

**UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION**

PAUL WEISHAAR, on behalf of himself and
all others similarly situated,

Plaintiffs,

v.

O'REILLY AUTOMOTIVE STORES, INC.,

Defendant.

Case No.: 4:17-cv-02384

Jury Trial Demanded

NOTICE OF REMOVAL

Defendant O'Reilly Automotive Stores, Inc. ("O'Reilly" or "Defendant"), hereby gives notice that, pursuant to 28 U.S.C. §§ 1332, 1441, 1446, and 1453 this civil action filed by Plaintiff Paul Weishaar ("Plaintiff") is hereby removed from the Circuit Court of the City of St. Louis, Missouri to the United States District Court for the Eastern District of Missouri, Eastern Division. In support of this Notice of Removal and this Court's jurisdiction, Defendant O'Reilly states:

1. On July 24, 2017, Plaintiff filed a putative Class Action Petition in the Circuit Court of the City of St. Louis, Missouri (the "Petition") (attached hereto as Exhibit 1).
2. Plaintiff brings this action pursuant to Mo. Rev. Stat. §407.025, on behalf of a proposed class consisting of "All individuals who purchased in Missouri Defendant's windshield wiper fluid products that were advertised and marketed as protecting down to -20 degrees Fahrenheit." Petition at ¶17(1).
3. The Petition asserts a cause of action for violation of Missouri's Merchandising Practices Act ("MMPA"). See Petition ¶¶27-30.

Timeliness of Removal

4. Section 1446(b)(1) requires a notice of removal to be filed within 30 days of the service of a complaint upon the defendants. *See Murphy Bros., Inc. v. Michetti Pipe Stringing, Inc.*, 526 U.S. 344, 354 (1999) (30-day time limit for removal runs from date of formal service of the initial complaint). O’Reilly was served with the Petition on August 10, 2017. Accordingly, this Notice is timely filed.

CAFA Jurisdiction Pursuant to 28 U.S.C. § 1332(d)

5. This civil action is removable because this Court has jurisdiction of this action under 28 U.S.C. § 1332(d) (as amended by the Class Action Fairness Act of 2005 (“CAFA”)).

6. Under 28 U.S.C. § 1332(d), this Court has original jurisdiction over class actions in which (i) there are at least 100 members in the plaintiff’s proposed class, (ii) any member of the putative class is a citizen of a state different from any defendant, and (iii) the matter in controversy exceeds the sum or value of \$5 million, exclusive of interest and costs, based on the aggregated claims of the class members. All of these requirements are satisfied.

The Class Exceeds 100 Members.

7. CAFA’s first requirement—that class membership be no less than 100 (28 U.S.C. § 1332(d)(5)(B))—is satisfied.

8. According to the Petition, the proposed class consists of “All individuals who purchased in Missouri Defendant’s windshield wiper fluid products that were advertised and marketed as protecting down to -20 degrees Fahrenheit.” Petition at ¶17(1). This proposed class is “so numerous that joinder of all Class members is impracticable.” Petition at ¶20.

Diversity of Citizenship Exists.

9. CAFA’s second requirement—that any one member of the purported class is a citizen of a state different from any defendant (28 U.S.C. § 1332(d)(2)(A))—is also satisfied.

10. O’Reilly is a Missouri corporation with its principal place of business in Springfield, Missouri. *See* Petition ¶2.

11. Per the Petition, the class members consist of all individuals who purchased Defendant’s windshield wiper fluid products that were advertised and marketed as protecting down to -20 degrees Fahrenheit in the state of Missouri. Petition at ¶17(1). It is reasonable to conclude, of course, that not everyone who purchases a product in Missouri is a Missouri citizen. “[M]any people and companies from [] neighboring state[s] travel into [Missouri] to purchase goods.” *See Dicuio v. Brother Int’l Corp.*, No. 11-CV-1447 FLW, 2011 WL 5557528, at *2 (D.N.J. Nov. 15, 2011). It also reasonable to conclude that some purchasers who may have previously been Missouri citizens are no longer Missouri citizens. *Id.*

12. Accordingly, CAFA’s requirement of minimal diversity is satisfied.

The Amount in Controversy Requirement Is Satisfied.

