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

CLASS REPRESENTATION

Case No. 16-2025-CA-004472-XXXX-MA
Division CV-C

TROY SMITH, individually and on behalf of all others similarly situated,

Plaintiff,

v.

COSTA DEL MAR, INC.,

Defendant.

CLASS COUNSEL'S UNOPPOSED MOTION FOR ATTORNEY'S FEES AND COSTS

Class Counsel, pursuant to Rule 1.220(e), Fla. R. Civ. P., ask the Court for an award of attorney's fees and costs in accordance with the parties' settlement of this class action and, in support, state as follows:

INTRODUCTION

Class Counsel, following more than eight-and-a-half years of litigation and related efforts, have successfully negotiated a $4.095-million settlement for the class. In accordance with the settlement, Class Counsel now respectfully request an award of attorneys' fees and costs in the amount of $1.2 million. Under Florida law, Class Counsel are entitled to recover fees reflecting the reasonable number of hours expended on the action multiplied by counsel's reasonable hourly rates (*i.e.*, the "lodestar") and reasonable litigation costs. Here, the lodestar is $1,697,172.67[1], and litigation costs are $235,229.03, for a total of $1,932,401.69. However, in an effort to expedite and enhance relief to the Class, Class Counsel have reduced their request by ***37.9%*** to just $1.2 million.

[1] In cases like this one that involve substantial contingency risk and outstanding monetary results, counsel are entitled a multiplier of up to five, but Class Counsel have declined to seek a multiplier here.

As set forth below, a request for the full lodestar would be amply supported by the factors courts use to assess the reasonableness of a fee in this type of case. A first-of-its-kind class action challenging a decades-long sales practice affecting consumers throughout the entire United States, this case was exceptionally novel and difficult. The billing records submitted with this motion give detailed descriptions of the tasks counsel performed over this case's long history and, having reviewed the billing records, Class Counsel's fee expert, Howard C. Coker, agrees that they demonstrate sound billing judgment and efficiency in managing the case.

The rates Class Counsel charged are also well supported and within the prevailing market rates charged for similar services in this legal community. Counsel invested substantial time and endured long delays in payment to successfully resolve this difficult case. Class Counsel also faced highly regarded and well-resourced opposition, adding to the difficulty of the case and the need for the highest quality representation. And, while applicable law would have permitted updating *all* of the fees charged in this matter to Class Counsel's current rates, counsel have elected to update only a portion of the rates (*i.e.*, the rates of attorneys who are still with Holland & Knight at the time of this motion). Doing so renders counsel's rates *more* than reasonable. Applying these rates to Class Counsel's hours yields a presumptively reasonable fee of $1,697,172.67.

In addition to these fees, Class Counsel incurred $235,229.03 in reasonable litigation expenses, which are adequately documented and were necessarily incurred for the benefit of the class. Under settled law, they are therefore recoverable together with counsel's reasonable fees.

Although the foregoing lodestar fee and litigation expenses total $1,932,401.69, Class Counsel are seeking only $1.2 million in total fees and costs, which is far below the amount they are entitled to under Florida law. Class Counsel submit that this voluntarily reduction makes this request abundantly reasonable. The details of this request are set forth in greater detail below.

<u>BACKGROUND</u>[2]

I. Nature of the Lawsuit

1. This lawsuit concerns Plaintiff's claim that Defendant, Costa Del Mar, Inc. ("Costa"), violated the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (the "MMWA"), by charging an improper fee (*i.e.*, $11.95 plus tax) to process claims under its "Lifetime Warranty" against manufacturer's defects. (*See generally* Compl. [Dkt. 3] (July 24, 2025).) Plaintiff alleges Costa sold its sunglasses with the Lifetime Warranty until 2016, when Costa transitioned to a *limited* lifetime warranty. (*Id.*) Plaintiff brought his claims for himself and on behalf of the following class:

> All citizens in the United States who, prior to Costa's switch to a "Limited Lifetime Warranty," purchased a pair of Costa sunglasses backed by a "Lifetime Warranty" who, within the applicable limitations period, paid Costa a fee to repair or replace those sunglasses damaged by a manufacturer's defect.[3]

(*Id.* at 7, ¶ 36.)

2. The action began nearly eight years ago with a complaint filed in federal court on August 20, 2018.[4] (*See generally* Ex. A.) After extensive proceedings in that action, including reaching a prior settlement that was ultimately vacated, the federal court ultimately concluded it lacked subject-matter jurisdiction and dismissed the case without prejudice, after which Plaintiff promptly refiled the action here. (*See generally* Compl.)

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[2] With this Motion, Class Counsel submit the Declaration of Peter Hargitai in Support of Class Counsel's Motion for Attorney's Fees and Costs (the "Hargitai Declaration") and the Declaration of Howard C. Coker in Support of Class Counsel's Motion for Attorney's Fees and Costs (the "Coker Declaration").

[3] The class excludes "(1) [Costa], any entity or division in which [Costa] has a controlling interest, and their legal representatives, officers, directors, assigns, and successors; (2) the judge to whom this case is assigned and the judge's staff; and (3) counsel for each of the parties in this case." (Compl. at 7, ¶ 36.)

[4] A copy of the original federal complaint is attached as **Exhibit A**. A copy of the federal court's electronic docket is attached as **Exhibit B**. Particular docket entries will be referenced as "Doc." followed by the docket entry number shown in the column marked "#" on the docket sheet.

3. After additional proceedings in this Court, including Costa's unsuccessful motion to dismiss the claims with prejudice, the parties reached a settlement (the "Settlement"). Through the Settlement, customers throughout the United States who paid Costa's administrative fee to obtain a warranty repair will be compensated from a $4.095 million qualified settlement fund with no reverter and a *cy pres* distribution. (*See generally* Pl.'s Unopposed Mot. for Class Cert., to Direct Class Not., & for Prelim. Approval of Class Action Settlement at 9 (July 27, 2026).) The parties estimate that every class member will receive approximately $2.25 as a result of the Settlement after accounting for administration costs for more than 900,000 claims. (*Id.*)

4. This outcome is the result of years of efforts, including formulating the novel claims against Costa, complying with the procedural requirements for a MMWA claims in the class-action context, briefing on discovery issues, class certification, and cross-motions for summary judgment in federal court, extensive efforts in connection with the prior settlement (*i.e.*, negotiation, class certification, settlement approval, notice and administrative, response to objections, appeal, *etc.*), formulation of revised litigation strategies following vacatur of the prior settlement and dismissal for lack of federal-court jurisdiction, opposition to Costa's motion to dismiss, and negotiation of the instant Settlement. These efforts are summarized in greater detail below.

II. Procedural History

5. Prior to filing this lawsuit, Class Counsel researched applicable law and complied with the requirement to send a written demand to Costa. (Hargitai Decl. ¶ 27(a)–(b).)

6. The original class-action complaint in this action was filed on August 20, 2018, in case number 3:18-cv-1011 in the U.S. District Court for the Middle District of Florida. (Ex. A; *see also* Ex. B, Doc. 1.) Plaintiff asserted a single claim for violation of the MMWA. (Ex. A at 10.)

7. From early in the case, Class Counsel worked to achieve maximum efficiency by seeking authorization from the federal court to use the evidence Class Counsel generated in a sep-

arate lawsuit against Costa in this action. (Ex. B., Doc. 16.) Although Costa initially opposed this request (*see id.*, Doc. 25), Class Counsel were ultimately able to persuade Costa to stipulate to the requested relief and, as a consequence, the parties expended far less time and effort on discovery in this action that they otherwise would have. (*Id.*; *see also* Hargitai Decl. ¶¶ 33–34.)

8. As the federal case proceeded, the parties engaged in motion practice on discovery disputes (*see, e.g.*, Ex. B, Docs. 16, 44–45, 57) and, more significantly, briefed cross-motions for summary judgment supported by a combined 58 exhibits (*id.*, Docs. 56, 58, 64, 65) and a contested motion for class certification involving 83 exhibits (*id.*, Docs. 40, 59, 67, 72).

9. Before the summary-judgment and class-certification motions were heard and ruled on, the parties reached the original class settlement. (*Id.*, Doc. 79.) The settlement encompassed the class claims in this action and two other lawsuits: *Haney v. Costa Del Mar, Inc.*, No. 16-2017-CA-4794 (Fla. 4th Jud. Cir.) ("*Haney*") and *Reed v. Costa Del Mar, Inc.*, No. 6:19-cv-1751-RBD-LHP (M.D. Fla.) ("*Reed*").

10. To effectuate the settlement, *Haney* and *Reed* were consolidated in this proceeding by leave to amend the federal complaint to add the plaintiffs and class claims in those lawsuits. (*See* Ex. B, Docs. 82, 84.) Class Counsel then worked with Costa's counsel to prepare the original settlement agreement, engage appropriate class-administration professionals, and prepare a motion for preliminary approval of the settlement, certification of the classes (including the class asserted here), and approval of a notice plan for each class. (*Id.*, Doc. 91; *see also id.*, Docs. 98–99.)

11. Class Counsel attended multiple hearings to obtain preliminary approval (*see id.*, Docs. 97, 101–02), prepared materials supporting Class Counsel's request to recover fees incurred in the litigation to that point (*id.*, Docs. 109, 131–33), and addressed several objections to the settlement (*id.*, Doc. 133) and the objectors' fee motions (*id.*, Docs. 167–68).

12. Class Counsel then prepared a motion for final approval of the original settlement and attended a final fairness hearing on April 20, 2021. (*Id.*, Docs. 135, 145; *see also id.*, Docs. 149–50.) The federal court ultimately approved the settlement and entered judgment thereon. (*Id.*, Docs. 151, 181–82.)

13. Several objectors appealed, and the federal appellate court ultimately vacated the settlement because the appellate court found that the trial court improperly valued certain injunctive relief in the settlement. *See Smith v. Miorelli*, 93 F.4th 1206 (11th Cir. 2024).

14. Following the appeal, Plaintiff and Costa agreed to drop the claims and plaintiffs from *Haney* and *Reed* without prejudice for those claims to be reasserted in their original forums, while Plaintiff's claims proceeded in the federal trial court. (*See* Ex. B, Doc. 223.) The federal court entered an order effectuating the parties' agreement on April 6, 2024. (*Id.*, Doc. 226.) On remand, the parties briefed jurisdictional issues, after which the federal court dismissed Plaintiff's claims without prejudice. (*Id.*, Docs. 227–29.)

15. Plaintiff promptly refiled his claim in this Court. (*See generally* Compl.) Costa moved to dismiss the case with prejudice on statute of limitations grounds, and Class Counsel successfully opposed the motion. (*See* Dkt. 9, 11, 13.) Plaintiff also engaged in limited written discovery. (*See* Dkt. 15.)

16. In parallel, the parties continued their efforts to settle the case, engaging in mediations on October 24, 2023, February 29, 2024, and October 1, 2025. (Coker Decl. ¶ 7 & n.2; Hargitai Decl., ¶¶ 26, 29(d).) These efforts ultimately succeeded, and on April 6, 2026, the parties notified the Court of the instant Settlement. (Dkt. 24.)

17. In total, Class Counsel expended 2,569 hours, which yields a fee of $1,697,172.67 on the foregoing efforts. (Hargitai Decl., ¶ 39.)

LEGAL STANDARDS

Florida courts use the lodestar method to determine an appropriate fee award in common-fund cases.[5] *Kuhnlein v. Dep't of Revenue*, 662 So. 2d 309, 310 (Fla. 1995). To calculate the lodestar, the court first "determine[s] the number of hours reasonably expended on the litigation." *Fla. Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985). This determination is generally made by reference to billing records that detail the amount of work performed and with consideration of the "novelty and difficulty" of the questions involved. *Id.*

Next, the court "determine[s] a reasonable hourly rate for the services of the . . . party's attorney[s]." *Id.* In determining this rate, courts consider all of the factors in Rule 4-1.5(b)[6] of the Rules Regulating the Florida Bar "except the time and labor required, the novelty and difficulty of the question involved, the results obtained, and whether the fee is fixed or contingent." *Id.* at 1150–51 (internal editing marks omitted).

The Rule 4-1.5(b) factors are:

> (1) the time and labor required, the novelty, complexity, and difficulty of the questions involved, and the skill requisite to perform the legal service properly;
>
> (2) the likelihood that the acceptance of the particular employment will preclude other employment by the lawyer;
>
> (3) the fee, or rate of fee, customarily charged in the locality for legal services of a comparable or similar nature;
>
> (4) the significance of, or amount involved in, the subject matter of the representation, the responsibility involved in the representation, and the results obtained;
>
> (5) the time limitations imposed by the client or by the circumstances and, as between attorney and client, any additional or special time demands or requests of the attorney by the client;
>
> (6) the nature and length of the professional relationship with the client;

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[5] A common-fund case is one in which "the defendant pays a specified sum for the benefit of class members." *Kuhnlein v. Dep't of Revenue*, 662 So. 2d 309, 310 (Fla. 1995).

[6] In *Rowe*, the Court referenced Disciplinary Rule 2-106 of the former Code of Professional Responsibility, which has been replaced by Rule 4-1.5(b) of the Rules Regulating the Florida Bar. 472 So. 2d at 1151.

(7) the experience, reputation, diligence, and ability of the lawyer or lawyers performing the service and the skill, expertise, or efficiency of effort reflected in the actual providing of such services; and

(8) whether the fee is fixed or contingent, and, if fixed as to amount or rate, then whether the client's ability to pay rested to any significant degree on the outcome of the representation.

R. Reg. the Fla. Bar 4-1.5(b).[7]

After calculating the lodestar, courts consider whether a multiplier is appropriate based on "the contingency risk factor and the results obtained for the benefit of the class." *Kuhnlein*, 662 So. 2d at 315. Although Class Counsel decline to seek a multiplier here, Class Counsel note that, in common-fund cases, multipliers up to five times the lodestar are permitted because it is appropriate "to place greater emphasis on the monetary results achieved" in such cases. *Id.* Thus, the amount requested here is actually far below the amounts permitted under Florida law. *Id.*; *see also, e.g.*, *Baptist Coll. of Fla., Inc. v. Church Mut. Ins. Co. SI*, No. 5:22-cv-158, 2024 WL 1672348, at *8 (N.D. Fla. Mar. 19, 2024) ("In a departure from the federal framework, Florida law is less hostile toward the practice of augmenting fee awards by use of a contingency fee multiplier.").

The party seeking fees bears the initial burden of presenting "satisfactory evidence" on the reasonableness of the hours and rates asserted. *Rowe*, 472 So. 2d at 1150–51. However, once a movant has submitted billing records that appear reasonable, "the opponent of the fee has the burden of pointing out with specificity which hours should be deducted." *Centex-Rooney Constr. Co., Inc. v. Martin Cnty.*, 725 So. 2d 1255, 1259 (Fla. 4th DCA 1999).

[7] Federal courts, which developed the lodestar method and utilized the same factors in applying it, *see Rowe*, 472 So. 2d at 1150 n.5, have concluded that the factors "are almost always subsumed within the lodestar" such that courts "need not march or slog through the factors" in determining a reasonable fee. *Lanard Toys Ltd. v. Dolgencorp, LLC*, No. 3:15-cv-849, 2022 WL 1597276, at *4 (M.D. Fla. Feb. 2, 2022) (internal quotation marks omitted).

Trial courts' rulings on fees and costs are reviewed under an abuse-of-discretion standard. *See, e.g.*, *Spanakos v. Hawk Sys., Inc.*, 362 So. 3d 226, 240 (Fla. 4th DCA 2023). This means factual findings must be supported by competent, substantial evidence, and correct legal standards must be applied to those factual findings. *Id.*; *see also, e.g.*, *Centex-Rooney*, 725 So. 2d at 1258 ("[T]he determination of an award of attorneys' fees is within the sound discretion of the trial court and will not be disturbed on appeal, absent a showing of a clear abuse of that discretion.").

ARGUMENT

As set forth herein, Class Counsel reasonably expended 2,569 hours on this litigation, which are documented in detailed billing records and correspond to the novelty and difficulty of the issues the litigation raised. (*See* Part I, *infra*.) Class Counsel's hourly rates, as partially brought current, are reasonable in light of the prevailing market rates and appropriate given the substantial delay in payment, and yield a lodestar fee of $1,697,172.67. (*See* Part II, *infra*.) In addition to attorney's fees, Class Counsel also incurred $235,229.03 in reasonable litigation costs. (*See* Part III, *infra*.) Although Class Counsel's lodestar fee and litigation costs total $1,932,401.69, Class Counsel seek to recover only **$1.2 million** in total fees and costs, making their request extraordinarily reasonable. (*See* Part IV, *infra*.)

I. Class Counsel reasonably expended 2,569 hours on this litigation.

As shown in the accompanying Hargitai Declaration and billing records attached thereto, Class Counsel have expended 2,569 hours in this litigation to date.[8] (*See* Hargitai Decl. ¶ 39 &

[8] Class Counsel note that the hours set forth herein include one third of the hours incurred during the period when this action was consolidated with *Haney* and *Reed*. (*See* Hargitai Decl. ¶¶ 38, 43; Coker Decl. ¶ 23.) This reflects the fact that, while the cases were consolidated, the class claims in each of the three actions were inextricably intertwined, and the work performed equally advanced the resolution of all three lawsuits. (*Id.*) Allocating one third of the hours in the consolidated action to this proceeding therefore reasonably accounts for that time without any improper double recovery. (*Id.*)

Exs. 5–6.) The billing records provide detailed descriptions of the work performed, the time spent on the tasks described to the nearest tenth of an hour, the identity of the person who performed the work, and the hourly rate charged. (*See generally* Hargitai Decl., Exs. 5–6.) These billing records have been reviewed by Howard C. Coker, Esq., a board-certified trial lawyer who is highly experienced in complex litigation and management of large litigation teams. (*See* Coker Decl. ¶¶ 2–4.) Having reviewed the billing records, Mr. Coker agrees that the case was handled efficiently and in a manner that reflects sound billing judgment. (*Id.* ¶¶ 11–24.)

Class Counsel were highly motivated to handle this case as efficiently as possible given the substantial risk that counsel might never be paid. One example of Class Counsel's efficiency in handling this action is the successful effort to utilize the extensive discovery generated in *Haney* in this action without the need to duplicate those efforts and associated costs. (*See id.* ¶ 15; Hargitai Decl. ¶ 33; Ex. B, Docs. 22, 25, 35.) This drastically reduced the attorney's fees expended in this action. (Hargitai Decl. ¶ 33; Coker Decl. ¶ 15.) Class Counsel's experience and knowledge gained from handling the similar claims against Costa asserted in *Haney* thus significantly increased the efficiency of the services provided here.

The hours Class Counsel expended in this litigation are especially reasonable in light of the novelty and complexity of the issues raised. (Coker Decl. ¶¶ 16–20.) For one thing, "class actions are inherently complex to prosecute because the legal and factual issues are complicated and uncertain in outcome." *Farmer v. Humana Inc.*, No. 8:21-cv-1478, 2022 WL 22855817, at *4 (M.D. Fla. Dec. 28, 2022). And, with respect the specific claims in this class action, federal court considering recognized that they are particularly novel and complex:

Class Counsel further note that the amount set forth herein excludes time spent pursuing the instant settlement approval and Class Counsel's attorney's fees and costs. Class Counsel reserve the right to supplement their request once these amounts are known.

> The Court has considered each of these factors and is especially struck by the time required of Class Counsel—well over 6,000 hours—and the complexity of managing three cases that involved novel legal issues. These claims involved a unique issue under FDUTPA, potential ambiguity in the MMWA, and extensive fact and expert discovery, including numerous depositions requiring intensive preparation.

Smith v. Costa Del Mar, Inc., No. 3:18-cv-1011, 2021 WL 4295282, at *16 (M.D. Fla. Sept. 21, 2021), *vacated on other grounds sub nom. Smith v. Miorelli*, 93 F.4th 1206 (11th Cir. 2024).

Importantly, this class action, together with *Haney* and *Reed*, was the first to challenge Costa's long-standing practices regarding the warranties for and repairs of its sunglasses. (*See* Coker Decl. ¶ 19.) Despite the long-running and nationwide scope of Costa's practices, Class Counsel were the first to challenge Costa's actions, building the case from the ground up without any pre-established gameplan or roadmap. (*Id.*) To accomplish this, counsel had to invest substantial time investigating Costa's practices, formulating robust legal theories, identifying the evidence that would be necessary to prevail, and anticipating and negating Costa's defenses. (*Id.* ¶ 17; Hargitai Decl. ¶¶ 26–27.) This case was thus highly novel and complex from beginning to end.

The case's novelty contributed to the difficult legal issues Class Counsel faced. For example, the parties' summary-judgment and class-certification briefing raised complex issues about the scope and meaning of Costa's warranties, potential variations in state law across the nationwide class, statute-of-limitations issues, and whether reliance or exposure are elements of the MMWA claim that present individualized issues such as to preclude class certification. The case's protracted litigation history also speaks to its difficulty and complexity. The length of the case reflects the large number of tasks Class Counsel had to perform at every stage, as summarized in the Hargitai Declaration. (*See* Hargitai Decl. ¶¶ 26–30.) Indeed, it is because the case went on for so long that Costa had multiple opportunities to hone its arguments and formulate new challenges to Plaintiff's claims, including getting a new opportunity to seek dismissal of Plaintiff's claim *more than seven years* after Costa had answered the same charges. (*See* Dkt. 9; Ex. B, Doc. 13.) The length of the case also forced Class Counsel to bring in new team members as the case progressed, which resulted in additional time being necessary for the new attorneys to digest the case's increasingly complex legal and factual history. (Coker Decl. ¶¶ 13–14; Hargitai Decl. ¶¶ 11–23.)

