UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

GERALD E. REED, IV,

Plaintiff,

v. Case No. 6:19-cv-1751-RBD-LHP

COSTA DEL MAR, INC.,

Defendant.

ORDER

Before the Court is Plaintiff's motion for class certification. (Doc. 106.) The motion is due to be granted.

BACKGROUND

This is a putative class action under Florida's Deceptive and Unfair Trade Practices Act ("FDUTPA") against Defendant Costa Del Mar, Inc. ("Costa") for its allegedly misleading promise to repair sunglasses for a nominal fee.

Prior to January 1, 2018, Costa manufactured sunglasses and shipped them to retailers in a box promising that Costa would repair "scratched lenses, frames, and other parts for a nominal fee." (Doc. 121-5, p. 2.) Retailers differed in their practices with displaying the box—some retailers may have placed the box on the shelves, but many threw the boxes away, and others gave the box to consumers at purchase. (*See* Doc. 121-4, Tr. 121:10–25, 253:19–254:9.) But Costa included the

nominal fee promise on every shipment of sunglasses sent to retailers. (Doc. 107-26, Tr. 14:8–10.)

The parties' dispute centers on the "nominal fee" language of the guarantee. (*See* Doc. 22.) When people sent sunglasses to Costa for repair, Costa charged between $49 and $89 (before tax and shipping) for sunglasses repair—amounts Plaintiff argues are not nominal. (Doc. 107-3; *see* Doc. 106.)

Plaintiff is a Louisiana citizen who purchased a pair of Costa sunglasses in 2014. (Doc. 107-31, p. 7:3; Doc. 121-8, pp. 2–3.) Plaintiff broke his sunglasses and sent them to Costa for repair, and Costa charged him $89. (Doc. 107-31, p. 56:10–14.) Plaintiff then sued Costa for violating FDUTPA on behalf of a putative class of non-Florida citizens who purchased sunglasses before January 1, 2018, and were charged a non-nominal fee for repairs up to four years before the filing of the complaint. (Doc. 22, pp. 10–11.) Plaintiff now moves to certify that class. (Doc. 106.) Costa opposes, arguing that: (1) Florida's choice-of-law rules require the application of the state law of each putative class member's residence; (2) Plaintiff's claims are time-barred and he cannot represent the class; (3) Plaintiff's damages model is inadequate; (4) issues of individual standing and causation predominate; and (5) the class is not ascertainable. (Doc. 121; *see* Doc. 125.) The Court held a hearing on the motion. (Doc. 132.) The matter is ripe.

STANDARDS

The party seeking certification bears the burden of proof. *Brown v. Electrolux Home Prods., Inc.*, 817 F.3d 1225, 1233 (11th Cir. 2016). As threshold matters, the lead plaintiff must have standing, and the class must be adequately defined and clearly ascertainable. *Griffin v. Dugger*, 823 F.2d 1476, 1482 (11th Cir. 1987); *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 984 (11th Cir. 2016). If the thresholds are met, the plaintiff must satisfy the requirements of Federal Rule of Civil Procedure 23(a): numerosity, commonality, typicality, and adequacy. *Sellers v. Rushmore Loan Mgmt. Servs., LLC*, 941 F.3d 1031, 1039 (11th Cir. 2019). Then, a plaintiff seeking to certify a Rule 23(b)(3) class must show predominance and superiority. *See id.*

ANALYSIS

I. Threshold

A. Ascertainability

The proposed class is defined as follows:

> All citizens of the United States who purchased non-prescription, non-promotional Costa sunglasses before January 1, 2018 and who were charged a fee by Costa, from four years prior to the date of the filing of this Complaint to the present, to repair or replace components of their sunglasses that Costa determined were damaged as a result of accident, normal wear and tear, or misuse.

