UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

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

PLAINTIFFS' UNOPPOSED MOTION FOR FINAL APPROVAL OF CLASS ACTION SETTLEMENT AND SUPPORTING MEMORANDUM

Pursuant to Federal Rule of Civil Procedure 23 and the Court's preliminary approval order (Doc. 24), Class Counsel respectfully move for entry of a Final Order and Judgment: (1) confirming Plaintiffs Steven Holt and Robert Enslen's appointment as the named representatives of the Settlement Class; (2) confirming the appointment of Class Counsel; (3) confirming and making final the Court's certification of the Settlement Class for settlement purposes only; and (4) granting final approval to the Parties' Stipulation of Settlement and Release.

This motion is based on the following Memorandum of Points and Authorities; the Parties' Stipulation of Settlement and Release (the "Settlement

Agreement," Doc. 22-2); the Declaration of Jennifer Keough of Settlement Administrator JND ("JND Decl.," attached hereto as Exhibit "A"); the previous Declarations of Class Counsel (Docs. 22-1, 26-1 and 32-1); Plaintiffs' pending Motion and Memorandum in Support of Attorneys' Fees, Costs and Service Award (Doc. 32); the Court's March 18, 2019 Preliminary Approval Order (Doc. 24); the other pleadings, Orders, documents and papers on file in this Action; and any other materials, testimony or argument that the Court may allow at the upcoming fairness hearing, currently scheduled for September 19, 2019 (Doc. 34).

Local Rule 7.1(C) Certification. Prior to the filing of this motion, the undersigned conferred with Murphy Oil USA, Inc.'s ("Murphy") counsel pursuant to Local Rule 7.1(B) regarding this motion and the relief it seeks, and Murphy's counsel stated their non-opposition to the relief requested in this motion for purposes of settlement only.

Local Rule 7.1(F) Certification. On August 23, 2019, the Court granted Plaintiffs' leave to file a memorandum exceeding Local Rule 7.1(F)'s 8,000 word briefing limitation. (Doc. 36). Pursuant to Local Rule 7.1(F) and the Court's Order, Plaintiffs hereby certify, pursuant to the word count function of Microsoft Word, that this motion and the accompanying memorandum, including all headings, footnotes, and quotations, but excluding the signature block, and certificate of service, contains 11,196 words.

Respectfully Submitted,

/s/ *Kenneth J. Grunfeld*

Kenneth J. Grunfeld, *pro hac vice*
Golomb & Honik, P.C.
1835 Market Street, Suite 2900
Philadelphia, PA 19103
Phone: (215) 985-9177
Fax: (215) 985-4169
Email: kgrunfeld@golombhonik.com

Joseph "Jay" H. Aughtman, *pro hac vice*
Aughtman Law Firm, LLC
1722 Platt Place
Montgomery, AL 36117
Phone:(334) 215-9873
Fax: (334) 213-5663
Email:jay@aughtmanlaw.com

Dated: August 28, 2019

Attorneys for Plaintiffs and the Classes

CERTIFICATE OF SERVICE

I hereby certify that on August 28, 2019, I electronically filed the foregoing with the Clerk of Court using the CM/ECF, which will send a notice of electronic filing to all counsel of record.

/s/ *Kenneth J. Grunfeld*
Kenneth J. Grunfeld

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION

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

<u>MEMORANDUM OF POINTS AND AUTHORITIES</u>

TABLE OF CONTENTS

I. INTRODUCTION AND NATURE OF THE CASE **1**

II. FACTUAL AND PROCEDURAL BACKGROUND **7**

A. Case Investigation 7

B. Proceedings Before the Court to Date 9

C. Settlement Negotiations for Class-Wide Relief 10

D. Settlement Negotiations Regarding Attorneys' Fees, Expenses and Service Awards 14

III. THE TERMS OF THE SETTLEMENT **15**

A. The Proposed Settlement Class 15

B. Process to Opt-Out of the Settlement 17

C. Relief Provisions 17

D. Release.. 20

E. Notice and Settlement Administration 21

F. Attorneys' Fees and Expenses.. 22

G. Class Representatives' Service Award... 23

IV. THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL............. **25**

A. The Standard for Judicial Approval of Class Action Settlements 25

B. The Settlement Satisfies the Standards for Judicial Approval 28

1. Reasonable and Adequate Notice Was Provided to the Class..28

2. The Settlement is the Product of Arms'-Length Bargaining and Mediation 30

3. The Settlement was Negotiated Based on a Sufficiently Developed Factual Record 33

4. The Risks and Expense of Continued Litigation Coupled with the Probability and Range of Possible Recovery by the Settlement Class, Measured Against the Relief Offered by the Settlement, Favor Final Approval 35

5. The Opinions of Class Counsel and Reaction of the Settlement Class Favor Final Approval 38

V. CERTIFICATION OF THE SETTLEMENT CLASS SHOULD BE MADE FINAL **44**

VI. CONCLUSION **45**

TABLE OF AUTHORITIES

Cases

Allapattah Servs., Inc. v. Exxon Corp.,
454 F. Supp. 2d 1185 (S.D. Fla. 2006) 24

Ault v. Walt Disney World Co., 692 F.3d 1212 (11th Cir. 2012) 25

Bennett v. Behring Corp., 737 F.2d 982 (11th Cir. 1984) 25

Blum v. Stenson, 465 U.S. 886 (1984) 23

Borcea v. Carnival Corp., 238 F.R.D. 664 (S.D. Fla. 2006) 27

Carpenters Health & Welfare Fund v. Coca-Cola Co.,
No. 1:00-CV-2838-WBH, 2008 WL 11336122 (N.D. Ga. Oct. 20, 2008) 38

Carson v. Am. Brands, Inc., 450 U.S. 79 (1981) 27

Class Plaintiffs v. City of Seattle, 955 F.2d 1268 (9th Cir. 1992) 25

Cotton v. Hinton, 559 F.2d 1326 (5th Cir. 1977) .... passim

Ehreart v. Verizon Wireless, 609 F.3d 590 (3d Cir. 2010) 25

Faught v. Am. Home Shield Corp., 2:07-cv-1928, 2010 WL 10959223
(N.D. Ala. Apr. 27, 2010), *aff'd*, 68 F.3d 1233 (11th Cir. 2011) 31

Francisco v. Numismatic Guaranty Corp. of Am.,
No. 06-cv-61677, 2008 WL 649124 (S.D. Fla. Jan. 31, 2008) 33, 35

Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P., 212 F.R.D. 400 (E.D. Wis. 2002) 36

Greco v. Ginn Devel. Co., LLC, 635 F. App'x 628 (11th Cir. 2015) 38

Hanlon v. Chrysler Corp., 150 F.3d 1011 (9th Cir. 1998) 44

Holmes v. Cont'l Can Co., 706 F.2d 1144 (11th Cir. 1983) 38

Ingram v. The Coca-Cola Co., 200 F.R.D. 685 (N.D. Ga. 2001)............................32

In re Corrugated Container Antitrust Litig.,
643 F.2d 195 (5th Cir. 1981) 31, 34, 35

In re Domestic Air Transp. Antitrust Litig.,
148 F.R.D. 297 (N.D. Ga. 1993)..27

In re Mego Fin. Corp. Sec. Litig.,
213 F.3d 454 (9th Cir. 2000) 34

In re Mid-Atlantic Toyota Antitrust Litig.,
564 F. Supp. 1379 (D. Md. 1983)...5

In re Motorsports Merch. Antitrust Litig.,
112 F. Supp. 2d 1329 (N.D. Ga. 2000)..27

In re Nasdaq Mkt.-Makers Antitrust Litig.,
187 F.R.D. 465 (S.D.N.Y. 1998) 39

In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions,
148 F.3d 283 (3d Cir. 1998) 33, 37

In re Rio Hair Naturalizer Prods. Liab. Litig.,
No. MDL 1055, 1996 WL 780512 (E.D. Mich. 1996)..33

In re Smith, 926 F.2d 1027 (11th Cir. 1991)..26

In re U.S. Oil and Gas Litig., 967 F.2d 489 (11th Cir. 1992) 25

Juris v. Inamed Corp., 685 F.3d 1294 (11th Cir. 2012) 29

Kay v. Apfel, 176 F. 3d 1322 (11th Cir. 1999)...23

Lazy Oil Co. v. Wotco Corp., 95 F. Supp. 2d 290 (W.D. Pa. 1997),
aff'd, 166 F.3d 581 (3d Cir. 1999)...35

Lee v. Ocwen Loan Serv., LLC,
No. 14-cv-60649, 2015 WL 5449813 (S.D. Fla. Sept. 14, 2015).........................30

Leverso v. S. Trust Bank of Ala., N.A.,
18 F.3d 1527 (11th Cir. 1994) .... passim

Lipuma v. Am. Express Co., 406 F. Supp. 2d 1298 (S.D. Fla. 2005) 26, 36

Little Rock School Dist. v. Pulaski Cnty, Special School Dist. No. 1,
921 F.2d 1371 (8th Cir. 1990) 25

Minter v. Wells Fargo Bank, N.A., 283 F.R.D. 268 (D. Md. 2012) 29

Muransky v. Godiva Chocolatier, Inc., 922 F.3d 1175 (11th Cir. 2019) 23

Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.,
221 F.R.D. 523 (C.D. Cal. 2004)...36

Officers for Justice v. Civil Serv. Comm'n,
688 F.2d 615 (9th Cir. 1982) 27

Owens v. Okure, 488 U.S. 235 (1989) 41, 43

Phillips Petroleum Co. v. Shutts, 472 U.S. 797 (1985) 25

Pinto v. Princess Cruise Lines,
513 F. Supp. 2d 1334 (S.D. Fla. 2007) 37

Poertner v. Gillette Co., 618 F. App'x 624 (11th Cir. 2015) 31

Ressler v. Jacobson, 822 F. Supp. 1551 (M.D. Fla. 1992).......................................33

Saccoccio v. JP Morgan Chase Bank, N.A.,
297 F.R.D. 683 (S.D. Fla. 2014)... passim

Shy v. Navistar Int'l Corp.,
No. C-3-92-333, 1993 WL 1318607 (S.D. Ohio May 27, 1993) 37

