BankAmerica Corp. Sec. Litig.*, 210 F.R.D. 694, 700 (E.D. Mo. 2002) (quoting Fed. Judicial Ctr., *Manual for Complex Litig.* § 30.42 at 240 (3d ed. 1997)). “Courts may rely on the judgment of experienced counsel on the merits of a class action settlement.” *Daniels v. Greenkote IPC, Inc.*, 2013 WL 1890654, at *2 (E.D. Mo. May 6, 2013)(citation omitted).

Applying these factors, the Court should grant the Amended Settlement final approval.

C. The Amended Settlement Meets the Standard for Final Approval

1. The Merits of the Case, Weighed Against the Terms of Settlement

The most important factor in determining the fairness, reasonableness and adequacy of a class settlement is “the strength of the case for Plaintiffs on the merits, balanced against the amount offered in settlement.” *In re Wireless*, 396 F.3d at 933. Although Plaintiffs believe they would have prevailed in class certification and on the merits if this case had proceeded to trial, Plaintiff nonetheless recognize the difficulties presented by class certification issues and the risk and uncertainty in this litigation. Defendants’ counsel was confident that Defendants had several,

strong defenses to class certification and to the claims asserted on behalf of the Class. The parties discussed those defenses in detail throughout the settlement negotiations.

Class Counsel conducted adequate discovery and performed a sufficient investigation into the underlying basis of the claims in order to make an intelligent evaluation of the possible outcome of the litigation and the settlement terms. Class Counsel performed substantial discovery in the original Missouri action which included serving significant written discovery and obtaining more than 30,000 pages of documents from Defendants. Class counsel also obtained documents and test results from the Missouri Department of Agriculture and the states of Georgia and North Carolina, as well as consulting with experts in the tractor hydraulic fluid and lubricant fields. Class Counsel further performed extensive research and analysis of the legal principles applicable to the claims against Defendants and class certification of those claims, as well as to the potential defenses to those claims and certification.

Through their investigation and the substantial document production and review in this litigation, as well as through their consultations with experts, Class Counsel have gained a comprehensive knowledge of the facts relating to the respective claims and defenses and have sufficient evidence on which to base an intelligent assessment of the Amended Settlement. Based on their knowledge of the case and the applicable law, as well as their experience in similar complex litigation and class actions, Plaintiffs' counsel believe the Amended Settlement is fair, reasonable and adequate. The Class Representatives have also approved the Amended Settlement.

The class-wide financial and non-financial relief is a significant victory for Settlement Class Members given the uncertainty whether Plaintiffs would have prevailed on class certification, at trial, and on appeal. When these risks, as well as the uncertainties and risks inherent in any litigation, are balanced against the benefits provided by the Amended Settlement

– here cash payments totaling more than \$8 million (94% of the Class Settlement Fund) and other benefits to Settlement Class Members – Plaintiffs submit that the Amended Settlement is fair and adequate and should receive final approval. In light of these positions and the risks of litigation for both sides, the Amended Settlement provides substantial benefits to Settlement Class Members and represents a reasonable resolution of the claims on a class-wide basis. Even if the Plaintiffs’ were successful on class certification and at trial, there was a very strong likelihood that Defendants would appeal the result. Thus, even if Plaintiffs were successful at class certification, trial, and on appeal, it could be years before the Class Members would receive any benefits.

The Amended Settlement of this case provides immediate financial relief to more than 166,000 Class Members. The Amended Settlement provides for a Class Settlement Fund totaling \$8,501,361.10 of which approximately \$8,015,361.10 will be distributed to members of the Settlement Class, and the remainder of which , approximately \$476,000, will cover total estimated notice and administration costs. The settlement provides substantial benefits to Settlement Class Members including payments in an amount initially calculated to be between 30% and 41% of the net sales price paid for the units of O’Reilly 303 Tractor Hydraulic Fluid purchased by Settlement Class Members during the Class Period. Based on the Settlement Fund amount, those original minimum payment percentages for each Settlement Class Member will actually increase, pro rata, to be between approximately 40% and 50%.