(Doc. 22, ¶ 62.) The class excludes Florida citizens. (*Id.*)

Plaintiff argues the class is adequately defined and ascertainable because it

is based on objective, identifiable criteria. (Doc. 106, p. 15.) Defendant argues the class is not ascertainable because "there are criteria necessary for the Court to determine proper class membership that cannot be addressed by the available data"—specifically, the location of purchase and residence, the purchase year, and the amount paid for the repair. (Doc. 121, p. 22.) Plaintiff counters that the proper standard is whether the class avoids "vague or subjective criteria," so Defendant applies too exacting a standard. (Doc. 125, p. 11.)

"[A]dministrative feasibility is not a requirement for certification under Rule 23." *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1304 (11th Cir. 2021). All that is required is that a proposed class is "adequately defined such that its membership is capable of determination." *Id.*

Here, the class is clearly defined, and the data include the names and addresses of customers, the year they bought the sunglasses, and the amount paid for the repair. (Doc. 121-4, pp. 79:8–81:11.) The relevant inquiry is whether it is possible to determine who is in the class, not whether it is easy, so Plaintiff has satisfied the ascertainability requirement. *See Cherry*, 986 F.3d at 1304.

B. Standing

The other threshold matter, standing, is also disputed. Defendant argues that Plaintiff's claim is barred by FDUTPA's statute of limitations. (Doc. 121, pp. 13–14.) Plaintiff argues that the limitations period began when Costa charged

Plaintiff the fee—a date within the statute—not when he bought the sunglasses. (Doc. 125, pp. 5–6.)

Named plaintiffs must file their lawsuit within the statute of limitations period to have standing. *City of Hialeah v. Rojas*, 311 F.3d 1096, 1103–04 (11th Cir. 2002). FDUTPA claims have a four-year statute of limitations. *See* Fla. Stat. § 95.11(3)(e); *see also id.* § 95.11(o). "A cause of action accrues when the last element constituting the cause of action occurs." *Id.* § 95.031(1). The three elements of a FDUTPA claim are: "(1) a deceptive act or unfair practice; (2) causation; and (3) actual damages." *Rollins, Inc. v. Butland*, 951 So. 2d 860, 869 (Fla. 2d DCA 2006).

Here, Plaintiff did not suffer actual damages until he paid a non-nominal fee. *See Sundance Apartments I, Inc. v. Gen. Elec. Cap. Corp.*, 581 F. Supp. 2d 1215, 1223 (S.D. Fla. 2008). Plaintiff did not suffer actual damages when he bought the sunglasses because his FDUTPA claim is based on the charging of an unfair fee, not the purchase of a defective product. *See Latman v. Costa Cruise Lines, N.V.*, 758 So. 2d 699, 703 (Fla. 3d DCA 2000) ("Reliance and *damages* are sufficiently shown by the fact that the passenger parted with money for what should have been a 'pass through' port charge . . . ." (emphasis added)). *See generally Saavedra v. Albin Mfg. Corp.*, No. 8:11-cv-1893, 2012 WL 254122, at *4 (M.D. Fla. Jan. 27, 2012) (deciding on motion to dismiss that "[a]lthough [this count] focuses on the date of sale, the Amended Complaint suggests other factual bases for a FDUTPA claim

that may fall within the four-year statute of limitations"). Because Plaintiff paid the fee in September 2016, within four years of filing this lawsuit in 2019, his claim is within the statute of limitations. (*See* Doc. 107-15, p. 10); *Latman*, 758 So. 2d at 703.

II. Rule 23(a)

With the thresholds met, the Court turns to the Rule 23(a) requirements of numerosity, commonality, typicality, and adequacy.

Numerosity requires that "the class is so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). Plaintiff asserts that Defendant repaired 494,146 sunglasses during the four-year window in the class definition. (Doc. 106, p. 15.) Well over forty class members is generally sufficiently numerous. *Vega v. T-Mobile USA, Inc.*, 564 F.3d 1256, 1266 (11th Cir. 2009). Because there must have been more than forty class members to repair nearly half a million sunglasses, this requirement is met.