UAW v. Gen. Motors Corp., 497 F.3d 615 (6th Cir. 2007) 25

United States v. Ala., 271 F. App'x 896 (11th Cir. 2008) 26

Wal-Mart Stores, Inc. v. Visa, U.S.A., Inc.,
396 F.3d 96 (2d Cir. 2005) 25

Walters v. Cook's Pest Control, Inc.,
No. 2:07-cv-00394, 2012 WL 2923542 (N.D. Ala. July 17, 2012)....................24

Wyatt By and Through Rawlins v. Horsley,
793 F. Supp. 1053 (M.D. Ala. 1991) 44

Statutes

28 U.S.C. § 1712 22

28 U.S.C. § 1712(b)(1) 22

28 U.S.C. § 1712(b)(2) 23

28 U.S.C. § 1715 .... 28, 29

Fla. Admin. Code R. 12A-l.018 2

Sales and Use Tax Rules, Code of Alabama 1975 2

Rules

FED R. CIV. P. 23(a) and 23(b)(2), (3) 45

FED R. CIV. P. 23(c)(2)(B) 28

FED R. CIV. P. 23(e) 25

FED. R. CIV. P. 23(e)(1) 28

Other Authorities

Frederick C. Dunbar, Todd S. Foster, Vinita M. Juneja, Denise N. Martin, *Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions*, National Economic Research Associates (November 1996), ...32

JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS: LAW AND PRACTICE § 6:17 (10th ed. 2013) 29

JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS: LAW AND PRACTICE § 6:28 (10th ed. 2013) 24

MANUAL FOR COMPLEX LITIG. (THIRD) § 30.42 (1995)..35

Thomas E. Willging, Laurel L. Hooper, and Robert J. Niemac, *Symposium: The Institute of Judicial Administration Research Conferences on Class Actions: Class Actions and the Rulemaking Process: An Empirical Analysis of Rule 23 to Address the Rulemaking Challenges* (1996)..32

I. INTRODUCTION AND NATURE OF THE CASE

The Class Representatives brought this lawsuit on behalf of themselves and a putative class of Murphy customers who made in store purchases 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. (*See generally* Complaint, Doc. 1). The Parties engaged in early settlement discussions, and through an intensive, thirteen-month long process involving formal and informal mediation and numerous rounds of confirmatory discovery, counsel for the Plaintiffs were able to fully and accurately assess the merits of their claims, Murphy's potential defenses, and the material facts regarding the nature, cause and effect of the events at issue in this case. (Doc. 22-1, Class Counsel Decl. at ¶¶ 2-4).

Murphy is a subsidiary of a Fortune 500 company with over one thousand retail gas stations with attached convenience stores, many of which are located adjacent to Walmart stores. Through comprehensive pre-suit investigation and the above confirmatory process, the Plaintiffs determined that Murphy had been charging its customers sales tax on the full amount of certain sale items instead of on the discounted price. When customers buy certain products that are on sale, at least a portion of the discounted amount (the difference between the item's full price and its discounted price) is not taxable. (Doc. 10, First Amended Complaint (FAC) at ¶¶ 3-6). To the extent the discounted amount is funded at least in part by Murphy

(referred to as a *retailer-funded discount*), sales tax should not be calculated on that amount. This is how sales tax is supposed to be calculated in Alabama (*see* Sales and Use Tax Rules, Code of Alabama 1975, at § 810-6-1-.53, at ¶ 18), in Florida (*see* Fla. Admin. Code R. 12A-l.018, at ¶ 28), and in every other state in the twenty-six (26) states that Murphy operates in, excluding Texas and Missouri.

By way of a simple example, here's how it worked: a Murphy customer buys a product for $4.20 with a $.75 Murphy-funded discount, so she paid $3.45. However, the purchase was taxed at $4.20. The difference between what Murphy charged for sales tax ($4.20 X 6%[1] = $.25) and what it should have charged ($3.45 X 6% = $.22) was $.03.

Confronted with the facts as set forth in the Complaint, Murphy recognized the issue and conferred with counsel for the Plaintiffs to reach a resolution to the issues presented. First, Murphy took immediate steps to stop the practice. Second, Murphy provided counsel for the Plaintiffs with detailed data showing that the sales tax collected was not kept by Murphy but, in fact, remitted to the various local municipalities and taxing authorities. Third, the Parties reviewed Murphy documents to confirm the size and scope of the issues presented. Fourth, details surrounding the Class Representatives' purchases were scrutinized to ensure that their transactions were typical of the claims alleged and that they could adequately

[1] For purposes of this example, we'll use Kentucky's 6% sales tax rate.

represent the proposed Settlement Class. Finally, the Parties engaged in arms-length mediation with a qualified, experienced neutral to create a foundation and framework to settle the claims alleged.

Over the course of this litigation, Murphy has fully cooperated with the Plaintiffs in good faith in its effort to identify and investigate issues presented; in quantifying the impact; in attempting to identify the customers who were affected; in implementing a practice change, and; in developing a plan to settle the litigation. In fact, the Parties agreed early on to stay the litigation and engage former U.S. Attorney and retired United States District Judge Thomas E. Scott as a private mediator in this matter. Through that protracted, adversarial and sometimes even contentious process, including the Parties' arms'-length negotiations and confirmatory due diligence discovery efforts, the Parties reached the instant settlement for which the Plaintiffs now seek final approval.

The settlement reached is a fair, reasonable and adequate compromise of the claims at issue in this lawsuit. The FAC asserts claims on behalf of the two Class Representatives and a putative class of consumers alleging unjust enrichment, negligence and a violation of states' consumer protection statutes. The relief sought is both non-monetary, calling for an immediate halt of the practice, and compensatory, seeking an award of compensatory damages, interest, attorneys' fees and costs for injuries caused. The relief offered by the settlement is commensurate

with what was sought in the lawsuit. First, the Parties are proud to report the process that Murphy employed to charge customers sales tax on the Murphy-funded portion of certain discounted items was investigated and terminated as quickly as possible. The lawsuit served as a catalyst to this change, which was the direct result of its filing. Second, the settlement offers members of the Settlement Class the opportunity to save significantly more money than they were overcharged for sales tax through the implementation of a thorough and well-tailored coupon program. The right of exclusion provided by the settlement also permits those who are not satisfied with the settlement's terms to exclude themselves from the Settlement Class, and thereby preserve their right to bring an individual lawsuit against Murphy if they choose to do so. Moreover, the Parties have agreed to retain a third-party administrator, JND Legal Administration ("JND.com"), to administer the settlement and, along with Murphy itself, to provide the Settlement Class with Notice at Murphy's expense. In other words, Murphy bears all Costs of Administration in this matter.

The Plaintiffs and Murphy reached the settlement through hard-fought, protracted, arm's-length negotiations that included multiple exchanges of information, communications with clients, and research and consultation with experts in the fields of economics, tax, notice and class action administration. The settlement is supported by significant due diligence verification of the critical facts.

Because the settlement resulted in the precise nature of relief as originally sought and in addition offers Settlement Class Members the opportunity to save more money than they were overcharged sales tax, all without the need, cost and risk of litigation over Murphy's legal and factual defenses to the claims, it is clear the settlement as codified in the Settlement Agreement represents a fair, reasonable and adequate compromise warranting final approval and class certification for purposes of settlement and notice. Murphy does not oppose this motion and will continue to cooperate in the settlement process. *See In re Mid-Atlantic Toyota Antitrust Litig.*, 564 F. Supp. 1379, 1386 (D. Md. 1983) (a defendant's agreement to cooperate with plaintiffs "is an appropriate factor for a court to consider in approving a settlement.").

On March 18, 2019, the Court preliminarily approved the Parties' Settlement, conditionally certified the Settlement Class for settlement purposes, approved forms of notice to members of that Settlement Class and approved the retention of JND Legal Administration to serve as the Settlement Administrator. *See* Doc. 24.[2] Following entry of that Order, the Parties and Settlement Administrator diligently implemented that notice plan. Notice was provided to the Settlement Class, as well as to 24 different federal and state regulators. August 16, 2019 was the Court

[2] Unless otherwise defined, capitalized terms herein have the same meanings attributed to them in Section 2 of the Settlement.

imposed cutoff for filing objections and opting out of the settlement. Only two (2) objections have been filed and no one has opted out of the Settlement. *See infra*.

The positive response to the Settlement (in terms of no opt-outs and objections) is not surprising. The Settlement resolves the claims of the Settlement Class by making available up to $257,500.00 of relief in the form of $1.00 coupons redeemable at Murphy stores. Additionally, the Settlement includes a major practice change by Murphy. Murphy has implemented practice changes to ensure no sales tax is collected on Murphy-funded discounts in those jurisdictions by (a) updating its Point-of-Sale system to not treat Murphy-funded discounts the same as manufacturer-funded discounts and (b) having Murphy's merchandise and tax professionals meet on a regular basis to review proposed discount programs and ensure sales tax is properly collected. These results were reached on behalf of the Class even though it is not certain the Settlement Class could have prevailed on the merits. At the same time, Class Counsel are seeking a very modest fee and cost award based on the time Class Counsel has spent litigating the case (at approximately 2/3rds the value of their time) or considering the value of the relief received by the Class. *Saccoccio v. JP Morgan Chase Bank, N.A.*, 297 F.R.D. 683, 695 (S.D. Fla. 2014) (far "below the range of 20–30% fee that is customary" in this Circuit.)

At bottom, the relief offered by the Settlement, measured against the uncertainty of success for the Settlement Class, coupled with other risks, costs and delays inherent in certifying the class on a contested basis and then pursuing the claims at issue to judgment, amply satisfies the criteria for final approval. The Court should finalize certification of the Settlement Class and give final approval to the Settlement.

II. FACTUAL AND PROCEDURAL BACKGROUND

A. Case Investigation

In the early Fall of 2017, Class Counsel was contacted by Murphy customers claiming they had been overcharged for sales tax and immediately began investigating both the way that Murphy charged customers sales tax and how sales tax should have been charged in various jurisdictions. The former factual investigation involved purchasing lots of products at various Murphy locations at various times. We came to understand that Murphy was almost universally offering a two-for-one on candy bars, and so our investigation focused on buying these candy bars because, from researching and speaking with people in the industry, we believed this was the type of discount program that would typically be funded by the retailer as opposed to by the manufacturer. (Doc. 22-1, Class Counsel Decl. at ¶ 7).