The following is a summary of the payout amounts that are scheduled for Class Members out of the Settlement Fund:

<u>Distribution Range</u>	<u>Number of Settlement Class Members</u>	<u>Amount</u>
\$5.00 and under	1,361	\$5,584.95
\$5.01 – \$10.00	38,942	\$257,422.70
\$10.01 – \$25.00	63,965	\$1,137,959.19

\$25.01 – \$50.00	31,076	\$1,086,749.31
\$50.01 - \$100.00	17,543	\$1,208,605.88
\$100.01 - \$250.00	9,137	\$1,383,962.97
\$250.01 - \$500.00	2,624	\$901,714.80
Over \$500.00	<u>1,742</u>	<u>\$2,033,361.30</u>
Total	166,390	\$8,015,361.10

In addition to these payments directly to Settlement Class Members from the Class Settlement Fund, Defendants will separately pay Class Counsel’s fees and expenses, as well as the Class Representatives’ incentive awards, such that those amounts will not detract from the distributions to Settlement Class Members.

In return for the consideration to be provided under the Amended Settlement, Defendants receive a reasonable release of liability from the Settlement Class Members related to the purchase and use of O’Reilly 303 Tractor Hydraulic Fluid. The release is not overly broad and only releases Settlement Class Members’ claims related to the purchase and use of O’Reilly 303 Tractor Hydraulic Fluid.

The strength of the Amended Settlement is shown in the response of the Class. With direct notice sent to more than 170,000 members of the Settlement Class containing each Class Member’s specific purchases and distribution amounts, publication notice provided to more than 2.3 million readers of various publications nationwide targeting the expected demographics of class members, and notice posted in O’Reilly stores throughout the country that sold high volumes of O’Reilly 303 Tractor Hydraulic Fluid, not one Class Member objected to the Amended Settlement or his/her/its award. The benefits provided by the Amended Settlement, weighed against the merits of the case, support this Court’s grant of final approval.

2. *The Defendants’ Financial Condition*

There is no indication that the financial condition of any of the Defendants is such to have been unable to pay any judgment that might have been entered in this case. Therefore, this is not

a factor in approving the Settlement. Even though Defendants “could likely afford a greater settlement, the result is quite favorable.” *See Wiles v. Sw. Bill Tel. Co.*, 2011 WL 2416291, at *3 (W.D. Mo. June 9, 2011) (citation omitted). “Although it appears that the defendant bank has the ability to withstand a greater financial judgment . . . given the substantial risks and obstacles faced by the classes in proceeding to trial . . . such factor does not weigh against approving the settlement.” *BankAmerica Corp.*, 210 F.R.D. at 702.

3. *The Complexity and Expense of Further Litigation*

If the claims asserted in the action were not settled by voluntary agreement among the parties, future proceedings (including appeals) would be protracted and expensive, involve highly complex legal and factual issues relating to, among other things, class certification, liability, and damages, and would involve substantial uncertainties, delays, and other risks inherent in litigation.

“Class actions, in general, place an enormous burden of costs and expense upon parties.” *Keil*, 862 F.3d at 698 (quoting *Marshall*, 787 F.3d at 512). With resolution occurring in this case at an early stage, this Court should therefore find that this factor weighs heavily in favor of final approval. *See Keil*, 862 F.3d at 698 (noting that this factor favors settlement where “plaintiffs believe that the claims in the litigation have merit,” but “class counsel recognize and acknowledge the expense and length of continued proceedings necessary to prosecute the litigation through summary judgment, class certification, and appeals.”)

4. *The Amount of Opposition to the Amended Settlement*

The reaction of Class Members to the Amended Settlement has been positive, with only 16 individuals/entities opting out and none filing objections. Accordingly, this factor strongly favors approval. *See Wiles*, 2011 WL 2416291, at *4 (“Having no objectors demonstrates strong support for the value and benefits delivered by the settlement” and so this “factor weighs heavily in favor

of approval of the settlement.”); *McClellan v. Health Sys. Inc.*, 2015 WL 12426091, at *6 (W.D. Mo. June 1, 2015)(finding “final factor strongly favors approval” where “[n]o Class Member filed an objection ... and only fourteen individuals opted out”).