Commonality requires that "there are questions of law or fact common to the class." Fed. R. Civ. P. 23(a)(2). A question is common if it is "capable of classwide resolution." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 350 (2011). Commonality is less demanding than predominance, which requires not only that common questions exist but also that they predominate over individual ones. *See Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 609, 624 (1997). Costa challenges

these inquiries together. (Doc. 121, p. 16.) Because predominance is more demanding, the Court will address both below in the Rule 23(b)(3) analysis. *See Carriuolo*, 823 F.3d at 985.

Third, typicality requires that the "claims or defenses of the class and the class representative arise from the same event or pattern or practice and are based on the same legal theory." *Kornberg v. Carnival Cruise Lines, Inc.*, 741 F.2d 1332, 1337 (11th Cir. 1984). Plaintiff's purported injury is substantively identical to those of the putative class: he paid an allegedly excessive fee to repair his sunglasses. (*See* Doc. 106, p. 17.) The fact that each class member may have paid more or less than Defendant does not matter because "[d]ifferences in the amount of damages between the class representative and other class members does not affect typicality." *Kornberg*, 741 F.2d at 1337. So typicality, which is not disputed, is met.

Fourth, adequacy requires that the "representative parties will fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The two questions are "whether [Plaintiff's] counsel are qualified, experienced, and generally able to conduct the proposed litigation" and whether "[Plaintiff has] interests antagonistic to those of the rest of the class." *Griffin v. Carlin*, 755 F.2d 1516, 1532 (11th Cir. 1985). Here, Plaintiff's injury is typical of the proposed class as he was charged a fee by Defendant to repair his sunglasses, and the class counsel are attorneys at Holland & Knight, who have adequately

represented similar classes in the other actions involving these facts, so adequacy is also met. (Doc. 106, p. 18.) With numerosity, typicality, and adequacy met, the Court turns to the remaining inquiry.

III. Rule 23(b)(3)

The final hurdle is Rule 23(b)(3), which requires that "questions of law or fact common to class members predominate over any questions affecting only individual members, and . . . a class action is superior to other available methods."

A. Predominance

Defendant attacks predominance on four grounds: (1) FDUTPA does not apply to individual class member claims because of choice-of-law rules; (2) each class member must have been exposed to the misleading promise; (3) issues of individual standing overwhelm common questions; and (4) Plaintiff's damages model is inadequate. (*See* Doc. 121.)

1. Choice of Law

Defendant first argues that predominance is not satisfied because Florida's choice-of-law rules mandate the application of the trade practice statutes of each individual class member's state of residence, not FDUTPA. (Doc. 121, pp. 6–13.) Plaintiff argues that Florida law mandates the application of FDUPTA to all class member claims. (Doc. 106, pp. 19–21; Doc. 125, pp. 2–5.)

In deceptive trade practice statutory claims, Florida law applies the

"significant relationships test" of § 145 of the Restatement (Second) of Conflicts of Laws.[1] *See Bishop v. Fla. Specialty Paint Co.*, 389 So. 2d 999, 1001 (Fla. 1980); *Trumpet Vine Invs., N.V. v. Union Cap. Partners I, Inc.*, 92 F.3d 1110, 1115–16 (11th Cir. 1996). Restatement § 145 considers where: (1) the injury occurred; (2) the conduct causing the injury occurred; (3) the parties reside; and (4) the relationship between the parties is centered. *Bishop*, 389 So. 2d at 1001. "The state where the injury occurred would, under most circumstances, be the decisive consideration in determining the applicable choice of law." *Id.* Where FDUTPA claims allege the payment of a fee based on a misleading promise, the place of injury is where the payments were sent. *See Renaissance Cruises, Inc. v. Glassman*, 738 So. 2d 436, 438–40 (Fla. 4th DCA 1999).

