

**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.

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**PLAINTIFF'S MOTION FOR CLASS CERTIFICATION**

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## INTRODUCTION

Costa Del Mar, Inc. (“**Costa**”) sells sunglasses. If you bought a pair of Costas before January 1, 2018, they came in a box touting a “rock solid” warranty under which, if the sunglasses were damaged by accident, normal wear and tear, or misuse, Costa would replace scratched lenses, frames, and other parts for a “*nominal fee*.”<sup>1</sup> Imagine your surprise, then, when your lens is scratched and you find out (*after* paying to ship your sunglasses to Costa’s repair center) that the “nominal fee” is anywhere from \$49.00 to \$89.00 per damaged piece, *plus* your shipping costs and \$9.95 for “processing.” So much for *nominal*.

This lawsuit is one of three putative class actions<sup>2</sup> that aims to vindicate the rights of consumers who bought Costa sunglasses subject to Costa’s false “nominal fee” promise. This action asserts a class of non-Florida U.S. citizens who bought Costa sunglasses before January 1, 2018, and were charged excessive repair fees for damage caused by accident, normal wear and tear, or misuse. For himself and this class, Plaintiff alleges Costa violated Florida’s Deceptive and Unfair Trade Practices Act, Fla. Stat. §§ 501.201 *et seq.* (“**FDUTPA**”), by selling sunglasses subject to the deceptive and unfair “nominal fee” promise and then charging fees that are not “nominal.”

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<sup>1</sup> See BLACK’S LAW DICTIONARY, *Nominal* (12th ed. 2024) (“(Of a price or amount) trifling, esp. as compared to what would be expected”).

<sup>2</sup> The others are *Smith v. Costa Del Mar, Inc.*, No. 3:18-cv-1011 (M.D. Fla.) (“**Smith**”), and *Haney v. Costa Del Mar, Inc.*, No. 16-2017-CA-004794 (Fla. 4th Jud. Cir.) (“**Haney**”). As explained below, the court in *Haney* certified a class like the one asserted here. *Smith*, meanwhile, is currently in the process of being re-filed in state court.

This motion asks the Court to certify the alleged class pursuant to Federal Rule of Civil Procedure 23(a) and 23(b)(3). Certification is appropriate under Rule 23(a) because the class is *numerous*, involving nearly 500,000 repair transactions, and Plaintiff's claim is *typical* of the class. Every class member's claim arises from Costa's *common* practice of selling sunglasses subject to the same "nominal fee" promise and then charging exorbitant fees when the repair was actually performed. Plaintiff and the undersigned counsel are *adequate* to represent the class because Plaintiff has no interests antagonistic to other class members, and counsel is not only experienced in class-action litigation generally but has already been appointed as class counsel in a similar class action against Costa.

Rule 23(b)(3) is also satisfied because, as the Eleventh Circuit has explained, every element of FDUTPA—unfair and deceptive conduct, causation, and damages—can be assessed objectively and is amenable to class-wide proof. The central questions are whether Costa's "nominal fee" promise was a part of its bargain with consumers and was unfair and likely to deceive consumers acting reasonably. These common questions predominate over any peripheral individualized issues. For the same reasons, a class action is a superior method of adjudication to hundreds of thousands of individual small-value lawsuits addressing the same unfair and deceptive practice. Accordingly, the Court should grant this motion, appoint Plaintiff as class representative, and appoint HOLLAND & KNIGHT as class counsel.

## **BACKGROUND**<sup>3</sup>

### **I. Facts**

#### **A. Costa**

Costa is a sunglasses company headquartered in Daytona Beach, Florida. (Rush Dep. II at 7:19–8:4.) Costa’s Daytona Beach headquarters is where Costa manufactured and repaired its sunglasses, shipped online orders, received calls from customers, formulated its marketing and warranty language, collected repair fees, and directed its business operations—in other words, Costa’s nerve center:

[E]verything is connected in Daytona Beach. . . . [W]e do everything in Daytona. So we’re actually manufacturing, assembling. We’re servicing after sale, and it gives the organization the ability to see the entire customer experience from end to end.

(*Id.* at 8:11–11:17, 15:18–19:15; Ritter Dep. at 20:22–21:1, 84:23–86:21.)

#### **1. Costa’s Nominal Fee Warranty was a key part of its brand, intended to be part of every customer’s bargain.**

Costa attempted to set itself apart by offering a lifetime warranty promising to repair or replace damaged sunglasses for a “nominal fee” (the “**Nominal Fee Warranty**”). (Crockett Dep. at 90:20–24; Rosenberg Dep. at 9:6–10.) Costa printed the warranty on every box it sold under the heading “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, make Costa Sunglasses the best value

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<sup>3</sup> Citations to exhibits reference the exhibits to the Transmittal Declaration of Peter P. Hargitai in Support of Plaintiff’s Motion for Class Certification filed contemporaneously herewith.

For multi-page exhibits without internal pagination, page numbers have been inserted at the bottom of the page in red type. Deposition transcripts (**Exhibits 20–32**) are cited as the deponent’s name followed by “Dep.” and the transcript page and line numbers.

available in the sunglass industry today. No other manufacturer offers a combination that even comes close.

(Ex. 1; MacDonald Dep. at 13:8–14:23; Hannah Dep. at 27:9–15; Crockett Dep. at 34:5–9; Owens Dep. at 103:20–24; Rosenberg Dep. at 14:8–10.) Costa intended its sunglasses to be distributed in the box, but, whether or not a customer got the box, Costa agreed customers could “rest assured” that the Nominal Fee Warranty was a part of their bargain. (Rosenberg at 15:15–16:10; Crockett 46:16–19, 47:14–24.) Costa intended customers to take the Nominal Fee Warranty literally and did not find the term *nominal* ambiguous or confusing. (Hannah Dep. at 38:19–39:15.)