13. CAFA’s third requirement—that the aggregate amount in controversy exceeds \$5,000,000 exclusive of interest and costs (28 U.S.C. § 1332(d)(2))—is satisfied as well.

14. Under CAFA, “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000, exclusive of interest and costs.” 28 U.S.C. § 1332(d)(6).

15. “[W]hen determining the amount in controversy, the question ‘is not whether the damages *are* greater than the requisite amount, but whether a fact finder *might* legally conclude that they are.’” *Raskas v. Johnson & Johnson*, 719 F.3d 884, 887 (8th Cir. 2013) (emphasis in

original) (quoting *Bell v. Hershey Co.*, 557 F.3d 953, 959 (8th Cir. 2009)). The defendant's Notice of Removal need include only a plausible allegation that the amount in controversy exceeds \$5,000,000; the Notice of Removal need not contain evidentiary submissions. *Dart Cherokee Basin Operating Co., LLC v. Owens*, 135 S. Ct. 547, 551, 554 (2014).

16. The Plaintiff's statement in the Petition that the amount in controversy will not exceed \$5 million for the entire class, Petition ¶6, does not prevent removal of this action. *See Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 596 (2013) (holding that the named plaintiff's stipulation that the class will not seek relief exceeding \$5,000,000 is not binding on the putative class members and should thus be ignored).

17. The Petition seeks economic, monetary, actual damages, consequential, compensatory, or statutory damages, whichever is greater. Petition, Prayer for Relief (B). The Petition also seeks to recover the costs of the lawsuit, attorneys' fees and reimbursement of reasonable expenses. Petition, Prayer for Relief (B).

18. Total sales of O'Reilly's windshield wiper fluid products in Missouri from January 1, 2010, through September 5, 2017, have been in excess of \$6.15 million. *See* Affidavit of Amy Green in Support of Defendant O'Reilly Automotive Stores, Inc.'s Notice of Removal ("Green Affidavit") at ¶5, attached hereto as Exhibit 2. The allegations, claims and prayer of the Petition put this full amount in controversy as possible claimed damages or restitution. *See* Petition at ¶¶7-8 (alleging that since 2010, O'Reilly sold the allegedly defective product).

19. The Petition seeks attorneys' fees. *See* Petition, Prayer for Relief (C). Attorneys' fees are potentially available under the MMPA. Mo. Rev. Stat. §407.025. Courts in the Eighth Circuit have held that attorneys' fees of 40 percent may be included in calculations of the amount in controversy in a putative class action. *See Basham v. Am. Nat'l Cnty. Mut. Ins. Co.*, 979 F.

Supp. 2d 883, 890 (W.D. Ark. 2013); *Knowles v. Standard Fire Ins. Co.*, No. 4:11-CV-4044, 2013 WL 3968490, at *6 (W.D. Ark. Aug. 2, 2013). In this case, the attorneys' fees calculation puts an additional \$2.46 million in controversy (40% of \$6.15 million).

20. Thus, without conceding any merit in the claims Plaintiff attempts to assert or the damages claimed, it is legally possible that the putative class could recover more than \$5 million, representing the sum of compensatory damages and attorneys' fees. Punitive damages are also potentially available under the MMPA.

21. Federal jurisdiction exists over this putative class action unless Plaintiff can establish that recovery of more than \$5,000,000 in this putative class action would be legally impossible. "Once the proponent of federal jurisdiction has explained plausibly how the stakes exceed \$5 million . . . then the case belongs in federal court unless it is legally impossible for the plaintiff to recover that much.' Even if it is highly improbable that the Plaintiffs will recover the amounts Defendants have put into controversy, this does not meet the legally impossible standard." *Raskas*, 719 F.3d at 888 (quoting *Spivey v. Vertrue, Inc.*, 528 F.3d 982, 986 (7th Cir. 2008)) (internal citation omitted).

The Other Removal Prerequisites Have Been Satisfied.

22. The procedural requirements set forth in 28 U.S.C. § 1446 have also been met.

23. The U.S. District Court for the Eastern District of Missouri is the federal judicial district encompassing the Circuit Court of the City of St. Louis, where this suit was originally filed. Venue is therefore proper in this district pursuant to 28 U.S.C. §§ 1441(a), 1446(a).