The quality of counsel retained by Costa at McGuireWoods, a highly regarded national law firm, also evidences the difficulty of the case. *See, e.g.*, *Farmer*, 2022 WL 22855817, at *5 ("Defendants were well-represented, making prosecution of this action more difficult."); *Walco Inv. Inc. v. Thenen*, 975 F. Supp. 1468, 1472 (S.D. Fla. 1997) ("Given the quality of defense counsel from prominent national law firms, the Court is not confident that attorneys of lesser aptitude could have achieved similar results."). In *Smith*, the Court noted that Costa's counsel at McGuireWoods were also "experienced [and] reputable" and had already—nearly *five years ago*—"expended ***15,000*** hours in defending the case." *Smith*, 2021 WL 4295282, at *16 (emphasis added). Costa's counsel litigated the case tenaciously from beginning to end, pursuing every available defense and procedural challenge and otherwise ensuring Class Counsel was put to the test at every stage of the case. *Morgan v. Pub. Storage*, 301 F. Supp. 3d 1237, 1256 (S.D. Fla. 2016) (finding the plaintiff's counsel's fees justified because opposing counsel "was excellent and vigorously defended . . . with fervor and adeptness, raised significant legal roadblocks to recovery, and required Class Counsel to maintain the highest quality of representation to reach the point of settlement"); *Allapattah Servs., Inc. v. Exxon Corp.*, 454 F. Supp. 2d 1185, 1207 (S.D. Fla. 2006) (finding higher numbers of hours appropriate where the opponent "deployed multiple lawyers . . . to argue every conceivable legal and factual issue"). Costa supported its positions as best it could with exhaustive legal research, which took substantial time and effort to defeat. (Coker Decl. ¶ 16.)

The foregoing factors and the expert testimony provided by Mr. Coker show that the hours delineated in Class Counsel's billing records are commensurate with the novelty and difficulty of the case. Accordingly, "the number of hours reasonably expended on the litigation" to be used in calculating the lodestar is 2,569. *Fla. Patient's Compensation Fund*, 472 So. 2d at 1150.

II. Class Counsel's rates are reasonable.

Having determined the number of hours reasonably expended, the Court next "determine[s] a reasonable hourly rate." *Fla. Patient's Compensation Fund*, 472 So. 2d at 1150.

As a preliminary matter, Class Counsel note that, consistent with federal and Florida law, they have partially updated the rates sought to reflect the rates *currently* charged by attorneys who are presently employed by Holland & Knight. (Coker Decl. ¶¶ 26–27.) Using current rates is proper to compensate counsel for the substantial delays in payment experienced in this long-running case. *See, e.g.*, *DG Auto Grp. Export, Inc. v. Mendez*, 427 So. 3d 619, 622–23 (Fla. 3d DCA 2026); *BMW of N. Am. v. Henry*, 336 So. 3d 1255, 1258–59 (Fla. 5th DCA 2022); *Fla. Dep't of Agriculture & Consumer Servs. v. Bogorff*, 132 So. 3d 249, 257 (Fla. 4th DCA 2013); *see also, e.g.*, *Perdue v. Kenny A.*, 559 U.S. 542, 556 (2010); *Missouri v. Jenkins ex rel. Agyei*, 491 U.S. 274, 282–83 (1989); *Gray ex rel. Alexander v. Bostic*, 613 F.3d 1035, 1044–45 (11th Cir. 2010); *Norman v. Hous. Auth. of Montgomery*, 836 F.2d 1292, 1302 (11th Cir. 1988). However, in applying this adjustment, Class Counsel have declined to seek updated rates (or to apply an interest rate) for attorneys who are no longer at Holland & Knight, thus forgoing a substantial increase in the total award. (Coker Decl. ¶¶ 27, 34–35.) Class Counsel submit that this enhances the reasonableness of the fee request and makes the overall rates sought *more* than reasonable. (*Id.*)

Turning to the rates themselves, *see* R. Reg. the Fla. Bar 4-1.5(b)(3), the billing records show that, for the primary counsel who worked on this matter, Class Counsel charged rates from $295/hour to $675/hour for associates with up to 15 years of experience, and $675/hour to

$875/hour for partners with up to 30 years of experience.[9] (*Id.* ¶ 31; Hargitai Decl. ¶¶ 16, 19.) These rates fall well within the prevailing market range of $900/hour to $1,250/hour to which Mr. Coker has testified. (Coker Decl. ¶ 32.) Case law also supports ranges encompassing Class Counsel's rates. Back in 2018, Judge Salvador found rates ranging from $400/hour to $800/hour reasonable, including a rate of $650/hour for a lawyer with 11 years of experience at the time. *Beale v. State Farm Mut. Auto. Ins. Co.*, No. 16-2025-CA-2661, 2018 WL 2267295, at *3 (Fla. Cir. Ct. Mar. 26, 2018). In 2024, Judge Anderson approved rates up to $900/hour for multiple attorneys, including an attorney who at that time had 18 years of experience.[10] (*See* Ex. C at 38.) And, in nearby Suwannee County, the court found rates up to $950/hour appropriate.[11] (*See* Ex. D at 38.)

Federal courts in the Middle District of Florida have also found support for ranges that encompass the rates sought here. Specifically, the court found that the evidence supported rates of "$425.00 to $930.00 for 'Senior Attorneys'" in *Sabal Trail Transmission, LLC v. +/- 1.401 Acres of Land in Hamilton Cnty., Florida*, No. 3:16-cv-278, 2026 WL 967041, at *32 (M.D. Fla. Feb. 2, 2026), and rates from $475/hour to $1,300/hour[12] in *Stoll v. Musculoskeletal Inst.*, No. 8:20-cv-1798, 2022 WL 16927150, at *2–3 (M.D. Fla. July 27, 2022). The rates Class Counsel seek fit comfortably within these ranges.

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[9] One timekeeper billed at rates above this range for limited and specialized appellate work. (Coker Decl. ¶ 31 n.7.) This rate also falls within the prevailing market rates supported by Mr. Coker's expert testimony and the cases cited herein. (*Id.* ¶ 32.)

[10] A copy of the "Order Awarding Attorneys' Fees and Costs in Favor of Defendants, Southern Swells Brewing Company, LLC and Due Amici Restaurateurs, Inc. d/b/a Gusto and Against Hasteh, LLC" entered on January 29, 2024, in *Tavus Investments, LLC v. Hasteh, LLC*, No. 16-2019-CA-8879 (Fla. 4th Jud. Cir.), is attached as **Exhibit C**.

[11] A copy of the "Final Judgment on Echo River Sanctuary, LLC's Attorney's Fees and Cost Claim for Slander of Title" entered on March 5, 2025, in *21st Mortgage Corp. v. Harrell*, No. 17-CA-188 (Fla. 3d Jud. Cir.), is attached as **Exhibit D**.

[12] Although not specified in the court's order, the rates underlying the fee request were set out in the fee motion. Pls.' Unopposed Mot. for Fee Award & Litig. Costs at 18, *Stoll v. Musculoskeletal Inst.*, No. 8:20-cv-1798, 2022 WL 16923698 (M.D. Fla. Nov. 14, 2022) (Doc. 100), 2022 WL 21727425.

Moreover, consideration of the applicable Rule 4-1.5(b) factors, each of which is analyzed in detail in Mr. Coker's declaration, support use of rates at the top of this range. (*See* Coker Decl. ¶¶ 28–41.) For example, it is clear that acceptance of this matter precluded Class Counsel from pursuing other employment with traditional institutional clients who routinely and promptly pay the fees requested herein without any contingency risk. *See* R. Reg. the Fla. Bar 4-1.5(b)(2). Mr. Coker explains that the twofold effect of accepting this matter—which consumed more than 2,500 hours of work over nearly eight years—was to preclude Class Counsel from performing their typical hourly work and from expanding their practice with existing and prospective clients who provide more consistent sources of employment. (Coker Decl. ¶¶ 28–29.)

The "significance of" and "amount involved in" this matter also justify top rates. *See* R. Reg. the Fla. Bar 4-1.5(b)(4). This matter was highly significant, challenging an alleged statutory violation that had gone on for many years across the entire nation. (*See generally* Compl.) The amount involved is also high, as evidenced by the multimillion-dollar payment to which Costa agreed to resolve the case. (*See* Coker Decl. ¶¶ 37–38.) This action also impacted the related class actions in *Haney* and *Reed* that, together, covered additional nationwide class claims. This exponentially increased the "responsibility involved in the representation"—the outcomes Class Counsel obtained here influenced the outcomes in the related actions.

Mr. Coker also testifies about the time limitations and other circumstances existing between Class Counsel and Plaintiff that further justify the requested rates. *See* R. Reg. the Fla. Bar 4-1.5(b)(5). In addition to postponing and risking nonpayment of their own fees, Class Counsel had to front the substantial litigation expenses needed to prosecute this action and will not recover any rate of interest for these costs. (Coker Decl. ¶ 39.)

Similarly, the "nature and length of the professional relationship" between Plaintiff and Class Counsel also supports the requested fees. R. Reg. the Fla. Bar 4-1.5(b)(6). There is no established relationship between Class Counsel and Plaintiff that would justify discounted rates on the expectation of future work or in consideration of past work. (Coker Decl. ¶ 40.)

Finally, Mr. Coker testifies that Class Counsel's "experience, reputation, diligence, and ability," R. Reg. the Fla. Bar 4-1.5(b)(7), are highly regarded and support the rates requested. The federal court previously recognized Class Counsel as "experienced and reputable." *Smith*, 2021 WL 4295282, at *16. Nearly five years later, Class Counsel are all the more experienced, particularly with respect to the issues involved in this representation. Relevant biographies are included with the Hargitai Declaration and specify the credentials and experience that allowed Class Counsel to handle this matter effectively and achieve the outstanding results described herein. (Hargitai Decl., Exs. 1–2.) Courts have recognized prosecution and management of complex class actions "require[ ] unique legal skills and abilities," *Swift v. BancorpSouth Bank*, No. 1:10-cv-90, 2016 WL 11529613, at *17 (N.D. Fla. July 15, 2016), and that, "[i]n the private marketplace . . . counsel of exceptional skill commands a significant premium." *Farmer*, 2022 WL 22855817, at *5 (internal quotation marks omitted). That recognition is well placed here.

For these reasons, the rates Class Counsel request are reasonable and should be used to calculate the lodestar amount. For the Court's convenience, tables showing the rates for the attorneys who worked on this lawsuit are included in the Hargitai Declaration. (*See* Hargitai Decl. ¶¶ 16, 19.) Applying those rates to the hours specified above produces a presumptively reasonable lodestar of $1,697,172.67.

III. Class Counsel are also entitled to reimbursement of reasonable litigation costs.

In addition to attorney's fees, Class Counsel are entitled to recover the litigation expenses incurred in prosecuting this action. *See Ramos v. Philip Morris Cos., Inc.*, 743 So. 2d 24, 33 (Fla.

3d DCA 1999) (affirming an award of $3 million in costs); *Kuhnlein*, 662 So. 2d at 315 (awarding costs of $73,529.70); *see also, e.g.*, *Stoll*, 2022 WL 16927150, at *3 ("Upon submission of adequate documentation, plaintiffs' attorneys are entitled to reimbursement of those reasonable and necessary out-of-pocket expenses incurred in the course of activities that benefitted the class." (internal quotation marks omitted)).

Class Counsel paid $235,229.03 for litigation expenses that were necessary to secure the recovery for the class under the settlement. These costs include significant expenses associated with class notice and administration, along with other ordinary costs of litigation. (*See* Hargitai Decl. ¶¶ 41–42.) All of these costs and expenses were reasonably necessary for the litigation.

IV. Although they are entitled to much more, Class Counsel seek only $1.2 million in total fees and costs, making their request extraordinarily reasonable.

Class Counsel's presumptively reasonable lodestar fee is $1,697,172.67, and their documented litigation costs are $235,229.03, for a total of $1,932,401.69. However, given the unique characteristics of this class, which involved more than 900,000 small-value claims that will be costly to administer, Class Counsel have elected to reduce their requested fees and costs by more than ***37.9%*** to only ***$1.2 million***. Class Counsel respectfully submit that this voluntary reduction in their requested fees and costs makes this request extraordinarily reasonable and ask the Court to grant the request in full.

CONCLUSION

WHEREFORE, the undersigned Class Counsel respectfully request that the Court grant this motion, award Class Counsel $1,200,000 in fees and costs and grant such further relief as the Court deems proper.

Certificate of Conferral

Counsel for Plaintiff have conferred with opposing counsel regarding this motion and are authorized to represent that the motion is unopposed.

Dated: July 27, 2026

HOLLAND & KNIGHT LLP

/s/ Peter P. Hargitai

Peter P. Hargitai (Fla Bar No. 85375)
peter.hargitai@hklaw.com
cathy.luke@hklaw.com
Joshua H. Roberts (Fla Bar No. 042029)
josh.roberts@hklaw.com
cathy.luke@hklaw.com
Laura B. Renstrom (Fla Bar No. 108109)
laura.renstrom@hklaw.com
kathleen.griffith@hklaw.com
Michael M. Gropper (Fla Bar No. 105959)
michael.gropper@hklaw.com
camille.winn@hklaw.com
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
Telephone: (904) 353-2000
Facsimile: (904) 358-1872

Attorneys for Plaintiff, Troy Smith, and all others similarly situated

CERTIFICATE OF SERVICE

I hereby certify that, on July 27, 2026, I filed the foregoing via the Court's e-filing portal, which will cause a copy to be served on counsel of record.

/s/ Peter P. Hargitai

Attorney

CLASS COUNSEL'S UNOPPOSED MOTION
FOR ATTORNEY'S FEES AND COSTS

Exhibit A

Class Action Complaint

Smith v. Costa Del Mar., Inc.
No. 16-2025-CA-004472-XXXX-MA (Fla. 4th Jud. Cir.)

FILED

2018 AUG 20 PM 1:29

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION

TROY SMITH, individually and
on behalf of all others similarly situated,

Plaintiff,

v.

Case No.: 3:18-cv-1011-J-32JRK

COSTA DEL MAR, INC.,
a Florida corporation,

JURY TRIAL DEMANDED

Defendant.

_______________________________/

CLASS ACTION COMPLAINT

Plaintiff, Troy Smith ("Plaintiff"), by and through his undersigned counsel, hereby sues Costa Del Mar, Inc., individually and on behalf of a nationwide class of consumers. In support, Plaintiff alleges as follows:

INTRODUCTION

1. This lawsuit seeks damages and other relief as a result of Costa Del Mar, Inc.'s ("Costa") practice of charging its customers an illegal fee to process its "Lifetime Warranty" against manufacturer's defects in connection with the sale of sunglasses.

2. 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." Through every medium of communication with its customers — on its website, on its sunglass boxes, on its advertisements, in videos, on plaques, in promotional material, and elsewhere — Costa advertises a "rock solid Lifetime Warranty" against manufacturer's defects on its sunglasses.

3. On the packaging for every pair of Costa sunglasses, Costa prominently displays the words "**BACKED BY OUR LIFETIME WARRANTY**" in all capital letters, along with the

promise that "[W]e stand behind our craftsmanship with a rock solid Lifetime Warranty against manufacturer's defects."

4. Once the consumer purchases the sunglasses and opens the package, a warranty card (placed on the inside of the package) titled "Costa's Lifetime Warranty" provides that Costa will "warrant these sunglasses against defects in materials or workmanship for the life-time of the product."

5. And to avoid any confusion about its full warranty, Costa touts on its website, under the heading **"BACKED FOR LIFE"** that, "[B]ecause we monitor the quality of every pair of sunglasses we build, we back them with a lifetime warranty. If a pair of Costas needs to be fixed, they get sent back to the shop where they were made and the Costa Repair Shop experts will bring them back to 'like-new' standards. Our product quality, backed by our Lifetime Warranty, makes Costa Sunglasses the best value available in the sunglass industry today. No other manufacturer offers a combination that even comes close."

6. Costa advertises elsewhere on its website that its sunglasses are **"BUILT BY HAND. BACKED FOR LIFE."**

7. And in brochures distributed to customers and retailers, Costa states that, "[A]t Costa, we stand behind our work. That's why every pair of sunglasses we make is backed with a Lifetime Warranty against manufacturer's defects."

8. As it is applied by Costa, Costa's purported "Lifetime Warranty" against manufacturer's defects violates federal law because customers must pay an illegal fee to take advantage of it. More specifically, although Costa offers "Costa's Lifetime Warranty," Costa does not repair or replace Costa sunglasses damaged by a manufacturer's defect "without charge," as

required by federal law. Instead Costa charges customers a fee — $11.95 plus tax — to repair or replace sunglasses with a manufacturer's defect.

9. Costa's actions — advertising, promoting, and offering a "Lifetime Warranty," but charging customers $11.95 plus tax per warranty claim for sunglasses with a manufacturer's defect — violate the Magnuson-Moss Warranty Act, 15 U.S.C. § 2304 ("MMWA"), which requires warrantors like Costa advertising full lifetime warranties to remedy consumer products "***without charge***."

10. As a consequence of Costa's illegal practices, Plaintiff and the class members have purchased Costa sunglasses under the false impression that their sunglasses are protected for life against manufacturer's defects at no charge to them (when Costa, in fact, requires customers to pay an illegal fee). Congress passed the MMWA specifically to curb false and deceptive warranty practices, like those warranty practices employed by Costa.

11. Significantly, each consumer in the class has purchased Costa sunglasses subject to Costa's Lifetime Warranty. Each of these class members have experienced the same harm, in the same manner, and bring this action in an effort to curb Costa's false and deceptive warranty practices, which constitute a clear violation of the MMWA.

12. Plaintiff brings this case pursuant to Federal Rule of Civil Procedure 23 on behalf of a class of Costa sunglass purchasers, seeking damages, including costs of suit, interest, and reasonable attorneys' fees, as well as injunctive relief to remedy Costa's illegal warranty practices.

PARTIES, JURISDICTION AND VENUE

13. Plaintiff Troy Smith is a citizen of the State of Florida.

14. Costa is a corporation incorporated under the laws of the State of Florida, with its principal place of business in Daytona Beach, Florida. Accordingly, Costa is deemed to be a citizen of the State of Florida.

15. 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).

16. Costa does business throughout the state of Florida and, specifically, within the Middle District of Florida. Costa has received and continues to receive substantial revenue and profits in the Middle District of Florida and throughout the state of Florida.

17. Upon information and reasonable belief, the proposed class consists of hundreds of thousands of members. In the aggregate, these proposed class members seek over $5,000,000 in damages, exclusive of costs and interest.

18. At least one unnamed member of the proposed class is a citizen of a state other than the State of Florida.

19. The Court has jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d), because the proposed class consists of 100 or more members; the amount in controversy exceeds $5,000,000, exclusive of costs and interest; and minimal diversity exists.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391 because Plaintiff and Costa reside within this district and a substantial part of the events and omissions giving rise to these claims occurred within this district.

21. On July 18, 2018, Plaintiff, individually and on behalf of the class, provided Costa with notice of Costa's violations of the MMWA, and provided Costa with a reasonable opportunity to cure its failures. As of the filing of this Class Action Complaint, Costa has failed and/or refused to comply with Plaintiff's demand.

22. All conditions precedent to the institution and maintenance of this action have been satisfied or waived.

23. 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 set forth herein.

FACTUAL ALLEGATIONS

Costa and its "Lifetime Warranty"

24. Costa manufactures, markets, advertises and sells its sunglasses across the United States.

25. Costa touts its "rock solid" sunglasses lifetime warranty.

26. Costa advertises to consumers through a variety of mediums a "backed for life" "Lifetime Warranty" against manufacturer's defects. In other words, Costa advertises that it fully warrants its sunglasses against manufacturer's defects.

27. Costa's "Lifetime Warranty" was uniformly printed on the side of every Costa sunglasses box, placed on a card inside of every Costa sunglasses box, and was part of the basis of the bargain for each purchase.

28. Apparently recognizing that its warranty practices violate the MMWA, Costa recently changed its packaging and other promotional materials so that its claims that its sunglasses are backed by a "Lifetime Warranty" are now replaced with claims that its sunglasses are backed by a "Limited Lifetime Warranty." In other words, Costa recognized that it was advertising and promoting a full "Lifetime Warranty," but not honoring such in accordance with the MMWA. So, Costa changed its warranty information to state that Costa offers a "Limited Lifetime Warranty,"

rather than a "Lifetime Warranty" as its packaging and promotional material previously represented.

29. In order for consumers to take advantage of Costa's "Lifetime Warranty," Costa requires that consumers send their damaged sunglasses to Costa's warranty center for evaluation by Costa. Once the consumer sends his or her sunglasses to the warranty center, Costa inspects the sunglasses to determine the cause of the damage.