At all relevant times, Costa did repairs at its Daytona Beach repair center. (Ritter Dep. at 7:22–8:3, 62:20–63:3.) Customers seeking repairs completed an online form providing their contact information. (Rush Dep. II at 15:21–17:14, 39:2–18; Ritter Dep. at 88:24–89:9.) They then sent their sunglasses to the repair center at their own expense, where Costa assessed them and, for the first time, disclosed its repair fees, at which point the customer would decide whether to proceed with the repair. (Ritter Dep. at 90:17–91:20.)

**2. Notwithstanding the Nominal Fee Warranty, Costa charged substantial, profit-generating repair fees.**

In 2004, Costa received a “delighted” review from a customer who received free repairs from Costa and wanted to recognize Costa’s “[g]reat customer service.” (Ex. 2 at 2.) Rather than celebrate, Costa’s then-CEO lamented that Costa’s repair policy was “much too expeditious,” causing “warranty expense[s] [to] go[ ] through the roof.” (*Id.* at 1.) He formed a task force to fix this perceived problem. (*Id.*)

And “fix” it Costa did. Costa soon began charging substantial repair fees. (Crockett Dep. at 94:25–95:8.) These fees ranged from \$49 to \$89 per item, as set forth on secret price charts obtained only through discovery, plus shipping and processing charges. (Ex. 3.) Costa’s former customer service and repair manager, Dean Rosenberg, admitted the prices Costa charged were not “nominal.” (Rosenberg Dep. at 6:11–7:20, 17:9–25.) Costa’s supervisor responsible for training its consumer care representatives did, too. (Mazza Dep. at 6:10–7:24, 57:9–13.) Contrary to the warranty’s text, Costa began informing customers that accidental damage and normal wear and tear were *not covered*. (*Id.* at 30:18–25.) And Costa refused to tell customers the charges they would have to pay until *after* the customer shipped their sunglasses to the repair center at their own cost. (Crockett Dep. at 127:25–128:18.) As Costa’s then-CEO admits, these policies “did not honor” the Nominal Fee promise. (MacDonald Dep. at 17:19–24.)

In fact, far from honoring its repair promise, Costa turned repairs into its highest source of gross profit. (Rosenberg Dep. at 19:12–14; Ex. 4.) The repair center went from expenses “going through the roof” (Ex. 2 at 1) to driving growth for the company with a reported gross margin of 75%. (*See* Ex. 5 at 11; at Morrisey 28:9–12.) As Costa’s VP of marketing put it, Costa’s repair policies were “geared toward making our repair shop a profit generator, instead of a loyalty generator.” (Ex. 6 at 2.) Notably, these profits were only so large because Costa’s defect rate was up to five times greater than that of its competitors. (*See* Ex. 7 at 1.) This toxic combination of poor quality and profit-driven repair fees was seen within Costa as

a “cancer” and something the incoming CEO said “keeps me up at night.” (Ex. 6 at 2; Ex. 7 at 1.)

**3. Unsurprisingly, consumers complained “all day, every day, on all channels.”**

Complaints poured in. Customers protested that, for sunglasses marketed as “the toughest sunglasses in the world,” “made for the water,” and able to “withstand even the harshest environments,” Costa denied warranty coverage for things that naturally occur when fishing or boating, like heat exposure, water exposure, and even wearing the sunglasses on top of the head. (Ex. 7 at 1; Ex. 8; Ex. 9.) Costa did so even though it *knew* its sunglasses used “materials that don’t mesh well with varying temperatures” and that, “under extreme temperature changes and salt water dips *they will fold*.” (Ex. 10 at 1 (emphasis added).) Customers referred to the Nominal Fee Warranty as “a scam,” “untrue,” “deceptive,” “a lie,” and “terrible,” among myriad other epithets. (Cockett Dep. at 103:11–105:12.) Harsh criticism of Costa’s repair fees was “typical,” “common,” “a disconcerting trend,” and consistently among the top complaints Costa received from customers. (Fontenot Dep. at 207:8–22, 208:25–14, 211:22–25; MacDonald Dep. at 47:4–7; Mazza Dep. at 38:21–39:7.) Costa’s misleading use of the term “nominal” drew particular ire:

Number one, the nominal would—would get in people’s crawl [sic]. Right? Because nominal has a—has a connotation that it’s not going to be very much, and then all of a sudden they have a hundred dollar or a hundred and twenty-five dollar repair charge in front of them.

(Rosenberg Dep. at 40:15–41:1.) Laurie Fontenot, Costa’s customer liaison, could

barely keep up, saying “[w]e get these [complaints] all day, every day, on all channels.” (Ex. 11.) The “anger level” was “out of control.” (Fontenot Dep. at 152:2–7.)

**4. Costa disregarded its “nominal fee” promise, treating it as meaningless puffery.**

Making matters worse, Costa *knew* its warranty language was misleading. Costa internally acknowledged that its customers’ complaints about repair fees “[weren’t] completely unfounded.” (Ex. 12.) Ms. Fontenot was more blunt: “The warranty statement does suck . . . .” (*Id.*) Costa’s own employees called the “[l]ifetime warranty” section of its website “very misleading.” (Ex. 13 at 5.) And Mr. Rosenberg, who headed up Costa’s repair department, pushed (unsuccessfully) for the Nominal Fee Warranty to be removed as far back as 2013 and later admitted that the language was “**unfair and deceptive.**” (Ex. 14 at 3; Rosenberg Dep. at 20:20–24, 21:3–23:1 (emphasis added).) Still, the “nominal fee” language was not changed until 2018—*after* Costa was sued in *Haney*. (Rush Dep. at 10:14–17.)