The distinction between who funded the discount was important because our latter legal investigation revealed definitively that sales tax could not be charged on

the portion of the sale reflecting retailer-funded discounts on sale items in any of the twenty-six (26) states that Murphy does business in. We also determined the applicable sales tax (considering both state and local tax laws) in all of the locations where we (or others with our proxy) purchased two-for-one candy bars from Murphy in order to get a general understanding of the impact of the way Murphy was charging sales tax. At the end of the investigation, Class Counsel was able determine that Murphy was improperly charging customers sales tax in a number of states.

Our investigation included two other steps as well, trying to determine: (1) what point-of-sale cash register network and centrally managed pricing system Murphy was operating, and (2) whether Murphy was remitting the sales tax in full that it collected from customers to state and local taxing authorities. While progress was made on both fronts, Class Counsel decided to file the lawsuit without reaching complete answers to these two questions. We had, however, fully investigated and vetted class representatives from Florida and Alabama, as well as others from other states. At that point, Class Counsel researched case law reflecting other class actions brought challenging the manner in which sales tax was charged and collected in and drafted a Complaint to be filed in the Northern District of Florida before the end of 2017.

B. Proceedings Before the Court to Date

The Plaintiffs commenced this action on December 15, 2017. (Doc. 1). Motions for *Pro Hac Vice* were filed and Orders were entered. (Docs. 2-4). In early January of 2018, even before the summons was issued (Doc. 8-9 (2/1/2018)), counsel for Murphy contacted counsel for the Plaintiffs to initiate a dialogue. It became immediately apparent to counsel for the Plaintiffs that (1) Murphy was in fact overcharging customers sales tax, (2) the Complaint was going to be a vehicle for a change in Murphy's practices, and (3) Murphy was amenable to an early resolution of the litigation. (Doc. 22-1, Class Counsel Decl. at ¶ 13). As such, service of the original Complaint was put on hold while conversations took place and information was exchanged between parties. *Id.* at ¶ 14. As part of this exchange of information, it became clear that the defendant named in the complaint, Murphy USA, Inc., was not the proper defendant. Instead, the company that operates Murphy's stores is Murphy Oil USA, Inc.

In May of 2018, Plaintiffs filed and served the FAC to substitute the name of the Defendant entity from Murphy USA, Inc. to Murphy Oil USA, Inc. (Docs. 10-13). The Parties agreed to seek to extend Defendant's time to respond to the FAC to August 15, 2018, and in the interim, an Initial Scheduling Order was entered. (Docs. 14-16). After months of negotiation an agreement in principle for class-wide relief was reached. The Parties agreed to file a Notice of Settlement and Request to

Stay Deadlines on August 15, 2018, which was ordered on August 20, 2018. (Docs. 18-19). Plaintiffs filed their Motion for Preliminary Approval (Doc. 22) and the Court granted the motion (Doc. 24).[3]

C. Settlement Negotiations for Class-Wide Relief

What began as a dialogue between counsel at the very outset of this litigation quickly morphed into settlement discussions. (Doc. 22-1, Class Counsel Decl. at ¶¶ 10, 15). In fact, during the very first call between counsel, Murphy claimed that (1) while it was charging customers sales tax in the manner referenced in the Complaint in some states, it did not do this in all 26 states it operates in, and; (2) it remits to the appropriate taxing authorities all sales tax it collects, including the amount it overcharges. *Id.* In subsequent calls and emails between counsel, the parties worked towards reaching an understanding of what actually transpired and creating a path towards early class-wide settlement. Murphy then agreed to provide materials to substantiate its claims that it remitted all sales tax collected and the Parties entered into a confidentiality agreement regarding all documents to be exchanged. After this

---

[3] On June 11, 2019, Plaintiff Steven Holt submitted a letter to the Court (Doc. 25) which Class Counsel has interpreted as an objection to the settlement. Class Counsel submitted a timely opposition to the letter (Doc. 26). The Court then entered an Order denying the relief requested by Mr. Holt and noting that his objection will be considered at the Fairness Hearing. (Doc. 28). Class Counsel addresses Mr. Holt's objection again *infra*.

set of documents were provided, Class Counsel met and conferred with Murphy counsel to evaluate and understand the materials provided.

At Murphy's request, counsel for Plaintiffs provided a written framework of a proposal to globally resolve the claims set forth in the Complaint. *Id.* at ¶ 16. Dollar figures were not being discussed at that time, but, with the help of class action administration and notice experts, an initial plan was submitted to reflect class formulation, potential remedies, and a comprehensive notice process. Counsel for Plaintiffs also set forth a plan going forward, including, *inter alia*, ensuring the case was proceeding as required by the Court,[4] the exchange of additional confirmatory discovery and the need for private mediation before a respected and experienced neutral. Counsel for the Parties spoke a number of times in March of 2018 regarding the proposal and eventually scheduled joint calls with class action administrators who also provided materials for the Parties to review and consider.

By late April 2018, considerable progress had been made by the Parties regarding a suitable framework for settlement. *Id.* at ¶ 17. At that time, the Parties jointly retained former United States Attorney and retired United States District Court Judge Thomas Scott of Miami, Florida as the mediator. *Id.* Because of Judge Scott's busy schedule and the need to coordinate travel for all of the individuals involved, an in-person mediation session could not be scheduled until June 4, 2018

[4] By agreement, service was postponed on the original Complaint.

in Miami, Florida. In the meantime, before the mediation session, the Parties negotiated the informal exchange of pertinent information and data in order to fully evaluate the claims, damages, allegations and defenses. Comprehensive information regarding the Plaintiffs was provided, and Murphy provided thorough data collections representing the impact of the way it had collected sales tax from its customers, broken down by state and time period, along with detailed examples. Detailed mediation statements were then provided to Judge Scott prior to the Mediation, confirming the following information:

1. Where. The overcharging occurred in all the states Murphy operated in except for Texas and Missouri; twenty-four (24) states in total.
2. When. The overcharging of sales tax in this manner began on January 8, 2016 and continued until approximately January 20, 2018 in most of the states it operates in.[5]
3. Tax Remission. While Plaintiffs contend that whether or to what extent Murphy remitted to the government the monies that it overcharged its customers for sales tax is largely irrelevant to this case legally except potentially on the unjust enrichment cause of action, documents supplied by Murphy did in fact establish that it was not keeping the sales tax collected for itself as a hidden profit.
4. How much. The total sales tax collected on the portion of discounts that are retailer-funded only for the years 2016 and 2017 is listed as $628,710.96.[6]

[5] Murphy began to stop collecting sales tax in this manner in 18 states as early as January 20, 2018 and completed the process for the remaining states thereafter.

[6] Given the time range set forth above, 2016-2017 is an acceptable proxy. The impact is slightly greater than this figure given the limited continued collection of sales taxes in some states.

> 5. Class Representatives. Information about these individuals was provided confirming that they are adequate and typical to serve as Class Representatives in this matter.

Id.

On June 4th, the Parties, which included a number of executive-level employees of Murphy, conducted a full day of in-person mediation in Miami. *Id.* at ¶ 18. No settlement was reached. Nevertheless, with the help of Judge Scott, a framework was created that included categories reflecting non-monetary relief, monetary relief, notice needs, a distribution plan and legal issues presented. The Parties agreed to continue negotiating terms of class-wide relief through email and over the phone with the mediator's oversight. By the end of July, most of the issues had been resolved and the Parties were contemplating a second mediation day with Judge Scott.

In August, Murphy provided additional data regarding its collection of sales tax. *Id.* at ¶ 19. On August 15, 2018, after what amounted to approximately eight (8) months of negotiations, the Parties agreed to a settlement in principle reflecting proposed relief to the Class and a plan for administration, notice, distribution and settlement approval. The Parties agreed to file a Notice of Settlement (Doc. 18) seeking a stay of case deadlines at that time.

D. Settlement Negotiations Regarding Attorneys' Fees, Expenses and Service Awards

While it was understood that Attorneys' Fees, Expenses or Service Awards would have to be paid separately by Murphy, as of August 15, 2018, the Parties had purposefully not negotiated these issues. At that time, the Parties initiated a separate, arms-length, informal negotiation period regarding Attorneys' Fees, Expenses and Service Awards, again using Judge Scott as the mediator. Additional mediation statements were prepared and provided to Judge Scott to address these issues.

Because of schedules, Judge Scott's busy calendar and the Parties' deeply entrenched positions, the back-and-forth of negotiations slowed significantly. Nevertheless, multiple calls took place and emails were exchanged between August and October between the Parties and Judge Scott to evaluate the Parties' respective positions and reach a compromise. Additional documentation was exchanged between the Parties and legal research was conducted to determine the best process to move forward and to obtain approval of the settlement. By the end of October, the Parties were deadlocked; at that time, counsel for the Plaintiffs was considering moving to enforce the class-wide settlement and looking to the Court to determine appropriate amounts for Attorneys' Fees, Expenses and Service Awards.

However, before the Parties gave up on negotiations entirely, and with the encouragement of Judge Scott, additional rounds of telephone calls were conducted in late October and into November. At around that time, a draft Settlement

Agreement was drafted by counsel for the Plaintiffs and provided to Murphy. In addition, the Parties communicated with the Settlement Administrator regarding notice, distribution and other case needs. Some progress was made and additional documentation was exchanged. In November and into December of 2018, again with the encouragement of Judge Scott despite his busy schedule, Murphy put together a detailed response and offer regarding Attorneys' Fees. The back-and-forth of negotiations ramped up in December with a goal, as set forth by Judge Scott, for the Parties to provide final offers and demands by year-end.

After clarification on a number of points was made, ultimately the final offers and demands were exchanged in early January. On January 22, 2019, the Parties reached an agreement on Attorneys' Fees, Expenses and Service Awards.

III. THE TERMS OF THE SETTLEMENT

The Settlement resolves all claims of the Class Representatives and the Settlement Class against Murphy. The details are contained in the Settlement Agreement. The primary terms of the Settlement are described below.