Here, the Restatement factors support the application of Florida law. As to the place of injury, because Plaintiff challenges an excessive fee paid to a Florida company, the place of injury is Florida. *See id.* True, the place of purchase was outside Florida, but that is not dispositive—the place of purchase was outside

[1] Defendant argues that § 148 should also apply because that section applies to "fraud-based" torts. (Doc. 121, p. 10.) But § 148 only applies when a plaintiff has acted in reliance on the defendant's misrepresentation, and reliance is not a FDUTPA element. *See Dart Indus., Inc. v. Acor*, No. 6:06-cv-1864, 2008 WL 4816612, at *13 n.14 (M.D. Fla. Nov. 5, 2008) (Antoon, J.). Other courts have applied § 148 where a FDUTPA claim is asserted alongside common law claims like fraud and unjust enrichment, but here the FDUTPA claim stands alone. (Doc. 22); *see Townhouse Rest. of Oviedo, Inc. v. NuCO2, LLC*, No. 2:19-CV-14085, 2020 WL 5440581, at *6 (S.D. Fla. Sep. 9, 2020); *Morris v. ADT Sec. Servs., Inc.*, No. 07-80950-CIV, 2009 WL 10691165, at *8–10 (S.D. Fla. Sep. 11, 2009).

Florida in *Renaissance,* too. *See id.* at 437 ("Appellant's arguments against certification centered on its claim that the laws of Florida could not or should not apply to each proposed class member, because most of them were not Florida residents and did not purchase their tickets in Florida."). Costa cites some case law for the proposition that the place of injury for FDUTPA claims is the state of purchase, but those cases are not on point because they concerned neither fees nor specific contacts with Florida, unlike *Renaissance*. *See Rebman v. Follet Higher Educ. Grp.*, 248 F.R.D. 624, 631–32 (M.D. Fla. 2008) (overcharging for used textbooks); *Karhu v. Vital Pharms., Inc.*, No. 13-60768-CIV, 2014 WL 815253, at *1 (S.D. Fla. Mar. 3, 2014) ("product [was] ineffective for its advertised purpose"); *Cohen v. Implant Innovations, Inc.*, 259 F.R.D. 617, 626 (S.D. Fla. 2008) (periodontists had to replace implants at rate higher than warrantied).[2]

As to the remaining factors, the conduct causing the injury—choosing to charge an excessive fee—occurred in Florida, where Costa is headquartered. The parties reside in different states, so that factor is neutral. But the relationship between the parties—where individuals shipped the sunglasses and where fees were paid—is also centered on Florida. (*See* Doc. 106, p. 21.)

[2] Even if these cases were closer factually to this one, they are all nonbinding federal district court opinions. Absent precedent from the Supreme Court of Florida, opinions from Florida's District Courts of Appeal, like *Renaissance*, are binding on this Court on issues of Florida law. *Fid. Union Tr. Co. v. Field*, 311 U.S. 169, 177–78 (1940). So *Renaissance* is both more factually similar and binding.

Given the significant relationship factors tilting toward Florida, Florida law applies to each class member's claim, so FDUTPA's application is appropriate on a classwide basis, and individual choice-of-law issues do not predominate.

2. Exposure

It is undisputed that some members of the putative class never saw the warranty promise because it was placed on an exterior box, and retailers varied widely in whether they displayed the boxes or gave them to customers. (*See* Doc. 121-4, Tr. 121:10–25, 253:19–254:9.) Defendant argues that because some class members were not exposed to the warranty promise, they cannot show causation on a classwide basis. (Doc. 121, pp. 17–20.) Plaintiff argues that exposure is not required under FDUTPA. (Doc. 125, pp. 9–11.)

Causation is an element of a FDUTPA claim. *Rollins*, 951 So. 2d at 869. Actual reliance on the deceptive act is not required to show causation. *See Latman*, 758 So. 2d at 703; *Davis v. Powertel, Inc.*, 776 So. 2d 971, 974 (Fla. 1st DCA 2000); *Turner Greenberg Assocs., Inc. v. Pathman*, 885 So. 2d 1004, 1009 (Fla. 4th DCA 2004). "That is so because the question is not whether the plaintiff actually relied on the alleged deceptive trade practice, but whether the practice was likely to deceive a consumer acting reasonably in the same circumstances." *Davis*, 776 So. 2d at 974. A consumer's payment of an excessive fee satisfactorily alleges causation because the manufacturer's misleading promise caused the consumer to pay more than his

bargain required. *See Latman*, 758 So. 2d at 703.