To Costa, profit was more important than honesty. The executive responsible for educating retailers about the Nominal Fee Warranty did not even know what *nominal* means. (Owens Dep. at 69:11–13.) Costa’s corporate representative testified that “nominal” means either whatever “I’m willing to pay for something” or “the price that we charge for a service.” (Crockett Dep. at 22:6–23.) She later said *nominal* means anything less than retail price. (Crockett Dep. II at 153:15–25.) A Costa marketing executive said she had “zero knowledge” about Costa’s repair pricing and looked up the meaning of *nominal* only after Costa was sued. (Hannah Dep. 37:17–25, 82:21–24.) And both of Costa’s CEOs during the relevant

period dismissed the Nominal Fee Warranty as mere “puffery.” (Rush Dep. 98:9–12; MacDonald Dep. 16:15–22.)

Tellingly, before calling the Nominal Fee Warranty “puffery” in litigation, Costa’s CEO in 2016 called its “Backed for Life” claim “a point of difference.” (Ex. 7 at 1.) Yet she acknowledged Costa was not living up to this standard, admitting “the current picture tell[s] a different story.” (*Id.*) That “picture” was a “high defective rate” and a repair department that “was set up as a Sales/Profit Center, NOT a Service Center.” (*Id.*) So while Costa’s boxes touted an unmatched combination of “product quality” with a “rock solid” warranty (*see* Ex. 1), the reality was substandard quality coupled with a profit-gouging repair center—a toxic combination that meant warranty claims “represent[ed] nearly 16% of . . . frames sold each year” and “complaints [were] at an all time high.” (Ex. 7 at 1 (typeface adjusted)).

Put simply, consumers were only echoing Costa’s internal admissions when they called the Nominal Fee Warranty the “Worst WARRANTY ever!!” and “not what it appears to be.” (Ex. 14 at 3.) Their complaints that “Costa [didn’t] understand the word ‘Nominal’” proved only too true. (*Id.*) Consumers did not get what Costa promised them, and Costa’s internal communications show Costa knew it.

## **B. Plaintiff**

Plaintiff, Gerald “Beau” Reed, is a Louisiana citizen who, in 2014, bought a pair of Costa “Harpoon 580” sunglasses (Plaintiff’s “**Harpoons**”). (Reed Dep. at 6:24–7:5, 77:24–78:1; Ex. 15 at 5.) Plaintiff was drawn to Costa sunglasses because he believed they would be good for fishing and because they came with a warranty.

(Reed Dep. at 15:6–11, 53:14–17.) Plaintiff was aware before he bought his Harpoons that Costa promised it would repair or replace them for a nominal fee if he damaged them. (*Id.* at 50:1–13.) When Plaintiff bought two prior pairs of Costas, he saw the Nominal Fee Warranty on the boxes they came in, and he received a box displaying the Nominal Fee Warranty with his Harpoons, as well. (*Id.* at 31:5–10; Ex. 15 at 5, 7.) Plaintiff understood that the Nominal Fee Warranty applied to each pair of Costas he bought and understood “nominal” to mean “very, very, very small.” (Reed Dep. at 63:20–64:9, 65:3.)

In September 2016, Plaintiff’s Harpoons fell off his shirt while he was getting out of his truck, and the lens shattered. (*Id.* at 86:18–87:3; Ex. 15 at 9.) Plaintiff requested a repair by filling out Costa’s online form. (Reed Dep. at 47:8–12, 81:19–82:4.) Plaintiff shipped his Harpoons to Costa’s repair center in Florida at his own expense, and Costa informed him of a \$100.95 repair fee. (*Id.* at 56:6–14, 88:8–14; Ex. 15 at 9.) Plaintiff, though dismayed over the fee, reluctantly authorized the repair (rather than toss them in the garbage). (Reed Dep. at 54:11–55:21, 93:1–11.)

## **II. Procedural History**

### **A. This Lawsuit**

Based on the foregoing facts, Plaintiff sued Costa for violating FDUTPA on behalf of himself and the following putative class:

All citizens of the United States [subject to the exclusions below] 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, 72–87) (the “**Class**”). Excluded from the Class are (1) citizens of Florida, (2) Defendant and its controlled affiliates and specified related persons, and (3) judicial staff assigned to this case. (*Id.* ¶ 62.)

### **B. Related Actions Against Costa**

Plaintiff’s counsel is handling two other lawsuits against Costa based on Costa’s unfair and deceptive conduct: *Haney* and *Smith* (see note 2, *supra*).

The Court in *Haney*, following a three-day evidentiary hearing, certified two classes against Costa, including one asserting FDUTPA claims virtually identical to those asserted here but on behalf of Florida citizens.<sup>4</sup> *Haney v. Costa Del Mar, Inc.*, No. 16-2017-CA-004794, 20191 WL 1878300 at \*1–2, \*43 (Fla. 4th Jud. Cir. Apr. 12, 2019). After the classes were certified in *Haney*, Costa entered into a global settlement with Plaintiff and the plaintiffs in *Smith* and *Haney*, and all three lawsuits were temporarily consolidated in *Smith*. See *Smith v. Costa Del Mar, Inc.*, No. 3:18-cv-1011, 2021 WL 4295282, \*1 n.2 (M.D. Fla. Sept. 21, 2021). With Costa’s support, the *Smith* court certified four settlement classes, including the FDUTPA classes asserted here and in *Haney*. *Id.* at \*4–5. However, the global settlement fell apart,<sup>5</sup> and the parties elected to disassociate the consolidated cases and proceed with each lawsuit in its original forum.

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<sup>4</sup> Florida’s class action rules are patterned after and, for present purposes, materially identical to Rule 23. See, e.g., *Ferreiro v. Phila. Indem. Ins. Co.*, 928 So. 2d 374, 378 n.3 (Fla. 3d DCA 2006); *Toledo v. Hillsborough Cnty. Hosp. Auth.*, 747 So. 2d 958, 961 n.1 (Fla. 2d DCA 1999).