30. If Costa determines that the consumer's sunglasses were damaged as a result of a manufacturer's defect, Costa honors its advertised "Lifetime Warranty" but charges the consumer $11.95 plus tax per warranty claim. The fee that Costa charges consumers to take advantage of Costa's "Lifetime Warranty" is illegal under the MMWA.

Plaintiff's MMWA Claim

31. In 2014. Plaintiff purchased a pair of Costa Fisch sunglasses backed by Costa's purported "Lifetime Warranty" against manufacturer's defects.

32. In September of 2015, Plaintiff sent his sunglasses to Costa's warranty center for inspection.

33. After inspection, Costa determined that Plaintiff's rubber gaskets (nose piece) needed to be replaced and the lenses were delaminated, and that these issues were caused by a manufacturer's defect.

34. Costa purported to honor the "Lifetime Warranty," but violated its obligations under the MMWA by charging Plaintiff $11.95 plus tax to take advantage of Costa's "Lifetime Warranty."

35. Plaintiff paid the $11.95 plus tax charged by Costa to take advantage of the "Lifetime Warranty."

36. Costa's actions — by advertising a "Lifetime Warranty" but charging Plaintiff and other customers $11.95 plus tax per warranty claim — violate the MMWA, which requires warrantors providing full lifetime warranties to remedy consumer products "***without charge***."

37. As an immediate, direct, and proximate result of Costa's illegal warranty practices, Costa has unfairly and unjustly charged customers $11.95 plus tax on each warranty claim made under a purported "Lifetime Warranty" against manufacturer's defects on Costa sunglasses.

38. Plaintiff and the members of the class have paid $11.95 plus tax per warranty claim to Costa, when the MMWA required that Costa honor its warranty "without charge."

39. Costa failed to comply with its obligations under the MMWA, and each of the members of the class were harmed by Costa's failures.

CLASS ALLEGATIONS

40. Plaintiff brings this action both on behalf of himself and as a class action pursuant to Federal Rule of Civil Procedure 23, on behalf of the following class members (the "Class"):

> **Count I - VIOLATION OF THE MAGNUSON-MOSS WARRANTY ACT (15 U.S.C. §§ 2301, et seq.):**
>
> All citizens in the United States who, prior to Costa's switch to a "Limited Lifetime Warranty," purchased a pair of Costa sunglasses backed by a "Lifetime Warranty" who, within the applicable limitations period, paid Costa a fee to repair or replace those sunglasses damaged by a manufacturer's defect.

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; (2) the judge to whom this case is assigned and the judge's staff; and (3) counsel for each of the parties in this case.

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.

43. Certification of Plaintiff's claims for class-wide treatment is appropriate because Plaintiff can prove the elements of his claims on a class-wide basis using the same evidence as would be used to prove those elements in individual actions alleging the same claim.

44. **Numerosity – Federal Rule of Civil Procedure 23(a)(1):** The members of the Class are so numerous and geographically dispersed that individual joinder of all Class members is impracticable. While Plaintiff believes that there are hundreds of thousands of members of the Class, the precise number of Class members is unknown to Plaintiff, but may be ascertained from Costa's books and records.

45. **Commonality and Predominance – Federal Rule of Civil Procedure 23(a)(2) and 23(b)(3):** This action involves common questions of law and fact which predominate over any questions affecting individual Class members including, without limitation:

a. Whether Costa engaged in the conduct alleged herein;

b. Whether Costa charged customers a fee to repair or replace sunglasses damaged by a manufacturer's defect;

c. Whether Costa's conduct constitutes a violation of the MMWA as asserted herein;

d. Whether Plaintiff and the other members of the Class were illegally charged a fee for Costa to repair or replace sunglasses damaged by a manufacturer's defect, when those sunglasses were subject to a "Lifetime Warranty";

e. 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; and

f. The scope of any declaratory or non-monetary relief to which Plaintiff and the other Class members are entitled.

46. **Typicality – Federal Rule of Civil Procedure 23(a)(3):** Plaintiff's claims are typical of the claims of the Class because, among other things, all Class members were comparably injured through Costa's wrongful conduct as described herein. All Class members purchased Costa sunglasses purportedly backed by Costa's "Lifetime Warranty" for damage to the sunglasses as a result of a manufacturer's defect, and were illegally charged a fee by Costa to repair those sunglasses damaged by a manufacturer's defect. The injuries to each Class member were caused directly by Costa's wrongful conduct. 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.

47. **Adequacy – Federal Rule of Civil Procedure 23(a)(4):** Plaintiff is an adequate Class representative because his interests do not conflict with the interests of the other members of the Class. 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 his 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.

48. **Declaratory and Injunctive Relief – Federal Rule of Civil Procedure 23(b)(2):** Costa has acted or refused to act on grounds generally applicable to Plaintiff and other members of the Class, thereby making appropriate final injunctive and declaratory relief, as described below, with respect to the Class as a whole.

49. **Superiority – Federal Rule of Civil Procedure 23(b)(3):** A class action is superior to any other available means for the fair and efficient adjudication of this controversy, and no unusual difficulties are likely to be encountered in the management of this class action. The damages or other financial detriment suffered by Plaintiff and the other Class members are relatively small compared to the burden and expense that would be required to individually litigate their claims against Costa, so it would be impracticable for the Class members to individually seek redress for Costa's wrongful conduct. Even if Class members could afford individual litigation, the court system could not. Individualized litigation creates a potential for inconsistent or contradictory judgments, and increases the delay and expense to all parties and the court system. By contrast, the class action device presents far fewer management difficulties, and provides the benefit of single adjudication, economy of scale, and comprehensive supervision by a single court.

50. The issues raised herein arise under federal law, and having all claims nationwide be decided in a single lawsuit, in Florida where Costa is located, is efficient, economical, and fair.

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

51. Plaintiff, individually and on behalf of the Class, re-alleges and incorporates the allegations of paragraph 1 through 50 as if fully set forth herein.

52. Plaintiff brings this count individually and on behalf of the Class.

53. 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.

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

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

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

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

58. Costa has provided, advertised, and promoted a written warranty to Plaintiff and members of the Class in connection with the sale of Costa sunglasses that its sunglasses are backed by a "Lifetime Warranty" against manufacturer's defects. This constitutes a written warranty within the meaning of the MMWA, 15 U.S.C. § 2301(6).

59. This written warranty was advertised and promoted by Costa through a variety of different means and types of mediums.

60. Costa's "Lifetime Warranty" constitutes a full warranty under the MMWA.

61. Among other things, a full warranty requires the warrantor to remedy defects in a product within a reasonable time and ***without charge***. 15 U.S.C. § 2304.

62. The term "without charge" means that the warrantor may not assess the consumer for any costs the warrantor or his representatives incur in connection with the required remedy or a warranted consumer product. 15 U.S.C. § 2304(d).

63. Costa has violated the MMWA by charging Plaintiff and members of the Class a fee in connection with warranty claims made on Costa sunglasses subject to Costa's "Lifetime Warranty."

64. A timely notice to Costa of its violations of the MMWA, on behalf of Plaintiff and all members of the Class, was sent to Costa by letter dated July 18, 2018. Through this letter, Costa was provided a reasonable opportunity to cure Costa's illegal warranty practices. In response to the letter, Costa failed and/or has continued to refuse to cure its noncompliance.

65. Costa's illegal warranty practices, as described herein, have resulted in damages to Plaintiff and the members of the Class who bought Costa sunglasses subject to a "Lifetime Warranty," but were charged an illegal fee in connection with warranty claims for sunglasses damaged as a result of a manufacturer's defect.

WHEREFORE, Plaintiff Troy Smith, 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 described herein;

c) An Order enjoining Costa from violating the MMWA, as alleged herein;

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 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 20th day of August, 2018.

HOLLAND & KNIGHT LLP

/s/ Peter P. Hargitai
Peter P. Hargitai (FBN 85375)
peter.hargitai@hklaw.com
Joshua H. Roberts (FBN 042029)
joshua.roberts@hklaw.com
Laura B. Renstrom (FBN 108019)
laura.renstrom@hklaw.com
Michael M. Gropper (FBN 105959)
michael.gropper@hklaw.com
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
Telephone: (904) 353-2000
Facsimile: (904) 358-1872

Attorneys for Plaintiff Troy Smith and the Class

 3:18-cv-1011-TJC-JRK

JS 44 (Rev. 06/17)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. *(SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)*

I. (a) PLAINTIFFS

Troy Smith, individually and on behalf of all others similarly situated.

(b) County of Residence of First Listed Plaintiff: Duval County, Florida
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys *(Firm Name, Address, and Telephone Number)*
Peter P. Hargitai, Joshua H. Roberts, Laura B. Renstrom, Michael M. Gropper, Holland & Knight LLP, 50 North Laura Street, Suite 3900, Jacksonville, FL 32202, (904) 353-2000

DEFENDANTS

Costa Del Mar, Inc.

County of Residence of First Listed Defendant: Volusia County, Florida
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys *(If Known)*

II. BASIS OF JURISDICTION *(Place an "X" in One Box Only)*

- ☐ 1 U.S. Government Plaintiff
- ☐ 3 Federal Question *(U.S. Government Not a Party)*
- ☐ 2 U.S. Government Defendant
- ☒ 4 Diversity *(Indicate Citizenship of Parties in Item III)*

III. CITIZENSHIP OF PRINCIPAL PARTIES *(Place an "X" in One Box for Plaintiff and One Box for Defendant)* *(For Diversity Cases Only)*

	PTF	DEF		PTF	DEF
Citizen of This State	☒ 1	☐ 1	Incorporated *or* Principal Place of Business In This State	☐ 4	☒ 4
Citizen of Another State	☐ 2	☐ 2	Incorporated *and* Principal Place of Business In Another State	☐ 5	☐ 5
Citizen or Subject of a Foreign Country	☐ 3	☐ 3	Foreign Nation	☐ 6	☐ 6

IV. NATURE OF SUIT *(Place an "X" in One Box Only)*

Click here for: Nature of Suit Code Descriptions.

CONTRACT
- ☐ 110 Insurance
- ☐ 120 Marine
- ☐ 130 Miller Act
- ☐ 140 Negotiable Instrument
- ☐ 150 Recovery of Overpayment & Enforcement of Judgment
- ☐ 151 Medicare Act
- ☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)
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- ☐ 160 Stockholders' Suits
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- ☐ 195 Contract Product Liability
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- ☐ 240 Torts to Land
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TORTS

PERSONAL INJURY
- ☐ 310 Airplane
- ☐ 315 Airplane Product Liability
- ☐ 320 Assault, Libel & Slander
- ☐ 330 Federal Employers' Liability
- ☐ 340 Marine
- ☐ 345 Marine Product Liability
- ☐ 350 Motor Vehicle
- ☐ 355 Motor Vehicle Product Liability
- ☐ 360 Other Personal Injury
- ☐ 362 Personal Injury - Medical Malpractice

PERSONAL INJURY
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- ☐ 367 Health Care/ Pharmaceutical Personal Injury Product Liability
- ☐ 368 Asbestos Personal Injury Product Liability

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- ☐ 371 Truth in Lending
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- ☐ 385 Property Damage Product Liability

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- ☐ 443 Housing/ Accommodations
- ☐ 445 Amer. w/Disabilities - Employment
- ☐ 446 Amer. w/Disabilities - Other
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- ☐ 510 Motions to Vacate Sentence
- ☐ 530 General
- ☐ 535 Death Penalty

Other:
- ☐ 540 Mandamus & Other
- ☐ 550 Civil Rights
- ☐ 555 Prison Condition
- ☐ 560 Civil Detainee - Conditions of Confinement

FORFEITURE/PENALTY
- ☐ 625 Drug Related Seizure of Property 21 USC 881
- ☐ 690 Other

LABOR
- ☐ 710 Fair Labor Standards Act
- ☐ 720 Labor/Management Relations
- ☐ 740 Railway Labor Act
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- ☐ 422 Appeal 28 USC 158
- ☐ 423 Withdrawal 28 USC 157

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- ☐ 835 Patent - Abbreviated New Drug Application
- ☐ 840 Trademark

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- ☐ 862 Black Lung (923)
- ☐ 863 DIWC/DIWW (405(g))
- ☐ 864 SSID Title XVI
- ☐ 865 RSI (405(g))

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- ☐ 896 Arbitration
- ☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
- ☐ 950 Constitutionality of State Statutes

V. ORIGIN *(Place an "X" in One Box Only)*

- ☒ 1 Original Proceeding
- ☐ 2 Removed from State Court
- ☐ 3 Remanded from Appellate Court
- ☐ 4 Reinstated or Reopened
- ☐ 5 Transferred from Another District *(specify)*
- ☐ 6 Multidistrict Litigation - Transfer
- ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing *(Do not cite jurisdictional statutes unless diversity)*:
Magnuson-Moss Warranty Act, 15 U.S.C. Section 2301 et seq.; Class Action Fairness Act, 28 U.S.C. 1332(d)

Brief description of cause:
Class Action under Magnuson-Moss Warranty Act, 15 U.S.C. Section 2301 et seq.

VII. REQUESTED IN COMPLAINT:

☒ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND $ 5,000,000.00

CHECK YES only if demanded in complaint:
JURY DEMAND: ☒ Yes ☐ No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE ____ DOCKET NUMBER ____

DATE: 08/20/2018

SIGNATURE OF ATTORNEY OF RECORD: /s/ Peter P. Hargitai

FOR OFFICE USE ONLY

RECEIPT # ____ AMOUNT $400 APPLYING IFP ____ JUDGE 32 MAG. JUDGE JRK

JAX028740

CLASS COUNSEL'S UNOPPOSED MOTION
FOR ATTORNEY'S FEES AND COSTS

Exhibit B

Federal Court Docket

Smith v. Costa Del Mar., Inc.
No. 16-2025-CA-004472-XXXX-MA (Fla. 4th Jud. Cir.)

CLOSED,SL DOC

U.S. District Court
Middle District of Florida (Jacksonville)
CIVIL DOCKET FOR CASE #: 3:18-cv-01011-TJC-LLL

Smith v. Costa Del Mar, Inc.
Assigned to: Judge Timothy J. Corrigan
Referred to: Magistrate Judge Laura Lothman Lambert
Demand: $5,000,000
Case in other court: USCA, 22-10663
Cause: 15:2301 Magnuson-Moss Warranty Act

Date Filed: 08/20/2018
Date Terminated: 01/27/2022
Jury Demand: Plaintiff
Nature of Suit: 890 Other Statutory Actions
Jurisdiction: Federal Question

Plaintiff

Troy Smith
individually and on behalf of all others similarly situated

represented by

Joshua H. Roberts
Holland & Knight, LLP
Suite 3900
50 N Laura St
Jacksonville, FL 32202
904/353-2000
Email: josh.roberts@hklaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura Renstrom
Holland & Knight, LLP
Suite 3900
50 N Laura St
Jacksonville, FL 32202
904/353-2000
Email: laura.renstrom@hklaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Manuel Gropper
Holland & Knight, LLP
Suite 3900
50 N Laura St
Jacksonville, FL 32202
904/353-2000
Email: michael.gropper@hklaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter P. Hargitai
Holland & Knight, LLP
Suite 3900
50 N Laura St
Jacksonville, FL 32202
904/353-2000
Fax: 904/358-1872

Email: peter.hargitai@hklaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Brendan C. Haney
individually and on behalf of all others similarly situated
TERMINATED: 08/06/2024

represented by **Joshua H. Roberts**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura Renstrom
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Manuel Gropper
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter P. Hargitai
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Plaintiff

Gerald E. Reed, IV
individually and on behalf of all others similarly situated,
TERMINATED: 08/06/2024

represented by **Joshua H. Roberts**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Laura Renstrom
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Michael Manuel Gropper
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Peter P. Hargitai
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

V.

Defendant

Costa Del Mar, Inc.
a Florida corporation

represented by **Emily Yandle Rottmann**
McGuireWoods, LLP
50 N Laura St Ste 3300
Jacksonville, FL 32202
904-798-3200
Fax: 904/798-3207

Email: erottmann@mcguirewoods.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Jocelyn M. Mallette
McGuire Woods, LLP-Raleigh
Suite 2600
434 Fayetteville St
Raleigh, NC 27601
919/755-6681
Fax: 919/755-6699
Email: jmallette@mcguirewoods.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Justin R. Opitz
McGuirewoods LLP
2601 Olive Street
Suite 2100
Dallas, TX 75201
214-932-6471
Email: jopitz@mcguirewoods.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Mark E. Anderson
McGuire Woods, LLP-Raleigh
Suite 2600
434 Fayetteville St
Raleigh, NC 27601
919/755-6678
Fax: 919/755-6699
Email: manderson@mcguirewoods.com
LEAD ATTORNEY
PRO HAC VICE
ATTORNEY TO BE NOTICED

Sara F. Holladay
McGuireWoods, LLP
Suite 3300
50 N Laura St
Jacksonville, FL 32202
904/798-3200
Fax: 904/798-3207
Email: sholladay@mcguirewoods.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Objector

Austin Valls represented by **Bradley Graham Bodiford**
Terrell Hogan Yegelwai P.A.
233 E Bay St Ste 804
Jacksonville, FL 32202-3451
904-868-6355

Email: Bodiford@terrellhogan.com
ATTORNEY TO BE NOTICED

Mikell A. West
Bandas Law Firm, P.C.
802 N. Carancahua Street, Suite 1400
Corpus Christi, TX 78401
361-698-5200
Fax: 361-698-5222
Email: mwest@bandaslawfirm.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Robert W. Clore
Bandas Law Firm, P.C.
802 N. Carancahua Street, Suite 1400
Corpus Christi, TX 78401
361-698-5200
Fax: 361-698-5222
Email: rclore@bandaslawfirm.com
ATTORNEY TO BE NOTICED

<u>Objector</u>

John W Davis represented by **C. Benjamin Nutley**
C. Benjamin Nutley, Attorney at Law
65-1279 Kawaihae Rd
Suite 203
Kamuela, HI 96743
808-238-8783
Email: nutley@zenlaw.com
PRO HAC VICE
ATTORNEY TO BE NOTICED

Eric Alan Isaacson
Law Office of Eric Alan Isaacson
6580 Avenida Mirola
La Jolla, CA 93037-6231
858/263-9581
Email: ericalanisaacson@icloud.com
ATTORNEY TO BE NOTICED

John William Davis
Law Office of John W. Davis
3030 N. Rocky Point Dr. W., Suite 150
Tampa, FL 33607
813-533-1972
Email: john@johnwdavis.com
ATTORNEY TO BE NOTICED

<u>Objector</u>

Mr. Mitchell George Miorelli represented by **Sam Andrew Miorelli**
Law Office of Sam Miorelli, P.A
1141 Mission Ridge Court
Orlando, FL 32835
352-458-4092
Email: sam.miorelli@gmail.com

LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/20/2018	1	CLASS ACTION COMPLAINT against Costa Del Mar, Inc. with jury demand (Filing fee $ 400 receipt number JAX028740) filed by Troy Smith. (Attachments: # 1 Civil Cover Sheet)(JSG) (Entered: 08/20/2018)
08/21/2018	2	WAIVER of service returned executed on 08/21/2018 by Troy Smith as to Costa Del Mar, Inc.. (Hargitai, Peter) (Entered: 08/21/2018)
08/24/2018	3	**NOTICE of designation under Local Rule 3.05 - track 2. Signed by Deputy Clerk on 8/24/2018. (Attachments: # 1 Case Management Report form, # 2 Consent to US Magistrate Judge Jurisdiction letter and form)(MD)** (Entered: 08/24/2018)
09/11/2018	4	CERTIFICATE of interested persons and corporate disclosure statement by Troy Smith. (Gropper, Michael) (Entered: 09/11/2018)
10/01/2018	5	CASE MANAGEMENT REPORT. (Gropper, Michael) (Entered: 10/01/2018)
10/18/2018	6	**CASE MANAGEMENT AND SCHEDULING ORDER: Discovery deadline is 7/5/2019; Conduct mediation hearing by 7/12/2019; Dispositive motions, Daubert motions and Motion for Class Certification due by 8/2/2019; Pretrial statement due by 12/12/2019; Final Pretrial Conference set for 12/18/2019 at 10:00 AM in Courtroom 10 D before Judge Timothy J. Corrigan; and, Jury Trial set for trial term commencing 1/6/2020 at 9:00 AM in Courtroom 10 D before Judge Timothy J. Corrigan. Signed by Deputy Clerk on 10/18/2018. (Attachments: # 1 Mediation Report form, # 2 docket sheet)(MD)** Remaining case settings and deadlines VACATED on 10/31/2019, per Order 73 (KKH). (Entered: 10/18/2018)
10/18/2018	7	CASE REFERRED to Mediation. (TMC) (Entered: 10/18/2018)
10/19/2018	8	NOTICE of Appearance by Sara F. Holladay-Tobias on behalf of Costa Del Mar, Inc. (Holladay-Tobias, Sara) (Entered: 10/19/2018)
10/19/2018	9	Unopposed MOTION for Extension of Time to File Answer re 1 Complaint by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) Motions referred to Magistrate Judge James R. Klindt. (Entered: 10/19/2018)
10/23/2018	10	**ORDER granting 9 Defendant Costa Del Mar, Inc.'s Unopposed Motion for Enlargement of Time to Respond to Plaintiff's Class Action Complaint. Defendant shall have up to and including 10/26/2018 to respond to the Class Action Complaint (Doc. No. 1). Signed by Magistrate Judge James R. Klindt on 10/22/2018. (MDC)** (Entered: 10/23/2018)
10/25/2018	11	NOTICE of Appearance by Emily Yandle Rottmann on behalf of Costa Del Mar, Inc. (Rottmann, Emily) (Entered: 10/25/2018)
10/25/2018	12	Unopposed MOTION for Justin R. Opitz to appear pro hac vice by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) Motions referred to Magistrate Judge James R. Klindt. (Entered: 10/25/2018)
10/26/2018		***PRO HAC VICE FEES paid by attorney Justin R. Opitz, appearing on behalf of Costa Del Mar, Inc. (Filing fee $150 receipt number JAX029337.) Related document: 12 Unopposed MOTION for Justin R. Opitz to appear pro hac vice. (TMC) (Entered: 10/26/2018)
10/26/2018	13	ANSWER and affirmative defenses to 1 Complaint by Costa Del Mar, Inc..(Holladay-Tobias, Sara) (Entered: 10/26/2018)
10/26/2018	14	CERTIFICATE of interested persons and corporate disclosure statement re 6 Case management and scheduling order by Costa Del Mar, Inc. identifying Corporate Parent Costa, Inc., Corporate Parent FGX International, Inc., Corporate Parent FGX International II Limited, Corporate Parent FGX International Holdings Limited, Corporate Parent EOA Holding Co., Inc., Corporate Parent Essilor