A. The Proposed Settlement Class

The unique nature of this case made defining the proposed class of consumers a particular challenge. The identification of individuals that purchased discounted goods at a convenience store is difficult. Counsel for the Parties, along with the assistance of Murphy itself and settlement administrators, initially explored the

possibility of identifying these individuals through a number of potential means, including (a) those who maintained their sales receipts, (b) those with established customer relationships with Murphy through membership programs or Murphy payment card products and (c) those that used a payment card for their purchase. Ultimately, Class Counsel's ability to accurately identify these individuals using these categories was determined to be a very difficult challenge.

Instead, through communications with Murphy itself and settlement administrators, Class Counsel learned that people who purchased discounted goods continue to do so on fairly regular intervals. (Doc. 22-1, Class Counsel Decl. at ¶¶ 21, 42). Accordingly, the notice plan set forth herein would adequately communicate the settlement to the individuals that purchased the discounted goods at Murphy stores and overpaid for sales tax. For purposes of the settlement proposed, the Settlement Class is as follows:

> 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).

Settlement Agreement (Doc. 22-2) at III.28. Still excluded from the Settlement Class are: (a) Murphy's board members and executive level officers; (b) persons who timely and properly exclude themselves from the Settlement Class as provided in this Agreement; and (c) all federal judges and their spouses. *Id.*

B. Process to Opt-Out of the Settlement

Any Class Members can opt-out of the Settlement. Any Settlement Class Member who wished to do so were advised of his or her right to be excluded, and of the deadline and procedures for exercising that right. *Id.* at VII.1-4. No one has opted-out out of the Settlement.

C. Relief Provisions

The Settlement offers two distinct forms of relief:

1. Non-Monetary Relief

The primary form of relief that the Complaint envisioned in this matter was a practice change to stop the alleged improper collection of sales tax. Regardless of whether the monies collected were being remitted to government authorities, it was clear that consumers were paying more than they should have. Plaintiffs are proud to report that the improper collection of sales tax stopped immediately as a result of the filing of this lawsuit. The terms of the Settlement Agreement call for the following:

> If a customer purchasing items in a Murphy store receives a discount on the purchase price, Murphy will not charge and collect sales tax on any portion of the discount funded by Murphy in jurisdictions where it is prohibited (see, e.g., jurisdictions listed in Settlement Agreement, Section II(4)). Murphy has implemented practice changes to ensure no sales tax is collected on Murphy-funded discounts in those jurisdictions by (a) updating its Point-of-Sale system to not treat Murphy-funded discounts the same as manufacturer-funded discounts and (b) having Murphy's merchandise and tax professionals meet on a

> regular basis to review proposed discount programs and ensure sales tax is properly collected. The Parties agree that these practice changes were implemented as a result of the Action as a catalyst for these practice changes, which will remain in effect until at least December 31, 2021; provided, however, that Murphy must comply with applicable laws, rules and regulations and thus is not required to maintain a practice change that would not comply with a law, rule or regulation or authoritative interpretation thereof.

Id. at V.1. Accordingly, Murphy agreed to immediately stop the practice and to committing to a four (4) year practice change as set forth above. *Id.* These promises resulted in significant cost savings to the Settlement Class. *See infra*. The documents exchanged and Class Counsel's investigation confirmed that in 2016-2017, Murphy collected $628,710.96 in sales tax based on Murphy-funded discounts, with a 7.5% annual increase from 2016 to 2017. (Doc. 32-1, Joint Fee Decl. at ¶ 9). Projecting this figure out four years through 2021, without even factoring in natural Murphy store growth, the total impact of the practice change would more likely have been over $1.5 million in sales tax based on Murphy-funded discounts that might have been collected from the Settlement Class. *Id.* In terms of the practice change, there can be no debate that the relief afforded to the Settlement Class, that is, that Murphy has stopped overcharging for sale tax and has promised to continue this practice for four years is unquestionably an excellent result for the Settlement Class.

2. Coupon Redemption and Distribution

In addition to non-monetary relief in the form of a practice change as set forth above, the FAC also contemplated monetary relief for the Settlement Class. Based on the way the Settlement Class is defined, that meant coming up with a process through which customers that go into Murphy stores could receive a discount on their in-store purchases. After working with the mediator and consulting with experts in the field of notice and class action administration regarding other cases like this one, the most effective and tailored type of relief available was to offer coupons to Settlement Class Members. Under the settlement:

> The Parties agree that Murphy will provide and make available coupons for $1.00 off on any item sold in its stores except for (a) age-restricted items such as alcohol, lottery or tobacco products, or (2) motor fuel. Coupons will be valid for one year or until 257,500 coupons are redeemed for a total value of $257,500.00.

Settlement Agreement (Doc. 22-2) at V.1.

The process was created to be as efficient and effective as possible for the Settlement Class. (Doc. 22-1, Class Counsel Decl. at ¶ 26). This includes Settlement Class Members to register for coupons prior to distribution to obtain and maintain coupons on their telephones, and to redeem coupons without printing them. *Id.* The administrator established Class Website allows for Settlement Class Members to affirm they are a Settlement Class Member and thereby register their email addresses in order to receive a Coupon. *Id.* The Coupons are of such quality

as to be a scannable image, such that it may be displayed on a mobile device and scanned at a Murphy store without the need to print a paper copy of the Coupon. *Id.* A report shall be provided to the Court not later than ten (10) days before the date of the Fairness Hearing regarding the registration process and results.

Further, in terms of the coupons offered, Settlement Class Members have an opportunity to redeem $257,500.00 worth of coupons. From a purely quantitative perspective, Settlement Class Members have an opportunity to recover approximately 41% of the total impact of the actions alleged in the FAC. And given the very small per-transaction amount of the sales tax charged, on a per-Settlement Class Member basis, a $1 coupon is a significant return based on each person's individual losses.

D. Release

In exchange for the relief described above, and upon entry of a Final Order and Judgment approving the Settlement, the Class Representatives and the Settlement Class will release Murphy of, *inter alia,* all claims "arising or resulting in whole or in part from the allegations in the Operative Complaint." Settlement Agreement (Doc. 22-2) at IX.1. In other words, the Settlement Agreement contemplates a release specific to the subject matter addressed in this case and does not contemplate a general release of any and all claims of any kind against Murphy. The Release includes a preliminary injunction to protect Murphy, the Settlement

Class and this Court's jurisdiction from any filings prior to approval of the settlement. *Id.* at IX.4.

E. Notice and Settlement Administration

The Parties negotiated how the process of notice and administration would take place. The parties agreed to the appointment of JND.com to act as the Settlement Administrator and the Court approved the appointment. *See* Preliminary Approval Order (Doc. 24). JND.com created a tailored notice plan to communicate the terms of the settlement to the Settlement Class. Notice was provided pursuant to CAFA (*id.* at VI.1), by publication in a daily circulation newspaper (*id.* at VI.2), via signage in all Murphy stores in the months of May, June and July of 2019 (*id.* at VI.3), and via a specially created Website (*id.* at VI.4).

The details of Notice were carefully planned and approved by the Court. The parties and JND.com crafted the language of the various forms of Notice, established a process to ensure Notice was disseminated, and administered the various contemplated forms of Notice to the Settlement Class. (Doc. 22-1, Class Counsel Decl. at ¶ 29; *infra* Section VI.B.1-3). Murphy was active in this process and also created the coupons and in-store notice materials, working cooperatively with Class Counsel and the Settlement Administrator. All Costs of Administration and Notice are paid separately by Murphy. (Doc. 22-1 at III.8).

F. Attorneys' Fees and Expenses

Under the terms of the Settlement Agreement, Class Counsel have petitioned the Court for an award of reasonable Attorneys' Fees and reimbursement of Expenses incurred in the prosecution of this case, in a total amount not to exceed $250,000.00. (Doc. 22 at 19). The Attorneys' Fees and Expenses provision was separately and independently negotiated by the Parties apart from the class settlement provisions, in a hotly contested, arm's-length negotiation. (Doc. 22-1, Class Counsel Decl. at ¶ 30). Any such Attorneys' Fees and Expenses award will be paid separately by Murphy from the relief being offered to the Settlement Class Members. *Id.* The Settlement is not conditioned upon any Attorneys' Fees or Expenses award being approved by the Court. *Id.*

Attorney's fees in this case are compensable under the lodestar method pursuant specifically to the Class Action Fairness Act (CAFA), 28 U.S.C. § 1712. Section (b)(1) of CAFA states:

> If a proposed settlement in a class action provides for a recovery of coupons to class members, and a portion of the recovery of the coupons is not used to determine the attorney's fee to be paid to Class Counsel, any attorney's fee award shall be based upon the amount of time Class Counsel reasonably expended working on the action.

28 U.S.C. § 1712(b)(1). CAFA's directive thus gives the Court the discretion to award fees using the lodestar method. CAFA also makes clear that the Court may award a multiplier of the lodestar to enhance the fee award under the appropriate

circumstances. *See* 28 U.S.C. § 1712(b)(2) ("Nothing in this subsection shall be construed to prohibit application of a lodestar with a multiplier method of determining attorney's fees."). Under the lodestar method, the Court multiplies the number of hours that Plaintiffs' counsel reasonably worked by the prevailing market rate for that work. *See Blum v. Stenson*, 465 U.S. 886, 888 (1984); *Kay v. Apfel*, 176 F. 3d 1322, 1324 (11th Cir. 1999). Courts have great latitude in setting fee awards in class action cases. *Muransky v. Godiva Chocolatier, Inc*., 922 F.3d 1175, 1194 (11th Cir. 2019).

Here, the fees and expenses being petitioned for are reasonable in nature. The request for a total of $250,000.00 in attorneys' fees and expenses to be paid separately by Murphy. Class Counsel have expended over 700 hours of work on this matter, such that the fees to be paid to them will result in a significant (approximately 2/3rds) negative multiplier. Class Counsel has established that if the motion is approved, it will result in a continued practice change valued in an amount of approximately $1,500,000.00, as well as an opportunity for coupon redemption of up to $257,500.00 to Class Members. These figures warrant the modest award requested.