24. Pursuant to 28 U.S.C. § 1446(a) and E.D. Mo. L.R. 2.03, copies of all process, pleadings, and other papers filed in the state court action are attached hereto as Exhibit 1.

25. Pursuant to 28 U.S.C. § 1446(d), undersigned counsel is serving this Notice of Removal on Plaintiff's counsel and is filing a copy of this Notice of Removal with the Circuit Court of the City of St. Louis.

26. The allegations of this Notice of Removal are true and correct and this cause is within the jurisdiction of the United States District Court for the Eastern District of Missouri, Eastern Division, and this cause is removable to the United States District Court for the Eastern District of Missouri, Eastern Division.

27. If any question arises as to the propriety of the removal of this action, O'Reilly requests the opportunity to submit a brief and present oral argument in support of its position that this case was properly removed.

WHEREFORE, Defendant O'Reilly Automotive Stores, Inc. respectfully gives notice that this action is removed from the Circuit Court of the City of St. Louis, Missouri to the United States District Court for the Eastern District of Missouri.

Dated: September 8, 2017

Respectfully submitted,

HEPLERBROOM LLC

By: /s/ W. Jason Rankin

Gerard T. Noce, #27636

W. Jason Rankin, #62672

One Metropolitan Square

211 North Broadway Suite 2700

St. Louis, MO 63102

(314) 241-6160

(314) 241-6116 - Facsimile

gtn@heplerbroom.com

wjr@heplerbroom.com

*Counsel for the Defendant O'Reilly Automotive
Stores, Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 8th day of September, 2017, a true and correct copy of the foregoing document was served upon the following Counsel of Record via the Court's electronic notification system, electronic mail, and/or U.S. Mail, postage prepaid:

Ryan P. Horace
SWMW Law, LLC
701 Market Street, Suite 1000
St. Louis, MO 63101
(314) 480-5180
ryan@swmwlaw.com

Steven J. Stolze
Holland Law Firm
300 N. Tucker, Suite 800
St. Louis, MO 63101
(314) 640-7550
stevenstolze@yahoo.com

Attorneys for Plaintiffs'

/s/ W. Jason Rankin _____

EXHIBIT 1

IN THE CIRCUIT COURT
STATE OF MISSOURI
TWENTY-SECOND JUDICIAL CIRCUIT
(City of St. Louis)

PAUL WEISHAAR, on behalf of himself and)	JURY TRIAL DEMANDED
all others similarly situated,)	
)	Cause No.:
Plaintiff,)	
)	
vs.)	
)	
O'Reilly Automotive Stores, Inc.)	
)	
Defendant.)	

CLASS ACTION PETITION

COMES NOW Plaintiff on behalf of himself and all other similarly situated, and for his causes of action states and alleges as follows:

PARTIES

1. Plaintiff is a citizen and resident of St. Louis, Missouri.
2. Defendant **O'Reilly Automotive Stores, Inc.** is a for profit corporation with its principal place of business in Springfield, MO. Defendant has and continues to advertise and sell its products, described herein, in the City of St. Louis, Missouri.

JURISDICTION AND VENUE

3. Pursuant to § 508.010.4 RSMo, the Twenty-Second Judicial Circuit, State of Missouri is an appropriate venue because the false representations and deceptive practices occurred in the City of St. Louis, Missouri, to Plaintiff and other residents of St. Louis, who purchased Defendant's product in the City of St. Louis, Missouri.

4. The Circuit Court of the City of St. Louis, Missouri has personal jurisdiction over Defendant because Defendant transacts business in Missouri, with its various advertising methods and product sales directed toward Missouri residents. Additionally, Plaintiff purchased the product(s) at issue in the City of St. Louis, Missouri.

5. This is a civil case in which the Twenty-Second Judicial Circuit, State of Missouri has jurisdiction pursuant to Mo. Const., Art. V. § 14.

