UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

STEVEN GREGORY HOLT and ROBERT ENSLEN, on behalf of themselves and all other similarly situated, Plaintiffs, vs. MURPHY OIL USA, INC., Defendant.	Case No. 3:17-cv-00911-RV-CJK

ORDER GRANTING FINAL APPROVAL OF CLASS ACTION SETTLEMENT

This case is a class action lawsuit brought by Plaintiffs STEVEN GREGORY HOLT and ROBERT ENSLEN ("Plaintiffs" or "Class Representatives") against MURPHY OIL USA, INC. ("Murphy"). Following over a year of negotiations, the Parties reached a proposed settlement, memorialized in a Stipulation of Settlement and Release (the "Settlement," Doc. 22-2). On March 18, 2019, the Court entered an Order preliminarily certifying the proposed Settlement Class for settlement purposes, granting preliminary approval of the Settlement, and directing that notice be sent to the Settlement Class Members. (Preliminary Approval Order, Doc. 24). The case now comes before the Court on the Plaintiffs' Motion for Final Approval of the Settlement (doc. 37).

The Court held a Fairness Hearing on September 19, 2019. Having fully considered all of the motions, the exhibits thereto (including the Stipulation of Settlement and Release and its own exhibits), and the evidence and argument offered in support of the Settlement, and based upon the totality of the information before the Court, **IT IS HEREBY ORDERED, DECREED, AND ADJUDGED AS FOLLOWS**:

1. The Plaintiffs' unopposed Motion for Final Approval of Class Action Settlement is **GRANTED** and the proposed Settlement is **APPROVED** in its entirety.

2. **Jurisdiction.** Because due, adequate, and the best practical notice has been given and all potential Settlement Class Members have been given the opportunity to exclude themselves from or object to the Settlement, the Court finds and concludes that it has personal jurisdiction over all Settlement Class Members and that venue is proper. *See, e.g.*, *Phillips Petroleum Co*., 472 U.S. at 811-812. The Court further finds and concludes that it has subject matter jurisdiction over this Action, including, without limitation, jurisdiction to approve and enforce the Settlement, grant final certification to the Settlement Class, dismiss the Action on the merits and with prejudice. The Court expressly finds that there is no just reason for delay, and the Clerk of the Court is directed to enter this Final Order and Judgment as a final judgment. Without in any way affecting the finality of this Final

Order and Judgment, the Court expressly retains exclusive and continuing jurisdiction: (a) as to the administration, consummation, enforcement and interpretation of the Settlement and the Final Order and Judgment, including the Release; (b) resolution of any disputes concerning Settlement Class membership or entitlement to benefits under the terms of the Settlement; and (c) all Parties hereto, including members of the Settlement Class, for purposes of enforcing and administering the Settlement and this Action generally until each and every act agreed to be performed by the Parties has been performed pursuant to the Settlement.

3. **Final Class Certification.** The Settlement Class preliminarily certified by the Court is hereby finally certified for settlement purposes only, the Court finding and concluding that the Settlement Class fully satisfies all the applicable requirements of Federal Rules of Civil Procedure 23(a), 23(b)(2), (b)(3), (e) and Due Process. The Settlement Class is comprised of:

> All persons who purchased products at Murphy stores (excluding stores in Missouri and Texas) and were charged and paid sales tax on the full, undiscounted price of products purchased with a discount funded all or in part by Murphy, within the statutory period(s).

Excluded from the Settlement Class are:

> Defendant; its board members, directors, and officers; persons who timely and properly exclude themselves from

the Settlement Class; and all federal judges and their spouses.[1]

a. Numerosity. The Settlement Class, as defined above, satisfies the numerosity requirement of Rule 23(a)(1) because it is comprised of hundreds of thousands of Murphy customers impacted by the allegations raised in this Action, and the individual joinder of that many persons would be impracticable. *Accord Cox v. Am. Cast Iron Pip Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986) ("[W]hile there is no fixed numerosity rule, generally less than twenty-one is inadequate, more than forty adequate, with numbers between varying according to other factors."); *Baker v. Thrasher Law Firm*, No. 4:12-cv-00630-MW/CAS, 2013 WL 12119572, at *2 (N.D. Fla. June 10, 2013).