G. Class Representatives' Service Award

Under the Settlement, Class Counsel have petitioned the Court to award reasonable Service Awards, not to exceed $2,500.00, to be paid to each of the two

(2) Class Representatives for their services to the Settlement Class, for a total of $5,000.00. *Id.* at XI.4. The Service Award is to be paid separately by Murphy. *Id.*

The Service Award is intended to recognize the time and effort expended by the Class Representatives on behalf of the Settlement Class in assisting Class Counsel with the prosecution of this case and negotiating the relief the settlement proposes to confer to the Settlement Class Members, as well as the exposure and risk they incurred by putting their names on the Complaint, participating in the litigation and settlement negotiations, and taking a leadership role in bringing this matter to the Court. *See, e.g.*, *Walters v. Cook's Pest Control, Inc*., No. 2:07-cv-00394, 2012 WL 2923542, at *14 (N.D. Ala. July 17, 2012) ("[T]here is ample precedent for awarding incentive compensation to class representatives at the conclusion of a successful class action.") (*quoting Allapattah Servs., Inc. v. Exxon Corp*., 454 F. Supp. 2d 1185, 1218 (S.D. Fla. 2006) *accord* 2 JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS: LAW AND PRACTICE § 6:28 at 197 (10th ed. 2013) ("[T]here is near-universal recognition that it is appropriate for the court to approve an incentive award payable from the class recovery, usually within the range of $1,000 - $20,000."). The Settlement is not conditioned upon any Service Award being approved by the Court.

IV. THE SETTLEMENT SHOULD BE GIVEN FINAL APPROVAL

A. The Standard for Judicial Approval of Class Action Settlements

No class action may be settled without court approval, FED R. CIV. P. 23(e), and the decision of whether to approve or reject a settlement "is left to the sound discretion of the trial court." *Bennett v. Behring Corp*., 737 F.2d 982, 986 (11th Cir. 1984). While "[p]ublic policy strongly favors the pretrial settlement of class action lawsuits," *In re U.S. Oil and Gas Litig*., 967 F.2d 489, 493 (11th Cir. 1992),[7] trial courts still have a responsibility to ensure a proposed settlement "is fair, reasonable, and adequate" to the class members. *Ault v. Walt Disney World Co*., 692 F.3d 1212, 1217 (11th Cir. 2012). Accordingly, before granting final approval to a settlement, a court should be satisfied that adequate notice was provided to the class and appropriate state and federal regulators. *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797, 812-13 (1985). And in assessing whether the compromise is "fair, reasonable and adequate," a court should consider the following factors:

[7] *See also, e.g*., *Wal-Mart Stores, Inc. v. Visa, U.S.A., Inc*., 396 F.3d 96, 116 (2d Cir. 2005) (noting the "strong judicial policy in favor of settlements, particularly in the class action context"); *Ehreart v. Verizon Wireless*, 609 F.3d 590, 595 (3d Cir. 2010) (there is a "strong judicial policy in favor of class action settlement"); *UAW v. Gen. Motors Corp*., 497 F.3d 615, 632 (6th Cir. 2007) (noting "the federal policy favoring settlement of class actions"); *Little Rock School Dist. v. Pulaski Cnty, Special School Dist. No. 1*, 921 F.2d 1371, 1388 (8th Cir. 1990) ("A strong public policy favors agreements, and courts should approach them with a presumption in their favor."); *Class Plaintiffs v. City of Seattle*, 955 F.2d 1268, 1276 (9th Cir. 1992) (noting "the strong judicial policy that favors settlements, particularly where complex class action litigation is concerned").

> (1) the existence of fraud or collusion behind the settlement; (2) the complexity, expense, and likely duration of the litigation; (3) the stage of the proceedings and the amount of discovery completed; (4) the probability of Plaintiffs' success on the merits; (5) the range of possible recovery; and (6) the opinions of the class counsel, class representatives, and the substance and amount of opposition to the settlement.

Leverso v. S. Trust Bank of Ala., N.A., 18 F.3d 1527, 1530, n.6 (11th Cir. 1994). "In assessing these factors, the Court should be hesitant to substitute her own judgment for that of counsel." *Lipuma v. Am. Express Co*., 406 F. Supp. 2d 1298, 1315 (S.D. Fla. 2005) (quotation omitted).

Courts should not convert settlement fairness hearings into trials on the merits or mini-trials. *United States v. Ala*., 271 F. App'x 896, 902 (11th Cir. 2008) ("It cannot be overemphasized that neither the trial court in approving the settlement nor this Court in review that approval have the right or the duty to reach any ultimate conclusions on the issues of fact or law which underlie the merits of a dispute.") (*quoting Cotton v. Hinton*, 559 F.2d 1326, 1330 (5th Cir. 1977)); *In re Smith*, 926 F.2d 1027, 1029 (11th Cir. 1991) ("A trial judge ought not try the case during a settlement hearing and should be hesitant to substitute his or her own judgment for that of counsel."). Instead:

> [a] court's intrusion upon what is otherwise a private consensual agreement negotiated between the parties to a lawsuit must be limited to the extent necessary to reach a reasoned judgment that the agreement is not the product of fraud or overreaching by, or collusion between, the

> negotiating parties, and that the settlement, taken as a whole, is fair, reasonable and adequate to all concerned.

Borcea v. Carnival Corp., 238 F.R.D. 664, 675 (S.D. Fla. 2006) (*quoting Officers for Justice v. Civil Serv. Comm'n*, 688 F.2d 615, 625 (9th Cir. 1982)). After all, the very purpose of a settlement is to avoid the need to determine sharply contested issues and to dispense with wasteful and expensive litigation and discovery. *Carson v. Am. Brands, Inc.*, 450 U.S. 79, 88 n.14 (1981) (in considering whether to approve a class settlement, courts "do not decide the merits of the case or resolve unsettled legal questions.").

Because "compromise is the essence of a settlement . . ., a yielding of absolutes and an abandoning of highest hopes," the dispositive inquiry is a narrow one, focusing on the fairness of the class settlement itself. *Cotton*, 559 F.2d at 1330; *accord In re Motorsports Merch. Antitrust Litig.*, 112 F. Supp. 2d 1329, 1333 (N.D. Ga. 2000) ("The court's authority … does not extend to modification of the settlement; the court may only approve or disapprove a proposed settlement."). Quite properly, then, courts have refused to transform the settlement process into a trial over what relief might have been gained but for the settlement. *See, e.g.*, *In re Domestic Air Transp. Antitrust Litig.*, 148 F.R.D. 297, 330 (N.D. Ga. 1993) ("The Court's function in assessing the fairness of the settlements is not to simply determine defendants' ability to provide another type of settlement. Instead, the

Court must look at the compromise before it and determine whether, in its present form, the settlement is fair, adequate and reasonable to the class.").

Analysis of these factors here compels the conclusion that the Court should grant final approval to the Parties' Settlement.

B. The Settlement Satisfies the Standards for Judicial Approval

1. Reasonable and Adequate Notice Was Provided to the Class

Before granting final approval, a court must ensure that reasonable and adequate notice was provided to class members. This is because Due Process and Rule 23 require a court to "direct notice . . . to all class members who would be bound by the" settlement. FED. R. CIV. P. 23(e)(1). Such notice must be "the best notice that is practicable under the circumstances," directed individually "to all members who can be identified through reasonable effort." FED R. CIV. P. 23(c)(2)(B).[8]

The "best notice practicable" requirement of Rule 23 does not require that every class member actually receive notice. *Juris v. Inamed Corp.*, 685 F.3d 1294,

---

[8] The Class Action Fairness Act also required that notice in this case be sent to 24 separate federal, state and territorial regulators, based on the geographic composition of the Settlement Class. 28 U.S.C. § 1715. Notice was disseminated by Murphy on March 19, 2019. To date, no regulators have objected to the Settlement's terms or the sufficiency of the notices provided to them. However, to be clear, by pointing out that no federal, state or territorial regulator has objected to the Settlement, Plaintiffs do not mean to imply that those officials have affirmatively endorsed the Settlement in any way.

1321 (11th Cir. 2012). Instead, a notice program is reasonable and adequate if it is the best notice practicable and affords notice to the substantial majority of the putative class members. *See Minter v. Wells Fargo Bank, N.A.*, 283 F.R.D. 268, 276 (D. Md. 2012) (Rule 23's notice requirements satisfied where individual notice reaches "the vast majority of potential class members"); *accord* 2 JOSEPH M. MCLAUGHLIN, MCLAUGHLIN ON CLASS ACTIONS: LAW AND PRACTICE § 6:17 at 129-30 (10th ed. 2013).

Here, the Parties provided notice to Class Members by multiple means, including publishing the notice in The USA Today on a regional basis to include the 24 states where Murphy maintains stores, by posting public notice in all stores in the 24 states and by publicly publishing notice via the Website developed by JND.com. In granting preliminarily approval of the Settlement, the Court approved the Parties' proposed forms of notice to the Settlement Class Members as to form and content, as well as the Parties' plan for distributing those notices, as being one "reasonably calculated, under the circumstances, to apprise Settlement Class Members of the pendency of this Action, the terms of the proposed Settlement, and of their rights under and with respect to" it. Doc. 24 at ¶ 12. The Court concluded that the Parties' proposed notice program satisfied "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)." *Id.* The Settlement

Administrator has now verified compliance with that Court-approved notice program. *See* Ex. A, JND Decl. The Settlement Administrator established a website, email address and mailing address to provide Settlement Class Members with information about the Settlement, and to field queries from them. *Id. at* ¶ 1. No Settlement Class Member has objected to the sufficiency of the notice program. Reasonable and adequate notice has been provided to all Settlement Class Members.

2. The Settlement is the Product of Arms'-Length Bargaining and Mediation

In evaluating a settlement's fairness, adequacy and reasonableness, a court should ensure that the settlement is not the product of collusion by the negotiating parties. *Leverso*, 18 F.3d at 1530, n.6. In making this determination, courts begin with "a presumption of good faith in the negotiating process." *Saccoccio*, 297 F.R.D. at 692; *see also Lee v. Ocwen Loan Serv., LLC*, No. 14-cv-60649, 2015 WL 5449813, at *11 (S.D. Fla. Sept. 14, 2015) ("Where the parties have negotiated at arm's length, the Court should find that the settlement is not the product of collusion.") (quotation omitted).

