

IN THE CIRCUIT COURT, FOURTH
JUDICIAL CIRCUIT, IN AND FOR
DUVAL COUNTY, FLORIDA.

CLASS REPRESENTATION

CASE NO: 16-2017-CA-004794-XXXX-MA
DIVISION: CV-E

BRENDAN C. HANEY, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

COSTA DEL MAR INC.,
a Florida corporation,

Defendant.

**SECOND AMENDED CLASS ACTION
COMPLAINT AND DEMAND FOR JURY TRIAL**

Plaintiff Brendan C. Haney (“Plaintiff”) brings this action individually and on behalf of a Plaintiff class (the “Class”). Plaintiff alleges as follows:

INTRODUCTION

1. Costa Del Mar Inc. (“Costa”) aggressively promotes and advertises its sunglasses as being “backed for life,” and touts its sunglasses warranty as “the best in the industry,” with “no gimmicks” and “no disclaimers.” On the side of every sunglasses box, Costa proudly advertises: “[I]f our sunglasses are damaged by accident, normal wear and tear, or misuse, we replace scratched lenses, frames, and other parts for a nominal fee.” These claims are false, deceptive, and misleading. Purchasers are not charged a “nominal” fee for damages due to accident, normal wear and tear, or misuse, but are instead charged \$89.00 for replacement glass lenses, \$69.00 for

replacement plastic lenses, or \$49.00 for replacement frames, along with shipping and handling fees.

2. Costa's advertised promise to repair damaged sunglasses "for a nominal fee" is false and deceptive, designed to lure consumers into paying a premium for sunglasses with a warranty against damage due to accident, normal wear and tear, or misuse, only for consumers to later discover the bait-and-switch. Unfortunately, Costa's "no gimmicks" warranty is just that – a gimmick – designed to trick consumers and maximize revenue for Costa's repair center at the expense of Costa's customers.

3. As a consequence of Costa's unfair and deceptive practices, Plaintiff and the class members have purchased Costa sunglasses under the false impression that their sunglasses are protected for life against damage due to accident, normal wear and tear, or misuse.

4. Significantly, each consumer has been exposed to the same material misrepresentations and omissions which are prominently displayed on the product packaging for Costa's sunglasses prior to purchasing the product.

5. Plaintiff brings this breach of warranty and deceptive trade practices case pursuant to Florida Rule of Civil Procedure 1.220(b) on behalf of a state-wide class of Costa sunglass purchasers, seeking injunctive relief and damages, including costs of suit, interest, and reasonable attorneys' fees, for Costa's falsely advertised products and sham warranty.

6. Plaintiff has retained the law firm of Holland & Knight LLP to represent him and the class, and such firm is entitled under applicable law to seek attorneys' fees from Costa as provided herein.

PARTIES, JURISDICTION AND VENUE

7. Plaintiff Brendan C. Haney is a citizen of Duval County, Florida.

8. Costa is a Florida corporation with its principal place of business in Daytona Beach, Florida.

9. Costa is “the fourth largest and fastest growing sunglass brand in America.” <https://www.costadelmar.com/us/en/costa-careers/careers-landing.html> (last visited June 22, 2017).

10. Costa does business throughout the state of Florida and, specifically, in Duval County, Florida. Costa has received and continues to receive substantial revenue and profits in Duval County and throughout the state of Florida.

11. The Court has original subject-matter jurisdiction over this proposed class action pursuant to Fla. Stat. § 26.012(2), as this is an action for damages in excess of \$15,000.00, exclusive of interest, costs and attorneys’ fees.

12. Costa is subject to the jurisdiction of this Court because Costa is a resident of the state and pursuant to Fla. Stat. § 48.193 because Costa operates, conducts, engages in, and carries on a business in the state of Florida.