The Eleventh Circuit has rejected the assertion that an individual "exposure" requirement applies to FDUTPA class action claims. *See Carriuolo*, 823 F.3d at 985 ("[Defendant] is incorrect to suggest that the plaintiffs must prove that every class member saw the [misleading] sticker and was subjectively deceived by it. As the district court correctly observed, these arguments simply seek a reliance inquiry by another name."). Because a misleading statement on a product results in reasonable consumers paying more, even if a particular customer did not see it, the misleading statement "arguably was the direct cause of actual damages." *Id.* at 987. For the purpose of analyzing predominance, it is "unnecessary to make *any* individualized inquiry into what each plaintiff knew and relied on" in purchasing a product. *Tershakovec v. Ford Motor Co.*, 79 F.4th 1299, 1311 (11th Cir. 2023) (applying FDUTPA) (emphasis added).

Here, Plaintiff has alleged causation on a classwide basis by asserting that Defendant's misleading promise led every class member to pay a non-nominal fee. *See Latman*, 758 So. 2d at 703. While each putative class member may have had different levels of exposure to the nominal fee guarantee (and some had none), *every* class member definitionally purchased sunglasses where the nominal fee promise was part of their bargain. (Doc. 22, ¶ 62.) Because sunglasses with a nominal fee promise carry a higher value than sunglasses without, and "prices are

determined in substantial measure according to market demand," Defendant's alleged misrepresentation "allow[ed] it to command a price premium and to overcharge customers systematically." *See Carriuolo*, 823 F.3d at 987. So even though some putative class members never saw the alleged misrepresentation, the misrepresentation caused *every* class member damage by inflating the price of the sunglasses. *See id.*

Because the Court need not conduct any inquiry into individual reliance, whether through "exposure" or otherwise, because Defendant's alleged conduct caused every putative class member to be damaged, individual issues of causation do not predominate. *See Tershakovec*, 79 F.4th at 1311.

3. Individual Standing

Relatedly, Defendant argues that because some class members never saw the misleading warranty promise, any injury they suffered is not fairly traceable to Defendant's conduct, so those class members lack standing. (Doc. 121, pp. 16–21.) Plaintiff counters that because reliance is not an element, Plaintiff need not show each class member saw the misleading promise. (Doc. 125, pp. 9–11.)

Standing has three elements: an injury-in-fact, traceability, and redressability. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560–61 (1992). At the class certification stage, courts may certify a class so long as the named plaintiff has standing. *Cordoba v. DIRECTV, LLC*, 942 F.3d 1259, 1267 (11th Cir. 2019). But any

class member who receives relief must have standing. *See TransUnion LLC v. Ramirez*, 594 U.S. 413, 417–21 (2021). So "[i]n some cases, whether absent class members can establish standing may be exceedingly relevant to the class certification analysis required by Federal Rule of Civil Procedure 23." *Cordoba*, 942 F.3d at 1273.

"[T]raceability is not an exacting standard." *Walters v. Fast AC, LLC*, 60 F.4th 642, 650 (11th Cir. 2023). Only de facto causality is required. *Dep't of Com. v. New York*, 588 U.S. 752, 768 (2019). The requirement is "less stringent than proximate cause." *Cordoba*, 942 F.3d at 1271.

At this stage, the Court need not address this issue, as the named Plaintiff has standing. *See Cordoba*, 942 F.3d at 1267. But for the reasons explained above, the putative class members did suffer an alleged injury (an excessive fee) caused by Defendant's conduct (charging the fee)—showing that Defendant's conduct de facto caused injury to the class members, even if such causality is more tenuous than if class members were individually exposed. *See Dep't of Com.*, 588 U.S. at 768. So issues of individual class member standing do not affect predominance because all putative class members would have standing.