Here, the Court has already found that the Parties' Settlement is fair, reasonable and adequate in protecting the interests of the Settlement Class. *See* Preliminary Approval Order, Doc. 24 at ¶ 7. The record continues to support the Court's earlier finding. The Parties' negotiations occurred within the context of

mediation conducted by a respected neutral party, Judge Scott[9], and were protracted in nature, involving multiple mediation sessions continuing for months, during which Class Counsel sought, reviewed and analyzed electronic data and pages of traditional hard copy documents. (Doc. 22 at 9-11). And the fact that the Class Counsel engaged in extensive confirmatory discovery before agreeing to the Settlement evidences that they were not "groping in the darkness" during their negotiations, *Cotton*, 559 F.2d at 1332, and that the Settlement is certainly not "the product of uneducated guesswork." *In re Corrugated Container Antitrust Litig*., 643 F.2d 195, 211 (5th Cir. 1981).

In addition, Class Counsel strenuously negotiated for terms of settlement designed to avoid any sort of "self-dealing" or "conflict-of-interest" concerns. For example, the Settlement offers *all* Settlement Class Members the same form of relief. Against the backdrop of that relief, the Settlement allows Class Counsel to seek Attorneys' Fees and Expenses totaling $250,000.00, paid separately, which equates

---

[9] The participation of a respected neutral like Judge Scott in the negotiation process should give the Court confidence that the negotiations were conducted in an arm's-length, non-collusive manner. *See Poertner v. Gillette Co*., 618 F. App'x 624, 630 (11th Cir. 2015) (objector's claim of "self-dealing" by parties to class settlement "was belied by the record: the parties settled only after engaging in extensive arm's-length negotiations moderated by an experienced, court-appointed mediator"); *Faught v. Am. Home Shield Corp*., 2:07-cv-1928, 2010 WL 10959223, at *21 (N.D. Ala. Apr. 27, 2010) (concluding "[s]ettlement [wa]s the product of informed, arm's-length negotiations" because "the negotiations were supervised by a highly experienced mediator"), *aff'd*, 68 F.3d 1233 (11th Cir. 2011).

to a small fraction of the total value of potential relief being offered to the Settlement Class. Doc. 32 at 9, 22-23. Class Counsel's request was inclusive of all costs and does not impact the relief the Settlement Class will receive in any way. Class Counsel and Class Representative requests are well within the reasonable ranges approved in similar settlements in this Circuit,[10] thereby ensuring that Plaintiffs and Class Counsel will not be disproportionately rewarded in relation to the Settlement Class itself. Moreover, the Parties only began negotiating Attorneys' Fees and Expenses and Service Awards *after* they had reached an agreement on the material terms of the settlement further belying any notion of collusion or self-dealing. *Ingram v. The Coca-Cola Co*., 200 F.R.D. 685, 693 (N.D. Ga. 2001) (concluding settlement was procedurally fair because "the fee was negotiated separately from the rest of the settlement, and only after substantial components of the class settlement had been resolved.").

---

[10] Within the Eleventh Circuit, fee awards in class action settlements often range as high as 30% to 33% of the value of the settlement. Docs. 54 at 22-23 (collecting cases); 46 at 41 & n10 (same)). Moreover, studies by the Federal Judicial Center and National Economic Research Associates indicate that fee awards nationally often range from 27% to 32% nationally. *See* Thomas E. Willging, Laurel L. Hooper, and Robert J. Niemac, *Symposium: The Institute of Judicial Administration Research Conferences on Class Actions: Class Actions and the Rulemaking Process: An Empirical Analysis of Rule 23 to Address the Rulemaking Challenges* (1996), at 69; Frederick C. Dunbar, Todd S. Foster, Vinita M. Juneja, Denise N. Martin, *Recent Trends IV: What Explains Filings and Settlements in Shareholder Class Actions*, National Economic Research Associates (November 1996), at 12-13.

There can be little doubt regarding the informed and good-faith basis of the Settlement here. The Settlement should therefore be given final approval.

3. The Settlement was Negotiated Based on a Sufficiently Developed Factual Record

Courts consider the stage of the proceedings at which the settlement was achieved, *Leverso*, 18 F.3d at 1530, n.6, to ensure that plaintiffs and their counsel "had sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation." *Francisco v. Numismatic Guaranty Corp. of Am.*, No. 06-cv-61677, 2008 WL 649124, at *11 (S.D. Fla. Jan. 31, 2008); *accord In re Prudential Ins. Co. Am. Sales Practice Litig. Agent Actions*, 148 F.3d 283, 319 (3d Cir. 1998) (noting that the purpose behind this factor is to assess whether the parties obtained "an adequate appreciation of the merits of the case before negotiating" the settlement).

There is "no precise yardstick to measure the amount of litigation that the parties should conduct before settling." *In re Rio Hair Naturalizer Prods. Liab. Litig.*, No. MDL 1055, 1996 WL 780512, at *13 (E.D. Mich. 1996). Because "early settlements are to be encouraged . . ., only some reasonable amount of discovery should be required to make these determinations." *Ressler v. Jacobson*, 822 F. Supp. 1551, 1555 (M.D. Fla. 1992). The proper inquiry then is whether the plaintiffs and class counsel engaged in enough discovery to afford them an "adequate appreciation of the merits of the case," *In re Prudential Ins. Co.*, 148 F.3d at 319, such that they

were not "groping in the darkness" when negotiating the settlement. *Cotton*, 559 F.2d at 1332. The settlement should not be "the product of uneducated guesswork." *In re Corrugated Container Antitrust Litig*., 643 F.2d at 211. In this regard, "formal discovery is not a necessary ticket to the bargaining table where the parties [were able to obtain] sufficient information to make an informed decision about settlement" through informal means. *In re Mego Fin. Corp. Sec. Litig*., 213 F.3d 454, 459 (9th Cir. 2000) (quotation omitted).

Here, the Court has already found the arm's-length negotiations involved experienced counsel familiar with the factual and legal issues of the action. (Doc. 24, ¶ 7). The record continues to support that finding. Through their confirmatory discovery efforts, Plaintiffs and Class Counsel were able to confirm the nature and terms of the tax over charges; the amount of annual sales tax collections; and the variances between retailer versus manufacturer funded discounts. An immediate and on-going practice change along with an opportunity for coupon redemption provides the best possible relief to the Settlement Class. Accordingly, Plaintiffs and Class Counsel were certainly not "groping in the darkness" during the course of their lengthy negotiations with Murphy. *Cotton*, 559 F.2d at 1332.

Moreover, given that the Parties have reached an agreement on how and when the tax over charges occurred, further discovery would be pointless on its face. Because the Settlement is not "the product of uneducated guesswork," *In re*

Corrugated Container Antitrust Litig., 643 F.2d at 211, but was instead reached at a point when the Parties had compiled "sufficient information to adequately evaluate the merits of the case and weigh the benefits of settlement against further litigation," *Francisco*, 2008 WL 649124, at *11, consideration of this factor favors the Settlement's final approval.

4. The Risks and Expense of Continued Litigation Coupled with the Probability and Range of Possible Recovery by the Settlement Class, Measured Against the Relief Offered by the Settlement, Favor Final Approval

The second, fourth and fifth *Leverso* factors are inter-related, calling on a court to consider the likelihood of success and range of possible recovery for the class at trial, measured against the trial's anticipated complexity and cost and the certain relief being offered by the class action settlement. *Saccoccio*, 297 F.R.D. at 693. It is not the value or nature of the settlement relief alone that is decisive, but whether that relief is reasonable when compared "with the [relief] plaintiffs would likely recover if successful, appropriately discounted for the risk of not prevailing." MANUAL FOR COMPLEX LITIG. (THIRD) § 30.42, at 238 (1995). Accordingly, the relevant inquiry is whether the proposed settlement affords relief that "falls within th[e] range of reasonableness, [and] not whether it is the most favorable possible result of litigation." *Lazy Oil Co. v. Wotco Corp.*, 95 F. Supp. 2d 290, 338 (W.D. Pa. 1997), *aff'd*, 166 F.3d 581 (3d Cir. 1999); *accord Great Neck Capital Appreciation Inv. P'ship, L.P. v. PricewaterhouseCoopers, L.L.P.*, 212 F.R.D. 400,

409–410 (E.D. Wis. 2002) (Because "[t]he determination of whether a settlement is reasonable is not susceptible to mathematical equation yielding a particularized sum ….[,] [t]he mere possibility that the class might receive more if the case were fully litigated is not a good reason for disapproving the settlement."). "The Court's role is . . . to evaluate the proposed settlement in its totality." *Lipuma*, 406 F. Supp. 2d at 1323.

Here, the Settlement affords relief that is not only reasonable, but which closely tracks what is arguably the best possible recovery for the class if they were to successfully litigate this case through trial. Plaintiffs claim that they and the other Settlement Class Members were subjected to the same unlawful retail tax charge practices by Murphy. (Doc. 10, ¶¶ 1, 7). As a result, the primary objective of the Settlement was compensatory and injunctive: to correct the effects of any sales tax overcharges and prohibit the practice going forward.

If this case were not settled, there existed real potential for years of further litigation, as well as a possibility that Murphy could prevail on the merits or defeat contested class certification. While Plaintiffs are confident they could accomplish class certification and prevail at trial, if the Court agreed with Murphy on any of its potential defenses, certification could be denied and class members could be left with no recovery at all. *See, e.g.*, *Nat'l Rural Telecomm. Coop. v. DIRECTV, Inc.*, 221 F.R.D. 523, 526 (C.D. Cal. 2004) (noting that in the class action settlement

context, it is "proper to take the bird in hand instead of a prospective flock in the bush."); *Pinto v. Princess Cruise Lines*, 513 F. Supp. 2d 1334, 1338 (S.D. Fla. 2007) (noting that settlement was approved where "the risk of going forward was substantial" despite the court's belief that case had merit). At bottom, "[i]t is neither required, nor is it possible, for a court to determine that the settlement is the fairest possible resolution of the claims of every individual class member, rather the settlement, *taken as a whole*, must be fair, adequate and reasonable." *Shy v. Navistar Int'l Corp*., No. C-3-92-333, 1993 WL 1318607, at *2 (S.D. Ohio May 27, 1993) (emphasis in original).

