

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 OF PRELIMINARILY APPROVAL OF CLASS SETTLEMENT**

The Parties and their respective counsel have entered into an agreement to settle and dismiss the above-captioned litigation on a class-action basis, subject to the Court's approval. On March 15, 2019, Plaintiffs STEVEN GREGORY HOLT and ROBERT ENSLEN (the "Class Representatives") moved the Court to preliminarily approve that settlement. (Doc. 22). Having fully considered the Class Representatives' motion, 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 Class Representatives' unopposed Motion for Preliminary Approval of Class Action Settlement (Doc. 22) is **GRANTED**.

2. **Use of Defined Terms.** For purposes of clarity and consistency, the Court hereby adopts the definitions set forth in Section III of the Parties' Stipulation of Settlement and Release (hereinafter, the "Settlement" or "Agreement"). Accordingly, unless otherwise defined herein, all capitalized terms and phrases used in this order shall have the same meanings as given them in the Settlement.

3. **Jurisdiction.** The Court finds that it has subject matter jurisdiction over this Action pursuant to 28 U.S.C. § 1332, including jurisdiction to approve and enforce the Agreement, all of its exhibits, and all Orders and Decrees that have been entered or which may be entered pursuant thereto. The Court also finds that it has personal jurisdiction over the Parties and, for purposes of consideration of the proposed Settlement, over each of the members of the Settlement Class defined below. The Court further finds that venue is proper in this District pursuant to 28 U.S.C. § 1391.

4. **Preliminary Class Certification for Settlement Purposes Only.** Where, as here, the Court is presented with a proposed settlement prior to a decision on class certification, the Court must determine whether the proposed settlement class satisfies the requirements for class certification under Federal Rule of Civil Procedure 23, albeit for purposes of settlement. *See, e.g., Amchem Prods., Inc. v.*

*Windsor*, 521 U.S. 591, 620-21 (1997); *In re Checking Account Overdraft Litig.*, 275 F.R.D. 654, 659 (S.D. Fla. 2011) (“In deciding whether to provisionally certify a settlement class, a court must consider the same factors that it would consider in connection with a proposed litigation class—*i.e.*, all Rule 23(a) factors and at least one subsection of Rule 23(b) must be satisfied—except that the Court need not consider the manageability of a potential trial, since the settlement, if approved, would obviate the need for a trial.”); *Underwood v. Manfre*, No. 3:13-cv-192-J-34PDB, 2014 WL 67644, at \*3 (M.D. Fla. Jan. 8, 2014) (same). The requirements that must be met under Rule 23(a) are: (1) numerosity, (2) commonality, (3) typicality, and (4) adequacy of representation. In addition, the proposed settlement class must satisfy one of the subsections of Rule 23(b), exclusive of any applicable manageability requirement. The Court preliminarily finds and concludes, for settlement purposes only, that:

a. The Settlement Class, as defined below, satisfies the numerosity requirement of Rule 23(a)(1) because it is comprised of hundreds of thousands of Murphy customers potentially 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) (numerosity requirement met “[s]ince the class [of 2,200 persons] is so large, joinder becomes impracticable.”).

b. The commonality requirement of Rule 23(a)(2) is satisfied, for purposes of settlement, 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, 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:”

what must be shown is that the claims of a class “depend upon a common contention ... that is capable of classwide resolution ... [and that is] apt to drive the resolution of the litigation.”).

c. 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. The two Class Representatives and Class Counsel are adequate representatives of the Settlement Class under Rule 23(a)(4). The Class Representatives have standing and are members of the Settlement Class they seek to represent, the Court is aware of no antagonistic interests that exist between them and the Settlement Class Members, and the Court is satisfied that Class Counsel have the competence to undertake this litigation.

e. 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 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. 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”).

5. Accordingly, for purposes of considering, approving and effectuating the settlement and to fairly and adequately protect the interests of all concerned, the following class (the “Settlement Class”) is preliminarily certified for settlement purposes only, pursuant to Rules 23(a) and 23(b)(2) and (b)(3) of the Federal Rules of Civil Procedure, with respect to all claims set forth in the First Amended Complaint:

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.

The Court's preliminary certification of this Settlement Class is provisional and conditioned upon final certification of the proposed Settlement Class and upon entry of the Final Order and Judgment approving the Settlement.