		International S.A.S., Corporate Parent EssilorLuxottica S.A. for Costa Del Mar, Inc... (Holladay-Tobias, Sara) (Entered: 10/26/2018)
10/29/2018	15	**ORDER granting 12 Defendant's Unopposed Motion for Admission Pro Hac Vice of Attorney Justin R. Opitz and Designation and Consent to Act Pursuant to Local Rule 2.02. Justin R. Opitz is permitted to appear pro hac vice on behalf of Defendant with Sara Holladay-Tobias as local counsel. Mr. Opitz shall expeditiously ensure mandatory registration with the Court's electronic case filing (ECF) system, if he has not already done so. Signed by Magistrate Judge James R. Klindt on 10/29/2018. (MDC)** (Entered: 10/29/2018)
03/19/2019	16	MOTION to Compel Defendant's Settlement Agreement with David Scott and Testimony Related Thereto by Troy Smith. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4 - Slip Sheet, # 5 Exhibit 5 - Slip Sheet, # 6 Exhibit 6, # 7 Exhibit 7, # 8 Exhibit 8, # 9 Exhibit 9)(Gropper, Michael) Motions referred to Magistrate Judge James R. Klindt. (Entered: 03/19/2019)
03/19/2019	17	Unopposed MOTION for leave to file under seal by Troy Smith. (Attachments: # 1 Exhibit 1) (Gropper, Michael) (Entered: 03/19/2019)
03/25/2019	18	**ORDER granting 17 Plaintiff's Unopposed Motion for Leave to File Under Seal; Plaintiff to provide documents to the Clerk, who shall then file the documents under seal; if Defendant relies on any confidential documents in support of its forthcoming response to the motion to compel, it shall file those documents under seal without need for a separate motion. Signed by Magistrate Judge James R. Klindt on 3/25/2019. (KAW)** (Entered: 03/25/2019)
03/26/2019	19	NOTICE by Troy Smith of Filing Under Seal Pursuant to 18 Court Order, (Gropper, Michael) Modified on 3/26/2019 to edit text. (TMC) (Entered: 03/26/2019)
03/26/2019		Sealed Documents: S-20 and S-21. (TMC) (Entered: 03/26/2019)
04/02/2019	22	MOTION for miscellaneous relief, specifically For Leave to Use Certain Depositions From An Earlier Action in Connection with this Case by Troy Smith. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit, # 16 Exhibit)(Gropper, Michael) (Entered: 04/02/2019)
04/02/2019	23	RESPONSE in Opposition re 16 MOTION to Compel Defendant's Settlement Agreement with David Scott and Testimony Related Thereto filed by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) (Entered: 04/02/2019)
04/15/2019	24	NOTICE of supplemental authority re 22 MOTION for miscellaneous relief, specifically For Leave to Use Certain Depositions From An Earlier Action in Connection with this Case by Troy Smith. (Attachments: # 1 Exhibit)(Gropper, Michael) (Entered: 04/15/2019)
04/16/2019	25	RESPONSE in Opposition re 22 MOTION for miscellaneous relief, specifically For Leave to Use Certain Depositions From An Earlier Action in Connection with this Case filed by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit 1: Plaintiff's Pre-Suit Notice, # 2 Exhibit 2: Haney Notice, # 3 Exhibit 3: Smith Notice, # 4 Exhibit 4: Excerpts of Depositions Taken in Haney)(Holladay-Tobias, Sara) (Entered: 04/16/2019)
04/17/2019	26	MOTION for Leave to File a Reply in Support of His 22 Motion for Leave to use Certain Depositions from an Earlier Action in Connection with this Case by Troy Smith (Gropper, Michael). Modified on 4/18/2019 to create docket entry relationship (JSG). (Entered: 04/17/2019)
04/18/2019	27	RESPONSE in Opposition re 26 MOTION for Leave to File a Reply in Support of His 22 Motion for Leave to use Certain Depositions from an Earlier Action in Connection with this Case filed by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) (Entered: 04/18/2019)
04/25/2019	28	NOTICE of mediation conference/hearing to be held on July 9, 2019 before Terrence M. White. (Gropper, Michael) (Entered: 04/25/2019)
05/02/2019	29	**ORDER granting 16 Plaintiff's Motion to Compel Defendant's Settlement Agreement With David Scott and Testimony Related Thereto; settlement agreement to be produced by**

		5/10/2019; see Order for details. Signed by Magistrate Judge James R. Klindt on 5/2/2019. (KAW) (Entered: 05/02/2019)
05/02/2019	30	**ORDER granting 26 Plaintiff's Motion for Leave to File Reply in Support of His Motion for Leave to Use Certain Depositions From an Earlier Action in Connection With This Case; reply, not to exceed seven pages, due 5/9/2019; optional sur-reply, not to exceed seven pages, due 5/16/2019; oral argument regarding 22 Plaintiff's Motion for Leave to Use Certain Depositions From an Earlier Action in Connection With This Case is set for 5/23/2019 at 10:30AM in Jacksonville Courtroom 5D before Judge James R. Klindt. Counsel most familiar with the issues shall personally appear. Signed by Magistrate Judge James R. Klindt on 5/2/2019. (KAW)** (Entered: 05/02/2019)
05/08/2019	31	REPLY to 25 Response to 22 MOTION For Leave to Use Certain Depositions From An Earlier Action in Connection with this Case, filed by Troy Smith. (Gropper, Michael) Modified on 5/8/2019 to create docket entry relationship and edit text. (TMC) (Entered: 05/08/2019)
05/16/2019	32	Unopposed MOTION for Mark E. Anderson to appear pro hac vice by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) Motions referred to Magistrate Judge James R. Klindt. (Entered: 05/16/2019)
05/16/2019	33	Unopposed MOTION for Jocelyn M. Mallette to appear pro hac vice by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) Motions referred to Magistrate Judge James R. Klindt. (Entered: 05/16/2019)
05/16/2019		***PRO HAC VICE FEES paid by attorney Mark E. Anderson, appearing on behalf of Costa Del Mar, Inc. (Filing fee $150 receipt number JAX030838.) Related document: 32 Unopposed MOTION for Mark E. Anderson to appear pro hac vice. (AFC) (Entered: 05/16/2019)
05/16/2019		***PRO HAC VICE FEES paid by attorney Jocelyn M. Mallette, appearing on behalf of Costa Del Mar, Inc. (Filing fee $150 receipt number JAX030839.) Related document: 33 Unopposed MOTION for Jocelyn M. Mallette to appear pro hac vice. (AFC) (Entered: 05/16/2019)
05/16/2019	34	SUR REPLY to 31 REPLY to 25 Response to 22 MOTION For Leave filed by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) Modified on 5/17/2019 to edit text and create additional docket entry relationship. (TMC) (Entered: 05/16/2019)
05/20/2019	35	STIPULATION *Regarding the Use of Depositions from the Haney Case and Suggestion of Mootness* by Troy Smith. (Gropper, Michael) (Entered: 05/20/2019)
05/21/2019	36	**ORDER deeming moot 22 Plaintiff's Motion for Leave to Use Certain Depositions from an Earlier Action in Connection with this Case; cancelling oral argument on the motion previously set for 5/23/2019 at 10:30 AM before Judge Klindt. Signed by Magistrate Judge James R. Klindt on 5/21/2019. (KAW)** (Entered: 05/21/2019)
05/21/2019	37	**ORDER granting 32 and 33 Defendant's Unopposed Motions for Admission Pro Hac Vice of Attorneys Mark E. Anderson and Jocelyn M. Mallette and Designations and Consents to Act Pursuant to Local Rule 2.02. Mark E. Anderson and Jocelyn M. Mallette are permitted to appear pro hac vice on behalf of Defendant with Sara Holladay-Tobias as local counsel. Mr. Anderson and Ms. Mallette shall expeditiously ensure mandatory registration with the Court's electronic case filing (ECF) system, if they have not already done so. Signed by Magistrate Judge James R. Klindt on 5/21/2019. (MDC)** (Entered: 05/21/2019)
05/28/2019	38	Partially Unopposed MOTION to Enlarge the Page Limitation for His Motion for Class Certification and for Leave to File Under Seal, by Troy Smith. (Gropper, Michael) Modified on 5/29/2019 to edit text. (TMC) (Entered: 05/28/2019)
06/19/2019	39	**ORDER granting in part and denying in part 38 Plaintiff Troy Smith's Partially Unopposed Motion to Enlarge the Page Limitation For His Motion for Class Certification and For Leave to File Under Seal. Plaintiff may file a motion for class certification of no more than forty pages, and Defendant may file a response of no more than thirty-five pages. Plaintiff's motion to seal is denied without prejudice. Plaintiff may file a more narrowly tailored motion to seal, which**

		comports with this Order, if he wishes to do so. Signed by Judge Timothy J. Corrigan on 6/19/2019. (SEJ) (Entered: 06/19/2019)
07/01/2019	40	MOTION to Certify Class by Troy Smith. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit, # 12 Exhibit, # 13 Exhibit, # 14 Exhibit, # 15 Exhibit, # 16 Exhibit, # 17 Exhibit, # 18 Exhibit, # 19 Exhibit, # 20 Exhibit, # 21 Exhibit, # 22 Exhibit, # 23 Exhibit, # 24 Exhibit, # 25 Exhibit, # 26 Exhibit, # 27 Exhibit, # 28 Exhibit, # 29 Exhibit, # 30 Exhibit, # 31 Exhibit, # 32 Exhibit, # 33 Exhibit, # 34 Exhibit, # 35 Exhibit, # 36 Exhibit, # 37 Exhibit, # 38 Exhibit, # 39 Exhibit, # 40 Exhibit, # 41 Exhibit, # 42 Exhibit, # 43 Exhibit, # 44 Exhibit, # 45 Exhibit, # 46 Exhibit, # 47 Exhibit)(Hargitai, Peter) (Entered: 07/01/2019)
07/01/2019	41	Unopposed MOTION for leave to file under seal *Exhibits to Plaintiff's Motion for Class Certification* by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) (Entered: 07/01/2019)
07/02/2019	42	Amended Unopposed MOTION for leave to file under seal *Exhibits to Plaintiff's Motion for Class Certification, by Costa Del Mar, Inc. (Holladay-Tobias, Sara F.) Modified on 7/2/2019 to edit text as to filing attorney. (TMC) (Entered: 07/02/2019)*
07/05/2019	43	MOTION for Extension of Time to File Response/Reply as to 40 MOTION to Certify Class by Costa Del Mar, Inc.. (Rottmann, Emily) Motions referred to Magistrate Judge James R. Klindt. (Entered: 07/05/2019)
07/05/2019	44	MOTION for miscellaneous relief, specifically A Limited Extension of the Discovery Deadline for the Sole Purpose of Allowing Plaintiff to Seek Relief Related to Defendant's Untimely Production by Troy Smith. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit, # 7 Exhibit, # 8 Exhibit, # 9 Exhibit, # 10 Exhibit, # 11 Exhibit)(Gropper, Michael) (Entered: 07/05/2019)
07/05/2019	45	MOTION to Compel an Adequate Answer to Interrogatory No. 2 of Plaintiff's Second Set of Interrogatories by Troy Smith. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit, # 5 Exhibit, # 6 Exhibit)(Gropper, Michael) Motions referred to Magistrate Judge James R. Klindt. (Entered: 07/05/2019)
07/10/2019	46	RESPONSE in Opposition re 43 MOTION for Extension of Time to File Response/Reply as to 40 MOTION to Certify Class filed by Troy Smith. (Attachments: # 1 Exhibit)(Gropper, Michael) (Entered: 07/10/2019)
07/10/2019	47	MOTION for leave to file Brief Reply in Support of 43 Motion for Enlargement of Time, by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) Modified on 7/11/2019 to create docket entry relationship and edit text. (TMC) (Entered: 07/10/2019)
07/11/2019	48	**ORDER granting 42 Defendant Costa Del Mar, Inc.'s Unopposed Amended Motion to Seal Exhibits to Plaintiff's Motion for Class Certification. Plaintiff shall mail or hand-deliver the materials to be filed under seal to the Clerk. Signed by Judge Timothy J. Corrigan on 7/11/2019. (SEJ)** (Entered: 07/11/2019)
07/12/2019	49	NOTICE by Troy Smith *of Filing Under Seal Pursuant to Court Order* (Gropper, Michael) (Entered: 07/12/2019)
07/12/2019		Sealed Document: S-50 (TMC) (Entered: 07/12/2019)
07/12/2019	51	CERTIFICATE of counsel re 47 MOTION for leave to file Brief Reply in Support of 43 Motion for Enlargement of Time by Sara F. Holladay-Tobias on behalf of Costa Del Mar, Inc. (Holladay-Tobias, Sara) (Entered: 07/12/2019)
07/15/2019	52	**ORDER granting 43 Defendant Costa Del Mar, Inc.'s Motion for Enlargement of Time to Respond to Plaintiff's Motion for Class Certification; response due 8/16/2019 to 40 Plaintiff's Motion for Class Certification and Incorporated Memorandum of Law; denying as moot 47 Defendant Costa Del Mar, Inc.'s Motion for Leave to File Brief Reply in Support of Motion for**

		Enlargement of Time. Signed by Magistrate Judge James R. Klindt on 7/15/2019. (KAW) (Entered: 07/15/2019)
07/19/2019	53	RESPONSE in Opposition re 45 MOTION to Compel an Adequate Answer to Interrogatory No. 2 of Plaintiff's Second Set of Interrogatories filed by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit A, # 2 Exhibit B)(Holladay-Tobias, Sara) (Entered: 07/19/2019)
07/19/2019	54	RESPONSE to Motion re 44 MOTION for miscellaneous relief, specifically A Limited Extension of the Discovery Deadline for the Sole Purpose of Allowing Plaintiff to Seek Relief Related to Defendant's Untimely Production filed by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit 1) (Holladay-Tobias, Sara) (Entered: 07/19/2019)
07/22/2019	55	NOTICE of Filing Additional Evidence in Support of his 44 Motion for a Limited Extension of the Discovery Deadline by Troy Smith (Attachments: # 1 Exhibit)(Gropper, Michael). Modified on 7/23/2019 to edit text and docket entry relationship (JSG). (Entered: 07/22/2019)
08/02/2019	56	MOTION for summary judgment *and Incorporated Memorandum of Law* by Troy Smith. (Attachments: # 1 Exhibit, # 2 Exhibit, # 3 Exhibit, # 4 Exhibit)(Gropper, Michael) (Entered: 08/02/2019)
08/02/2019	57	MOTION to Strike *and Exclude the Testimony of Ian Ratner and Incorporated Memorandum of Law* by Troy Smith. (Attachments: # 1 Exhibit, # 2 Exhibit)(Gropper, Michael) Motions referred to Magistrate Judge James R. Klindt. (Entered: 08/02/2019)
08/02/2019	58	MOTION for summary judgment *with Incorporated Memorandum of Law* by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit 1: Rush Deposition Transcript, # 2 Exhibit 2: Ex. 12 to Rush Deposition, # 3 Exhibit 3: Ex. 10 to Smith Deposition, # 4 Exhibit 4: Ex. 36 to Hannah Deposition (Haney), # 5 Exhibit 5: Ex. 40 to Hannah Deposition (Haney), # 6 Exhibit 6: Ex. 45 to Hannah Deposition (Haney), # 7 Exhibit 7: Smith Deposition Transcript, # 8 Exhibit 8: Ritter Deposition Transcript, # 9 Exhibit 9: Rosenberg Deposition Transcript (Haney), # 10 Exhibit 10: Rush Deposition Transcript (Haney), # 11 Exhibit 11: Declaration of T. Hannah with Exhibits, # 12 Exhibit 12: Hannah Deposition Transcript (Haney), # 13 Exhibit 13: Morrisey Deposition Transcript (Haney), # 14 Exhibit 14: Ex. 140 to Rush Deposition (Haney), # 15 Exhibit 15: Owens Deposition Transcript (Haney), # 16 Exhibit 16: Costa's Responses to Second Interrogatories, # 17 Exhibit 17: Costa's Amended Responses to First Interrogatories, # 18 Exhibit 18: Perkinson Deposition Transcript (Haney), # 19 Exhibit 19: Ratner Deposition Transcript, # 20 Exhibit 20: Expert Report of I. Ratner) (Holladay-Tobias, Sara) (Entered: 08/02/2019)
08/16/2019	59	MEMORANDUM in opposition re 40 Motion to Certify Class *with Incorporated Memorandum of Law* filed by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit 1: Rush Deposition Transcript, # 2 Exhibit 2: Ex. 12 to Rush Deposition, # 3 Exhibit 3: Ex. 10 to Smith Deposition, # 4 Exhibit 4: Ex. 36 to Hannah Deposition (Haney), # 5 Exhibit 5: Ex. 40 to Hannah Deposition (Haney), # 6 Exhibit 6: Ex. 45 to Hannah Deposition (Haney), # 7 Exhibit 7: Declaration of T. Hannah with Exhibits, # 8 Exhibit 8: Hannah Deposition Transcript, # 9 Exhibit 9: Morrisey Deposition Transcript, # 10 Exhibit 10: Rush Deposition Transcript (Haney), # 11 Exhibit 11: Ex. 140 to Rush (Haney) Deposition, # 12 Exhibit 12: Owens Deposition Transcript, # 13 Exhibit 13: Declaration of T. Owens, # 14 Exhibit A to Owens Declaration, # 15 Exhibit B to Owens Declaratoin, # 16 Exhibit C to Owens Declaration, # 17 Exhibit D to Owens Declaration, # 18 Exhibit E to Owens Declaration, # 19 Exhibit F Owens Declaration, # 20 Exhibit G to Owens Declaration, # 21 Exhibit H to Owens Declaration, # 22 Exhibit I to Owens Declaration, # 23 Exhibit 14: Declarations of Certain Retailers, # 24 Exhibit 15: Smith Deposition Transcript, # 25 Exhibit 16: Ritter Deposition Transcript, # 26 Exhibit 17: Rosenberg Deposition Transcript, # 27 Exhibit 18: Perkinson Deposition Transcript, # 28 Exhibit 19: Costa's Amended Responses to First Interrogatories, # 29 Exhibit 20: Ratner Deposition Transcript, # 30 Exhibit 21: Email from L. Renstrom, # 31 Exhibit 22: Plaintiff's Proposed Class Certification Order in Haney, # 32 Exhibit 23: Declaration of J. Sanchez with Exhibits, # 33 Exhibit 24: Chart of Consumer-Reported Purchase Year Inaccuracies, # 34 Exhibit 25: Chart of 50 States' Statutes of Limitations, # 35 Exhibit 26: Haney Deposition Transcript, # 36 Exhibit 27: T. Smith LinkedIn Page) (Holladay-Tobias, Sara) (Entered: 08/16/2019)