Here, the fact that the Settlement offers such real and meaningful relief now—thereby avoiding the risks inherent with protracted, litigated class certification proceedings and complex pre-trial legal challenges, the costs associated with further discovery and pre-trial proceedings, and the prospect of a lengthy trial and possible appeal by Murphy—heavily favors the Settlement's final approval. The prospect of "a long, arduous [trial] requiring great expenditures of time and money on behalf of both the parties and the [C]ourt," all in hopes of achieving a result different or potentially better than that offered by the Settlement, is not in the interests of any Party or Settlement Class Member. *In re Prudential*, 148 F.3d at 318. Accordingly, consideration of the Settlement Class's likelihood of success and potential recovery

from trial, measured against the complexity and cost of trial and the relief presently offered by the Settlement, strongly favors the Settlement's final approval.

5. The Opinions of Class Counsel and Reaction of the Settlement Class Favor Final Approval

In weighing the propriety of final approval, the Court should also consider the opinions of Class Counsel. *Leverso*, 18 F.3d 1527, 1530 n.6 (11th Cir 1994); *accord Greco v. Ginn Devel. Co., LLC*, 635 F. App'x 628, 632 (11th Cir. 2015) (in reviewing a class action settlement for final approval, courts may "rely upon the judgment of experienced counsel for the parties."); *Holmes v. Cont'l Can Co*., 706 F.2d 1144, 1149 (11th Cir. 1983) ("Courts often accord great weight to the opinions of counsel for the class in approving class action settlements"). In fact, courts typically "defer to the judgment of experienced trial counsel who has evaluated the strength of his case." *Carpenters Health & Welfare Fund v. Coca-Cola Co*., No. 1:00-CV-2838-WBH, 2008 WL 11336122, at *10 (N.D. Ga. Oct. 20, 2008) (quotation omitted).

Here, Class Counsel are qualified, competent and have extensive experience prosecuting complex class actions, including consumer actions similar to the instant case. Class Counsel have been investigating this particular sales tax issue since January 2018, including through months of confirmatory discovery efforts. Based upon their investigation in this case and their experience generally in litigating class action lawsuits, Class Counsel believe that the Settlement is fair, reasonable,

adequate, and in the best interests of the Settlement Class. This supports the Settlement's final approval.

Equally influential is the overwhelmingly favorable reaction of the Settlement Class Members. It is "extremely unusual not to encounter objections" of some sort or number in response to a proposed class action settlement. *In re Nasdaq Mkt.-Makers Antitrust Litig*., 187 F.R.D. 465, 478 (S.D.N.Y. 1998). Here, only two (2) objections have been filed and no opt-outs have been filed Doc. 32-1 at ¶ 16. Class Counsel addresses each of these objections separately below.

i. Steven Holt

Steven Holt is the proposed Class Representative from the State of Alabama. He approached Class Counsel Jay Aughtman through a referral from Alabama attorney David Baker. Doc. 26-1, Counsel Decl. at ¶ 1. Mr. Holt agreed to become a named class representative by executing an attorney-client contract on November 2, 2017. *Id.* While Class Counsel was investigating the allegations, filing and litigating the claims, and negotiating a potential settlement, they had always informed Mr. Holt of the progress of the case on an ongoing basis. Mr. Holt does not challenge this fact. In fact, when a proposed settlement agreement was reached, Mr. Holt met with counsel in person and was specifically informed of the terms. All his questions were answered; he did not simply accept what was shown to him - he vetted the terms

and understood his role in the settlement and what it would mean for him. *Id.* On March 14, 2019, Mr. Holt voluntarily signed the agreement in Mr. Baker's presence.

In May of 2019, Mr. Holt told Class Counsel he was now unhappy with how much money he was going to get. He met with counsel again on June 3, 2019. After approximately three minutes, Mr. Holt became hostile, told counsel again that he wanted more money, and then "fired" all counsel and abruptly walked out of the meeting in a heated fashion. *Id.*

On June 11, 2019, Plaintiff Steven Holt submitted a letter to the Court. Doc. 25. In it, he asks the Court to "set aside" the settlement and to remove class counsel. Class Counsel submitted a timely opposition to the letter. Doc. 26. Class Counsel treated the letter as an objection and the Court agreed with that designation. *Id.* In over a dozen pages, Class Counsel explained why the relief that Mr. Holt requests should be denied. *Id.* In summary, he provides no basis to remove just Class Counsel Jay Aughtman and suggests no new substituted counsel. He claims that the settlement should be rejected because (1) he should get more money, (2) some money should go to his favorite charity, (3) Murphy should be punished more, and (4) Mr. Holt doesn't believe that Murphy remitted the sales tax to the taxing authorities or stopped the practice. As set forth in detail in Class Counsel's filing, nothing in the Settlement Agreement (which he signed), 11th Circuit precedent or the actual facts in the case warrant such a finding. The Court entered an Order denying the relief

requested by Mr. Holt and noting that his objection will be considered at the Fairness Hearing. Doc. 28.

Since the filing, Class Counsel moved for approval of Service Awards to the Class Representatives. Doc. 32. Even though Mr. Holt previously terminated the engagement of Class Counsel, we still thought it was appropriate to advocate for him to receive the Service Award that he and Defendant agreed upon in the Settlement Agreement. *Id.* Class Counsel has had no communication of any kind with Mr. Holt since his filing.

ii. Ronald Dandar

On July 9, 2019, the Court entered the hand-written letter of Ronald G. Dandar. Doc. 29. Mr. Dandar is an inmate at the Pennsylvania State Correctional Institution at Fayette in La Belle, PA.[11] Pennsylvania is not one of the 24 states that are included in the Settlement. Mr. Dandar has not alleged or provided proof that he is a Murphy customer in one of those 24 states or that he ever purchased a product at a Murphy store where he was overcharged sales tax. Mr. Dandar asks that the Court not approve the Settlement (an objection) and allow him to keep his rights to sue Murphy individually (an exclusion). He provides no justification for either request other than a citation to *Owens v. Okure*, 488 U.S. 235 (1989) and a blanket

[11] *See* PA Department of Corrections Inmate Search Locator, at http://inmatelocator.cor.pa.gov/#/Result (last visited August 26, 2019).

statement that "rights [were] violated under the Constitution." We address each request separately.

To object to the settlement, the parties have established and presented to the Court an orderly and approved process to do so. The Court has adopted the process in the entered Preliminary Approval Order. *See* Doc. 24. The Settlement Agreement states:

> **VIII. OBJECTIONS TO SETTLEMENT**
>
> Any Settlement Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Agreement or the proposed settlement, or to any other aspect or effect of the proposed settlement, must file with the Court a written statement of his or her objection no later than the Objection/Exclusion Deadline. To file a written statement of objection, a Settlement Class Member must (a) mail it to the Clerk of the Court in time to be received by the Clerk of the Court on or before the Objection/Exclusion Deadline, or (b) 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, except that any objection made by a Settlement Class Member represented by counsel must be filed through the Court's Case Management/Electronic Case Filing ("CM/ECF") system.
>
> A written statement of objection must: (a) contain a caption or title that identifies it as "Objection to Class Settlement in *Holt, Enslen v. Murphy Oil USA, Inc.*, No. 3:17-cv-00911- RV-CJK (N.D. Fla.)"; (b) include the Settlement Class Member's name, mailing and email addresses, and contact telephone number; (c) set forth the specific reason(s) for the objection, including all legal support the Settlement Class Member wishes to bring to

> the Court's attention and all factual evidence the Settlement Class Member wishes to introduce in support of the objection; (d) disclose the name and contact information of any and all attorneys representing, advising, or in any way assisting the Settlement Class Member in connection with the preparation or submission of the objection; and (e) be personally signed by the Settlement Class Member.

See Settlement Agreement, at Doc. 22-2 at § VIII. Based on these terms, Mr. Dandar has failed to "set forth the specific reason(s) for the objection." His reference to *Owens v. Okure*, 488 U.S. 235 (1989) is inapplicable, as that case is about the application of personal injury statutes of limitations for courts considering §1983 actions, which is wholly unrelated to Mr. Dandar's claims. Nor does he specify how his rights have been violated under the United States Constitution. Accordingly, his attempt to object to the Settlement fails as a matter of law.

Mr. Dandar also seems to indicate an attempt to opt-out of the Settlement to potentially bring his own individual claim for relief. *See* Doc. 29. His letter to the Court could be interpreted as a request for exclusion. *See* Settlement Agreement, at Doc. 22-2 at § VII. According to the terms of the Settlement Agreement, opt-outs were supposed to be sent to the Settlement Administrator, not to the Court directly. *Id.* Nevertheless, Class Counsel is willing to interpret and accept Mr. Dandar's letter as a request for exclusion. No one else has attempted opt-out of this Class other than him.

* * * * *

A low number of opt-outs and objections weighs heavily in favor of granting final approval to the Settlement. *See, e.g.*, *Saccoccio*, 297 F.R.D. at 694 ("[L]ow resistance to the settlement [through opt-outs and objections] … weighs in favor of approving the settlement."); *Wyatt By and Through Rawlins v. Horsley*, 793 F. Supp. 1053, 1056 (M.D. Ala. 1991) ("[A] court may properly interpret the absence of objections from a majority of the plaintiff class as indicating support for the proposed modification or settlement"). At the same time, JND's website has tracked over 9,000 unique visitors as well as over 39,000 page-views without a single request to opt out of the Settlement, indicating the willingness of Settlement Class Members to remain in the Settlement Class and be bound by the Settlement. (JND Decl. ¶¶ 6, 10). Put simply, "the fact that the overwhelming majority of the class willingly approved the offer and stayed in the class" favors final approval. *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1027 (9th Cir. 1998).