4. Damages Model

Defendant argues that Plaintiff failed to provide an adequate damages model. (Doc. 121, pp. 14–16.) The fact that damages will be calculated on an

individual basis generally does not defeat predominance. *See Carriuolo*, 823 F.3d at 988. When a FDUTPA claim is based on the overcharging of fees, the proper damages model is the overcharge paid by each class member. *See Latman*, 758 So. 2d at 703; *Waste Pro USA v. Vision Constr. ENT, Inc.*, 282 So. 3d 911, 920 (Fla. 1st DCA 2019). So Plaintiff's proposed damages model is adequate because it is based on the amount of money paid above the nominal fee promised. *See Latman*, 758 So. 2d at 703.

Because all of Defendant's arguments do not defeat predominance, the Court concludes that the common issues of a deceptive practice and causation predominate over individual ones. (*See* Doc. 106, pp. 22–26.)

B. Superiority

As to superiority, Plaintiff argues that class treatment is superior to other methods because predominance is satisfied, the claims are too small to sustain individual lawsuits, and the Rule 23(b)(3) factors support certification. (Doc. 106, pp. 27–28.) Defendant does not contest superiority. (*See* Doc. 121.)

If predominance is satisfied, superiority is usually satisfied. *Williams v. Mohawk Indus.*, 568 F.3d 1350, 1358 (11th Cir. 2009). But courts must still consider the factors listed in Rule 23(b)(3) when deciding whether a class action is the superior means of resolving the dispute. *See Vega*, 564 F.3d at 1278. Those factors include:

> [T]he class members' interests in individually controlling the prosecution or defense of separate actions; the extent and nature of any litigation concerning the controversy already begun by or against class members; the desirability or undesirability of concentrating the litigation of the claims in the particular forum; and the likely difficulties in managing a class action.

Fed. R. Civ. P. 23(b)(3).

Here, there is no existing litigation between the class members and Costa. Common issues predominate, so manageability is satisfied. *See Williams*, 568 F.3d at 1358. Concentrating the litigation in one forum—where Costa is—is preferable to having multiple claims spread across the country. And class members have little interest in separate actions because the individual claim amounts would be low enough to discourage filing. That itself shows superiority: if these claims proceeded as individual actions, Costa's alleged misrepresentation likely would go unredressed. *See Nelson v. Mead Johnson Nutrition Co.*, 270 F.R.D. 689, 692 n.2 (S.D. Fla. 2010). So superiority is also satisfied.

CONCLUSION

With the threshold, Rule 23(a), and Rule 23(b)(3) requirements satisfied, the Court will certify the class. Accordingly, it is **ORDERED AND ADJUDGED**:

1. Plaintiffs' motion (Doc. 106) is **GRANTED**.

2. The Court **CERTIFIES** the following class:

> All citizens of the United States who purchased non-prescription, non-promotional Costa sunglasses before January 1, 2018, and who were charged a fee by Costa, from four years prior to the date of the filing of this Complaint to the present, to repair or replace

components of their sunglasses that Costa determined were damaged as a result of accident, normal wear and tear, or misuse. The class excludes Florida citizens.

3. The Court **APPOINTS** Gerald E. Reed, IV, as Class Representative.

4. The Court **APPOINTS** Peter P. Hargitai, Esq., Joshua H. Roberts, Esq., Laura B. Renstrom, Esq., and Michael M. Gropper, Esq., of Holland & Knight, LLP as Class Counsel.

5. By **Wednesday, February 25, 2026**, the parties are **DIRECTED** to meet-and-confer and then file a joint notice that: (1) describes the proposed identification of class members and their contact information; (2) describes the method of disseminating class notice; and (3) proposes a notice to be disseminated to the class. *See* Fed. R. Civ. P. 23(c)(2)(B). To the extent the parties cannot agree, their positions should be described in the notice, supported by relevant authority.

DONE AND ORDERED in Chambers in Orlando, Florida, on January 28, 2026.

ROY B. DALTON, JR.
United States District Judge