b. Commonality. The commonality requirement of Rule 23(a)(2) is satisfied because the claims present common issues of law and fact as to how Murphy was charging sales tax on the full, undiscounted price of Murphy-funded discounted or sale price items in some jurisdictions. The Court finds this sales-tax-collection practice amounts to "a standardized course of conduct that affect[ed] all class members." *In re Checking Account Overdraft Litig.*, 307 F.R.D. at 640; *see also LaBauve v. Olin Corp.*, 231 F.R.D. 632, 668 (S.D. Ala. 2005) ("[A]s a general rule, all that is necessary to satisfy Rule 23(a)(2) is an allegation of a standardized,

[1] Also excluded from the Settlement Class is Mr. Ronald G. Dandar, who timely and properly excluded himself. *See infra* at Section 9(b).

uniform course of conduct by defendants affecting plaintiffs."). Resolution of whether Murphy's practice amounts to an overcharging of sales tax is an issue "apt to drive the resolution of the litigation" because it is not only one common to the claims of the Class Representatives and all Settlement Class Members, but is also the claimed cause of their alleged injuries and is "of a nature that is capable of classwide resolution" principally through common, classwide proof. *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011) ("Commonality requires the plaintiff to demonstrate that the class members have suffered the same injury, … not … that they have all suffered a violation of the same provision of law").

c. Typicality. The Settlement Class also satisfies the typicality requirement of Rule 23(a)(3). The test of typicality is "whether other members [of the class] have the same or similar injury, whether the action is based on conduct which is not unique to the named class plaintiffs, and whether other class members have been injured by the same course of conduct." *In re Checking Account Overdraft Litig*., 307 F.R.D. at 641 (*quoting Hanon v. Dataprods. Corp*., 976 F.2d 497, 508 (9th Cir. 1992)). And Rule 23's typicality requirement "may be satisfied even though varying fact patterns support the claims or defenses of individual class members, or there is a disparity in the damages claimed by the representative parties and the other members of the class," *In re Domestic Air Transp. Antitrust Litig*., 137 F.R.D. 677, 698 (N.D. Ga. 1991), so long as "the claims or defenses of the class and

the class representative arise from the same event, pattern and practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc*., 741 F.2d 1332, 1337 (11th Cir. 1984). Here, the Class Representatives allege they and the Settlement Class were impacted by a common course of conduct. The Court is unaware of any factual or legal issues that would render the Class Representatives' claims atypical from those of the other Settlement Class Members.

d. Adequacy of Representation. The Court finds and concludes that the Plaintiffs STEVEN GREGORY HOLT[2] and ROBERT ENSLEN and Class Counsel have adequately represented the Settlement Class under Rule 23(a)(4) for purposes of entering into and implementing the Settlement.

e. Rule 23(b)(2) requirements. The requirements of Rule 23(b)(2) are satisfied for purposes of certification of the Settlement Class because class members have been impacted in essentially the same way by the defendant's acts. FED. R. CIV. P. 23(b)(2); *see also Dehoyos v. Allstate Corp*., 240 D.R.D 269 (W.D. Tex. 2007). Here, Murphy has acted on grounds that apply generally to the entire Settlement Class. "And the same relief will be appropriate for the class as a whole . . . . this squarely and easily meets the requirement for certification under Rule 23(b)(2)." *Welch v. Theodorides-Bustle*, 273 F.R.D. 692, 695 (N.D. Fla. 2010). Settlement Class Members have been impacted in essentially the same way and have

[2] Mr. Holt's objection is specifically addressed *infra* at Section 9(a).

sought relief in the form of a practice change. These practice changes were implemented as a result of the Action as a catalyst for these practice changes.