13. Venue is proper in this judicial district pursuant to Fla. Stat. § 47.051 because the cause of action accrued here.

FACTUAL ALLEGATIONS

Costa’s Brand Image: Quality Products and a “No Gimmicks” Warranty

14. Costa manufactures, markets, advertises and sells its sunglasses across the United States. Upon information and belief, a significant portion of these sales occur in Florida.

15. Costa advertises itself as “the leading manufacturer of the world’s clearest, polarized performance sunglasses,” and states that it creates “the highest quality, best performing sunglasses.” <https://www.costadelmar.com/us/en/costa-careers/careers-landing.html> (last visited June 22, 2017).

16. Costa touts itself as “the best value available in the sunglass industry,” due to a combination of its high product quality and its “rock solid” sunglasses warranty.

17. All Costa sunglasses are sold in a uniform Costa box, upon which Costa prominently prints the below warranty whereby it agrees to perform in accordance with the following terms in favor of each purchaser:

BACKED FOR LIFE.

We stand behind our craftsmanship with a rock solid Limited Lifetime Warranty against manufacturer’s defects. And if our sunglasses are damaged by accident, normal wear and tear, or misuse, we replace scratched lenses, frames, and other parts for a nominal fee. Our product quality, backed by our Limited Lifetime Warranty, makes Costa Sunglasses the best value available in the sunglass industry today. No other manufacturer offers a combination that even comes close.

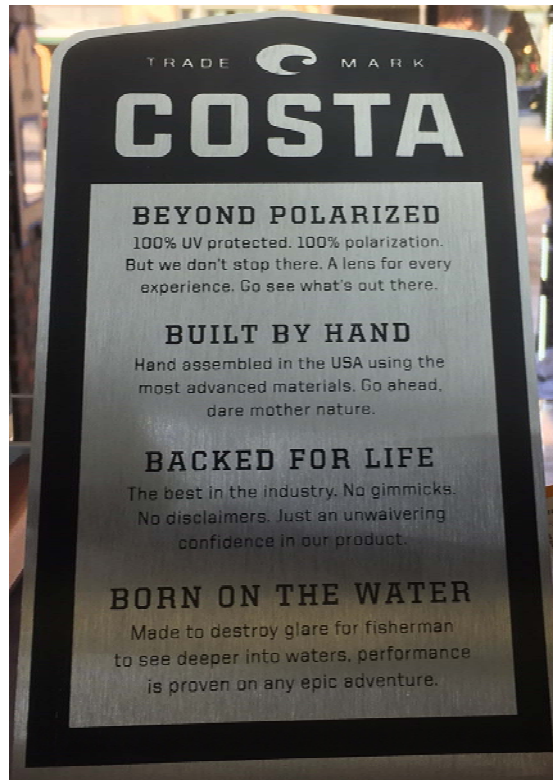


18. Costa’s in-store displays stress that Costa’s sunglasses are “backed for life,” and advertise Costa’s warranty as “[t]he best in the industry,” with no gimmicks and no disclaimers:

BACKED FOR LIFE

The best in the industry. No gimmicks.

No disclaimers. Just an unwavering
confidence in our product.



Plaintiff Haney Purchased a Pair of Costa Brine Sunglasses in Jacksonville, Florida

19. On April 1, 2016, Plaintiff Haney purchased a pair of Costa sunglasses for \$149.00 in Jacksonville, Florida.

20. In March 2017, one of the lenses in Plaintiff Haney's sunglasses was accidentally shattered.

21. Plaintiff Haney filled out the online repair form available at www.costadelmar.com and paid to mail his sunglasses to Costa for repair.

22. Costa received Plaintiff Haney's sunglasses on or about March 31, 2017.

23. On April 6, 2017, and after inspecting the sunglasses, Costa advised Plaintiff Haney that he would need to pay for replacement lenses at a cost of \$89, plus taxes and shipping and handling, for a total cost of \$105.18.