<sup>5</sup> Specifically, the Eleventh Circuit held that certain relief was improperly valued in the settlement and thus vacated final approval. *Smith v. Miorelli*, 93 F.th 1206, 1209–08 (11th Cir. 2024).

## **LEGAL STANDARDS**

Decisions on class certification are committed to the district court’s sound discretion. *Carriuolo v. Gen. Motors Co.*, 823 F.3d 977, 981 (11th Cir. 2016). “To certify a class action, the named plaintiffs must have standing, and the proposed class must: (1) be adequately defined and clearly ascertainable; (2) meet each of the requirements of [Rule 23(a)]; and (3) meet at least one of the requirements of Rule 23(b).” *Andreas-Moses v. Hartford Fire Ins. Co.*, 326 F.R.D. 309, 313 (M.D. Fla. 2018) (Dalton, J.). Rule 23(a) requires “numerosity, commonality, typicality, and adequacy of representation.” *Id.* (internal quotation marks omitted). Rule 23(b)(3), which Plaintiff asserts here, requires that (1) “questions of law or fact common to class members predominate over any questions affecting only individual members” and (2) “a class action is superior to other available methods for fairly and efficiently adjudicating the controversy.” *Id.*

## **MEMORANDUM OF LAW**

The Class should be certified because it is clearly defined (*see* Part I, *infra*), and Rules 23(a) and 23(b)(3) are satisfied (*see* Parts II–III, *infra*).

### **I. The Class is adequately defined and clearly ascertainable.**

“Ascertainability is an implied prerequisite of Rule 23” that “requires only that the class definition avoid vague or subjective criteria.” *Stengl v. L3Harris Techs., Inc.*, No. 6:22-cv-572, 2023 WL 11932263, at \*2 (M.D. Fla. June 5, 2023) (citing *Cherry v. Dometic Corp.*, 986 F.3d 1296, 1301 (11th Cir. 2021)). Administrative feasibility is not considered. *Cherry*, 986 F.3d at 1301–02.

Here, the Class is ascertainable because it is defined by objective criteria—specifically, by having “purchased non-prescription, non-promotional Costa sunglasses before January 1, 2018” and having been “charged a fee by Costa” up to four years before the Complaint was filed (*i.e.*, from April 3, 2015 to 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.) Costa’s own records show everyone who paid Costa a repair fee, their address, the year they purchased their Costas, the fees they paid, and Costa’s assessment of the cause of the damage. (Crockett Dep. II at 235:21–23; Ritter Dep. at 88:24–89:9; Rush Dep. II at 15:21–17:14, 39:2–18.) No subjective judgments or interpretations of vague standards are needed, so the Class is ascertainable.

## **II. Rule 23(a) is satisfied.**

### **A. Numerosity: The Class has hundreds of thousands of members, so joinder would be highly impracticable.**

Rule 23(a)(1) requires a class to be “so numerous that joinder of all members is impracticable.” “A specific number to satisfy this rule is unspecified, but in general, more than forty people is sufficient.” *Council v. Lynch*, No. 3:24-cv-534, 2025 WL 642473, at \*5 (M.D. Fla. Feb. 7, 2025) (citing *Cox v. Am. Cast Iron Pipe Co.*, 784 F.2d 1546, 1553 (11th Cir. 1986)).

Records produced by Costa show that, as of February 28, 2020, Costa repaired 494,146 units after April 3, 2015 (*i.e.*, four years before the Complaint was filed) for customers with non-Florida U.S. addresses who purchased their Costas

before 2018. (*See* Ex 16.) Even if, in some cases, multiple repairs were performed for the same Class members, numerosity is clearly satisfied.

**B. Commonality: The putative Class members share numerous legal and factual issues in common**

Rule 23(a)(2) requires that “there are questions of law or fact common to the class.” Put another way, there must be “at least one issue whose resolution will affect all or a significant number of the putative class members.” *Williams v. Mohawk Indus., Inc.*, 568 F.3d 1350, 1349 (11th Cir. 2009). Commonality is a “low hurdle,” *id.*, and “is generally satisfied where a defendant has engaged in a standardized course of conduct that affects all class members.” *In re Takata Airbag Prod. Liab. Litig.*, 348 F.R.D. 500, 513 (S.D. Fla. 2025).

Here, Costa “engaged in a standardized course of conduct that affected all class members,” *id.*, because all of the Class members received the Nominal Fee Warranty when they purchased their sunglasses. (*See* MacDonald Dep. at 13:8–14:23; Hannah Dep. at 27:9–15; Crockett Dep. at 34:5–9, 46:16–19, 47:14–24; Owens Dep. at 103:20–24; Rosenberg Dep. at 14:8–10, 15:15–16:10.) Costa then violated the Nominal Fee Warranty by charging every Class member uniform fees ranging from \$49 to \$89 per broken item, plus \$9.95 for “processing.” (*See* Crockett Dep. at 94:25–95:8; Ex. 3.) This course of conduct presents numerous common issues, including (a) the legal significance of the Nominal Fee Warranty, (b) what constitutes a “nominal fee,” (c) whether the fees Costa charged are “nominal,” and (d) whether the Nominal Fee Warranty would deceive a reasonable consumer or was otherwise unfair. As the *Haney* court put it, “the same practice or course of

conduct—*i.e.*, Costa’s nominal fee promise—. . . gives rise to the claims of each and every class member, and all claims are based on the same legal theory.” 2019 WL 1878300, at \*16. This Court should therefore join the *Haney* court in finding that the “low hurdle” of commonality has been cleared. *Williams*, 568 F.3d at 1355.

**C. Typicality: Plaintiff’s claims are typical of the Class because they are based on the same conduct and the same injury.**

Rule 23(a)(3) requires that “the claims or defenses of the representative parties are typical of the claims or defenses of the class.” Typicality is shown “if 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.” *Williams*, 568 F.3d at 1357. Even with “substantial factual differences,” typicality is satisfied by “a strong similarity of legal theories.” *Id.* “The commonality and typicality requirements typically go hand in hand” and “are generally easy to satisfy.” *Fox v. Ritz-Carlton Hotel Co., LLC*, 345 F.R.D. 358, 365 (S.D. Fla. 2024).