f. Rule 23(b)(3) requirements. The requirements of Rule 23(b)(3) are satisfied for purposes of certification of the Settlement Class because the core common issues of law and fact that surround the claims of the Settlement Class predominate for purposes of settlement over any individual questions associated with the resolution of those claims (such as the individual extent of resulting damages and harm). Certification of a Rule 23(b)(3) opt-out class action for purposes of settlement is superior to other available means of adjudicating this dispute precisely because the charging of sales tax was performed in a similar manner as to all Settlement Class Members. And because the Class Representatives seek class certification for settlement purposes, the Court need not inquire into whether the case, if tried, would present intractable management problems over the calculation of actual individual damages to the Settlement Class Members or state legal variations in the claims asserted by the First Amended Complaint. *Amchem Prods*., 521 U.S. at 620; *In re Am. Int'l Grp., Inc. Sec. Litig*., 689 F.3d 229, 242 (2d Cir. 2012) ("[M]anageability concerns do not stand in the way of certifying a settlement class."); *Sullivan v. DB Invs., Inc*., 667 F.3d 273, 297 (3d Cir. 2011) ("[C]oncerns regarding variations in state law largely dissipate when a court is considering the certification of a settlement class").

4. **Class Notice.** "For a court to exercise jurisdiction over the claims of absent Class members, there must be minimal procedural due process protection." *Perez v. Asurion Corp.*, 501 F. Supp. 2d 1360, 1377 (S.D. Fla. 2007). Class members must be provided with notice "reasonably calculated, under all the circumstances, to apprise [them] of the pendency of the action and afford them an opportunity to present their objections." *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 811-812 (1985); *cf.* FED. R. CIV. P. 23(c)2)(B), 23(e)(1). While reasonable efforts should be made to reach the entirety of the class, Rule 23 does not require that each individual class member actually receive notice. *Juris v. Inamed Corp*., 685 F.3d 1294, 1321 (11th Cir. 2012).

a. The Court finds and concludes that the Parties and Settlement Administrator fully discharged the duties imposed upon them by the Court's Preliminary Approval Order to provide Notice to the Settlement Class.

b. The dissemination of the Notices, along with the Notice dissemination methodology implemented pursuant to the Settlement and the Court's Preliminary Approval Order, constituted the best practicable notice to the Settlement Class Members under the circumstances of this Action.

c. The Notice was reasonably calculated, under the circumstances, to apprise the Settlement Class Members of: (i) the pendency of this Action; (ii) the terms of the proposed Settlement; (iii) their rights under the proposed Settlement,

including their right to exclude themselves from the Settlement Class or object to any aspect of the Settlement; (iv) their right to appear at the Fairness Hearing, either on their own or through counsel hired at their own expense, if they did not exclude themselves from the Settlement Class; and (v) the binding effect of the Orders and judgment in this Action, whether favorable or unfavorable, on all persons and entities who did not request exclusion from the Settlement Class;

d. The Notice was reasonable, due, adequate, and sufficient notice to all persons and entities entitled to be provided with notice.

e. The Notice met all applicable requirements of the Federal Rules of Civil Procedure, and the Due Process Clause of the United States Constitution.

5. **Final Settlement Approval.** The Court has considered whether the proposed class action (a) is "not the product of collusion between the parties," *Bennett v. Behring Corp.*, 737 F.2d 982, 986 (11th Cir. 1984), and (b) is "fair, reasonable, and adequate." FED. R. CIV. P. 23(e)(2). In assessing a settlement's fairness, adequacy and reasonableness, the Court has considered, *inter alia*, the following six (6) factors:

> (1) the likelihood of success at trial; (2) the range of possible recovery; (3) the point on or below the range of possible recovery at which a settlement is fair, adequate and reasonable; (4) the complexity, expense and duration of litigation; (5) the substance and amount of opposition to the settlement; and (6) the stage of proceedings at which the settlement was achieved.

Nelson v. Mead Johnson & Johnson Co., 484 F. App'x 429, 434 (11th Cir. 2016); *cf. Faught v. Am. Home Shield Corp*., 668 F.3d 1233, 1240 (11th Cir. 2011).

a. The Court finds and concludes that the terms and provisions of the proposed Settlement, including all of its exhibits, have been negotiated and entered into by the Parties in good faith and at arm's-length. The Settlement is both substantively and procedurally fair, and is hereby fully and finally approved as fair, reasonable, and adequate as to each of the Parties and each of the Settlement Class Members. The Court further finds and concludes that the Settlement fully complies with all applicable requirements of the Federal Rules of Civil Procedure and the United States Constitution (including the Due Process Clause) and is therefore fully and finally approved in all respects.