24. On April 27, 2017, Costa charged Plaintiff Haney a total of \$105.18 in repair and shipping costs.

The “Gimmick”: Costa’s Bait-and-Switch Warranty

25. Costa markets itself to consumers as “the best value available in the sunglass industry,” due to a combination of its high product quality and its “rock solid” sunglasses warranty.

26. But while Costa touts the high quality of its sunglasses, upon information and belief, Costa’s frames and lenses are manufactured overseas, primarily in China, Taiwan, and Japan.

27. On the side of every sunglasses box, Costa prominently advertises and agrees that it will replace damages due to “accident, normal wear and tear, or misuse ... for a nominal fee.”

28. But these claims are false, deceptive, and misleading. Purchasers are not charged a “nominal” fee for repair due to misuse, but are instead charged \$89.00 for replacement glass lenses, \$69.00 for replacement plastic lenses, or \$49.00 for replacement frames, along with shipping and handling fees. These charges, which are inconsistent with Costa’s advertising and agreement with customers, are not disclosed in advance of the purchase.

29. Black’s Law Dictionary defines the term “nominal” as: “(Of a price or amount) trifling, esp. as compared to what would be expected <the lamp sold for a nominal price of ten cents>.” See Black’s Law Dictionary 1148 (9th ed. 2009).

30. Merriam-Webster defines the term “nominal” as “being so small or trivial as to be a mere token.” See “Nominal,” Merriam-Webster.com (last accessed July 20, 2017).

31. A customer would reasonably believe that a “nominal” fee would be a few dollars, and would not expect to be required to pay a significant portion of the original purchase price to obtain repairs.

32. Costa’s misrepresentations and omissions were uniformly printed on the side of every Costa sunglasses box, and were communicated to Plaintiff and every other member of the Class at every point of purchase.

33. Upon calling the phone number listed on the Costa sunglass box (1.855.MYCOSTA, or 1.855.692.6782), the recording instructs that Costa does not provide repair assessments over the phone. Accordingly, customers generally must pay to ship their sunglasses to Costa before Costa will provide a repair assessment or disclose the cost of the repairs, which exceeds a “nominal” fee.

34. Costa’s false and deceptive misrepresentations and omissions, and Costa’s refusal to honor its contractual inducements and agreement, are material, and are likely to deceive and mislead a reasonable consumer.

35. Upon information and belief, Costa has profited enormously from its fraudulently marketed products and its carefully orchestrated label and image. Costa has been able to command a price premium by virtue of its false warranty.

36. Further, consumers are not able to discover the true nature of Costa’s deceptive advertising from reading the label. Costa does not display its allegedly “nominal” repair costs on its website. And in general (unless the telephone operator violates Costa’s internal policy), a consumer is not able to receive pricing or repair information over the phone. Thus, discovery of the true nature and extent of Costa’s deception requires owning a pair of Costas and sending them in for repair. Only after paying to ship and relinquishing possession of the sunglasses to Costa does a customer learn that he or she has been duped.

37. As an immediate, direct, and proximate result of Costa’s false, misleading, and deceptive representations and omissions, Costa injured Plaintiff and the Class members in that they:

- a. Paid money for a product that was falsely represented;
- b. Paid more for a product that was falsely represented than they would have paid had the product not been falsely represented;
- c. Were deprived the benefit of the bargain because the Costa sunglasses they purchased were different from what Costa warranted;

- d. Were deprived the benefit of the bargain because the Costa sunglasses they purchased had less value than what was represented;
- e. Paid more than a “nominal” fee for repairs;
- f. Did not receive a product that measured up to their expectations as created by Costa; and
- g. Did not receive the benefit of the repair warranty agreement made by Costa.

38. If Costa had not made the false, misleading, and deceptive representations and omissions, and instead honored its representations and agreement, Plaintiff and the Class Members would not have been injured as described herein.

39. Plaintiff and the Class Members paid money for Costa sunglasses, but did not obtain the full value of the advertised products due to Costa’s misrepresentations and omissions. Plaintiff and the Class Members purchased or paid more for Costa sunglasses than they would have had they known the truth about Costa and paid more than they should have been charged for repairs.