Every Class member’s claim arises from the same pattern or practice—Costa’s sale of sunglasses that carried the Nominal Fee Warranty and subsequent refusal to honor the Nominal Fee Warranty by charging costly repair fees. (*See* BACKGROUND, Part I.A.1.–2., *supra.*) These common facts are tied together by a common legal theory—*i.e.*, that Costa’s conduct was an unfair and deceptive trade practice that violated FDUTPA. Accordingly, typicality is satisfied.

**D. Adequacy: Plaintiff and his counsel will adequately protect the interests of the Class.**

Finally, Rule 23(a)(4) requires that “the representative parties will fairly and adequately protect the interests of the class.” This element is satisfied as long as the named plaintiff does not possess interests adverse to the proposed class, and class counsel are sufficiently diligent and competent to fully litigate the claims. *In re Disposable Contact Lens Antitrust Litig.*, 170 F.R.D. 524, 532 (M.D. Fla. 1996).

Here, Plaintiff suffered the same kind of injury as every Class member by paying fees to repair his damaged sunglasses that were not “nominal.” Plaintiff wants the same thing other Class members want—to be made whole for this injury.

Plaintiff’s counsel, HOLLAND & KNIGHT LLP, is a national law firm with substantial resources and extensive experience prosecuting and defending class actions. (Ex. 17 ¶¶ 6–11.) Plaintiff’s counsel has invested years of effort bringing class claims against Costa and is deeply familiar with the relevant law and facts. (*Id.* ¶¶ 11–12.); *see also Smith*, 2021 WL 4295282, at \*9 (“This litigation ha[d] lasted for several years . . . . Class Counsel has expended over 6,000 hours . . . . Extraordinary time and labor were expended . . . .”). In light of these efforts, other courts have found Plaintiff’s counsel adequate, and Costa has agreed. *See Haney*, 2025 WL 629640, at \*12 (“[Costa] concedes . . . Holland & Knight LLP can fairly and adequately protect and present the interests of each member of the class.”); *Smith*, 2021 WL 4295282, at \*5. Adequacy—and Rule 23(a)—are therefore satisfied.

### **III. Rule 23(b)(3) is satisfied.**

Certification is proper under Rule 23(b)(3) if common questions of law or fact “predominate over any questions affecting only individual members,” and a class action is “superior to other available methods for fairly and efficiently adjudicating the controversy.” Fed. R. Civ. P. 23(b)(3). Twice before, courts have found Rule 23(b)(3) satisfied for nearly identical FDUTPA claims, and this Court should do the same. *Haney*, 2025 WL 629640, at \*17; *Smith*, 2021 WL 4295282, at \*5.

#### **A. Common issues predominate over individual issues.**

To evaluate predominance, courts must consider the elements of the underlying cause of action in order to assess whether the key issues can be established on a class-wide basis. *See, e.g., Williams*, 568 F.3d at 1358. Here, FDUTPA provides the elements for each Class member’s claim. (*See* Part III.A.1, *infra.*) Under FDUTPA, all of the key issues can be proved on a class-wide basis, so common issues predominate over individual ones. (*See* Part III.A.2., *infra.*)

##### **1. FDUTPA applies to all of the Class members’ claims.**

It is well settled that FDUTPA applies to “transactions between Florida corporations and non-resident consumers.” *Millennium Commc’ns & Fulfillment, Inc. v. Office of the Att’y Gen.*, 761 So. 2d 1256, 1261 (Fla. 3d DCA 2000). As the Third District explained, FDUTPA lacks any language confining its provisions to transactions involving Florida residents, and its broad aim is “to prohibit unfair, deceptive, and/or unconscionable practices which have transpired within the territorial boundaries of this state *without limitation.*” *Id.* at 1261–62 (emphasis added).

Florida’s Fourth District reached the same conclusion in the class-action context in *Renaissance Cruises, Inc. v. Glassman*, 738 So. 2d 436 (Fla. 4th DCA 1999). The court affirmed certification of a nationwide FDUTPA class—even though the vast majority of transactions involved non-Florida residents—based on the defendant’s ties to Florida and the activities it conducted there. *Id.* at 437–39. The defendant’s principal place of business was in Florida, its business operations were controlled and directed from Florida, it received payment in Florida, and the deceptive materials were created in Florida. *Id.* The court recognized that “Florida has a great interest in protecting people dealing with corporations doing business within Florida” and found that “[e]ach class member’s claim implicate[d] Florida’s interest in applying its law to adjudicate [a] dispute which involved a business principally located in Florida.” *Id.* at 438. The court further held “that the significant relationship test support[ed] application of Florida law to all claims” in the class,<sup>6</sup> and that the defendant’s “significant contact” with Florida meant there was “nothing arbitrary nor fundamentally unfair in applying the law of Florida.”<sup>7</sup> *Id.* at 440.

Despite prior confusion on this issue, the overwhelming weight of authority among federal courts follows *Millennium*<sup>8</sup> and shows that every Class member has

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<sup>6</sup> This Court’s choice-of-law analysis is governed by Florida law and would therefore follow *Renaissance*. See, e.g., *Belin v. Health Ins. Innovations, Inc.*, 337 F.R.D. 544, 559 (S.D. Fla. 2021).

<sup>7</sup> This finding accords with *Phillips Petroleum Co. v. Shutts*, which held that applying one state’s law to a nationwide class is not “arbitrary or unfair” so as to offend due process if the state has “a significant contact or significant aggregation of contacts to the claims asserted by each [class] member.” 472 U.S. 797, 821–22 (1985) (internal quotation marks omitted).