6. **Appointment of Class Representatives and Class Counsel.** The Court hereby appoints Plaintiffs STEVEN GREGORY HOLT and ROBERT ENSLEN as the representatives of the conditionally certified Settlement Class. The Court further designates and appoints Joseph H. Aughtman, of the Aughtman Law Firm, LLC, 1722 Platt Place, Montgomery, Alabama 36117, and Kenneth J. Grunfeld, of the law firm of Golomb & Honik, PC, 1835 Market Street, Suite 2900, Philadelphia, Pennsylvania 19103, who the Court finds are experienced and adequate counsel, as the legal counsel for the Settlement Class ("Class Counsel"). Class Counsel are authorized to represent the Class Representatives and the Settlement Class Members, to enter into and seek approval of the Agreement on behalf of the Settlement Class, and to bind the Class Representatives, all other



Settlement Class Members and themselves to the duties and obligations contained in the Agreement, subject to the final approval of the Agreement by the Court.

7. **Preliminary Settlement Approval.** The Court preliminarily finds that, subject to the Fairness Hearing, the Settlement is sufficiently fair, reasonable, and adequate such that it falls well within the range of possible approval, and it is in the best interests of the Settlement Class that they be given the opportunity to be heard regarding the Settlement and the opportunity to exclude themselves from the proposed Settlement Class. The Court further finds that the Settlement substantially fulfills the purposes and objectives of the Action and offers beneficial relief to the Settlement Class that falls within the range of potential recovery in successful litigation of the claims asserted. The Court also finds that the Settlement (a) is the result of serious, informed, non-collusive arm's-length negotiations involving experienced counsel informed and familiar with the legal and factual issues of the Action and reached through the assistance, as mediator, of the Honorable Thomas E. Scott (Ret.); (b) is sufficient to warrant notice of the Settlement and the Fairness Hearing to the Settlement Class Members; and (c) meets all applicable requirements of law, including Federal Rule of Civil Procedure 23 and the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1715. Accordingly, the Court grants preliminary approval to the Agreement under Federal Rule of Civil Procedure 23(e), subject to

further consideration at the Fairness Hearing after notice to the Settlement Class Members.

8. **Fairness Hearing**. In compliance with 28 U.S.C. § 1715(d), and with due regard to the deadlines contemplated by the Agreement for the distribution of notice to, and the submission of exclusion requests or objections by, the Settlement Class Members, the Court hereby sets this case for a settlement Fairness Hearing to take place on September 17, 2019, beginning at 10:00 a.m./p.m., in Courtroom 2 of the Winston E. Arnow Federal Building, 100 North Palafox Street, Pensacola, Florida 32502. During the Fairness Hearing, the Court will consider whether: (a) the proposed Settlement of the Action on the terms and conditions provided for in the Agreement is fair, adequate and reasonable as to the Settlement Class, such that the Agreement should be granted final approval by the Court pursuant to Federal Rule of Civil Procedure 23(e); (b) the preliminary certification of the Settlement Class should be made final for settlement purposes, pursuant to Rules 23(a) and 23(b) of the Federal Rules of Civil Procedure; (c) whether Attorneys' Fees and Expenses should be awarded by the Court to Class Counsel, and in what amount, pursuant to the terms in the Agreement and Federal Rule of Civil Procedure 23(h); (d) whether a Service Award should be approved by the Court to the Class Representatives, and in what amount, pursuant to the terms of the Agreement; and (e) whether a Final Order and Judgment should be entered, and this Action thereby dismissed with

prejudice, pursuant to the terms of the Agreement. The Court may adjourn or reschedule the Fairness Hearing without further notice to the Settlement Class Members.

9. **Further Submissions by the Parties.** Any application by Class Counsel for Attorneys' Fees and Expenses and by the Class Representatives for Service Awards shall be filed with the Court no later than fourteen (14) days prior to the Objection/Exclusion Deadline. The Parties must promptly cause the Settlement Administrator to post such applications to the settlement Website. All other submissions of the Parties in support of the proposed Settlement, or in response to any objections submitted by Settlement Class Members, shall be filed no later than ten (10) days before the Fairness Hearing. The Settlement Administrator is directed to file a list reflecting all requests for exclusion it has received from Settlement Class Members with the Court no later than ten (10) days before the Fairness Hearing.

10. **Administration.** JND Legal Administration shall serve as the Settlement Administrator and shall implement the Notice Program, as set forth below and in the Agreement.

11. **Notice to the Settlement Class.** The Court approves, as to both form and content, the Long Form Notice, the Publication Notice and the In-Store Notice, which are attached as Exhibits "A", "B" and "C" to the Agreement, as well as the

methodology for distributing those notices to the Settlement Class Members as set forth in Section VI. of the Agreement. As a result:

a. The Court orders the Settlement Administrator, beginning not later than fourteen (14) days after entry of this Order, to implement the Notice Program subject to the requirements of this Order and the Agreement.

b. Following the entry of this Order, the Parties, working with the Settlement Administrator, are permitted by mutual agreement to make changes in the font, format and content of the Notices that do not materially alter the substance of those Notices. Any material substantive changes to those notices must be approved by the Court.

c. The Settlement Administrator is further ordered to establish a Website to inform Settlement Class Members of the terms of the Agreement, their rights, dates and deadlines, and related information. The Website shall include, in .pdf format, materials agreed upon by the Parties and/or required by the Court and should be operational and live as soon as practicable after entry of this Order, but no later than the commencement of the Notice Program.