5. *The Amended Settlement Resulted from Arms’ Length Negotiation*

The Amended Settlement Agreement before the Court is the product of intensive, arm’s-length negotiations. In the underlying Missouri Action, the negotiations included a formal mediation with experienced class action mediator Phil Miller. After the resolution of the Missouri Action and during the initial stages of the Kansas, Iowa, Alabama, and Texas actions, further negotiations occurred which led to this Settlement which is consistent with that which was granted final approval in the Missouri Action. The negotiations were informed by the great deal of document discovery, investigation and preparation undertaken by the Parties prior to that point. Negotiations were conducted by Plaintiffs’ counsel highly experienced in pursuing and resolving complex litigation and class action matters and Defendants’ counsel similarly experienced in defending such cases. Accordingly, the settlement is entitled to a preliminary presumption of fairness. *See, e.g., In re BankAmerica Corp. Securities Litig.*, 210 F.R.D. 694, 700 (E.D. Mo. 2002) (“In evaluating the settlement, the Court should keep in mind the unique ability of class and defense counsel to assess the potential risks and reward of litigation; a presumption of fairness, adequacy and reasonableness may attach to a class settlement reached in arms-length negotiations between experienced, capable counsel after meaningful discovery.”); *In re Austrian & German Bank Holocaust Litig.*, 80 F.Supp. 2d 164, 173-74 (S.D.N.Y. 2000) (“If the Court finds that the Settlement is the product of arm’s length negotiations conducted by counsel knowledgeable in complete class litigation, the settlement will enjoy a presumption of fairness. Once the settlement is presumed fair, it is not for the court to substitute its judgment as to a proper settlement for that of such competent counsel”)

IV. CONCLUSION

Based on the above and foregoing, Plaintiffs respectfully ask that the Court grant final approval of the Amended Settlement and enter the proposed Final Approval Order.

Date: May 13, 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
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
bcarr@wagblaw.com
bwhite@wagblaw.com

CLAYTON JONES, ATTORNEY AT LAW

BY: /s/ Clayton A. Jones
Clayton Jones MO 51802
P.O. Box 257
405 W. 58 Hwy.
Raymore, MO 64083
Office: (816) 318-4266

Fax: (816) 318-4267
clayton@claytonjoneslaw.com

LUNDBERG LAW FIRM, P.L.C.

BY: /s/ Paul D. Lundberg
Paul D. Lundberg, IA Bar #W00003339
600 Fourth St., Suite 906
Sioux City, Iowa 51101
Tel: 712-234-3030
paul@lundberglawfirm.com

**BEASLEY, ALLEN, CROW
METHVIN, PORTIS & MILES, P.C.**

BY: /s/ Rhon E. Jones
Rhon E. Jones, AL
Tucker Osborne, AL
218 Commerce St.
Montgomery, AL 36104
Rhon.Jones@BeasleyAllen.com

EMERSON FIRM, PLLC

BY: /s/ John G. Emerson
John G. Emerson, TX Bar No. 06602600
830 Apollo St.
Houston, TX 77058
Tel: (800) 551-8649
Fax: (501) 286-4659
Email: jemerson@emersonfirm.com

BOLEN ROBINSON & ELLIS, LLP

BY: /s/ Shane M. Mendenhall
Jon D. Robinson
Joshua Rohrscheib
Shane M. Mendenhall – ARDC No. 6297182
Zachary T. Anderson - ARDC No. 6329384
202 S. Franklin St., 2nd Floor
Decatur, IL 62523
Phone: 217-429-4296
Fax: 217-329-0034
Email: smendenhall@brelaw.com
Email: zanderson@brelaw.com

BRYANT LAW CENTER, P.S.C.

BY: /s/ Mark P. Bryant
Mark. P. Bryant KY Bar #08755
P.O. Box 1876
Paducah, KY 42002-1876
Phone: (270) 442-1422
Fax: (270) 443-8788
Mark.bryant@bryantpsc.com
Austin.kennady@bryantpsc.com

GRIFFITH LAW CENTER, PLLC

BY: /s/ Travis A. Griffith
Travis A. Griffith, WVSB No. 9343
One Bridge Place
10 Hale Street, Suite 203
Charleston, WV 25301
T: (304) 345-8999
F: (304) 345-7638
E: travis@protectingwv.com

ATTORNEYS FOR PLAINTIFFS

AND SETTLEMENT CLASS MEMBERS

CERTIFICATE OF SERVICE

The undersigned hereby certifies that this document was filed electronically with the United States District Court for the Western District of Missouri, with notice of case activity to be generated and sent electronically by the Clerk of the Court to all designated persons this 13th day of May 2021.

/s/ Dirk Hubbard