<sup>8</sup> See, e.g., *In re Mednax Servs., Inc., Customer Data Sec. Breach Litig.*, 603 F. Supp. 3d 1183, 1211–12 (S.D. Fla. 2022) (“As to FDUTPA, Defendants point out that no Plaintiff hails from Florida . . . . Be that as it may, all of the federal courts in the Southern District of Florida that have

a FDUTPA claim against Costa. Just like the defendant in *Renaissance*, Costa is headquartered in Florida and committed the offending conduct here, including crafting the Nominal Fee Warranty and collecting its excessive repair charges. (Rush Dep. II at 16:5–10, 19:7–15; Ritter Dep. at 20:22–21:1.) What’s more, Costa required every Class member to ship their sunglasses to its Florida repair center, showing that the Class members’ relationships with Costa centered in Florida. (See Ritter Dep. 90:17–91:20.) And, just as the defendant in *Renaissance* had Florida venue provisions in its contracts (albeit not the ones the plaintiffs sued under), 738 So. 2d at 438, Costa, too, uses Florida venue provisions in its contracts. (See, e.g., Ex. 18 at 3; Ex. 19 at 7.) Put simply, *everything* Costa did constituting its unfair and deceptive conduct occurred in Florida,<sup>9</sup> so FDUTPA applies to all claims.<sup>10</sup>

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considered this issue have held that FDUTPA applies to non-Florida residents if the offending conduct took place predominantly or entirely in Florida.” (cleaned up)); *Restore Robotics, LLC v. Intuitive Surgical, Inc.*, No. 5:19-cv-55, 2022 WL 1495005, at \*7 (N.D. Fla. Apr. 11, 2022) (finding the defendant’s argument that “it is entitled to summary judgment on the FDUTPA claim because there is no Florida consumer injured” “meritless.”); *Bank of Am., N.A. v. Zaskey*, No. 9:15-cv-81325, 2016 WL 2897410, at \*9 (S.D. Fla. May 18, 2016) (“[A]ll of the federal courts in the Southern District of Florida that have considered this issue have followed *Millennium* . . . .”); *In re Cast Iron Soil Pipe & Fittings Antitrust Litig.*, No. 1:14-md-2508, 2015 WL 5166014, at \*34 (E.D. Tenn. June 24, 2015) (“[M]ore recent court decisions . . . reflect[ ] that courts have expanded coverage to claims of out-of-state consumers if the offending conduct occurred predominantly . . . in Florida.” (cleaned up)); *F.T.C. v. Info. Mgmt. Forum, Inc.*, No. 6:12-cv-986, 2013 WL 3323635, at \*5 (M.D. Fla. June 28, 2013) (“[T]he facts of *Millennium* are the most analogous . . . .”); *2P Commercial Agency S.R.O. v. Familant*, No. 2:11-cv-652, 2012 WL 6615889, at \*4 (M.D. Fla. Dec. 19, 2012) (“*Millennium* . . . more appropriately reflects both the text of FDUTPA and its enumerated purpose.”); *In re Flonase Antitrust Litig.*, 692 F. Supp. 2d 524, 537 (E.D. Pa. 2010) (“I predict that the Florida Supreme Court would hold that the FDUTPA allows claims by out-of-state plaintiffs.”).

<sup>9</sup> Notably, FDUTPA applies even when conduct occurs *predominantly*, rather than *exclusively*, in Florida. See, e.g., *FinancialApps, LLC v. Envestnet, Inc.*, No. 19-cv-1337, 2023 WL 4975373, at \*3 (D. Del. July 31, 2023) (“[C]ourts have rejected the notion that the offending conduct must occur exclusively in Florida for the FDUTPA to apply.”); *Barnext Offshore, Ltd. v. Ferretti Grp. USA, Inc.*, No. 10-cv-23869, 2012 WL 1570057, at \*5 (S.D. Fla. May 2, 2012) (“[N]othing in *Millennium* suggests that [FDUTPA] applies *only* when conduct occurs entirely within Florida.”).

<sup>10</sup> Even if the laws of other states applied, any variations could be effectively managed through a

**2. The key FDUTPA elements can be established on a class-wide basis and predominate over any individual issues.**

The Eleventh Circuit’s decision in *Carriuolo v. General Motors Co.* shows why the FDUTPA claims asserted here align perfectly with the predominance requirement. 823 F.3d 977 (11th Cir. 2016). In *Carriuolo*, the court began by laying out the elements of a FDUTPA claim and then showed why each one is amenable to class-wide proof. *Id.* at 983–88. The same analysis works here.

To start, the elements of a FDUTPA claim for damages are “(1) a deceptive act or unfair practice; (2) causation; and (3) actual damages.” *Id.* at 983. The first element, a deceptive act or unfair practice, is established by a “practice [that] was likely to deceive a consumer acting reasonably,” *id.* at 984, or “one that offends established public policy” or “is immoral, unethical, oppressive, unscrupulous or substantially injurious to consumers,” *PNR, Inc. v. Beacon Prop. Mgmt., Inc.*, 842 So. 2d 773, 777 (Fla. 2003) (internal quotation marks omitted). “[W]hether an act is deceptive or unfair” is “an objective test” that turns solely on the defendant’s conduct. *Vazquez v. Gen. Motors, LLC*, No. 17-cv-22209, 2018 WL 447644, at \*6 (S.D. Fla. Jan. 16, 2018). Thus, in *Carriuolo*, predominance was shown because the “*essential question* common to each class member” was whether stickers with false vehicle-safety information in the windows of cars “would deceive an