12. **Findings Concerning the Notice Program.** The Court finds and concludes that the form, content and method of giving Notice to the Settlement Class as described in this Order: (a) will constitute the best practicable notice under the circumstances; (b) is reasonably calculated, under the circumstances, to apprise

Settlement Class Members of the pendency of this Action, the terms of the proposed Settlement, and their rights under and with respect to the proposed Settlement (including, without limitation, their right to object to or seek exclusion from, the proposed settlement); (c) is reasonable and constitutes due, adequate and sufficient notice to all Settlement Class Members and other persons entitled to receive notice; and (d) satisfies all applicable requirements of law, including, but not limited to, 28 U.S.C. § 1715, Federal Rule of Civil Procedure 23(c), and the United States Constitution (including the Due Process Clause). The Court further finds that the Class Notice is written in simple terminology, readily understandable by Settlement Class Members.

13. **Cost Obligations for the Notice Program.** All Costs of Administration, including those associated with providing notice to the Settlement Class as well as in administering the terms of the Settlement, shall be paid by Murphy as set forth in the Agreement.

14. **Communications with Settlement Class Members.** The Court authorizes Murphy to communicate with Settlement Class Members, potential Settlement Class Members, and to otherwise engage in any other communications within the normal course of Murphy's business. However, Murphy is ordered to refer any inquiries by Settlement Class Members or potential Settlement Class Members about the Settlement to the Settlement Administrator or Class Counsel.

15. **Exclusion (“Opting Out”) from the Settlement Class.** Any Settlement Class Member who wishes to be excluded from the Settlement Class must submit a written request for exclusion to the Settlement Administrator, mailed sufficiently in advance to be received by the Settlement Administrator by the Objection/Exclusion Deadline. A request for exclusion must comply with the requirements set forth in Section VII. of the Agreement. A single request for exclusion may not request the exclusion of more than one member of the Settlement Class. Any Settlement Class Member who timely requests exclusion consistent with these procedures 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 entitled to object to any aspect of the Settlement. However, Settlement Class Members who do not exclude themselves from the Settlement Class in full compliance with the requirements and deadlines of this Order shall be deemed to have forever consented to the exercise of personal jurisdiction by this Court, shall have waived their right to be excluded from the Settlement Class and from the Settlement, and shall thereafter be bound by all subsequent proceedings, orders and judgments in this Action.

16. **Objections and Appearances.** Any Settlement Class Member who does not properly and timely exclude himself or herself from the Settlement Class, and who complies with the requirements of this paragraph and the procedures

specified in the Class Notice, may object to the proposed Settlement by filing (personally or through counsel hired at his or her own expense) a written statement of objection with the Court as required in the Notice no later than the Objection/Exclusion Deadline. To personally file a written statement of objection, an objector must mail it to the Clerk of the Court sufficiently in advance that it is received by the Clerk of the Court on or before the Objection/Exclusion Deadline, or the objector may file it in person on or before the Objection/Exclusion Deadline at any location of the United States District Court for the Northern District of Florida. Any objection made by a Settlement Class Member represented by his or her own counsel must be filed by counsel through the Court's Case Management/Electronic Case Filing (CM/ECF) system. Any Settlement Class Member who fails to comply with the provisions in this Order for the submission of written statements of objection shall thereby forever waive and forfeit any and all rights he or she may have to appear separately and/or to object, and will be deemed to have consented to the exercise of personal jurisdiction by the Court, consented to the Settlement, consented to be part of the Settlement Class, and consented to be bound by all the terms of the Agreement, this Order, and by all proceedings, orders, and judgments that have been entered or may be entered in the Action. All objections must comply with these requirements and those set forth in Section VIII. of the Agreement.

17. **Preliminary Injunction.** Pursuant to the terms of the Agreement, the Class Representatives have moved for entry of a preliminary injunction that would enjoin all Settlement Class Members from filing or prosecuting actions asserting claims that would be subject to the Release provided for by the Agreement unless they first timely and validly submit a written request to be excluded from the Settlement Class. Pursuant to 28 U.S.C. §§ 1651(a) and 2283 and Federal Rule of Civil Procedure 23(d), the Court finds that issuance of the requested preliminary injunction is necessary and appropriate in aid of the Court's continuing jurisdiction and authority over this Action, to preserve its ability and jurisdiction to consider and fully effectuate the Settlement and in order to prevent the potential for inconsistent orders, confusion and disruption that would be caused by the simultaneous litigation of other putative class actions involving the allegations and causes of action asserted by the First Amended Complaint during the Court's consideration of the Settlement. Accordingly, in order to preserve the Court's jurisdiction pending consideration of whether final approval should be given to the Agreement, and to avoid irreparable harm to the settlement process, and after balancing the equities and concluding that the Agreement is sufficiently fair, reasonable and adequate that it is due to be preliminarily approved and should be protected from collateral attack during the notice and final approval process, the Court hereby preliminarily bars and enjoins all Settlement Class Members from: (a) instituting, maintaining, prosecuting,