V. CERTIFICATION OF THE SETTLEMENT CLASS SHOULD BE MADE FINAL

In connection with seeking preliminary approval, Plaintiffs demonstrated that the Parties' stipulations concerning class certification, and the Settlement Class proposed thereby, satisfied all of the requirements and criteria of Rule 23(a), (b)(2) and (b)(3). The Court then conducted its own analysis of the record, ultimately ordering the conditional certification of the Settlement Class based on detailed factual findings and conclusions of law. *See* Preliminary Approval Order, Doc. 22.

The Court certified the Settlement Class because it was sufficiently numerous and involved common claims whose elements were predominately susceptible to "class wide resolution . . . through common, class wide proof." *Id.* at ¶¶ 4(a-f), 7. The Court further found that Plaintiffs' claims were typical of those of the Settlement Class Members because all of them had been subject to a common course of conduct involving the sales tax over charge, and that Plaintiffs and Class Counsel were adequate representatives of the Settlement Class. *Id.*

In response to the comprehensive notice program employed here, no Settlement Class Member has questioned whether this action satisfies the requirements of Federal Rules of Civil Procedure 23(a), (b)(2) and (b)(3). The Court's analysis and conclusions were correct at the preliminary approval stage and remain so now. The evidentiary record and established precedent support entry of an Order by the Court making final its certification of the Settlement Class for purposes of settlement only.

VI. CONCLUSION

Because (1) notice of the Settlement was properly distributed to the Settlement Class and governmental regulators, and (2) the Settlement is fair, reasonable and adequate and not the product of collusion between the Parties, the Court should grant final approval to the Settlement and render the certification of the Settlement Class final for purposes of settlement. To do so would clearly serve the best interests of

the Settlement Class Members as a whole and would be fully consistent with the strong public policy favoring the settlement of class action litigation.

Respectfully Submitted,

/s/ *Kenneth J. Grunfeld*

Kenneth J. Grunfeld, *pro hac vice*
Golomb & Honik, P.C.
1835 Market Street, Suite 2900
Philadelphia, PA 19103
Phone: (215) 985-9177
Fax: (215) 985-4169
Email: kgrunfeld@golombhonik.com

Joseph "Jay" H. Aughtman, *pro hac vice*
Aughtman Law Firm, LLC
1722 Platt Place
Montgomery, AL 36117
Phone:(334) 215-9873
Fax: (334) 213-5663
Email:jay@aughtmanlaw.com

Dated: August 28, 2019

Attorneys for Plaintiffs and the Classes

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA

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

DECLARATION OF JENNIFER M. KEOUGH
REGARDING SETTLEMENT ADMINISTRATION

I, JENNIFER M. KEOUGH, declare and state as follows:

1. I am the Chief Executive Officer of JND Legal Administration LLC ("JND"). JND is a legal administration service provider with its headquarters located in Seattle, Washington. JND has extensive experience with all aspects of legal administration and has administered settlements in hundreds of class action cases.

2. JND is serving as the Settlement Administrator in the above-captioned litigation ("Action") for the purposes of administering the Stipulation of Settlement and Release preliminarily approved by the Court in its Order of Preliminarily

Approval of Class Settlement ("Order"), dated March 18, 2019. The following statements are based on my personal knowledge and information provided to me by other JND employees working under my supervision, and if called on to do so, I could and would testify competently thereto.

3. JND is one of the leading legal administration firms in the country, and the principals of JND, including myself, collectively have over 75 years of experience in class action legal and administrative fields. JND's class action division provides all services necessary for the effective implementation of class action settlements including: (1) all facets of legal notice, such as outbound mailing, email notification, and the design and implementation of media programs, including through digital and social media platforms; (2) website design and deployment, including on-line claim filing capabilities; (3) call center and other contact support; (4) secure class member data management; (5) paper and electronic claims processing; (6) calculation design and programming; (7) payment disbursements through check, wire, PayPal, merchandise credits, and other means; (8) qualified settlement fund tax reporting; (9) banking services and reporting; and (10) all other functions related to the secure and accurate administration of class action settlements. JND has been recognized by various publications, including the National Law Journal and the Legal Times, and most recently, the New York Law Journal, for excellence in class action administration.

WEBSITE

4. On April 1, 2019, JND established a Settlement Website, www.murphyoilusasettlement.com, to provide additional information to the Settlement Class Members, answer frequently asked questions, and allow Settlement Class Members to register electronically for a settlement Coupon being provided pursuant to the proposed Settlement. Viewers of the Settlement Website can download a copy the Stipulation of Settlement and Release, the operative complaint in the Action, the Long-Form Notice, and a printable Registration Form for registering for a settlement Coupon, as well as other case-related documents. The Settlement Website is optimized for display on mobile devices. Keywords and natural language search terms are included in the site's metadata to maximize search engine rankings. JND will continue to maintain the Settlement Website for at least one year after the Final Order and Judgment.

5. As of the date of this Declaration, the Settlement Website tracked 9,480 unique visitors and 40,856 page-views.

6. JND also established a Settlement email address (info@murphyoilusasettlement.com) for individuals to make direct email inquiries, file a Registration Form, among other correspondence. As of the date of this Declaration, the Settlement Email has received and responded to sixty-eight

communications. JND will continue to maintain the Settlement email address throughout the Settlement Administration process.

7. Settlement Class Members can register to receive a settlement Coupon through the Settlement Website or by returning a Registration Form to JND via mail or email. After the Fairness Hearing, the Settlement Website will continue to accept the online registration of emails by Settlement Class Members for one year or until all coupons have been redeemed, whichever comes first. The total number of Registration Forms received is subject to updating until the conclusion of the registration period and JND's validation process is complete.

PUBLICATION NOTICE

8. On May 1, 2019, JND caused a publication version of the legal notice ("Publication Notice") to appear in the *USA Today*. Pursuant to the Stipulation of Settlement and Release and Order, the Publication Notice was circulated on a regional basis, covering markets in the twenty-four states at issue in the Action. A representative copy of the Publication Notice is attached hereto as **Exhibit A**.

REQUESTS FOR EXCLUSION

9. Per the terms of the Stipulation of Settlement and Release and Order, any Settlement Class Member who wanted to exclude themselves from the proposed Settlement ("opt-out") had to mail a signed letter to JND stating that they desired to

opt-out of the proposed Settlement or otherwise not participate in the proposed Settlement, on or before August 16, 2019.

10. As of the date of this Declaration, JND has not directly received any opt-outs to the proposed Settlement.

* * * * *

I declare under the penalty of perjury pursuant to the laws of the United States of America that the foregoing is true and correct.

Executed on August 27, 2019 at Seattle, Washington.

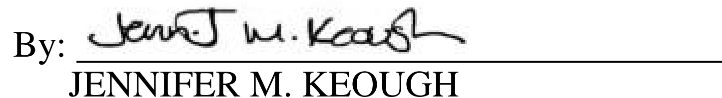
By: 
JENNIFER M. KEOUGH

Exhibit A

PUBLICATION NOTICE

LEGAL NOTICE

If you purchased a discounted or sale-price item at a Murphy USA or Murphy Express store (excluding Missouri and Texas), on or after January 8, 2016, you may be eligible to receive a coupon from a class action settlement.

A proposed Settlement has been reached in a class action lawsuit filed against Murphy Oil USA, Inc. ("Murphy" and/or the "Defendant"), in which the plaintiffs allege that Murphy was charging sales tax on the Murphy-funded portion of the discount on sale items starting on January 8, 2016 at all Murphy USA and Murphy Express stores (excluding those in Missouri and Texas). This Notice is not intended to be an expression of any opinion by the Court with respect to the truth of the allegations or the merits of the claims or defenses asserted.

Who's included in the Settlement Class? The Court has preliminarily certified the Settlement Class, for Settlement purposes only, as "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)." If you are a member of this Settlement Class, you may be able to receive a Coupon for $1.00 off on any item sold in Murphy stores, except for (1) age-restricted items, such as alcohol, lottery or tobacco products, or (2) motor fuel.

How to get a Settlement Benefit? To be able to receive a Coupon, you must register your email address online at **www.murphyoilusasettlement.com** and affirm that you are a member of the Settlement Class. You will then be eligible to receive a $1.00 off coupon emailed to you from the website if the Court approves the proposed Settlement. Settlement Coupons will be available for one year or until 257,500 Coupons are redeemed, whichever occurs first.

What are your other options? If you register for a Settlement Benefit or do nothing, and the Court approves the proposed Settlement, you will give up your right to sue Murphy for any of the claims released in the proposed Settlement. If you don't want to receive a Settlement Benefit, but you want to keep your right to sue Murphy separately for the same claims resolved by this proposed Settlement, you must exclude yourself by mailing a written "request for exclusion" so that it is received by the Settlement Administrator no later than **August 16, 2019**. If you do not exclude yourself from the proposed Settlement, you may object and notify the Court that you or your lawyer intends to appear at the Court's Fairness Hearing. Objections and intentions to appear are due and must be filed with the Court no later than **August 16, 2019**.

The Court will hold a Fairness Hearing on **September 17, 2019** to determine whether the proposed Settlement should be granted final approval. The Court will also consider Class Counsels' request for attorneys' fees and expenses in an amount not to exceed Two Hundred and Fifty Thousand Dollars ($250,000.00), and service awards in an amount not to exceed Two Thousand Five Hundred Dollars ($2,500.00) for each of the two Class Representatives. This lawsuit is known as *Holt v. Murphy Oil USA, Inc.*, Case No. 3:17-cv-00911-RV, pending in the U.S. District Court for the Northern District of Florida.

Want more information? This Notice summarizes the proposed Settlement. More details regarding the proposed Settlement, including the Settlement Agreement, can be found at **www.murphyoilusasettlement.com**. You may also email **info@murphyoilusasettlement.com**.

Do not contact the Court directly with any questions about the proposed Settlement.

info@murphyoilusasettlement.com
www.murphyoilusasettlement.com

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

[proposed] 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.

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[4] 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).

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 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

[4] Mr. Holt agreed to a $2,500 Service Award and he should receive it. If Mr. Holt refuses this award or fails to cash his check within ninety (90) days of issue, his Service Award should be donated to the Wounded Warrior Foundation, a worthy cause that he has identified as his charity of choice.

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 _____ day of _____, 2019.

____
THE HONORABLE ROGER VINSON
CHIEF UNITED STATES DISTRICT COURT JUDGE