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small number of subclasses grouping states with similar legal doctrines. *See, e.g., Krell v. Prudential Ins. Co. of Am.*, 148 F.3d 283, 315 (3d Cir. 1998). A preliminary summary of states that, like Florida, do not require reliance to establish liability for an unfair and deceptive trade practice, or that allow reliance to be presumed or inferred on a class-wide basis, is set forth in **Appendix A**. Plaintiff would request leave to supplement this analysis, if necessary, notwithstanding the arguments above concerning the applicability of FDUTPA to the entire Class. *See, e.g., Jones v. Depuy Synthes Prods., Inc.*, 330 F.R.D. 298, 314 (N.D. Ala. 2018).

objectively reasonable observer.” 823 F.3d at 981, 986 (emphasis added). The “buying and leasing experiences of each proposed class member”—including whether they were deceived by the sticker or even knew it existed—were “irrelevant.” *Id.* at 985–86. This reasoning parallels *Davis*, in which Florida’s First District similarly found that every class member’s FDUTPA claim against a cell phone provider “share[d] one *essential common feature*; that is, the alleged deceptive practice” that harmed the class member. 776 So. 2d at 975 (emphasis added). “Because proof of reliance [was] unnecessary,” the defendant’s deceptive and unfair practice was, on its own, sufficient to establish predominance. *Id.*

In the same way here, details about each Class member’s mental state (*i.e.*, whether they relied on or even knew about the Nominal Fee Warranty) are irrelevant. *Carriuolo*, 823 F.3d at 958; *Davis*, 776 So. 2d at 975. Every pair of sunglasses Class members purchased included the Nominal Fee Warranty—it was printed on every box (*see* BACKGROUND, Part I.A.1., *supra*), and Costa admits it intended the warranty to be a part of every sale (Rosenberg at 15:15–16:10; Crockett 46:16–19, 47:14–24). Costa’s uniform Nominal Fee Warranty thus creates an “essential common feature” or “essential question,” in the words of the *Carriuolo* and *Davis* courts, that causes common issues to predominate. *See also, e.g., Fitzpatrick v. Gen. Mills, Inc.*, 635 F.3d 1279, 1283 (11th Cir. 2011) (“[W]hether [the] allegedly deceptive conduct would deceive an objective reasonable consumer is a common issue for all the putative class members, amendable to class[-]wide proof.” (cleaned up, citing *Davis*, 776 So. 2d at 973)); *Nelson v. Mead Johnson Nutrition Co.*, 270

F.R.D. 689, 697–98 (S.D. Fla. 2010) (“[C]lass members may establish a FDUTPA claim by submitting identical proof that [the defendant’s representations] would deceive an objective reasonable consumer. . . . Because plaintiffs may prove the *essential issues* in this case with common proof, . . . class-wide issues predominate over individualized issues.” (emphasis added)).

While Costa’s standardized use of the deceptive and unfair Nominal Fee Warranty is alone enough to establish predominance, causation also presents a common issue. This is because, by definition, the Class includes only those who “were charged a fee by Costa” to repair or replace their sunglasses despite the Nominal Fee Warranty. (Doc. 22 ¶ 62.) Every Class member thus suffered a concrete loss (*i.e.*, the difference between what was promised—nominal repair fees—and what was actually charged). These losses are directly traceable to Costa’s unfair and deceptive promise—which Costa admitted came with every pair of sunglasses (*see* Rosenberg at 15:15–16:10; Crockett 46:16–19, 47:14–24)—and its subsequent refusal to honor that promise by exacting costly repair fees. *See, e.g., Allstate Ins. Co. v. Auto Glass Am., LLC*, 418 F. Supp. 3d 1009, 1019, 1023 (M.D. Fla. 2019) (“Plaintiffs have alleged an injury in the form of overpaying for windshield replacements when they should have only had to pay for lower repair costs. Clearly, these purported injuries are fairly traceable to the alleged FDUTPA violations.”); *Martorella v. Deutsche Bank Nat’l Trust Co.*, 161 F. Supp. 3d 1209, 1221 (S.D. Fla. 2015) (finding “the necessary causal link under FDUTPA . . . because the harm Plaintiff suffered . . . was a foreseeable result of [the defendant’s] conduct”). Critically, “[t]o

prove causation, a plaintiff need not prove reliance on the allegedly false statement to recover damages under FDUTPA.” *Gov’t Emps. Ins. Co. v. Right Spinal Clinic, Inc.*, No. 23-11778, 2024 WL 4564168, at \*9 (11th Cir. Oct. 24, 2024) (unpublished). Thus, any attempt by Costa to smuggle reliance in through the back door by conflating it with causation—that is, to “seek a reliance inquiry by another name,” *Carriuolo*, 823 F.3d at 985—must fail. FDUTPA causation, properly understood, is another issue common to the Class.<sup>11</sup>

Finally, with respect to actual damages, numerous courts have held that “individual damages questions generally do not defeat certification.” *Mount v. Pulte Home Co., LLC*, No. 6:20-cv-2314, 2022 WL 3446217, at \*4 n.6 (M.D. Fla. Aug. 17, 2022) (Dalton, J.).<sup>12</sup> Rather, when “common questions predominate regarding liability . . . courts generally find the predominance requirement to be satisfied even if individual damages issues remain.” *Smilow v. Sw. Bell Mobile Sys., Inc.*, 323 F.3d 32, 40 (1st Cir. 2003). This principle is especially applicable here because,

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<sup>11</sup> In *Haney*, Costa argued reliance in the guise of an “exposure” theory and, in connection with this effort, attempted to manufacture evidence about retailers not displaying the boxes featuring the Nominal Fee Warranty. *See, e.g., Haney*, 2019 WL 1878300, at \*22. Apart from being legally irrelevant for the reasons above, this evidence is also factually dubious given that it was based on remedial measures Costa implemented *after* it was sued, including covering up the Nominal Fee Warranty with a sticker and discouraging retailers from displaying the box. *Id.* at \*22–23.