6. The amount in controversy for all proposed class members does not exceed five million dollars (\$5,000,000.00).

FACTUAL ALLEGATIONS COMMON TO ALL COUNTS

7. Since 2010, Defendant herein was in the business of selling and advertising for sale certain merchandise or retail products in trade or commerce within the City of St. Louis, and other cities and counties throughout the State of Missouri, to wit: windshield wiper fluid, advertised and marketed as protecting down to -20 degrees Fahrenheit.

8. Since 2010, Defendant advertised and marketed that the products were fit to protect or function as windshield wiper fluid, a cleaning solution for automotive windshields, when the outside ambient temperature was as low as the stated temperature on the packaging.

9. In fact, however, and as Defendant well knew at the time, its products did not perform to the advertised specifications when the product was used as marketed, advertised, and intended, to wit: the windshield wiper fluid solidified or was otherwise unable to be pumped through a vehicle's windshield wiper fluid system as to enable a driver to clean his or her windshield by use of the system, after the solution was poured into in a vehicles windshield wiper fluid reservoir tank, during the normal course of a vehicle's operation.

10. Since 2010, Plaintiff purchased Defendant's windshield wiper fluid, advertised as protecting down to the advertised temperature, numerous times, primarily for personal, family, or household purposes.

11. When Defendant marketed, advertised, distributed, and sold Plaintiff its windshield wiper fluid, the product did not protect down to the freezing temperature advertised, marketed, warranted, guaranteed, or promised on the product label, which comprised all terms, besides price, of the contract for sale between Plaintiff and Defendant.

12. Plaintiff used Defendant's windshield wiper fluid as it was intended to be used, during and after placing the windshield wiper fluid into Plaintiff's vehicle's windshield wiper fluid systems.

13. While using Defendant's products within the advertised operable temperature range as designated on each windshield wiper fluid bottle, Plaintiff experienced freezing of the windshield wiper fluid or otherwise inadequate operation of the windshield wiper fluid in Plaintiff's vehicle.

14. As a result of using Defendant's products, Plaintiff:

- a. Received a lesser product than advertised and marketed, a windshield wiper fluid that froze or was otherwise inoperable above the advertised temperature, increasing the risk of accidents due to poor visibility;
- b. Was forced to purchase other windshield wiper fluids; and/or
- c. Was forced to make repairs to their windshield wiper fluid systems in order to remedy the issues faced with freezing windshield wiper fluid.

15. As a result of Defendant's windshield wiper fluid failing to perform as advertised,

marketed, warranted, or promised, Defendant fraudulently or negligently induced Plaintiff to purchase its products through a material representation, breached Defendant's contracts, and breached Defendant's implied and express warranties, with Plaintiffs.

16. This action is brought by Plaintiff against Defendant to recover all money paid by Plaintiff to Defendant in exchange for their marketing, advertising, and sale of deceptive products.

CLASS ACTION ALLEGATIONS

17. Plaintiff brings this Class Action pursuant to § 407.025 RSMo, on behalf of himself and the following Classes of similarly situated persons:

- (1) All individuals who purchased in Missouri Defendant's windshield wiper fluid products that were advertised and marketed as protecting down to -20 degrees Fahrenheit.

18. Excluded from the Class are Defendant and its 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.

19. Defendant's products are sold across Missouri through retailers such as: O'Reilly Auto Parts. The class may be identified through the use of sale receipts, affidavits, or through sales records.

20. The proposed Class is so numerous that joinder of all Class members is impracticable.

21. There are questions of fact and law common to the Class which predominate over questions affecting only individual Class members. The questions of law and fact common to the Class arising from Defendant's actions include, without limitation, the following:

- a. whether the Defendant's products were being advertised and marketed as protecting down to the indicated temperature;
- b. whether the Defendant's products actually protected down to the indicated temperature;
- c. whether Defendant's representations that its products protected down to the indicated temperature, were false and made knowingly by Defendant, and was therefore a deception, fraud, false pretense, false promise, and/or misrepresentation as described at § 407.020 RSMo and a violation thereof;
- d. whether Defendant's representations that its products protected down to the indicated temperature, were false and made negligently by Defendant, and was therefore a deception, fraud, false pretense, false promise, and/or misrepresentation as described at § 407.020 RSMo and a violation thereof; and
- e. whether Defendant was unjustly enriched.