CLASS REPRESENTATION ALLEGATIONS

40. Plaintiff brings this action both on behalf of himself and as a class action pursuant to Florida Rules of Civil Procedure 1.220(b)(1), 1.220(b)(2), and 1.220(b)(3), on behalf of the following class members (the “Class”):

Count I - VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR TRADE PRACTICES ACT (FLA. STAT. §§ 501.201 et seq.):

All citizens of the State of Florida who, within the four years preceding the filing of this Complaint, purchased non-prescription Costa sunglasses for personal use.

Count II - VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. §§ 2301, et seq.):

All citizens of the State of Florida who, within the five years preceding the filing of this Complaint, were charged a fee (or quoted a fee) by Costa to replace damaged components of their non-prescription Costa sunglasses.

Excluded from the Class are: (1) Defendant, any entity or division in which Defendant has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; and (2) the judge to whom this case is assigned and the judge's staff.

41. Plaintiff reserves the right to amend the Class definition if further information and discovery indicates that the Class definition should be narrowed, expanded, or otherwise modified, including but not limited to, the creation of subclasses, if necessary.

42. Plaintiff does not know the exact number of Class members because such information is in the exclusive control of Costa. Based on the annual sales and popularity of Costa sunglasses, it is readily apparent that the number of consumers in the Class is so large as to make joinder impracticable, if not impossible.

A. Existence and Predominance of Common Questions of Law and Fact

43. Numerous questions of law or fact arise from Costa's conduct that are common to the Class, including but not limited to:

- a. Whether Costa engaged in deceptive and unfair trade practices by claiming that Costa will repair sunglasses damaged due to accident, normal wear and tear, or misuse for a nominal fee;
- b. Whether Plaintiff and the other members of the Class were injured by Costa's conduct and, if so, the appropriate class-wide measure of damages for Class members;
- c. The scope of any declaratory relief to which Plaintiff and the other Class members are entitled; and
- d. The scope of any injunctive relief to which Plaintiff and the other Class members are entitled.

44. These and other questions of law and fact are common to the Class and predominate over any questions affecting only individual Class members.

B. Typicality and Numerosity

45. Plaintiff's claims are typical of the claims of the Class because the Class members all purchased Costa sunglasses purportedly backed by Costa's claim that it would repair sunglasses damaged due to accident, normal wear and tear, or misuse for a nominal fee. The injuries of each Class member were caused directly by Costa's wrongful conduct. In addition, the factual underpinning of Costa's misconduct is common to all Class members and represents a common thread of misconduct resulting in injury to all members of the Class. Plaintiff's claims arise from the same practices and course of conduct that give rise to the claims of the Class members and are based on the same legal theories.

46. The Class is composed of thousands of persons geographically dispersed throughout the state of Florida, the joinder of whom in one action is impractical.

C. Adequate Representation

47. Plaintiff will fairly and adequately represent the interests of the Class members and neither Plaintiff nor counsel have any interests that conflict with or are antagonistic to the interests of the Class members. Plaintiff has retained highly competent and experienced class action attorneys to represent their interests and those of the members of the Class. Plaintiff and his counsel have the necessary resources to adequately and vigorously litigate this class action, and Plaintiff and his counsel are aware of their fiduciary responsibilities to the Class members and will diligently discharge those duties by seeking the maximum possible recovery for the Class.

D. Superiority

48. There is no plain, speedy, or adequate remedy other than by maintenance of this class action. The prosecution of individual remedies by members of the Class is impractical and

will tend to establish inconsistent standards of conduct for Costa and will result in the impairment of Class members' rights and the disposition of their interests through actions to which they are not parties. Class treatment will permit a large number of similarly situated persons to prosecute their common claims in a single forum simultaneously, efficiently, and without the unnecessary duplication of effort and expense that numerous individual actions would create. Further, as the damages suffered by individual members of the Class may be relatively small, the expense and burden of individual litigation would make it difficult or impossible for individual members of the Class to redress the wrongs done to them, while an important public interest will be served by addressing the matter as a class action. Class treatment of common questions of law and fact would also be superior to multiple individual actions or piecemeal litigation in that class treatment will conserve the resources of the Court and the litigants, and will promote consistency and efficiency of adjudication.