b. As a result, the Parties are hereby ordered and directed to implement and consummate the Settlement according to its terms and provisions. The Parties are hereby ordered to take all steps necessary and appropriate to provide the Settlement Class Members with the benefits to which they are entitled under the Settlement.

c. The Parties are hereby authorized, without further approval from the Court, to agree to and adopt such amendments, modifications and expansions of the Settlement and its implementing documents if such changes are not materially inconsistent with the Court's Final Order and Judgment or do not materially limit,

or materially and adversely affect, the rights or objections of the Settlement Class Members under the Settlement as presently before the Court.

6. **Binding Effect**. The terms of the Settlement and of this Final Order and Judgment shall be forever binding on the Parties and all Settlement Class Members, as well as their present, former and future heirs, guardians, assigns, executors, administrators, representatives, agents, attorneys, partners, legatees, predecessors, and/or successors, and the terms of the Settlement and of this Final Order and Judgment shall have *res judicata* and other preclusive effect in all pending and future claims, lawsuits or other proceedings maintained by or on behalf of any such persons or entities, to the extent those claims, lawsuits or other proceedings involve matters that were or could have been raised in the Action or are otherwise encompassed by the Release.

7. **Release.** The Court hereby approves, incorporates and adopts the Release set forth in the Settlement Agreement. The Court orders that the Release is hereby made effective and will forever discharge Murphy and the Released Parties of and from any liability arising in whole or in part from the Released Claims as defined in the Settlement.

8. **No Admissions.** Neither this Final Order and Judgment, nor the Settlement, nor any other document referred to herein, nor any action taken to carry out this Final Order and Judgment is, may be construed as, or may be used as an

admission or concession by or against Murphy or the Released Parties of the validity of any claim or defense or any actual or potential fault, wrongdoing or liability whatsoever. Murphy continues to deny that the action meets the requisites for class certification under Federal Rule of Civil Procedure 23 for any purpose other than Settlement. Entering into or carrying out the Settlement, and any negotiations or proceedings related to it, shall not in any event be construed as, or deemed evidence of, an admission or concession as to Murphy's denials or defenses and shall not be offered or received in evidence in any action or other tribunal for any purpose whatsoever, except as evidence to enforce the provisions of this Final Order and Judgment and the Settlement; provided, however, that this Final Order and Judgment and the Settlement may be filed in any action brought against or by Murphy or the Released Parties to support a defense of *res judicata*, collateral estoppel, release, waiver, good-faith settlement, judgment bar or reduction, full faith and credit, or any other theory of claim preclusion, issue preclusion or similar defense or counterclaim.

9. **Objections to the Settlement.** The Court received two letters from Settlement Class Members that it has characterized as objections.

a. Steven Gregory Holt. On June 11, 2019, Class Representative Plaintiff Steven Holt submitted a letter to the Court asking that the settlement be set aside and that Class Counsel Jay Aughtman be removed. Doc. 25. The Court temporarily denied the request (Doc. 26) and addressed Mr. Holt's issues at the

Fairness Hearing and in this Order. Mr. Holt's objection is **DENIED**. He has failed to raise any issues that challenge the fairness or adequacy of the Settlement. Further, his voluntary execution of the Settlement Agreement constitutes valid consent to the terms of the Settlement. He cannot renege on an Agreement that he has already made. Pursuant to the terms of the Settlement Agreement, Mr. Holt's denied objection does not remove him from the Settlement Class. Mr. Holt, like all members of the Settlement Class, shall be deemed to have consented to the exercise of personal jurisdiction by this Court and is bound by the terms of the Settlement Agreement and this Final Order.

b. Ronald G. Dandar. On July 9, 2019, the Court received a letter from Mr. Dandar. Doc. 29. His letter fails to identify the reasons for his objection and therefore does not satisfy the requirements of filing an objection.[3] Mr. Dandar also asks the Court to allow him to keep his rights to sue Murphy individually. The Court interprets this request as an opt-out. Pursuant to the terms of the Settlement Agreement, any Settlement Class Member who timely requests exclusion shall not: (a) be bound by a final judgment approving the Settlement; (b) be entitled to any relief under the Settlement; (c) gain any rights by virtue of the Settlement; or (d) be

[3] It is unknown whether Mr. Dandar is even a member of the Settlement Class, as he is currently an inmate in Pennsylvania, which is not one of the 24 states included in the Settlement. The Court need not determine his inclusion in the Class for purposes of this Order.

entitled to object to any aspect of the Settlement. Mr. Dandar's Request for Exclusion is **GRANTED**.