08/20/2019	60	MOTION for leave to file A Reply in Support of Plaintiff's Motion for Class Certification by Troy Smith. (Gropper, Michael) (Entered: 08/20/2019)
08/21/2019	61	RESPONSE in Opposition re 60 MOTION for leave to file A Reply in Support of Plaintiff's Motion for Class Certification filed by Costa Del Mar, Inc.. (Rottmann, Emily) (Entered: 08/21/2019)
08/22/2019	62	**ENDORSED ORDER granting 60 Plaintiff's Motion for Leave to File a Reply in Support of His Motion for Class Certification. Plaintiff may file a reply of no more than 10 pages by 9/5/19. Defendant may file a sur-reply of no more than 10 pages, if it chooses, by 9/19/19. Signed by Judge Timothy J. Corrigan on 8/22/2019. (SEJ)** (Entered: 08/22/2019)
08/23/2019	63	MEMORANDUM in opposition re 57 Motion to Strike filed by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit 1: Ratner Deposition Transcript, # 2 Exhibit 2: Expert Report of Ian Ratner, # 3 Exhibit 3: Rush Deposition Transcript, # 4 Exhibit 4: Chart of 50 States' Statutes of Limitations, # 5 Exhibit 5: Smith Deposition Transcript, # 6 Exhibit 6: Excerpts of Ex. 1 to Ratner Deposition, # 7 Exhibit 7: Declaration of J. Sanchez with Exhibits, # 8 Exhibit 8: Chart of Consumer-Reported Purchase Year Inaccuracies, # 9 Exhibit 9: Ritter Deposition Transcript, # 10 Exhibit 10: Rosenberg Deposition Transcript)(Holladay-Tobias, Sara) (Entered: 08/23/2019)
08/23/2019	64	MEMORANDUM in opposition re 56 Motion for summary judgment *with Incorporated Memorandum of Law* filed by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit 1: Rush Deposition Transcript, # 2 Exhibit 2: Ex. 12 to Rush Deposition, # 3 Exhibit 3: Ex. 10 to Smith Deposition, # 4 Exhibit 4: Ex. 36 to Hannah Deposition (Haney), # 5 Exhibit 5: Ex. 40 to Hannah Deposition (Haney), # 6 Exhibit 6: Ex. 45 to Hannah Deposition (Haney), # 7 Exhibit 7: Declaration of T. Hannah with Exhibits, # 8 Exhibit 8: Rush Deposition Transcript (Haney), # 9 Exhibit 9: Ex. 140 to Rush Deposition (Haney), # 10 Exhibit 10: Owens Deposition Transcript (Haney), # 11 Exhibit 11: Hannah Deposition Transcript (Haney), # 12 Exhibit 12: Morrisey Deposition Transcript (Haney), # 13 Exhibit 13: Declaration of T. Owens, # 14 Exhibit A to Owens Declaration, # 15 Exhibit B to Owens Declaratoin, # 16 Exhibit C to Owens Declaration, # 17 Exhibit D to Owens Declaration, # 18 Exhibit E to Owens Declaration, # 19 Exhibit F Owens Declaration, # 20 Exhibit G to Owens Declaration, # 21 Exhibit H to Owens Declaration, # 22 Exhibit I to Owens Declaration, # 23 Exhibit 14: Declarations of Certain Costa Retailers, # 24 Exhibit 15: Costa's Amended Responses to First Interrogatories, # 25 Exhibit 16: Perkinson Deposition Transcript (Haney), # 26 Exhibit 17: Smith Deposition Transcript, # 27 Exhibit 18: Ritter Deposition Transcript, # 28 Exhibit 19: Excerpt of Plaintiff's Proposed Class Certification Order (Haney), # 29 Exhibit 20: MacDonald Deposition Transcript (Haney), # 30 Exhibit 21: Ratner Deposition Transcript)(Holladay-Tobias, Sara) (Entered: 08/23/2019)
08/23/2019	65	RESPONSE in Opposition re 58 MOTION for summary judgment *with Incorporated Memorandum of Law* filed by Troy Smith. (Attachments: # 1 Exhibit Exhibit 1)(Gropper, Michael) (Entered: 08/23/2019)
08/23/2019	66	REQUEST for oral argument re 56 Motion for summary judgment and 58 Motion for summary judgment by Troy Smith (Gropper, Michael). Modified on 8/26/2019 to create docket entry relationship (JSG). (Entered: 08/23/2019)
09/05/2019	67	REPLY to Response to Motion re 40 MOTION to Certify Class filed by Troy Smith. (Attachments: # 1 Exhibit Exhibit 1, # 2 Exhibit Exhibit 2 - Slipsheet, # 3 Exhibit Exhibit 3 - Slipsheet, # 4 Exhibit Exhibit 4, # 5 Exhibit Exhibit 5, # 6 Exhibit Exhibit 6 - Slipsheet, # 7 Exhibit Exhibit 7)(Hargitai, Peter) (Entered: 09/05/2019)
09/05/2019	68	**ORDER Setting Hearing for 9/13/2019 at 10:00 AM in Jacksonville Courtroom 5 D before Magistrate Judge James R. Klindt re 44 Plaintiff's Motion for a Limited Extension of the Discovery Deadline for the Sole Purpose of Allowing Plaintiff to Seek Relief Related to Defendant's Untimely Production and 45 Plaintiff's Motion to Compel an Adequate Answer to Interrogatory No. 2 of Plaintiff's Second Set of Interrogatories. Counsel of record most familiar with the Motions shall personally appear. Prior to the hearing, but no later than 5:00 p.m. on 9/11/2019, the parties shall file a joint notice advising the Court of the issues that remain unresolved and setting out a brief summary of each party's respective position regarding the**

		unresolved issues. The parties shall confer either in person or via telephone prior to the preparation of the joint notice. If the parties resolve all of the matters at issue and so advise the Court, the hearing will automatically cancel. SEE ORDER FOR DETAILS. Signed by Magistrate Judge James R. Klindt on 9/5/2019. (MDC) (Entered: 09/05/2019)
09/06/2019	69	NOTICE *of Filing Exhibits 2, 3 and 6 to His Reply in Support of His Motion for Class Certification* by Troy Smith re 67 Reply to Response to Motion (Attachments: # 1 Exhibit Costa(Howland)16239-16240, # 2 Exhibit Costa(Howland)006819-006825, # 3 Exhibit Fontenot Exhibit 62)(Renstrom, Laura) Modified to edit text on 9/9/2019 (KKH). (Entered: 09/06/2019)
09/11/2019	70	JOINT NOTICE by Troy Smith re 68 Order Setting Hearing on Motion (Gropper, Michael). Modified on 9/12/2019 to edit text (JSG). (Entered: 09/11/2019)
09/12/2019	71	**ORDER regarding 70 Joint Notice; deeming moot and terminating 44 Plaintiff's Motion for a Limited Extension of the Discovery Deadline for the Sole Purpose of Allowing Plaintiff to Seek Relief Related to Defendant's Untimely Production and 45 Plaintiff's Motion to Compel an Adequate Answer to Interrogatory No. 2 of Plaintiff's Second Set of Interrogatories; cancelling hearing set for 9/13/2019 at 10:00 a.m. Signed by Magistrate Judge James R. Klindt on 9/12/2019. (KAW)** (Entered: 09/12/2019)
09/19/2019	72	SUR-REPLY in Opposition re 40 MOTION to Certify Class *with Incorporated Memorandum of Law* filed by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit 1: Rush Deposition Transcript, # 2 Exhibit 2: Fontenot Deposition Transcript, # 3 Exhibit 3: Smith Deposition Transcript)(Holladay-Tobias, Sara) Modified to edit text on 12/12/2019 (KKH). (Entered: 09/19/2019)
10/30/2019	73	**ORDER vacating remaining deadlines and settings in the Case Management and Scheduling Order 6; setting case for status conference on 12/13/2019 at 2:30 p.m., Courtroom 10D. Signed by Judge Timothy J. Corrigan on 10/30/2019. (SRW)** (Entered: 10/30/2019)
11/19/2019	74	NOTICE OF RESCHEDULING HEARING (AS TO TIME ONLY): The 12/13/19 hearing is rescheduled. New hearing time: 3:00 PM. (SEJ) (Entered: 11/19/2019)
12/13/2019	75	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: Status Conference held on 12/13/2019. Court Reporter: Shannon Bishop. (MD) (Entered: 12/13/2019)
12/13/2019	76	NOTICE of hearing: Hearing on all pending motions set for 2/21/2020 at 10:00 AM in Courtroom 10 D before Judge Timothy J. Corrigan. (MD) (Entered: 12/13/2019)
02/04/2020	77	**ORDER with information for the parties, directing the parties to file any pleadings in response no later than 02/11/2020. Signed by Judge Timothy J. Corrigan on 2/4/2020. (TNM)** (Entered: 02/04/2020)
02/04/2020	78	Joint NOTICE Pursuant to Court Order 77 by Troy Smith (Gropper, Michael) Modified to edit text on 2/5/2020 (KKH). (Entered: 02/04/2020)
02/12/2020	79	NOTICE of settlement *and Request to Convert February 21, 2020 Hearing to a Status Conference* by Troy Smith (Gropper, Michael) (Entered: 02/12/2020)
02/12/2020	80	**ORDER re 79 Notice of Settlement, vacating all deadlines and settings in this case and converting hearing on pending motions set for 2/21/2020 at 10:00 A.M. to a status hearing to discuss settlement and corresponding deadlines. Signed by Judge Timothy J. Corrigan on 2/12/2020. (TNM)** (Entered: 02/12/2020)
02/21/2020	81	AMENDED MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: STATUS CONFERENCE held on 2/21/2020. Amended Complaint and Joint Motion for Preliminary Approval of Class Action Settlement due by 3/9/2020. Court Reporter: Shannon Bishop. Modified on 8/13/2020 to correct names of counsel (MD). (Entered: 02/24/2020)
02/25/2020	82	Unopposed MOTION to Amend 1 Complaint by Troy Smith. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3)(Hargitai, Peter) Motions referred to Magistrate Judge James R. Klindt. (Entered: 02/25/2020)

02/28/2020	83	**ORDER granting 82 Unopposed Motion to Amend Complaint and directing the Clerk to file Amended Class Action Complaint. Signed by Judge Timothy J. Corrigan on 2/28/2020. (TNM)** (Entered: 02/28/2020)
03/02/2020	84	AMENDED COMPLAINT against Costa Del Mar, Inc. with Jury Demand. filed by Troy Smith, Brendan C. Haney, Gerald E. Reed, IV.(KKH) (Entered: 03/02/2020)
03/09/2020	85	Unopposed MOTION for Extension of Time to File Joint Motion for Preliminary Approval of Class Action Settlement by Costa Del Mar, Inc.. (Holladay-Tobias, Sara) (Entered: 03/09/2020)
03/10/2020	86	**ORDER granting 85 Defendant's Unopposed Motion to Extend Settlement Deadlines. The parties must submit a Joint Motion for Preliminary Approval not later than 4/10/2020. Signed by Judge Timothy J. Corrigan on 3/10/2020. (TNM)** (Entered: 03/10/2020)
03/23/2020	87	NOTICE Joint Submission of Proposed Dates by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Hargitai, Peter) Modified to edit text on 3/23/2020 (KKH). (Entered: 03/23/2020)
04/10/2020	88	Unopposed MOTION for Miscellaneous Relief, specifically to Extend Settlement Deadlines by Costa Del Mar, Inc.. (Attachments: # 1 Exhibit)(Holladay-Tobias, Sara) (Entered: 04/10/2020)
04/10/2020	89	**ENDORSED ORDER granting 88 the Unopposed Motion to Extend Settlement Deadlines and extending the deadline for parties to file a Joint Motion for Preliminary Approval of Class Action Settlement to 5/1/2020. Signed by Judge Timothy J. Corrigan on 4/10/2020. (TNM)** (Entered: 04/10/2020)
05/01/2020	90	JOINT SUBMISSION of Proposed Dates by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Hargitai, Peter). Modified on 5/4/2020 to edit text (JSG). (Entered: 05/01/2020)
05/01/2020	91	Unopposed MOTION for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, Approval of Notice to Settlement Class, and Incorporated Memorandum of Law by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Attachments: # 1 Exhibit 1 - Settlement Agreement, # 2 Exhibit 2 - Hargitai Declaration, # 3 Exhibit 3 - Preliminary Approval Order, # 4 Exhibit 4 - Azari Declaration, # 5 Exhibit 5 - Owens Declaration, # 6 Exhibit 6 - Notices)(Hargitai, Peter). Modified on 5/4/2020 to edit text (JSG). (Entered: 05/01/2020)
05/04/2020	92	JOINT NOTICE re 91 Unopposed MOTION for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, Approval of Notice to Settlement Class, and Incorporated Memorandum of Law by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Hargitai, Peter). Modified on 5/5/2020 to edit text (JSG). (Entered: 05/04/2020)
06/18/2020	93	**ORDER setting hearing on 91 the parties' Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of Class, Approval of Notice to Settlement Class, and Incorporated Memorandum of Law for 7/17/2020 at 10:00 AM in Jacksonville Courtroom 10D before Judge Timothy J. Corrigan. See Order for details. Signed by Judge Timothy J. Corrigan on 6/18/2020. (TNM)** (Entered: 06/18/2020)
06/22/2020	94	NOTICE of Filing Declaration of Stephanie J. Fiereck, Esq. on Implementation of CAFA Notice by Costa Del Mar, Inc. (Attachments: # 1 Exhibit A - Declaration of Stephanie J. Fiereck, Esq.)(Holladay-Tobias, Sara) Modified to edit text on 6/23/2020 (KKH). (Entered: 06/22/2020)
07/07/2020	95	NOTICE CONVERTING HEARING. The in-person hearing scheduled for 7/17/2020 at 10:00 a.m. will now take place by ZOOM VIDEOCONFERENCE HEARING at the same date and time. See Notice for details. (TNM) (Entered: 07/07/2020)
07/13/2020	96	NOTICE of Filing Redacted Declaration of Stefan Boedeker in Support re 91 Unopposed MOTION for Preliminary Approval of Class Action Settlement by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit A)(Hargitai, Peter) Modified to edit text on 7/14/2020 (KKH). (Entered: 07/13/2020)
07/17/2020	97	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: ZOOM MOTION HEARING held on 7/17/2020 re: 91 Plaintiffs' Unopposed Motion for Preliminary Approval of Class

		Action Settlement, Certification of Settlement Class, Approval of Notice to Settlement Class. Submissions from the parties due by 8/14/2020. Court Reporter: Shannon Bishop. (MD) (Entered: 07/17/2020)
08/14/2020	98	Joint NOTICE of Filing Amended and Restated Settlement Agreement by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith re 91 Unopposed MOTION for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, Approval of Notice to Settlement Class, and Incorporated Memorandum of Law (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5, # 6 Exhibit 6)(Hargitai, Peter) Modified to edit text on 8/17/2020 (KKH). (Entered: 08/14/2020)
08/14/2020	99	SUPPLEMENT re 91 Unopposed MOTION for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, Approval of Notice to Settlement Class, and Incorporated Memorandum of Law by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) (Entered: 08/14/2020)
08/26/2020	100	NOTICE OF TELEPHONE HEARING: Telephone hearing regarding [98-1] the parties' Amended and Restated Settlement Agreement and 99 Plaintiffs' Supplement to Motion for Preliminary Approval of Class Action Settlement set for 9/1/2020 at 4:00 PM before Judge Timothy J. Corrigan. See Notice for details. (TNM) (Entered: 08/26/2020)
09/01/2020	101	MINUTE ENTRY. Proceedings held before Judge Timothy J. Corrigan: Telephone hearing re: [98-1] Amended and Restated Settlement Agreement and 99 Plaintiffs' Supplement to Motion for Preliminary Approval of Class Action Settlement Regarding 28 U.S.C. Sect. 1712 held on 9/1/2020. Court Reporter: Shannon Bishop. (MD) (Entered: 09/02/2020)
09/03/2020	102	**PRELIMINARY APPROVAL ORDER: Granting 91 the Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Notice to Settlement Class. The Final Fairness Hearing shall be held on 4/20/2021 at 2:00 PM in Courtroom 10D of the Bryan Simpson U.S. Courthouse, 300 North Hogan Street, Jacksonville, FL 32202. See Order for details and deadlines. Signed by Judge Timothy J. Corrigan on 9/3/2020. (TNM)** (Entered: 09/03/2020)
09/24/2020	103	**ORDER directing the parties to file a joint statement no later than 10/8/2020 regarding the impact of a recent Eleventh Circuit decision on [98-1] the Amended and Restated Settlement Agreement and 102 the Preliminary Approval Order. See Order for details. Signed by Judge Timothy J. Corrigan on 9/24/2020. (TNM)** (Entered: 09/24/2020)
10/08/2020	104	Joint NOTICE Regarding the Parties' Amended and Restated Settlement Agreement and the court's Preliminary Approval Order by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith re 103 Order pdf (Attachments: # 1 Exhibit 1)(Hargitai, Peter) (Modified on 10/9/2020 to edit docket text) (JDR). (Entered: 10/08/2020)
10/08/2020	105	OBJECTION to the proposed class action settlement re 98 Joint NOTICE of filing Amended and Restated Settlement Agreement. (Attachments: # 1 Mailing Envelope)(JDR) (Entered: 10/14/2020)
10/29/2020	106	**ORDER directing the parties to notify the Court as to whether the schedule in this case meets the applicable requirements no later than 11/13/2020. The parties should also file copies of both the long and short form notices that were disseminated. See Order for details. Signed by Judge Timothy J. Corrigan on 10/29/2020. (TNM)** (Entered: 10/29/2020)
11/02/2020	107	Second Joint NOTICE Regarding the Parties' Amended and Restated Settlement Agreement and the Court's Preliminary Approval Order by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith re 106 Order pdf (Attachments: # 1 Exhibit 1, # 2 Exhibit 2)(Hargitai, Peter) Modified to edit text on 11/3/2020 (KKH). (Entered: 11/02/2020)
11/06/2020	108	**ORDER granting the parties' request to change the attorneys' fees motion deadline, pursuant to 107 the parties' Second Joint Notice, and setting the new attorneys' fees motion deadline as 2/8/2021. All other deadlines in 102 the Order Preliminarily Approving Settlement remain in**

		effect. See Order for details. Signed by Judge Timothy J. Corrigan on 11/6/2020. (TNM) (Entered: 11/06/2020)
02/08/2021	109	Unopposed MOTION for Attorney Fees *and Expenses and Conditional Request for Incentive Awards to Class Representatives* by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4)(Hargitai, Peter) Motions referred to Magistrate Judge James R. Klindt. (Entered: 02/08/2021)
03/01/2021	110	NOTICE of Appearance by Bradley Graham Bodiford on behalf of Valls Austin (Bodiford, Bradley) (Entered: 03/01/2021)
03/01/2021	111	NOTICE of Filing the Declaration of Cameron Azari, Esq. on Implementation of Settlement Notice Plan by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Attachments: # 1 Exhibit 1 - Azari Notice Implementation Declaration)(Hargitai, Peter) Modified to edit text on 3/2/2021 (KKH). (Entered: 03/01/2021)
03/01/2021	112	OBJECTION to Proposed Settlement re 102 Order on Motion for Miscellaneous Relief. (Davis, John) Modified to edit text on 3/2/2021 (KKH). (Entered: 03/01/2021)
03/01/2021	113	DECLARATION of John W. Davis in Support re 112 Objection by John W Davis. (Attachments: # 1 Exhibit 1, # 2 Exhibit 2, # 3 Exhibit 3, # 4 Exhibit 4, # 5 Exhibit 5)(Davis, John) Modified to edit text on 3/2/2021 (KKH). (Entered: 03/01/2021)
03/01/2021	114	OBJECTION re 109 Unopposed MOTION for Attorney Fees *and Expenses and Conditional Request for Incentive Awards to Class Representatives Objections to Evidence*. (Davis, John) (Entered: 03/01/2021)
03/01/2021	115	OBJECTION of Austin Valls and NOTICE of Intention to Appear at the Fairness Hearing Through Counsel re 102 Order on Motion for Miscellaneous Relief .(Attachments: # 1 Exhibit Declaration)(Bodiford, Bradley) Modified to edit text on 3/2/2021 (KKH). (Entered: 03/01/2021)
03/01/2021	116	NOTICE of Appearance by Sam Andrew Miorelli on behalf of Mitchell George Miorelli (Miorelli, Sam) (Entered: 03/01/2021)
03/01/2021	117	OBJECTION to Class Action Settlement re 102 Order on Motion for Miscellaneous Relief . (Attachments: # 1 Exhibit 1 - Declaration of Mitchell George Miorelli, P.E., # 2 Exhibit 2 - Declaration of Deborah McComb RE Settlement Claims, filed as Docket Entry 156 in Joshua D. Poertner v. The Gilette Co. & The Procter & Gamble Co., Case No. 6:12-CV-00803- GAP-DAB, Apr. 22, 2014 (M.D. Fla.), # 3 Exhibit 3 - Costa Shipping and Returns Policy as of Feb. 26, 2021, # 4 Exhibit 4 - Costa Online Store Listings for Sunglasses as of Feb. 26, 2021, # 5 Exhibit 5 - Internet Wayback Machine Snapshot of http://www.costadelmar.com as of Nov. 28, 2020)(Miorelli, Sam) Modified to edit text on 3/2/2021 (KKH). (Entered: 03/01/2021)
03/01/2021	118	MOTION to Strike 109 Unopposed MOTION for Attorney Fees *and Expenses and Conditional Request for Incentive Awards to Class Representatives Exhibit 1 - Declaration of Thomas E. Scott* by Mitchell George Miorelli. (Miorelli, Sam) Motions referred to Magistrate Judge James R. Klindt. (Entered: 03/01/2021)
03/04/2021	119	Unopposed MOTION for Mikell West to appear pro hac vice, Special Admission fee paid, Receipt No. 113A-17962325 for $150 by Valls Austin. (Bodiford, Bradley) Motions referred to Magistrate Judge James R. Klindt. (Entered: 03/04/2021)
03/04/2021	120	Unopposed MOTION for Robert W. Clore to appear pro hac vice, Special Admission fee paid, Receipt No. 113A-17962889 for $150 by Valls Austin. (Attachments: # 1 Exhibit)(Bodiford, Bradley) Motions referred to Magistrate Judge James R. Klindt. (Entered: 03/04/2021)
03/05/2021	121	**ORDER granting 119 and 120 Unopposed Motions for Pro Hac Vice Admission of Attorneys Mikell West and Robert Clore. Mikell West and Robert Clore are permitted to appear pro hac vice on behalf of Objector Austin Valls. Mr. West and Mr. Clore shall expeditiously ensure mandatory registration with the Court's electronic case filing (ECF) system, if they have not**