49. Should individual class members be required to bring separate actions, this Court and other courts throughout Florida would be confronted with a multiplicity of lawsuits burdening the court system while also creating the risk of inconsistent rulings and contradictory judgments. In contrast to proceeding on a case-by-case basis, in which inconsistent results will magnify the delay and expense to all parties and the court system, this class action presents far fewer management difficulties while providing unitary adjudication, economies of scale and comprehensive supervision by a single court.

E. Refusal to Act on Grounds Common to the Class.

50. Costa has acted or refused to act on grounds generally applicable to the Class, thereby making appropriate declaratory and injunctive relief with respect to the Class as a whole.

COUNT I
**VIOLATION OF THE FLORIDA DECEPTIVE AND UNFAIR
TRADE PRACTICES ACT (FLA. STAT. §§ 501.201 *et seq.*)**

51. Plaintiff, individually and on behalf of all others similarly situated, realleges and incorporates the allegations of paragraphs 1 through 50 above.

52. This cause of action is brought pursuant to the Florida Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.* (the “Act”).

53. The stated purpose of the Act is to “protect the consuming public ... from those who engage in unfair methods of competition, or unconscionable, deceptive, or unfair acts or practices in the conduct of any trade or commerce.” Fla. Stat. § 501.202(2).

54. Plaintiff and all Class members are “consumers,” and the transactions at issue in this Complaint constitute “trade or commerce” as defined by Fla. Stat. § 501.203(7) and (8). Costa sunglasses are a “good” within the meaning of the Act.

55. Costa violated and continues to violate the Act by engaging in unfair methods of competition, unconscionable acts and practices, and unfair and deceptive acts and practices in the conduct of their business.

56. It is Costa’s policy not to provide repair assessments over the phone. Nor does Costa display repair costs on its website. Thus, a customer cannot learn the true cost of Costa’s repair services until the customer mails its sunglasses to Costa (at the customer’s expense).

57. Costa prominently advertises the terms and conditions of its warranty on the side of each box of sunglasses. The box states: “[I]f our sunglasses are damaged by accident, normal wear and tear, or misuse, we replace scratched lenses, frames, and other parts for a nominal fee.”

58. However, contrary to its representations, Costa does not repair sunglasses damaged by accident, normal wear and tear, or misuse for a nominal fee, and withholds such information from consumers at the time of sale.

59. Costa's acts and omissions constitute unfair and deceptive business practices because Costa's claim that it will repair sunglasses damaged by misuse for a "nominal" fee is likely to mislead a reasonable consumer.

60. A reasonable consumer would believe that a "nominal" fee would be no more than a few dollars, and certainly far less than Costa charges.

61. Plaintiff and the other Class members had no way of reasonably knowing that the sunglasses they purchased did not have the warranty that was marketed and advertised by Costa. Thus, they could not have reasonably avoided the injury each of them suffered.

62. As a direct and proximate cause of the violations herein, Plaintiff and the Class members have suffered injury in fact, actual damages, and have lost money as a result of Costa's unlawful, unfair, and fraudulent conduct. Namely, Plaintiff and the Class members paid more for their Costa sunglasses than such sunglasses are worth. Accordingly, Plaintiff and the Class members are entitled to compensatory damages, including but not limited to the difference in value between the Costa sunglasses as originally delivered and as they should have been delivered, injunctive relief, costs and reasonable attorneys' fees.

63. Pursuant to Section 501.211(1), Florida Statutes, Plaintiff and the Class members seek a declaration that Defendant's conduct is in violation of applicable law.