<sup>12</sup> *See also, e.g., Carriuolo*, 823 F.3d at 988 (“[I]ndividualized damages calculations are insufficient to foreclose the possibility of class certification, especially when, as here, the central liability question is so clearly common to each class member.”); *Brown*, 817 F.3d at 1239 (“The ‘black letter rule’ recognized in every circuit is that ‘individual damage calculations generally do not defeat a finding that common issues predominate.’” (quoting William B. Rubenstein, *Newberg on Class Actions* § 4:54 (5th ed.))); *Monroe Cty. Employees’ Ret. Sys. v. So. Co.*, 332 F.R.D. 370, 397 (N.D. Ga. 2019) (“It is axiomatic that individualized damages calculations are generally insufficient to foreclose class certification, and particularly so where the central liability question is common to each class member.”); *Nelson*, 270 F.R.D. at 697 (“[I]ndividualized damages determinations generally do not preclude class certification if liability may be determined class-wide.”).

once the factfinder determines what constitutes the “nominal fee” Costa promised, each Class member’s damages can be determined simply by subtracting that figure from what each Class member actually paid—data that is readily obtainable from Costa’s records. Even if individualized, “the calculations are formulaic” and thus “easy to resolve,” so they do not predominate over the more significant liability issues. *Brown*, 817 F.3d at 1239. The straightforward methodology for calculating damages, coupled with the ability to prove liability on a class-wide basis with common proof, means predominance is easily satisfied.

Again, the Court can look to *Haney* for direct, on-point guidance. The *Haney* court explained that, “during the class period, every pair of non-promotional, non-prescription Costa sunglasses left Costa’s facility in a uniform box” displaying the Nominal Fee Warranty. 2019 WL 1878300, at \*17. “[I]t was part of every customer’s deal or bargain.” *Id.* Moreover, “[a]ll consumers were subject to the same schedule of undisclosed repair charges.” *Id.* at \*19. The *Haney* court further recognized that “reliance is irrelevant to Plaintiff’s FDUTPA claim,” and “[e]ach member of the class did suffer a loss . . . regardless of whether they saw” the Nominal Fee Warranty. *Id.* at \*19, \*21. All of these findings apply equally here. Put simply, in a FDUTPA case like this one (and *Haney*), “proof of the alleged *deceptive practice* and issues pertaining to *causation* . . . will be common to all members of the class.” *Davis*, 776 So. 2d at 975 (emphasis added). These are the key elements of the sole cause of action asserted in this action, so common issues will predominate over any individualized issues, and the predominance element is satisfied.

**B. Class treatment is superior to other methods.**

For similar reasons, superiority is also satisfied. First and foremost, the fact that common issues predominate itself establishes superiority. *See, e.g., Carriuolo*, 832 F.3d at 989 (“Because common questions of law and fact predominate, class-wide adjudication appropriately conserves judicial resources and advances society’s interests in judicial efficiency.”); *Nelson*, 270 F.R.D. at 698 (“[T]he predominance analysis has a tremendous impact on the superiority analysis . . .”). Resolving the thousands of transactions at issue here by common proof is vastly preferable to hundreds of thousands of individual suits. (*See Ex. 16 at 5–24.*) In fact, that each claim is too small to warrant an individual lawsuit means a class action is not merely a *superior* method of adjudication, it is, practically speaking, the *only* method of adjudication. *See Nelson*, 270 F.R.D. at 692 n.2 (explaining that requiring individualized litigation would “eviscerate the protections that FDUTPA is designed to afford” because “the amount in controversy for an individual plaintiff [would be] too insignificant to make the claim worth pursuing,” thus “depriv[ing] those plaintiffs of a remedy”). Class members thus have no interest in “individually controlling” the litigation. Fed. R. Civ. P. 26(b)(3)(A).

As for “difficulties in managing the class action,” Fed. R. Civ. P. 26(b)(3)(D), “manageability is ordinarily satisfied so long as common issues predominate over individual issues.” *Williams*, 568 F.3d at 1358. And the other enumerated superiority factors also support certification—there is no existing non-Florida FDUTPA litigation over this controversy, *see Fed. R. Civ. P. 23(b)(3)(B)*, and concentrating

the litigation in Costa’s home district is desirable for access to evidence and witnesses, *see* Fed. R. Civ. P. 23(b)(3)(C). Accordingly, superiority is established, and Rule 23(b) is satisfied.

\* \* \*

Putative classes materially identical to this Class have already been certified twice—once over Costa’s opposition, *Haney*, 2019 WL 1878300, at \*43, and once with Costa’s full support, *Smith*, 2021 WL 4295282, at \*4–5. Costa will presumably attempt to conjure new reasons—*something* the other courts missed in hundreds of pages of briefing and multi-day hearings<sup>13</sup>—to explain why consumers should not be permitted to pursue relief for a Nominal Fee Warranty Costa’s own employees admit was “unfair and deceptive.” (*See* Rosenberg Dep. at 20:20–24.) But Costa should have to answer for its unfair and deceptive conduct, and certification of the Class is an essential step in forcing it to finally do so. *See, e.g., Mullins v. Direct Digital*, 795 F.3d 654, 668 (7th Cir. 2015) (discussing the “important policy objective of class actions: deterring and punishing corporate wrongdoing”).

### **CONCLUSION**

Plaintiff asks the Court to grant the Motion, certify the Class, appoint Plaintiff as Class representative, and appoint HOLLAND & KNIGHT as Class counsel.

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<sup>13</sup> *See Haney*, 2019 WL 1878300, at \*1 (“This cause came before the Court on December 4 through December 6, 2018, for a three-day evidentiary hearing upon Plaintiff’s Motion for Class Certification . . . .”); *Smith*, 2021 WL 4295282, at \*3 (“The Court held a final approval hearing on April 20, 2021 . . . .”); *id.* at \*2 n.4 (“The Court also held hearings on the motion for preliminary approval on July 17, 2020 and September 1, 2020 . . . .”).

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