		already done so. Signed by Magistrate Judge James R. Klindt on 3/5/2021.(MDC) (Entered: 03/05/2021)
03/07/2021	122	Unopposed MOTION to File Excess Pages and Consolidated Response to Objections re 112 re 115 re 117 by All Plaintiffs. (Renstrom, Laura) Modified to create docket entry relationships on 3/8/2021 (KKH). (Entered: 03/07/2021)
03/08/2021		PRO HAC VICE FEES paid by attorney Eric Alan Isaacson, appearing on behalf of John W Davis (Filing fee $150 receipt number JAX034471.). (LAB) (Entered: 03/08/2021)
03/08/2021	123	**ENDORSED ORDER granting 122 Plaintiffs' Unopposed Motion to File Consolidated Response of 35 Pages to Objections. Plaintiffs may file a consolidated response of thirty-five (35) pages in response to 112, 115, and 117, the objections of John W. Davis, Mitchell George Miorelli, and Austin Valls, by 3/16/2021, the deadline provided in 102 the Preliminary Approval Order. Signed by Judge Timothy J. Corrigan on 3/8/2021. (TNM)** (Entered: 03/08/2021)
03/08/2021	127	MOTION for Eric Alan Isaacson to appear pro hac vice by John W Davis. (KKH) Motions referred to Magistrate Judge James R. Klindt. (Entered: 03/15/2021)
03/09/2021	124	Unopposed MOTION for Extension of Time to File Their Motion for Final Approval of Settlement and Response to Objections by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) Motions referred to Magistrate Judge James R. Klindt. (Entered: 03/09/2021)
03/10/2021	125	NOTICE of Filing of Supplemental Declaration by Austin Valls (Attachments: # 1 Exhibit)(Clore, Robert) (Modified on 3/11/2021 to edit docket text) (JDR). (Entered: 03/10/2021)
03/10/2021	126	**ENDORSED ORDER granting 124 Plaintiffs' Unopposed Motion for Extension of Time to File Their Motion for Final Approval of Settlement and Response to Objections. Plaintiffs may file the motion for final approval of the settlement and the response to objections no later than 3/19/2021. Signed by Judge Timothy J. Corrigan on 3/10/2021. (TNM)** (Entered: 03/10/2021)
03/17/2021	128	**ORDER granting 127 Unopposed Motion for Special Admission of Eric Alan Isaacson to Appear Pro Hac Vice for Objector John W. Davis. Eric Alan Isaacson is permitted to appear pro hac vice on behalf of Objector John W. Davis. Mr. Isaacson shall expeditiously ensure mandatory registration with the Court's electronic case filing (ECF) system, if he has not already done so. Signed by Magistrate Judge James R. Klindt on 3/17/2021. (MDC)** (Entered: 03/17/2021)
03/18/2021	129	Unopposed MOTION for Extension of Time to File Consolidated Response to Objector Miorelli's Motion to Strike Or Exclude the Declaration of Thomas Scott and Objector Davis' Objections to Evidence by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) Motions referred to Magistrate Judge James R. Klindt. (Entered: 03/18/2021)
03/18/2021	130	**ENDORSED ORDER granting 129 Plaintiffs' Unopposed Motion for Extension of Time to File Consolidated Response to Objector Miorelli's Motion to Strike or Exclude the Declaration of Thomas Scott and Objector Davis' Objections to Evidence. Plaintiffs may file the response to Miorelli's Motion to Strike and to Davis' Objections to Evidence no later than 3/26/2021. Signed by Judge Timothy J. Corrigan on 3/18/2021. (SRW)** (Entered: 03/18/2021)
03/19/2021	131	NOTICE of Filing the Second Supplemental Declaration of Peter Hargitai by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Attachments: # 1 Exhibit Second Supplemental Declaration of Peter Hargitai)(Hargitai, Peter) Modified to edit text on 3/22/2021 (KKH). (Entered: 03/19/2021)
03/19/2021	132	NOTICE of Filing the Declaration of Barry Richard, Esq. by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Attachments: # 1 Exhibit Declaration of Barry Richard, Esq.)(Hargitai, Peter) Modified to edit text on 3/22/2021 (KKH). (Entered: 03/19/2021)
03/19/2021	133	SUPPLEMENT re 109 Unopposed MOTION for Attorney Fees *and Expenses and Conditional Request for Incentive Awards to Class Representatives* by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) (Entered: 03/19/2021)

03/19/2021	134	RESPONSE re 117 Objection, 112 Objection, 115 Objection *Filed by John W. Davis, Mitchell George Miorelli and Austin Valls* filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit 1 Edelson v. Bandas Complaint, # 2 Exhibit 2 Cole Order, # 3 Exhibit 3 Brown v. WalMart Order, # 4 Exhibit 4 Notorious Serial Objector, # 5 Exhibit 5 Bandas Firm Order, # 6 Exhibit 6 Davenport Order, # 7 Exhibit 7 Chambers Withdrawal of Bowes' Objection, # 8 Exhibit 8 McMeniman Dec, # 9 Exhibit 9 Judge Hoyt Order, # 10 Exhibit 10 Terry Dec, # 11 Exhibit 11 Sternberg Dec, # 12 Exhibit 12 Costa Dec)(Hargitai, Peter) (Entered: 03/19/2021)
03/19/2021	135	MOTION for Settlement *Final Approval of Class Action Settlement and Incorporated Memorandum of Law* by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit A - White Dec, # 2 Exhibit B - Sternberg Dec, # 3 Exhibit C - McMeniman Dec, # 4 Exhibit D - Morrisey, # 5 Exhibit E - Exclusions, # 6 Exhibit F - Objections)(Hargitai, Peter) (Entered: 03/19/2021)
03/19/2021	136	NOTICE of Filing of Supplemental Exhibit re 120 by Austin Valls (Attachments: # 1 Exhibit)(Clore, Robert) Modified to edit text and create docket entry relationship on 3/22/2021 (KKH). (Entered: 03/19/2021)
03/25/2021	137	RESPONSE re 118 MOTION to Strike and 114 Objection filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) Modified to edit text on 3/26/2021 (KKH). (Entered: 03/25/2021)
04/05/2021	138	MOTION for Eric Alan Isaacson to appear telephonically *at April 20, 2021 fairness hearing,* by John W Davis. (Isaacson, Eric) Motions referred to Magistrate Judge James R. Klindt. (Entered: 04/05/2021)
04/06/2021	139	RESPONSE to Motion re 138 MOTION for Eric Alan Isaacson to appear telephonically *at April 20, 2021 fairness hearing,* filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit April 1, 2021 Email Exchange, # 2 Exhibit April 1, 2021 Email Exchange, # 3 Exhibit April 2, 2021 Email Exchange)(Gropper, Michael) (Entered: 04/06/2021)
04/06/2021	140	**ENDORSED ORDER granting 138 Objector John W. Davis's motion for Eric Alan Isaacson to appear telephonically at the 4/20/2021 fairness hearing. Given the ongoing COVID-19 pandemic, Mr. Isaacson may appear telephonically at the final fairness hearing scheduled for 4/20/2021 at 2:00 PM. The conference line will be activated at 1:50 PM so the hearing may start promptly at 2:00 PM. The Courtroom Deputy will email the call-in information to Mr. Isaacson using the email address listed on the Court's docket for this case. High quality audio is imperative for telephonic appearances. To reduce background noise and interference, callers should not use the speaker function during the call, and if at all possible, callers should use a landline instead of a cell phone or a computer. Callers must put their phones on mute when not speaking, and callers must identify themselves when speaking so the court reporter can accurately report the proceedings. Signed by Judge Timothy J. Corrigan on 4/6/2021. (TNM)** (Entered: 04/06/2021)
04/12/2021	141	MOTION to Strike Class Counsels' Supplemental Fee Motion in Violation of Rule 23(h); or Alternatively, Motion for Leave to File Response by Austin Valls. (Attachments: # 1 Exhibit Proposed Response)(Clore, Robert) Motions referred to Magistrate Judge James R. Klindt. Modified to edit text on 4/13/2021 (KKH). (Entered: 04/12/2021)
04/13/2021	142	RESPONSE to Motion re 141 MOTION to Strike Class Counsels' Supplemental Fee Motion in Violation of Rule 23(h); or Alternatively, Motion for Leave to File Response filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Gropper, Michael) Modified to edit text on 4/14/2021 (KKH). (Entered: 04/13/2021)
04/16/2021	143	**ORDER granting in part and denying in part 141 Objector Austin Valls's Motion to Strike Class Counsel's Supplemental Fee Motion in Violation of Rule 23(h); or Alternatively, Motion for Leave to File Response. The Court declines to strike class counsel's supplemental filings. The Clerk shall file [141-1] Mr. Valls's Response as a separate document. See Order for details. Signed by Judge Timothy J. Corrigan on 4/16/2021. (TNM)** (Entered: 04/16/2021)

04/19/2021	144	RESPONSE to re 133 Supplement to Class Counsel's "Unopposed" Motion for Attorneys' Fees and expenses filed by Austin Valls. (KKH) (Entered: 04/19/2021)
04/20/2021	145	MINUTE ENTRY. In Person Proceedings held before Judge Timothy J. Corrigan: Final Fairness Hearing held on 4/20/2021. Court Reporter: Shannon Bishop. (MD) (Entered: 04/21/2021)
04/23/2021	146	TRANSCRIPT of Final Fairness Hearing held on April 20, 2021 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com,Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter.. Redaction Request due 5/14/2021 Redacted Transcript Deadline set for 5/24/2021 Release of Transcript Restriction set for 7/22/2021. (SB) (Entered: 04/23/2021)
04/23/2021	147	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Shannon Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com. (SB) (Entered: 04/23/2021)
06/03/2021	148	NOTICE of supplemental authority re 117 Objection by Mitchell George Miorelli. (Miorelli, Sam) (Entered: 06/03/2021)
06/06/2021	149	NOTICE of supplemental authority re 135 MOTION for Settlement *Final Approval of Class Action Settlement and Incorporated Memorandum of Law*, 109 Unopposed MOTION for Attorney Fees *and Expenses and Conditional Request for Incentive Awards to Class Representatives*, 133 Supplement *to Class Counsel's Unopposed Motion for Attorneys' Fees and Expenses* by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit In re Equifax Inc Customer Data Security Breach Litigation (11th Cir. June 3, 2021))(Gropper, Michael) (Entered: 06/06/2021)
06/09/2021	150	NOTICE of supplemental authority re 135 MOTION for Settlement *Final Approval of Class Action Settlement and Incorporated Memorandum of Law*, 109 Unopposed MOTION for Attorney Fees *and Expenses and Conditional Request for Incentive Awards to Class Representatives*, 133 Supplement *to Class Counsel's Unopposed Motion for Attorneys' Fees and Expenses* by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit Fruitstone v. Spartan Race, Inc., 2021 WL 2012362 (S.D. Fla. May 20, 2021))(Gropper, Michael) (Entered: 06/09/2021)
09/21/2021	151	**ORDER granting in part, deferring in part, and denying in part 109 Class Counsel's Unopposed Motion for Attorneys' Fees and Expenses and Conditional Request for Incentive Awards to Class Representatives; granting in part, deferring in part, and denying in part 135 Plaintiffs' Motion for Final Approval of Class Action Settlement; denying 118 Objector Mitchell George Miorelli's Motion to Strike or Exclude Declaration of Thomas Scott; and directing the parties to file additional briefing as instructed in Order no later than 10/20/2021. If they so choose, Objectors may respond to additional briefing no later than 11/10/2021. The final order will be entered after the Court receives additional briefing. See Order for details. Signed by Judge Timothy J. Corrigan on 9/21/2021. (TNM)** (Entered: 09/21/2021)
10/05/2021	152	MOTION for Attorney Fees and Conditional Objector Incentive Award by Austin Valls. (Clore, Robert) Motions referred to Magistrate Judge James R. Klindt. Modified to edit text on 10/6/2021 (KKH). (Entered: 10/05/2021)
10/05/2021	153	MOTION for Attorney Fees *and Costs* by Mitchell George Miorelli. (Miorelli, Sam) Motions referred to Magistrate Judge James R. Klindt. (Entered: 10/05/2021)

10/12/2021	154	Unopposed MOTION for Extension of Time to Respond to the Objectors' Motions for Attorneys' Fees and Expenses Doc 152 and Doc 153 by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) Motions referred to Magistrate Judge James R. Klindt. Modified to edit text and create docket entry relationships on 10/13/2021 (KKH). (Entered: 10/12/2021)
10/15/2021	155	**ENDORSED ORDER re 154 Plaintiffs' Unopposed Motion for Extension of Time to Respond to the Objectors' Motions for Attorneys' Fees and Expenses. Plaintiffs' response(s) to 152 Objector Austin Valls' Motion for Attorneys' Fees and 153 Objector Mitchell George Miorelli's Motion for Attorneys' Fees is no longer due on 10/19/2021. The Court will set the schedule for consideration of Objectors' attorneys' fees motions in a subsequent order. Signed by Judge Timothy J. Corrigan on 10/15/2021. (TNM)** (Entered: 10/15/2021)
10/19/2021	156	**ENDORSED ORDER granting in part 154 Plaintiffs' Unopposed Motion for Extension of Time to Respond to the Objectors' Motions for Attorneys' Fees and Expenses. If Objector John W. Davis plans to file an attorneys' fees motion, he must do so no later than 11/3/2021. Plaintiffs shall respond to all objectors' attorneys' fees motions no later than 11/19/2021. Signed by Judge Timothy J. Corrigan on 10/19/2021. (TNM)** (Entered: 10/19/2021)
10/20/2021	157	Joint BRIEF on Increasing the Value of the Settlement to the Class by $4 Million re 151 Order on Motion filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Roberts, Joshua) Modified to edit text on 10/21/2021 (KKH). (Entered: 10/20/2021)
11/03/2021	158	MOTION for Attorney Fees by John W Davis. (Isaacson, Eric) Motions referred to Magistrate Judge James R. Klindt. (Entered: 11/03/2021)
11/03/2021	159	DECLARATION of Eric Alan Isaacson in Support of Objector John W. Davis's 158 Motion for an Award of Attorney's Fees by John W Davis. (Attachments: # 1 Exhibit Eric Alan Isaacson - short c.v., # 2 Exhibit Eric Alan Isaacson - long c.v.)(Isaacson, Eric) Motions referred to Magistrate Judge James R. Klindt. Modified to edit text and create docket entry relationship on 11/4/2021 (KKH). (Entered: 11/03/2021)
11/10/2021	160	RESPONSE re 157 Brief - Plaintiff *Joint Brief on Increasing the Value of the Settlement to the Class by $4 million* filed by Austin Valls. (Clore, Robert) (Entered: 11/10/2021)
11/10/2021	161	Unopposed MOTION for C. Benjamin Nutley to appear pro hac vice, Special Admission fee paid, Receipt No. AFLMDC-18916703 for $150 by John W Davis. (Isaacson, Eric) Motions referred to Magistrate Judge James R. Klindt. (Entered: 11/10/2021)
11/10/2021	162	RESPONSE re 157 Brief - Plaintiff *; Objector John W. Davis's Response Concerning Allocation of Unawarded Fees* filed by John W Davis. (Isaacson, Eric) (Entered: 11/10/2021)
11/10/2021	163	RESPONSE re 157 Brief - Plaintiff *RE: $4 MILLION ATTORNEYS FEE REDUCTION* filed by Mitchell George Miorelli. (Miorelli, Sam) (Entered: 11/10/2021)
11/12/2021	164	**ORDER granting 161 Unopposed Motion for C. Benjamin Nutley to Appear Pro Hac Vice; C. Benjamin Nutley is permitted to appear pro hac vice on behalf of Objector John W. Davis; Mr. Nutley shall expeditiously ensure mandatory registration with the Court's electronic case filing (ECF) system, if he has not already done so. Signed by Magistrate Judge James R. Klindt on 11/12/2021. (KAW)** (Entered: 11/12/2021)
11/15/2021	165	MOTION for Leave to File a Brief Amicus Curiae in Support of Distributing Propose Class Representatives' $30,000 Incentive Awards Along with This Court's Order Regarding Distribution of $4 Million from Reductions of Attorney's Fees. (KKH) (Entered: 11/15/2021)
11/16/2021	166	CASE Reassigned to Magistrate Judge Laura Lothman Lambert. New case number: 3:18-cv-1011-TJC-LLL. Magistrate Judge James R. Klindt no longer assigned to the case. Motion(s) REFERRED: 158 MOTION for Attorney Fees , 152 MOTION for Attorney Fees , 153 MOTION for Attorney Fees *and Costs*. Motion(s) referred to Magistrate Judge Laura Lothman Lambert. (LRB) (Entered: 11/16/2021)

11/19/2021	167	RESPONSE in Opposition re 158 MOTION for Attorney Fees, 152 MOTION for Attorney Fees, 153 MOTION for Attorney Fees and Costs filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit Isaacson timesheets)(Hargitai, Peter) Modified to edit text on 11/22/2021 (KKH). (Entered: 11/19/2021)
11/22/2021	168	RESPONSE in Opposition re 165 MOTION for Leave to File Amicus Brief filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) (Entered: 11/22/2021)
11/23/2021	169	NOTICE of Filing Certificate of Service by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith re 168 Response in Opposition to Motion (Attachments: # 1 Exhibit Exhibit A)(Hargitai, Peter) Modified to edit text on 11/23/2021 (KKH). (Entered: 11/23/2021)
11/23/2021	170	REPLY to 168 Response to Motion re 165 MOTION for Leave to File Amicus Brief. (KKH) (Entered: 11/23/2021)
11/29/2021	171	MOTION for Leave to File Other Document :Reply in Support of Motion for Attorneys' Fees and Conditional Objector Incentive Award by Austin Valls. (Clore, Robert) (Entered: 11/29/2021)
12/01/2021	172	RESPONSE in Opposition re 171 MOTION for Leave to File Other Document :Reply in Support of Motion for Attorneys' Fees and Conditional Objector Incentive Award filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Gropper, Michael) (Entered: 12/01/2021)
12/02/2021	173	NOTICE of Supplemental Authority in Assistance to This Court's Pending Order Regarding Distribution Methods By Proposed Amicus Curiae Shiyang Huang (Attachments: # 1 Exhibit A, # 2 Exhibit B)(KKH) (Entered: 12/03/2021)
12/06/2021	174	**ENDORSED ORDER granting 171 Objector Valls' Motion for Leave to File a Reply in Support of Motion for Attorneys' Fees and A Conditional Objector Incentive Award. Objector Valls may file a reply brief of no more than five (5) pages no later than 12/10/2021. Signed by Judge Timothy J. Corrigan on 12/6/2021. (TNM)** (Entered: 12/06/2021)
12/10/2021	175	REPLY to 167 Response to Motion re 152 MOTION for Attorney Fees filed by Austin Valls. (Clore, Robert) Modified to create docket entry relationship on 12/13/2021 (KKH). (Entered: 12/10/2021)
01/05/2022	176	**ORDER directing the parties to file an additional brief of no more than ten (10) pages to address remaining issues no later than 1/13/2022. See Order for details. Signed by Judge Timothy J. Corrigan on 1/5/2022. (TNM)** (Entered: 01/05/2022)
01/13/2022	177	PLAINTIFF'S BRIEF re 176 Order *Joint Brief on $4 Million Distribution to the Class* filed by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) (Entered: 01/13/2022)
01/14/2022	178	NOTICE of Plaintiffs' Self Disclosure of $0.86 cash-per-$1-voucher ratio, in light of 177 Plaintiffs' Brief regarding "$4 Million Distribution to the Class" By Proposed Amicus Curiae Shiyang Huang (Attachments: # 1 Exhibit)(AEP) (Entered: 01/14/2022)
01/18/2022	179	NOTICE of withdrawal of Huang's Supplemental Notice, or, in the Alternative, Correction of Huang's Supplemental Notice re 178 NOTICE of Plaintiffs' Self Disclosure of $0.86 cash-per-$1-voucher ratio, in light of 177 Plaintiffs' Brief regarding "$4 Million Distribution to the Class" By Proposed Amicus Curiae Shiyang Huang (Attachments: # 1 Exhibit A, # 2 Exhibit B)(AEP) (Entered: 01/19/2022)
01/27/2022	180	Docket Text Removed per Chambers - entered in case in error. Modified on 1/27/2022. (AEP) (Entered: 01/27/2022)
01/27/2022	181	**ORDER granting in part 152, 153, 158, Objectors' motions for attorneys' fees, and authorizing Class Counsel, Defendant, and the Settlement Administrator to implement and consummate [98-1] the Settlement Agreement, pursuant to its terms and conditions as adjusted in 151 the Court's prior Order and as adjusted herein. Defendant shall deposit $30,000.00 into the registry of the Court no later than 3/1/2022, and the parties should notify the Court once Johnson v. NPAS Solutions, LLC, 975 F.3d 1244 (11th Cir. 2020) is final to seek further instructions. The parties shall file a status update regarding distribution of the settlement fund**