64. Pursuant to Section 501.211(1), Florida Statutes, Plaintiff and the Class members seek injunctive relief barring Costa from continuing to falsely and deceptively advertise and label its sunglasses to the public, and prohibiting Costa from charging any above-nominal fees to repair its sunglasses. Injunctive relief is necessary and proper because, unless so enjoined, Costa will continue to engage in the deceptive actions explained herein. Injunctive relief is further appropriate here because:

- a. Plaintiff can demonstrate a likelihood of irreparable harm and lack of an adequate remedy at law;
- b. Plaintiff can demonstrate a substantial likelihood of success on the merits of the FDUTPA claim;
- c. The threatened injury to the public as a result of Costa's deceptive and unlawful actions outweighs any possible harm to Costa; and
- d. Granting a preliminary injunction will benefit, and not disserve, the public interest.

COUNT II
VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT
(15 U.S.C. §§ 2301, et seq.)

65. Plaintiff, individually and on behalf of all others similarly situated, realleges and incorporates the allegations of paragraphs 1 through 50 above.

66. Costa's acts and omissions, as alleged herein, violate the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, et seq. ("MMWA"), which governs consumer product warranties and sets forth the rights of consumers and the obligations of warrantors who provide written warranties.

67. The MMWA allows consumers to bring civil actions for both legal and equitable relief. 15 U.S.C. §2310(d)(1).

68. Plaintiff and the Class members are consumers as defined in 15 U.S.C. § 2301(3).

69. Costa is a supplier and warrantor as defined in 15 U.S.C. §§ 2301(4) and (5).

70. Costa sunglasses constitute a consumer product as defined in 15 U.S.C. §2301(1).

71. Costa has provided a written warranty to Plaintiff and members of the Class that its sunglasses, if damaged by accident, normal wear and tear, or misuse, will be repaired for "a nominal fee."

72. Costa has breached the terms of its written warranty by failing to repair sunglasses damaged by accident, normal wear and tear, or misuse, for “a nominal fee.”

73. A timely notice to Costa of the breach on behalf of all members of the Class was sent to Costa by letter dated July 12, 2017.

74. Through this letter, Costa was provided with a reasonable opportunity to cure Costa’s failure to comply with the terms of its written warranty.

75. In response to the letter, Costa failed and has continued to refuse to cure its noncompliance.

76. Costa’s breach of the written warranty resulted in damages to Plaintiff and other members of the Class, who bought Costa sunglasses but did not receive the goods as warranted.

WHEREFORE, Plaintiff Brendan C. Haney, individually and on behalf of the Class, prays for relief as follows:

- a) An order certifying that this action is properly brought and may be maintained as a class action, that Plaintiff be appointed the class representative, and that Plaintiff’s counsel be appointed counsel for the class;
- b) An order declaring Defendant’s conduct to be in violation of applicable law and enjoining Defendant from pursuing the unlawful acts and practices alleged herein;
- c) An injunction barring Costa from continuing to falsely and deceptively advertise and label its sunglasses to the public and from charging more than a nominal fee for repairs;
- d) Compensatory damages, and all other damages allowable under the law, sustained by Plaintiff and the class;
- e) Payment of costs of suit herein incurred;

- f) Pre-judgment and post-judgment interest at the maximum rate allowable at law on any amounts awarded;
- g) Payment of reasonable attorneys' fees pursuant to Sections 501.211(2) and 501.2105, Florida Statutes, and 15 U.S.C. § 2310(d)(2); and
- h) Such other and further relief as the Court may deem just and proper.

DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all claims so triable.

Dated this 2nd day of February, 2018.

HOLLAND & KNIGHT LLP

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 2nd day of February, 2018, a true and accurate copy of the foregoing was filed with the Clerk of Court by using the electronic filing system which will serve via email this filing to:

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Sara F. Holladay-Tobias, Esquire
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