intervening in, participating as a party or class member in, or otherwise pursuing or receiving any benefits from any other action other than this Action asserting any claims that would be Released Claims under the terms of the Settlement, unless they first exclude themselves from the Settlement Class in accordance with the terms of this Order; and (b) from filing, commencing, maintaining, or prosecuting any lawsuit asserting claims within the scope of the proposed Release set forth in the Settlement as a class action, as a separate class, or as a representative action for purposes of pursuing (including by seeking to amend a pending complaint to include class allegations or by seeking class certification in a pending action in any jurisdiction) on behalf of any other Settlement Class Members any of the claims within the scope of the proposed Release contained in the Settlement, whether or not they have excluded themselves from the Settlement Class.

18. **Termination of Settlement.** This Order, including the conditional class certification and findings contained in this Order, shall become null and void, have no further force or effect, shall not be used or referred to for any purpose, shall not be admissible or discoverable in any other proceeding, and shall be without prejudice to the rights of the Parties or Settlement Class Members, all of whom shall be restored to their respective positions existing immediately before this Court entered this Order, if the Settlement: (a) is not finally approved by the Court; (b) does not become final pursuant to the terms of the Agreement; (c) is terminated in

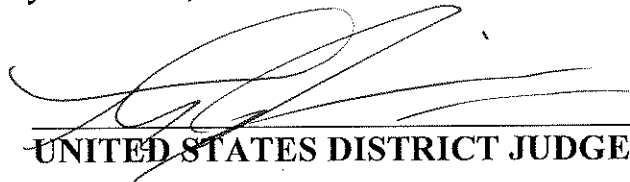
accordance with the Agreement; or (d) does not become effective for any other reason. In addition, neither the settlement terms nor any publicly disseminated information regarding the settlement (including without limitation the Notice Program, court filings, orders, and public statements) may be used as evidence in any proceeding in the event that the settlement does not become final for any reason. Furthermore, the Court recognizes that, should the settlement not become final for any reason, Murphy has reserved (a) all its defenses, objections, and rights to oppose any request for class certification and (b) all of its defenses to the merits of the claims in the First Amended Complaint. In the event the termination of the settlement or the Agreement otherwise fails to become effective due to no fault of their own, neither the Class Representatives, nor Class Counsel, nor the Settlement Class Members, shall have any obligation to Murphy for the Costs of Administration incurred.

19. **Continuing Jurisdiction.** This Court shall maintain continuing exclusive jurisdiction over these settlement proceedings to consider all further applications arising out of or connected with the Settlement or this Order, and to assure the effectuation of the Settlement for the benefit of the Settlement Class.

20. **Schedule.** Based on the foregoing, the Court sets the following schedule for the Fairness Hearing and the actions that must take place before and after such hearing:

<u>Event</u>	<u>Deadline/Time</u>	<u>Proposed Date</u>
Establish the Website	As soon as practicable following Preliminary Approval	April 7, 2019
In Store Notice	A ninety-day period of time	May 1-July 31, 2019
Online coupon registration opens	To coincide with In Store Notice	May 1, 2019
Publication Notice	To coincide with In Store Notice	May 2019
File Plaintiff's Motion for Attorneys' Fees, Expenses, Service Awards	To be filed no later than fourteen (14) days prior to the Objection/Exclusion Deadline. PA at ¶ 11	August 1, 2019
Objection and Requests for Exclusion Deadline	Thirty (30) days before the scheduled date of the Fairness Hearing. SA at ¶ 18.	August 16, 2019
File Motion for Final Approval of the Settlement	No later than 20 days before the Fairness Hearing	August 28, 2019
Any further submissions by the Parties	Including other submissions, any objections submitted by Settlement Class Members, a list reflecting all requests for exclusion, etc. PA at ¶ 11	September 6, 2019
Fairness Hearing	The Winston E. Arnow Federal Building, 100 North Palafox Street, Pensacola, Florida 32502, or any location of the Court's choosing. PA Order at ¶ 10.	Potentially September 17, 2019 at 10:00 a.m., in Courtroom 2.

**IT IS SO ORDERED** this 18th day of March, 2019.

  
**UNITED STATES DISTRICT JUDGE**