22. Plaintiff's claims are typical of the consumers in the putative Class because he purchased Defendant's products and was similarly treated.

23. Plaintiff is an adequate representative of the Class because his interests do not conflict with the interests of the other members of the Class. The interests of the members of the class will be fairly and adequately protected by Plaintiff and his counsel, who have extensive experience prosecuting complex litigation and class actions.

24. 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

the 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 Defendant, 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 all Class members.

25. Class members will be determined based on the records of Defendant, records by class members, such as sales receipts, or affidavits by class members.

26. Class certification is also appropriate because Defendant has acted or refused to act on grounds generally applicable to the Classes. The Class Action is based on Defendant's acts and omissions with respect to the Class as a whole, not on facts or law applicable only to Plaintiff. All Class members who purchased Defendant's products were treated similarly. Thus, all Class Members have the same legal right to an interest in relief for damages associated with the violations enumerated herein. The claims are governed by general concepts of statutory, tort, contract, and/or quasi-contract law.

COUNT I

Violations of Missouri's Merchandising Practices Act

27. Plaintiff incorporates by reference all preceding paragraphs of this petition as if fully set forth herein.

28. Defendant's representations that the products were fit to be used as windshield wiper fluid at the advertised and marketed temperature rating was false and made knowingly by Defendant or without knowledge as to its truth or falsity and was therefore a deception, fraud, false pretense, false promise, misrepresentation as described at § 407.020 RSMo, and was therefore a

violation of § 407.020 RSMo.

29. Pleading alternatively, Defendant's representation that the products were fit to be used as windshield wiper fluid at the advertised and marketed temperature rating constituted the omission or suppression of a material fact in violation of the provisions of § 407.020 RSMo in that Defendant's windshield wiper fluid would not perform at the advertised temperature when used as it was advertised, marketed, and intended.

30. Defendant's conduct as described herein was intentional and in violation of § 407.020 RSMo, and the regulations of the Attorney General of Missouri promulgated thereunder, and as a direct and proximate result of Defendant's illegal conduct, Plaintiff has suffered ascertainable losses of money, to a total amount yet to be determined.

WHEREFORE, Plaintiff, on behalf of himself and the Class described in this Class Action Petition, respectfully requests that:

A. the Court certify the Classes pursuant to Rule 52.08 and § 407.025 RSMo, and adjudge Plaintiff and his counsel to be adequate representatives thereof;

B. the Court enter an Order requiring Defendant to pay Plaintiff's, and the other members of the Class, economic, monetary, actual damages, consequential, compensatory, or statutory damages, whichever is greater, to the extent permitted under the law;

C. the Court enter an Order awarding Plaintiff, individually and on behalf of the other members of the Class, his 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 Plaintiff, individually and on behalf of the

other members of the Class, pre- and post-judgment interest, to the extent allowable; and

E. for such other and further relief as may be just and proper.

Respectfully Submitted,

SWMW Law, LLC

By: /s/ Ryan P. Horace
Ryan P. Horace, #64918
ryan@swmwlaw.com
Attorneys for Plaintiff
701 Market Street, Suite 1000
St. Louis, MO 63101
(314) 480-5180
(314) 932-1566 – Facsimile

Steven J. Stolze, #39795
stevenstolze@yahoo.com
Holland Law Firm, of counsel
300 N. Tucker, Suite 800
Attorney for Plaintiffs
St Louis, MO 63101
314-640-7550



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL KELLAN MULLEN	Case Number: 1722-CC10830	Special Process Server 1
Plaintiff/Petitioner: PAUL WEISHAAR	Plaintiff's/Petitioner's Attorney/Address BENJAMIN ROBERT SCHMICKLE 701 MARKET STREET STE 1000 SAINT LOUIS, MO 63101	Special Process Server 2
Defendant/Respondent: O'REILLY AUTOMOTIVE STORES ,INC	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	Special Process Server 3
Nature of Suit: CC Other Tort		(Date File Stamp)

Summons in Civil Case

The State of Missouri to: O'REILLY AUTOMOTIVE STORES ,INC
 Alias:
 233 S. PATTONSON
 SPRINGFIELD, MO 65802



COURT SEAL OF
CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

July 24, 2017

_____ Date

_____ Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____.

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____ Date _____ Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.