10. **Class Counsel's Request for Attorneys' Fees, Expenses and Service Awards for Class Representatives**. During the Fairness Hearing, the Court considered whether Attorneys' Fees and Expenses should be awarded by the Court to Class Counsel, and in what amount, as well as whether Service Awards should be approved by the Court to the Class Representatives, and in what amount. The Court **ORDERS** the following:

a. In evaluating Class Counsel's request for Attorneys' Fees and Expenses to be paid separately by Murphy, the Court finds the amount to be fair and reasonable under Fed. R. Civ. P. 23(h), and in compliance with the applicable law in the Eleventh Circuit as set forth in Plaintiffs' Unopposed Motion. *See, i.e., Camden I Condo. Ass'n v. Dunkle*, 946 F.2d 768, 771 (11th Cir. 1991); *Lee v. Ocwen Loan Servicing, LLC*, No. 0:14-cv-60649-JG, 2015 U.S. Dist. LEXIS 121998, *14 (S.D. Fla. Sept. 14, 2015); *Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984).

b. Class Counsel Golomb & Honik, P.C. and Aughtman Law Firm, LLC are hereby awarded Attorneys' Fees and Expenses in the cumulative amount of $250,000.00, to be paid in accordance with the Agreement. The Court further finds that litigation costs and expenses in the amount of $15,618.12 as set forth in

detail in Plaintiffs' Motion, to be paid from and as a part of the $250,000.00 award, is reasonable and fair based upon the litigation.

c. The Service Awards in the amount of $5,000.00 total to be paid to Plaintiffs STEVEN GREGORY HOLT (Mr. Holt) and ROBERT ENSLEN such that each Plaintiff shall be paid $2,500.00 separately from Murphy is fair and reasonable and in compliance with the applicable law in the Eleventh Circuit as set forth in Plaintiffs' Unopposed Motion. *See In re Checking Account Overdraft Litig.*, 830 F. Supp. 2d 1330 (S.D. Fla. 2011).

d. At the Final Approval Hearing, the Court has determined that an additional $2,500.00 shall be paid to Mr. Holt in recognition of his efforts in this case. The additional $2,500.00 shall be paid by Class Counsel out of the above $250,000.00 award for fees and costs.[4]

11. **Termination of Settlement.** This Order and Final Judgment shall become null and void and shall be without prejudice to the rights of the Parties and Settlement Class Members, all of whom shall be restored to their respective positions existing immediately before the Court entered this Final Order and Judgment and the Court's Preliminary Approval Order, if: (a) the Settlement is terminated by a

[4] If Mr. Holt refuses the total amount of his award ($5,000.00) or fails to cash his check within ninety (90) days of issue, $2,500.00, the amount reflecting his agreed upon Service Award, should be donated to the Wounded Warrior Foundation, a worthy cause that he has identified as his charity of choice. The remaining $2,500.00 should be returned to Class Counsel.

Party in accordance with its provisions; or (b) the Settlement does not become effective for any other reason.

12. **Dismissal of Action.** Subject to the provisions of an Order granting Plaintiffs' Motion for Attorneys' Fees, Costs and Service Award, and the provisions of this Order and Final Judgment, including the Court's retention of jurisdiction as set forth herein, this Action (including all individual and class claims presented herein) is hereby dismissed on the merits and with prejudice, and without fees, expenses or costs to any Party or Settlement Class Member except as otherwise provided by the Court.

IT IS SO ORDERED this 20th day of September, 2019.

/s/ Roger Vinson
THE HONORABLE ROGER VINSON
SENIOR UNITED STATES DISTRICT COURT JUDGE