		no later than 6/1/2022. The Court retains jurisdiction as explained herein and will separately enter a final judgment. See Order for details. Signed by Judge Timothy J. Corrigan on 1/27/2022. (TNM) (Entered: 01/27/2022)
01/27/2022	182	**FINAL JUDGMENT: As stated in 151 and 181, the settlement approval Orders, Class Counsel shall recover $7,949,000.00 as attorneys' fees and costs from the settlement fund; Objectors Austin Valls, Mitchell George Miorelli, and John W. Davis shall each recover $17,000.00 as attorneys' fees from the settlement fund; and Defendant shall deposit $30,000.00 from the settlement fund into the registry of the Court no later 3/1/2022, to be distributed as incentive payments for the three named Plaintiffs only if Johnson v. NPAS Solutions, LLC, 975 F.3d 1244 (11th Cir. 2020), is vacated by the Eleventh Circuit. As the parties request, the settlement having been approved subject to modifications and the Court retaining jurisdiction for the limited purposes stated here, this case is DISMISSED with prejudice. The Clerk shall terminate all pending motions and deadlines and shall close the file. Signed by Judge Timothy J. Corrigan on 1/27/2022. (TNM)** (Entered: 01/27/2022)
02/28/2022	183	REGISTRY MONIES received by Costa Del Mar, Inc. in the amount of $ 30,000.00; Receipt # JAX035539. (BGR) (Entered: 02/28/2022)
02/28/2022	184	NOTICE OF APPEAL as to 182 Judgment by Mitchell George Miorelli. Filing fee $ 505, receipt number AFLMDC-19282102. (Miorelli, Sam) (Entered: 02/28/2022)
02/28/2022	185	NOTICE OF APPEAL as to 151 Order on Motion for Attorney FeesOrder on Motion to StrikeOrder on Motion for Settlement, 181 Order on Motion for Attorney FeesOrder on Motion for Leave to File Document, 182 Judgment by Austin Valls. Filing fee $ 505, receipt number AFLMDC-19284033. (Clore, Robert) (Entered: 02/28/2022)
02/28/2022	186	NOTICE OF APPEAL as to 151 Order on Motion for Attorney FeesOrder on Motion to StrikeOrder on Motion for Settlement, 181 Order on Motion for Attorney FeesOrder on Motion for Leave to File Document, 182 Judgment by John W Davis. Filing fee $ 505, receipt number AFLMDC-19284309. (Isaacson, Eric) (Entered: 02/28/2022)
03/01/2022	187	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, order/judgment being appealed, and motion, if applicable to USCA re 184 Notice of Appeal. Eleventh Circuit Transcript information form forwarded to pro se litigants and available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (Attachments: # 1 Notice of appeal, # 2 Final Judgment)(SJW) (Entered: 03/01/2022)
03/01/2022	188	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, order/judgment being appealed, and motion, if applicable to USCA re 185 Notice of Appeal. Eleventh Circuit Transcript information form forwarded to pro se litigants and available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (Attachments: # 1 Notice of appeal, # 2 Order, # 3 Order, # 4 Final Judgment)(SJW) (Entered: 03/01/2022)
03/01/2022	189	TRANSMITTAL of initial appeal package to USCA consisting of copies of notice of appeal, order/judgment being appealed, and motion, if applicable to USCA re 186 Notice of Appeal. Eleventh Circuit Transcript information form forwarded to pro se litigants and available to counsel at www.flmd.uscourts.gov under Forms and Publications/General. (Attachments: # 1 Notice of appeal, # 2 Order, # 3 Order, # 4 Final Judgment)(SJW) (Entered: 03/01/2022)
03/09/2022	190	MOTION for Miscellaneous Relief, specifically Time-Sensitive Motion for Appeal Bond by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Affidavit Declaration of Peter Hargitai) (Gropper, Michael) (Entered: 03/09/2022)
03/10/2022	191	**ORDER setting in-person hearing on 190 Plaintiffs' Time-Sensitive Motion for Appeal Bond for 5/2/2022 at 2:00 PM; Objectors shall file a response to the motion no later than 3/25/2022. Signed by Judge Timothy J. Corrigan on 3/10/2022. (KSM)** (Entered: 03/10/2022)
03/15/2022	192	TRANSCRIPT information form filed by Mitchell George Miorelli re 184 Notice of Appeal. USCA number: 22-10663-E. (Miorelli, Sam) (Entered: 03/15/2022)

03/15/2022	193	TRANSCRIPT information form filed by Austin Valls re 185 Notice of Appeal. USCA number: 22-10663-E. (Clore, Robert) (Entered: 03/15/2022)
03/15/2022	194	TRANSCRIPT information form filed by John W Davis for proceedings held on Dec. 13, 2019; July 17, 2020; Sept. 01, 2020 before Judge Timothy J. Corrigan re 186 Notice of Appeal. USCA number: 22-10663, 22-10666, 22-10667. (Isaacson, Eric) (Entered: 03/15/2022)
03/15/2022	195	TRANSCRIPT information form filed by John W Davis for proceedings held on Dec. 13, 2019; July 17, 2020; Sept. 01, 2020 before Judge Timothy J. Corrigan re 186 Notice of Appeal. USCA number: 22-10663. (Isaacson, Eric) Modified on 3/16/2022 Duplicate pleading, see #194.(LRB). (Entered: 03/15/2022)
03/16/2022	196	COURT REPORTER ACKNOWLEDGMENT by Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com re 186 Notice of Appeal Estimated transcript filing date: April 8, 2022. USCA number: 22-10633-E. (SB) (Entered: 03/16/2022)
03/23/2022	197	SUPPLEMENT re 190 MOTION for Miscellaneous Relief, specifically Time-Sensitive Motion for Appeal Bond by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Gropper, Michael) (Entered: 03/23/2022)
03/25/2022	198	RESPONSE in Opposition re 190 MOTION for Miscellaneous Relief, specifically Time-Sensitive Motion for Appeal Bond filed by Austin Valls. (Clore, Robert) (Entered: 03/25/2022)
03/25/2022	199	RESPONSE in Opposition re 190 MOTION for Miscellaneous Relief, specifically Time-Sensitive Motion for Appeal Bond filed by John W Davis, Mitchell George Miorelli. (Attachments: # 1 Affidavit Declaration of Eric Alan Isaacson in Support of Join Opposition of John W. Davis & Mitchell Miorelli to Plaintiffs Time-Sensitive Motion for Appeal Bond)(Isaacson, Eric) (Entered: 03/25/2022)
04/04/2022	200	TRANSCRIPT of Status Hearing held on December 13, 2019 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com,Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter.. Redaction Request due 4/25/2022 Redacted Transcript Deadline set for 5/5/2022 Release of Transcript Restriction set for 7/5/2022. (SB) (Entered: 04/04/2022)
04/04/2022	201	TRANSCRIPT of Zoom Motion Hearing held on July 17, 2020 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com,Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter.. Redaction Request due 4/25/2022 Redacted Transcript Deadline set for 5/5/2022 Release of Transcript Restriction set for 7/5/2022. (SB) (Entered: 04/04/2022)
04/04/2022	202	TRANSCRIPT of Telephonic Hearing held on September 1, 2020 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com,Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter.. Redaction Request due 4/25/2022 Redacted Transcript Deadline set for 5/5/2022 Release of Transcript Restriction set for 7/5/2022. (SB) (Entered: 04/04/2022)

04/04/2022	203	NOTICE to counsel of filing of OFFICIAL TRANSCRIPTS (12/13/19, 7/17/20 and 9/1/20 Proceedings). The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Shannon Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com. (SB) (Entered: 04/04/2022)
04/04/2022	204	NOTIFICATION that transcripts have been filed (12/13/19, 7/17/20 and 9/1/20) by Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com re: 184 Notice of Appeal. USCA number: 22-10633-E. (SB) (Entered: 04/04/2022)
04/18/2022	205	MOTION for Eric Alan Isaacson or C. Benjamin Nutley to appear telephonically *at May 2, 2022 hearing* by John W Davis. (Attachments: # 1 Affidavit Declaration of Eric Alan Isaacson in Support of John W Davis's Time Sensitive Motion to Appear Telephonically at May 2, 2022 Hearing) (Isaacson, Eric) Motions referred to Magistrate Judge Laura Lothman Lambert. (Entered: 04/18/2022)
04/18/2022	206	CORRECTED MOTION for Eric Alan Isaacson or C. Benjamin Nutley to appear telephonically at May 2, 2022 hearing by John W Davis. (Attachments: # 1 Affidavit Declaration of Eric Alan Isaacson in Support of John W. Davis's Time Sensitive Motion to Appear Telephonically at May 2, 2022 Hearing)(Isaacson, Eric) Motions referred to Magistrate Judge Laura Lothman Lambert. Modified text on 4/19/2022. (AEP) (Entered: 04/18/2022)
04/20/2022	207	**ORDER granting 206 John W. Davis's Corrected Motion to Appear Telephonically and converting in-person hearing to telephonic hearing. The in-person hearing re: Plaintiffs' Motion for Appeal Bond (Doc. 190) scheduled for 5/2/2022 at 2:00 PM will now take place by TELEPHONE at the same date and time. See Order for details. Signed by Judge Timothy J. Corrigan on 4/20/2022. (KSM)** (Entered: 04/20/2022)
04/25/2022	208	NOTICE of Filing Objectors' Civil Appeal Statements by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith (Attachments: # 1 Exhibit John W. Davis Civil Appeal Statement, # 2 Exhibit Mitchell Miorelli Civil Appeal Statement, # 3 Exhibit Austin Valls Civil Appeal Statement)(Gropper, Michael) (Modified on 4/26/2022, to edit text) (BGR). (Entered: 04/25/2022)
05/02/2022	209	Minute Entry. Telephonic Proceedings held before Judge Timothy J. Corrigan: MOTION HEARING held on 5/2/2022 re 190 Time Sensitive Motion for Appeal Bond. Plaintiffs directed to file a joint status report by June 2, 2022. Court Reporter: Shannon Bishop (KKH) (Entered: 05/02/2022)
05/05/2022	210	TRANSCRIPT of Telephonic Motion Hearing held on May 2, 2022, before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com, Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter. Redaction Request due 5/26/2022. Redacted Transcript Deadline set for 6/6/2022. Release of Transcript Restriction set for 8/3/2022. (SB) (Entered: 05/05/2022)
05/05/2022	211	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Shannon Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com. (SB) (Entered: 05/05/2022)
05/19/2022	212	STATUS report by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit Valls Extension of Time, # 2 Exhibit Miorelli Extension of Time)(Gropper, Michael) Modified on 5/26/2022 - STRICKEN, PDF removed per Court Order, doc. 214. (AEP) (Entered: 05/19/2022)

05/20/2022	213	STATUS report *(Amended)* by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Attachments: # 1 Exhibit Valls Extension of Time, # 2 Exhibit Miorelli Extension of Time)(Gropper, Michael) (Entered: 05/20/2022)
05/25/2022	214	**ENDORSED ORDER striking 212 Plaintiffs' Status Report. Document 212 is stricken and removed from the public record. Signed by Judge Timothy J. Corrigan on 5/25/2022. (KSM)** (Entered: 05/25/2022)
05/26/2022	215	**ORDER denying 190 Plaintiffs' Time-Sensitive Motion for Appeal Bond. The case remains closed. Signed by Judge Timothy J. Corrigan on 5/26/2022. (KSM)** (Entered: 05/26/2022)
06/28/2022		Pursuant to F.R.A.P. 11(c), the Clerk of the District Court for the Middle District of Florida certifies that the record is complete for the purposes of this appeal re: 184 Notice of Appeal, 185 Notice of Appeal, 186 Notice of Appeal,. All documents are imaged and available for the USCA to retrieve electronically. USCA number: 22-10663 (SJW) (Entered: 06/28/2022)
08/31/2022	216	TRANSCRIPT of Status Conference held on February 21, 2020 before Judge Timothy J. Corrigan. Court Reporter/Transcriber Shannon M. Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com,Telephone number (904)549-1307. Transcript may be viewed at the court public terminal or purchased through the Court Reporter/Transcriber before the deadline for Release of Transcript Restriction. After that date it may be obtained through PACER or purchased through the Court Reporter.. Redaction Request due 9/21/2022 Redacted Transcript Deadline set for 10/3/2022 Release of Transcript Restriction set for 11/29/2022. (SB) (Entered: 08/31/2022)
08/31/2022	217	NOTICE to counsel of filing of OFFICIAL TRANSCRIPT. The parties have seven (7) calendar days to file with the court a Notice of Intent to Request Redaction of this transcript. If no such Notice is filed, the transcript may be made remotely electronically available to the public without redaction after 90 calendar days. Any party needing a copy of the transcript to review for redaction purposes may purchase a copy from the court reporter or view the document at the clerk's office public terminal. Court Reporter: Shannon Bishop, RDR, CRR, CRC; dsmabishop@yahoo.com. (SB) (Entered: 08/31/2022)
02/26/2024	218	OPINION of USCA Decision: Vacated and Remanded as to 184 Notice of Appeal filed by Mitchell George Miorelli, 185 Notice of Appeal filed by Austin Valls, 186 Notice of Appeal filed by John W Davis. EOD: 2/26/2024; Mandate to issue at a later date. USCA number: 22-10663. (SJW) (Entered: 02/27/2024)
03/26/2024	219	MANDATE of USCA as to 184 Notice of Appeal filed by Mitchell George Miorelli, 185 Notice of Appeal, filed by Austin Valls, 186 Notice of Appeal, filed by John W Davis Issued as Mandate: 3/26/24 USCA number: 22-10663. (Attachments: # 1 Bill of Cost for Mitchell George Miorelli, # 2 Bill of Cost for Austin Valls, # 3 Bill of Cost for John Davis)(SJW) (Entered: 03/27/2024)
03/29/2024	220	**ORDER for Parties to file a joint notice regarding status and how they wish to proceed no later than May 31, 2024. Signed by Judge Timothy J. Corrigan on 3/29/2024. (DDW)** (Entered: 03/29/2024)
05/31/2024	221	STATUS report by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) (Entered: 05/31/2024)
06/17/2024	222	Unopposed MOTION for Miscellaneous Relief, specifically Motion for Status Conference and Incorporated Memorandum of Law by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) (Entered: 06/17/2024)
06/17/2024	223	Unopposed MOTION for Miscellaneous Relief, specifically Motion to Drop Certain Plaintiffs without Prejudice and Incorporated Memorandum of Law by Brendan C. Haney, Gerald E. Reed, IV, Troy Smith. (Hargitai, Peter) (Entered: 06/17/2024)
06/24/2024	224	NOTICE of hearing: Telephone Status Conference set for 7/24/2024 at 02:00 PM in Jacksonville Courtroom 10 D before Judge Timothy J. Corrigan. See Notice for details. (DDW) (Entered: 06/24/2024)

07/24/2024	225	Minute Entry. Telephonic Proceedings held before Judge Timothy J. Corrigan: STATUS CONFERENCE held on 7/24/2024. Court Reporter: Katharine Healey (JW) (Entered: 07/24/2024)
08/06/2024	226	**ORDER granting 223 the Unopposed Motion to Drop Certain Plaintiffs Without Prejudice. See Order for details. Signed by Judge Timothy J. Corrigan on 8/6/2024. (DDW)** (Entered: 08/06/2024)
08/30/2024	227	PLAINTIFF'S BRIEF re 225 Status Conference filed by Troy Smith. (Attachments: # 1 Exhibit 1 - John W. Davis' Response to Plaintiff-Appellee's Supplemental Authority)(Hargitai, Peter) (Entered: 08/30/2024)
09/30/2024	228	DEFENDANT'S BRIEF re 227 Brief - Plaintiff *on Federal Subject Matter Jurisdiction* filed by Costa Del Mar, Inc.. (Holladay, Sara) (Entered: 09/30/2024)
06/17/2025	229	**ORDER dismissing this case without prejudice for lack of subject matter jurisdiction. The Clerk shall close the file. Signed by Senior Judge Timothy J. Corrigan on 6/17/2025. (SRW)** (Entered: 06/17/2025)
06/17/2025	230	NOTICE of Local Rule 1.11(e), which provides that, unless an order states another time, a seal under Rule 1.11 expires ninety days after a case is closed and all appeals are exhausted. To prevent the content of a sealed item from appearing on the docket after the seal expires, a party or interested non-party must move for relief before the seal expires. (Signed by Deputy Clerk). (ELA) (Entered: 06/17/2025)

Exhibit C

Order Awarding Attorneys' Fees and Costs in Favor of Defendants, Southern Swells Brewing Company, LLC and Due Amici Restaurateurs, Inc. d/b/a Gusto and Against Hasteh, LLC

Tavus Investments, LLC v. Hasteh, LLC, No. 16-2019-CA-8879 (Fla. 4th Jud. Cir. Jan. 29, 2024)

Filing # 190726542 E-Filed 01/29/2024 12:09:17 PM

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

CASE NO.: 16-2019-CA-8879
DIVISION: CV-E

TAVUS INVESTMENTS, LLC, a Florida limited liability company,

Plaintiff,

v.

HASTEH, LLC, a Florida limited liability company,

Defendant.
_______________________________________/

HASTEH, LLC, a Florida limited liability company,

Plaintiff,

v.

BACM2006-4 BEACH BOULEVARD, LLC, a Florida limited liability company, TAVUS INVESTMENTS, LLC, a Florida limited liability company, SOUTHERN SWELLS BREWING COMPANY, LLC, a Florida limited liability company, and DUE AMICI RESTAURATEURS, INC. d/b/a GUSTO, a Florida corporation,

Defendants.
_______________________________________/

ORDER AWARDING ATTORNEYS' FEES AND COSTS IN FAVOR OF DEFENDANTS, SOUTHERN SWELLS BREWING COMPANY, LLC AND DUE AMICI RESTAURATEURS, INC. D/B/A GUSTO AND AGAINST HASTEH, LLC

THIS CAUSE came before the Court for an in-person evidentiary hearing on August 9, 2023, to determine the amount of attorneys' fees and costs to be awarded to Defendants, Southern Swells Brewing Company, LLC and Due Amici Restaurateurs, Inc. d/b/a Gusto against Plaintiff, Hasteh, LLC. The Court, having reviewed the docket and pleadings, received testimony, including expert testimony, received certain documents into evidence, considered all of the factors applicable to fee awards set out in Rule 4-1.5 of the Rules Regulating the Florida Bar and *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145 (Fla. 1985) and regarding taxable costs, has also considered Section 57.041, Fla. Stat., and the statewide Uniform Guidelines for Taxation of Costs in Civil Actions, and the relevant legal authority, heard arguments of counsel, and otherwise being fully advised in the premises, finds and concludes as follows:

I. Relevant Background and Procedural History

1. This matter arises out of claims made by Hasteh, LLC ("Hasteh" or "Plaintiff") regarding parking rights under a Reciprocal Easement Agreement (the "Easement") related to a shopping center. Plaintiff Hasteh asserted that Defendants, Southern Swells Brewing Company, LLC ("Southern Swells") and Due Amici Restaurateurs, Inc. d/b/a Gusto ("Gusto") (Southern Swells and Gusto are collectively referred to as "Defendants"), who are tenants in the shopping center, were violating the Easement because they placed a patio over parking spaces outside their restaurants, thereby depriving Hasteh of the use of those parking spaces. The parties were in dispute over the proper interpretation and application of the Easement.

2. On December 14, 2021, an Order was entered denying Hasteh's motion for summary judgment and granting Southern Swells and Gusto's motion for partial summary judgment, and finding the use of land as a patio space by Gusto and Southern Swells does not violate the Easement.

3. Final Judgments in favor of Southern Swells and Gusto and against Hasteh were entered on April 20, 2022.

4. Plaintiff appealed these Final Judgments on May 12, 2022, and appellate briefing continued through April 26, 2023. Both parties moved for appellate attorneys' fees and costs.

5. Southern Swells and Gusto timely filed Motions for Entitlement to Attorneys' Fees and Costs pursuant to language contained within the Easement allowing the prevailing party to recover costs and attorneys' fees in connection with any litigation arising out of the Easement.

6. On October 13, 2022, the Court entered an Order granting Defendants' Motions. In doing so, the Court relied upon the Florida Supreme Court's opinion in *Hayslip v. U.S. Home Corporation*, 336 So. 3d 207 (Fla. 2022) and found that the attorney fee provision in the Easement is a real covenant running with the land and concluded that the provision is binding on and benefits the prevailing parties in this action, even if the Defendants were not parties to the Easement.

7. Southern Swells and Gusto filed their original Motion to Determine Reasonable Attorneys' Fees and Costs on January 11, 2023, and subsequently filed an amended Motion on February 24, 2023.