IN THE 22ND JUDICIAL CIRCUIT COURT, CITY OF ST LOUIS, MISSOURI

Judge or Division: MICHAEL KELLAN MULLEN	Case Number: 1722-CC10830	Special Process Server 1
Plaintiff/Petitioner: PAUL WEISHAAR	Plaintiff's/Petitioner's Attorney/Address BENJAMIN ROBERT SCHMICKLE 701 MARKET STREET STE 1000 SAINT LOUIS, MO 63101	Special Process Server 2
Defendant/Respondent: O'REILLY AUTOMOTIVE STORES ,INC	Court Address: CIVIL COURTS BUILDING 10 N TUCKER BLVD SAINT LOUIS, MO 63101	Special Process Server 3
Nature of Suit: CC Other Tort		(Date File Stamp)

Summons in Civil Case

The State of Missouri to: O'REILLY AUTOMOTIVE STORES ,INC
 Alias:
 CT CORPORATION SYSTEM
 120 S CENTRAL AVE
 CLAYTON, MO 63105

COURT SEAL OF

CITY OF ST LOUIS

You are summoned to appear before this court and to file your pleading to the petition, a copy of which is attached, and to serve a copy of your pleading upon the attorney for Plaintiff/Petitioner at the above address all within 30 days after receiving this summons, exclusive of the day of service. If you fail to file your pleading, judgment by default may be taken against you for the relief demanded in the petition.

August 8, 2017

 Date

Thomas Kloeppinger

 Clerk

Further Information:

Sheriff's or Server's Return

Note to serving officer: Summons should be returned to the court within thirty days after the date of issue.

I certify that I have served the above summons by: (check one)

delivering a copy of the summons and a copy of the petition to the Defendant/Respondent.

leaving a copy of the summons and a copy of the petition at the dwelling place or usual abode of the Defendant/Respondent with _____ a person of the Defendant's/Respondent's family over the age of 15 years.

(for service on a corporation) delivering a copy of the summons and a copy of the petition to _____ (name) _____ (title).

other _____.

Served at _____ (address)
 in _____ (County/City of St. Louis), MO, on _____ (date) at _____ (time).

 Printed Name of Sheriff or Server

 Signature of Sheriff or Server

Must be sworn before a notary public if not served by an authorized officer:

(Seal) Subscribed and sworn to before me on _____ (date).

My commission expires: _____
 Date Notary Public

Sheriff's Fees

Summons \$ _____

Non Est \$ _____

Sheriff's Deputy Salary

Supplemental Surcharge \$ 10.00

Mileage \$ _____ (_____ miles @ \$._____ per mile)

Total \$ _____

A copy of the summons and a copy of the petition must be served on **each** Defendant/Respondent. For methods of service on all classes of suits, see Supreme Court Rule 54.

EXHIBIT 2

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI
EASTERN DIVISION

PAUL WEISHAAR, on behalf of himself)	
and all others similarly situated,)	
)	
)	
Plaintiff,)	
)	Civil Action No.
v.)	
)	
O'REILLY AUTOMOTIVE STORES,)	
INC.,)	
)	
Defendant.)	

**AFFIDAVIT OF AMY GREEN IN SUPPORT OF DEFENDANT
O'REILLY AUTOMOTIVE STORES, INC.'S NOTICE OF REMOVAL**

Being duly sworn upon her oath, Amy Green states as follows:

1. My name is Amy Green. I am over the age of twenty-one (21) and under no legal disability.
2. I have personal knowledge of the facts in this affidavit.
3. This affidavit is given in support of Defendant O'Reilly Automotive Stores, Inc.'s ("O'Reilly") Notice of Removal.
4. I am the Merchandise Systems Manager at O'Reilly.
5. The following table reflects O'Reilly's total wiper fluid sales in the state of Missouri, from January 1, 2010 to September 5, 2017, broken down by year:

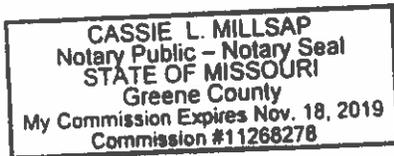
Total Wiper Fluid Sales in The State of MO		
Year	Total Sales	Total Units
2010	\$710,632.99	285,620
2011	\$805,401.85	334,254
2012	\$688,592.40	257,519
2013	\$794,685.89	268,997
2014	\$886,126.85	274,123
2015	\$860,029.93	249,803
2016	\$908,118.38	260,951
2017	\$502,404.93	144,195
Grand Total	\$6,155,993.22	2,075,462

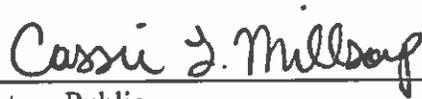
I declare under penalty of perjury that the foregoing is true and correct.



Amy Green

Subscribed and sworn to before me this 8th day of September 2017.





Notary Public

My Commission Expires: 11/18/2019

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Paul Weishaar

(b) County of Residence of First Listed Plaintiff St. Louis City, Missouri (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number) SWMW Law, LLC 701 Market Street, Suite 1000 St. Louis, MO 63101 Tel: 314-480-5180

DEFENDANTS

O'Reilly Automotive Stores, Inc.

County of Residence of First Listed Defendant Greene County, Missouri (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known) W. Jason Rankin, Hepler Broom LLC 211 N. Broadway St., Suite 2700 St. Louis, MO 63102 Tel: 314-241-6160

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
3 Federal Question (U.S. Government Not a Party)
2 U.S. Government Defendant
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- Citizen of This State PTF DEF X 1 1 Incorporated or Principal Place of Business In This State PTF DEF 4 4
Citizen of Another State 2 2 Incorporated and Principal Place of Business In Another State 5 5
Citizen or Subject of a Foreign Country 3 3 Foreign Nation 6 6

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Table with 5 columns: CONTRACT, REAL PROPERTY, TORTS, CIVIL RIGHTS, PRISONER PETITIONS, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES. Includes various legal categories like Insurance, Personal Injury, Labor, etc.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity): 28 U.S.C. s1332

Brief description of cause: MMPA Action related to windshield wiper fluid

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ 5,000,000.00 CHECK YES only if demanded in complaint: JURY DEMAND: X Yes [] No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 09/08/2017 SIGNATURE OF ATTORNEY OF RECORD W. Jason Rankin

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

INSTRUCTIONS FOR ATTORNEYS COMPLETING CIVIL COVER SHEET FORM JS 44

Authority For Civil Cover Sheet

The JS 44 civil cover sheet and the information contained herein neither replaces nor supplements the filings and service of pleading or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. Consequently, a civil cover sheet is submitted to the Clerk of Court for each civil complaint filed. The attorney filing a case should complete the form as follows:

- I.(a) Plaintiffs-Defendants.** Enter names (last, first, middle initial) of plaintiff and defendant. If the plaintiff or defendant is a government agency, use only the full name or standard abbreviations. If the plaintiff or defendant is an official within a government agency, identify first the agency and then the official, giving both name and title.
- (b) County of Residence.** For each civil case filed, except U.S. plaintiff cases, enter the name of the county where the first listed plaintiff resides at the time of filing. In U.S. plaintiff cases, enter the name of the county in which the first listed defendant resides at the time of filing. (NOTE: In land condemnation cases, the county of residence of the "defendant" is the location of the tract of land involved.)
- (c) Attorneys.** Enter the firm name, address, telephone number, and attorney of record. If there are several attorneys, list them on an attachment, noting in this section "(see attachment)".
- II. Jurisdiction.** The basis of jurisdiction is set forth under Rule 8(a), F.R.Cv.P., which requires that jurisdictions be shown in pleadings. Place an "X" in one of the boxes. If there is more than one basis of jurisdiction, precedence is given in the order shown below.
 United States plaintiff. (1) Jurisdiction based on 28 U.S.C. 1345 and 1348. Suits by agencies and officers of the United States are included here.
 United States defendant. (2) When the plaintiff is suing the United States, its officers or agencies, place an "X" in this box.
 Federal question. (3) This refers to suits under 28 U.S.C. 1331, where jurisdiction arises under the Constitution of the United States, an amendment to the Constitution, an act of Congress or a treaty of the United States. In cases where the U.S. is a party, the U.S. plaintiff or defendant code takes precedence, and box 1 or 2 should be marked.
 Diversity of citizenship. (4) This refers to suits under 28 U.S.C. 1332, where parties are citizens of different states. When Box 4 is checked, the citizenship of the different parties must be checked. (See Section III below; **NOTE: federal question actions take precedence over diversity cases.**)
- III. Residence (citizenship) of Principal Parties.** This section of the JS 44 is to be completed if diversity of citizenship was indicated above. Mark this section for each principal party.
- IV. Nature of Suit.** Place an "X" in the appropriate box. If the nature of suit cannot be determined, be sure the cause of action, in Section VI below, is sufficient to enable the deputy clerk or the statistical clerk(s) in the Administrative Office to determine the nature of suit. If the cause fits more than one nature of suit, select the most definitive.
- V. Origin.** Place an "X" in one of the six boxes.
 Original Proceedings. (1) Cases which originate in the United States district courts.
 Removed from State Court. (2) Proceedings initiated in state courts may be removed to the district courts under Title 28 U.S.C., Section 1441. When the petition for removal is granted, check this box.
 Remanded from Appellate Court. (3) Check this box for cases remanded to the district court for further action. Use the date of remand as the filing date.
 Reinstated or Reopened. (4) Check this box for cases reinstated or reopened in the district court. Use the reopening date as the filing date.
 Transferred from Another District. (5) For cases transferred under Title 28 U.S.C. Section 1404(a). Do not use this for within district transfers or multidistrict litigation transfers.
 Multidistrict Litigation. (6) Check this box when a multidistrict case is transferred into the district under authority of Title 28 U.S.C. Section 1407. When this box is checked, do not check (5) above.
- VI. Cause of Action.** Report the civil statute directly related to the cause of action and give a brief description of the cause. **Do not cite jurisdictional statutes unless diversity.** Example: U.S. Civil Statute: 47 USC 553 Brief Description: Unauthorized reception of cable service
- VII. Requested in Complaint.** Class Action. Place an "X" in this box if you are filing a class action under Rule 23, F.R.Cv.P.
 Demand. In this space enter the actual dollar amount being demanded or indicate other demand, such as a preliminary injunction.
 Jury Demand. Check the appropriate box to indicate whether or not a jury is being demanded.
- VIII. Related Cases.** This section of the JS 44 is used to reference related pending cases, if any. If there are related pending cases, insert the docket numbers and the corresponding judge names for such cases.

Date and Attorney Signature. Date and sign the civil cover sheet.

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF MISSOURI

Paul Wieshaar, on behalf of himself)	
and all others similarly situated ,)	
)	
Plaintiff,)	
)	
v.)	Case No. 4:17-cv-
O'Reilly Automotive)	
Stores, Inc. ,)	
)	
Defendant,)	
)	

ORIGINAL FILING FORM

THIS FORM MUST BE COMPLETED AND VERIFIED BY THE FILING PARTY WHEN INITIATING A NEW CASE.

THIS SAME CAUSE, OR A SUBSTANTIALLY EQUIVALENT COMPLAINT, WAS PREVIOUSLY FILED IN THIS COURT AS CASE NUMBER _____ AND ASSIGNED TO THE HONORABLE JUDGE _____.

THIS CAUSE IS RELATED, BUT IS NOT SUBSTANTIALLY EQUIVALENT TO ANY PREVIOUSLY FILED COMPLAINT. THE RELATED CASE NUMBER IS _____ AND THAT CASE WAS ASSIGNED TO THE HONORABLE _____. THIS CASE MAY, THEREFORE, BE OPENED AS AN ORIGINAL PROCEEDING.

NEITHER THIS SAME CAUSE, NOR A SUBSTANTIALLY EQUIVALENT COMPLAINT, HAS BEEN PREVIOUSLY FILED IN THIS COURT, AND THEREFORE MAY BE OPENED AS AN ORIGINAL PROCEEDING.

The undersigned affirms that the information provided above is true and correct.

Date: 09/08/2017

/s/ W. Jason Rankin
Signature of Filing Party