8. On February 24, 2023, the Defendants served Hasteh with their respective privilege logs regarding the redacted time entries which had been produced as of that date. No updated or supplemental privilege log was produced by the Restaurant Defendants after their production of similarly redacted billing statements from December 1, 2022 through June 5, 2023. However, the privilege logs do not describe the redacted items individually and merely describe all of the redacted entries generally as "ATTORNEY CLIENT; WORK PRODUCT." Plaintiff Hasteh raised the issue of the adequacy or sufficiency of the Defendants' respective privilege logs ***for the first time within its proposed order filed after the evidentiary hearing concluded***. *See*, Plaintiff's Proposed Order at pages 14-15; arguing that such a broad and vague description fails to meet the standard set by Florida Rule of Civil Procedure 1.280(b)(6) which requires that a party

asserting privilege must "make the claim expressly and shall describe the nature of the documents, communications, or things no produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection." As a result, Plaintiff urges the Court to find Defendants have failed to meet their burden of establishing their entitlement to an award of those fees, because combining the redacted records with the lack of a sufficiently descriptive privilege log reasonably describing the nature of the redacted materials results in billing entries that are incomprehensible and vague. The Plaintiff argues within its proposed order that Defendants have failed to meet their burden of showing their entitlement to the redacted entries pursuant to *Centex Rooney Const. Co., Inc.*, 725 So. 2d at 1259. *Id. See* Plaintiff's Proposed Order at page 15.

9. The Court heard Defendants' motion to determine fees on March 2, 2023. At the conclusion of the hearing, the Court closed the evidence but set a one-hour hearing on March 9, 2023, for the parties to make closing arguments.

10. However, on March 6, 2023, the Honorable Katie Dearing, the predecessor judge in this case, *sua sponte* entered an Order of Recusal.

11. On March 22, 2023, after the recusal, Hasteh filed a Case Management Report which contained a motion to stay the attorneys' fee proceedings pending the outcome of its appeal arising out of the Summary Judgment Order and Final Judgments entered in favor of Southern Swells and Gusto. Hasteh also requested reconsideration of Judge Dearing's decision to close the evidence at the conclusion of the March 2, 2023, fee hearing.

12. On May 4, 2023, following a case management conference with the Parties, the Court entered an Order denying Hasteh's motion to stay the attorneys' fee proceedings and the motion for reconsideration. However, the Court found that the predecessor judge's ruling closing

evidence was non-final and interlocutory and reopened evidence as it pertains to determining an amount of reasonable attorneys' fees and costs. In doing so, the Court allowed Plaintiff the opportunity to retain a fee expert and present evidence. Additionally, the Court ruled the Defendants could offer, without prejudice, new evidence as to the reasonableness of its fees and costs, including changing positions, arguments, and experts.

13. The Court entered a Case Management Order on May 22, 2023, outlining matters to be completed in advance of the evidentiary hearing and directing Defendants to provide Hasteh with the name and address of their new fee expert along with copies of all billing and cost records and any other documentary evidence related to the claimed attorneys' fees and costs. Thirty days after receiving the records, Hasteh was then required to specifically respond in writing to each item of cost and each fee entry submitted by Defendants and state whether counsel agrees with or rejects each entry and item. These responses were to state the basis of each objection and cite supporting legal authority. In addition, Hasteh was to disclose the name and address of its expert. Thirty days after receiving Hasteh's objections, Defendants were to respond in writing to each objection and state whether or not they agreed with the objection and if not, to state the basis and cite contrary legal authority. Defendants were also required to disclose any rebuttal opinions at that time.

14. On June 5, 2023, Defendants provided Hasteh with all billing records from March 19, 2020, through May 31, 2023, along with retainer agreements, a breakdown of all costs, and an affidavit from their expert, Howard Coker, Esq. Mr. Coker's Affidavit included a fee analysis and chart.

15. Hasteh filed its Response on July 5, 2023, along with a Declaration from Christopher Greene, Esq., Hasteh's expert, and a list of 636 objections to specific time entries from the billing records provided by Defendants.

16. On August 4, 2023, Defendants, in compliance with the Case Management Order, provided its Rebuttal and Affidavit of Howard Coker, Esq. in Support of Reasonableness of Attorneys' Fees and Costs, along with numerous Orders and Judgments awarding attorneys' fees in and around Duval County, Florida, which were submitted for purposes of establishing the reasonableness of fees to be determined by this Court. Defendants also provided a detailed response, along with relevant case law and explanations to contest each of the 636 objections Hasteh outlined concerning specific time entries from the billing records.

17. On July 11, 2023, the Fifth District Court of Appeal affirmed the trial Court's Final Judgments, *per curium*. Shortly thereafter, on July 13, 2023, the Fifth District Court of Appeal entered an Order provisionally granting Appellee, Tavus Investments, LLC's motion for attorneys' fees, however, the Court denied fees as to Southern Swells and Gusto, stating only that Southern Swells and Gusto were not parties to the Easement containing the attorney fee provision. Finally, the Court denied Hasteh's motion for appellate attorneys' fees.

18. Following the entry of the Fifth District Court of Appeal's Order on attorneys' fees, Plaintiff filed Hasteh's Motion to Vacate the October 13, 2022, Order Granting Defendants' Motion for Attorneys' Fees and Costs, on July 27, 2023. This motion was based upon the Fifth District Court of Appeal's denial of Gusto and Southern Swell's Motion for Appellate Attorneys' Fees. Hasteh argued the denial of appellate attorneys' fees established the "law of the case" and required this Court to deny Gusto and Southern Swells' request for attorneys' fees at the trial level.

19. A review of the appellate motions shows that Southern Swells and Gusto filed only a brief motion, wherein they simply requested fees under Section 11 of the Easement. Importantly, there was no reference in the motion to *Hayslip*, nor was there any argument that the fees provision was a covenant running with the land. Plaintiff filed a Response to Appellees'

Motion for Appellate Attorney's Fees, wherein it argued Gusto and Southern Swells were not entitled to fees because neither is a party to the Reciprocal Easement Agreement. The Response did not contain any reference to *Hayslip*, and there was no argument presented addressing whether the fees provision is a covenant that runs with the land.

20. On August 9, 2023, prior to the start of the evidentiary hearing to determine reasonableness of attorney's fees and costs, this Court addressed Hasteh's Motion to Vacate.

21. Following a review of all relevant filings, the applicable case law, and hearing argument from counsel for the parties, the Court orally denied Hasteh's Motion to Vacate. In denying the Motion, the Court relied upon the Florida Supreme Court's opinions in *Florida Dept. of Transp. v. Juliano*, 801 So. 2d 101, 104 (Fla. 2001) and *Delta Prop. Mgmt. v. Profile Investments, Inc.*, 87 So. 3d 765, 767 (Fla. 2012). As expressly stated in *Juliano*, "the law of the case doctrine is limited to questions of law actually presented and considered on a former appeal…." *Juliano*, 801 So. 2d at 106.

22. As the only stated basis for denying the Motion for Appellate Attorneys' Fees was that Southern Swells and Gusto were not parties to the Easement, the Court held that it was precluded from finding that the appellate court made a decision on the merits of *Hayslip* or whether the fee provision in the Easement is a covenant that runs with the land.

23. The Court reduced its oral ruling denying Hasteh's Motion to Vacate to a written order consistent with its oral ruling *Order Denying Hasteh, LLC's Motion to Vacate Order Granting Defendants Southern Swells Brewing Company, LLC, and Due Amici Restauranteurs, Inc. D/B/A Gusto's Motions for Attorney's Fees and Costs* that was entered on October 16, 2023.

24. After denying Hasteh's Motion to Vacate, the evidentiary hearing proceeded.

25. During the August 9, 2023 evidentiary hearing, Defendants presented testimony from Michael Orr, Esq. from the law firm Orr Cook, who served as Defendants' lead trial counsel, as well as their expert, Howard Coker Esq., regarding the hours expended, the qualifications of the professionals who represented the Defendants in this matter, the fees and costs incurred, the reasonableness of the fees sought, the reasonable market rates for attorney's fees, and the alternative fee agreement with Orr Cook, which covered the representation of the Defendants in this matter.

26. During the August 9, 2023 evidentiary hearing, Plaintiff Hasteh's counsel conceded in response to the Court's questioning that he was not arguing a "discovery violation" as it concerned the subject redacted time entries, rather he was arguing a "failure of evidence" – "the redaction means you can't evaluate the time entry." (Aug. 9, 2023 Tr., 196:21-198:17). Plaintiff Hasteh's counsel argues that such redactions prevent the Court from evaluating factually, not legally, whether the time is "reasonable and properly allocated." (Aug. 9, 2023 Tr., 198:22-199:4).

27. Hasteh presented the testimony of its expert, Christopher Greene, which was limited only to his opinion of the reasonable hourly rates. Mr. Greene did not provide any opinion or testimony regarding the reasonableness of the hours expended, reasonableness of costs, or the alternative fee agreement, which governed Orr Cook's representation of the Defendants in this matter.

28. Billing records for Orr Cook and fee agreements were also entered into evidence.

II. Legal Standards

A. Awarding Attorneys' Fees Generally

In *Florida Patient's Compensation Fund v. Rowe*, 472 So. 2d 1145, 1150 (Fla. 1985), the Supreme Court of Florida adopted the federal lodestar approach as the foundation for setting reasonable fee awards. "This approach requires the trial court to determine a 'lodestar figure' by multiplying the number of hours reasonably expended on the litigation by a reasonable hourly rate for the services of the prevailing party's attorney." In performing this analysis, the trial court must consider separately the reasonableness of the hourly rate and the number of hours expended. *See Rowe*, 472 So. 2d at 1150-51.

> "Reasonably expended" means the time that ordinarily would be spent by lawyers in the community to resolve this particular type of dispute. It is *not* necessarily the number of hours actually expended by counsel in the case. Rather, the court must consider the number of hours that should be expended in that particular case.... In this respect, the magnitude of the case should be a consideration.

In re Estate of Platt, 586 So. 2d 328, 333-34 (Fla. 1991) (emphasis in original). In determining the reasonableness of attorneys' fees, the court should utilize the following criteria known as the *Rowe* factors which are substantially based on R. Reg. Fla. Bar 4-1.5:

> (1) The time and labor required, the novelty and difficulty of the question involved, and the skill requisite to perform the legal service properly.
>
> (2) The likelihood, if apparent to the client, that the acceptance of the particular employment will preclude other employment by the lawyer.
>
> (3) The fee customarily charged in the locality for similar legal services.
>
> (4) The amount involved and the results obtained.
>
> (5) The time limitations imposed by the client or by the circumstances.

> (6) The nature and length of the professional relationship with the client.
>
> (7) The experience, reputation, and ability of the lawyer or lawyers performing the services.
> (8) Whether the fee is fixed or contingent.

Rowe, 472 So. 2d at 1150.

The first step in the lodestar process requires the court to determine the number of hours reasonably expended on litigation. *Id.* at 1150. This requires fee applicants to present records detailing the amount of work performed. *Id.* Fee applicants are expected to exercise "billing judgment" and, if they do not, courts may reduce the amount of hours to remove those that are excessive, redundant, or otherwise unnecessary. *22nd Century Properties, LLC v. FPH Properties, LLC,* 160 So. 3d 135, 142-43 (Fla. 4th DCA 2015). "If the billing records appear otherwise reasonable, the opponent of the fee has the burden of pointing out with specificity which hours should be deducted." *Id.* at 143. "Accordingly, a fee opponent's failure to explain exactly which hours the opponent views as unnecessary or duplicative is generally viewed as fatal." *Id.* In sum, although the fee applicant has the burden of establishing its entitlement to an award of attorneys' fees and costs, the opponent of the fee has the burden of pointing out with specificity which hours, fees and costs should be deducted. *Centex-Rooney Constr. Co., Inc. v. Martin City*, 725 So. 2d 1255, 1259 (Fla. 4th DCA 1999).

Once the court determines the number of hours reasonably expended, it must then determine a reasonable hourly rate for the services of the prevailing party's attorneys. *Rowe*, 472 So. 2d at 1150. The party seeking the fees bears the burden of establishing the prevailing "market rate," which is the rate charged in that community by lawyers of reasonably comparable skill, experience, and reputation for similar services. *Id.* at 1150-51. The court then multiplies the number of hours reasonably expended by the reasonable hourly rate to determine the "lodestar," which is an objective basis for the award of attorney's fees. *Id.* at 1151.

With the foregoing policy considerations and objective criteria in place, the courts have provided further guidance over the years to guide trial courts in properly evaluating parties' requests for and determinations of reasonable attorneys' fees as follows:

B. Alternative Fee Agreements

Over thirty years ago, the Florida Supreme Court approved the use of an alternative fee recovery clause to require the losing party to pay prevailing party attorney's fees in an amount that exceeded what the prevailing party would have been required to pay her attorney under the contingency-fee clause of her contract. *See Kaufman v. MacDonald*, 557 So. 2d 572, 573 (Fla. 1990); See also *Fla. Patient's Comp. Fund v. Moxley*, 557 So. 2d 863, 864 (Fla. 1990); *Wilson v. Wasser*, 562 So. 2d 339, 340 (Fla. 1990). Citing its above cited previous holdings, the Florida Supreme Court in 2013 recognized that "requiring the losing party to pay an amount exceeding the prevailing party's fee agreement does not violate *Rowe's* prohibition against awarding fees in excess of the fee agreement if the agreement contains an alternative fee recovery clause. *First Baptist Church of Cape Coral, Florida, Inc. v. Compass Const. Inc.* 115 So. 3d 978, 982 (Fla. 2013). The *First Baptist* court reasoned that the reasoning it used to uphold alternative fee recovery clauses with contingency fee alternatives in *Kaufman*, *Moxley*, and *Wasser* applies to alternative fee recovery clause in general, regardless of the other basis for payment, because "once a fee-shifting statute or contract triggers a court-awarded fee, the trial court is constrained by *Rowe* and its progeny in setting a fee that must be reasonable." *Id.* The *First Baptist* court validated an alternative fee recovery clause with an hourly-rate alternative. *Id.* at 982, 983. Citing *Moxley,* the *First Baptist* court noted that the *Rowe* constraints alleviated "any concern that enforcing an alternative fee recovery clause will result in the non-prevailing party paying an unreasonable fee."

Id. at 982 (citations omitted).

In sum, the *First Baptist* court recognized as it did in *Kaufman, Moxley*, and *Wasser*:

> an alternative fee recovery clause does not violate *Rowe's* prohibition against the fee award exceeding the fee agreement because it establishes an agreed rate that the client must pay but also states that the court may award a higher, reasonable attorney's fee if someone other than the client is required to pay. And as the Fourth District aptly stated, "There is no logical way to distinguish an alternative fee recovery clause that uses "an hourly rate … instead of a contingency as the alternative basis." *Wolfe I*, 713 So. 2d at 1109.

Id. at 983.

C. Block Billing

"Block-billing – the grouping of multiple tasks into a single billing entry – is not per se unreasonable." *Spanakos v. Hawk Systems, Inc.*, 362 So. 3d 226, 242 (Fla. 4th DCA 2023) (citations omitted). "[T]he mere fact that an attorney has included more than one task in a single billing entry is not, in itself, evidence of [impermissible] block-billing. When those tasks are intertwined, including a thorough description of the activities performed clarifies, rather than obscures, the record." *Id.* (citation omitted). "Thus, block billing does not warrant a reduction where 'the entries are so well-detailed and informative that the lack of segregation does not interfere at all with the court's task to determine the reasonableness of the time spent,' and 'there are no objectionable tasks that need to be eliminated from the computation of counsel's hours." *Id.* (citing *Gay v. Brencorp, Inc.,* No. 3:09-CV-1002-J-JBT, 2013 WL 2683156, at *3 (M.D. Fla. June 11, 2013)). "By contrast, improper block billing occurs when the time entries are 'insufficiently detailed.' *Id.* (citations omitted).

D. Duplicated Work

"Duplicative time charged by multiple attorneys working on the case are generally not compensable." *Spanakos*, 362 So. 3d at 241 (citation omitted). "However, the mere fact that multiple lawyers collaborated on a particular task 'does not necessarily mean that their work was duplicative.'" *Id.* (citation omitted). "An award for time spent by two or more attorneys is proper as long as it reflects the distinct contribution of each lawyer to the case and the customary practice of multiple-lawyer litigation." *Id.* (citing *Johnson v. Univ. Coll. of Univ. of Ala. in Birmingham,* 706 F. 2d 1205, 1208 (11th Cir. 1983). "Thus, 'a reduction is warranted only if the attorneys are *unreasonably* doing the *same* work.'" *Id.* (citing *Id.*). "For example, where two lawyers entered 'the same amount of time, describing the same exact service,' a federal judge concluded that such 'generic carbon copy entries' were redundant and thus not recoverable." *Id.* (citing *Beishir v. Chase Home Fin., LLC,* No. 8-07-CV-65-T-27 MAP, 2008 WL 533881, at *1 (M.D. Fla. Feb. 27, 2008).

E. Discovery Privilege, Privilege Log, Procedure to Resolve Privilege Claims, and Redactions

Discovery Privilege

Confidential lawyer-client communications are, by statute, privileged, and therefore not discoverable. Fla. Stat. §90.502; Fla. R. Civ. P. 1.280(b)(1). Section 90.502 codifies the attorney-client privilege which protects confidential communication between attorney and client made to obtain or to provide legal services to the client. *Southern Bell Tel. & Tel. Co. v. Deason*, 632 So. 2d 1377 (Fla. 1994). The attorney-client privilege is an absolute privilege, rather than a qualified privilege, not subject to any balancing test and cannot be discovered by a showing of need, undue hardship, or some other competing interest. *Genovese v. Provident Life and Accident Ins. Co.,* 74 So. 3d 1064, 1066-68 (Fla. 2011); *Tedrow v. Cannon,* 186 So. 3d 43, 48 (Fla. 2d DCA 2016);

Florida Power & Light Co. v. Hicks, 162 So. 3d 1074, 1075 (Fla. 4th DCA 2015); *Hagans v. Gatorland Kubota LLC/Sentry Ins.*, 45 So. 3d 73, 76 (Fla. 1st DCA 2010); *National Sec. Fire & Cas. Co. v. Dunn,* 705 So. 2d 605, 608 (Fla. 5th DCA 1997); *See Swidler & Berlin v. U.S.*, 524 U.S. 399, 118 S. Ct. 2081, 141 L. Ed. 2d 379 (1998).

The work product privilege protects from discovery "documents and tangible things otherwise discoverable" if a party prepared those items "in anticipation of litigation or for trial." Fla. R. Civ. P. 1.280(b)(3). There is no requirement in this rule that for something to be protected as work product, it must be an item ordered to be prepared by an attorney. *Barnett Bank v. Dottie-G Dev. Corp.,* 645 So. 2d 573 (Fla. 2d DCA 1994) (Documents sought to be discovered are subject to work product privilege even when litigation is neither pending nor threatened so long as there is a possibility that suit may ensue). Materials may qualify as work product even if no specific litigation was pending at the time the materials were compiled – even preliminary investigative materials are privileged if compiled in response to some event which foreseeably could be made the basis of a claim. *Time Warner, Inc. v. Gadinsky*, 639 So. 2d 176 (Fla. 3d DCA 1994). It is well-settled in the First, Second, Third, Fourth and Fifth District Courts of Appeal that in determining whether documents are protected by the work product doctrine, is whether the document was prepared in response to some event which foreseeably could be made the basis of a claim in the future. *See, e.g., Millard Mall Servs. v. Bolda*, 155 So. 3d 1272 (Fla. 4th DCA 2015); *Marshalls of MA, Inc. v. Minsal*, 932 So. 2d 444 (Fla. 3d DCA 2006); *McRae's, Inc. v. Moreland*, 765 So. 2d 196 (Fla. 1st DCA 2000); *Anchor Nat. Financial Services, Inc. v. Smeltz*, 546 So. 2d 760 (Fla. 2d DCA 1989); *Winn-Dixie Stores, Inc. v. Nakutis*, 435 So. 2d 307 (Fla. 5th DCA 1983).

Generally, the burden of establishing a discovery privilege rests on the party asserting the privilege. *Deason*, 632 So. 2d 1377, 1383 (Fla. 1994). However, when communications appear privileged on their face, the party seeking disclosure bears the burden of proving that they are not. *Eight Hundred Inc. v. Fla. Dep't of Revenue*, 837 So. 2d 574, 576 (Fla. 1st DCA 2003).

Privilege Log

Florida Rule of Civil Procedure 1.280(b)(6) states the following with regard to a claim of privilege or work product immunity during discovery:

> When a party withholds information otherwise discoverable under these rules by claiming that it is privileged or subject to protection as trial preparation material, the party shall make the claim expressly and shall describe the nature of the documents, communications, or things not produced or disclosed in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the applicability of the privilege or protection.

The Fifth District has held that the privilege log should include at a minimum (for documents), sender, recipients, title or type, date, and subject matter. *Bankers Sec. Ins. Co. v. Symons*, 889 So. 2d 93 (Fla. 5th DCA 2004). The United States District Court for the Southern District of Florida has promulgated a Local Rule for the content required in a privilege log,[1] and that Local Rule has served as guidance for a Florida court. *TIG Ins. Corp. of Am. v. Johnson*, 799 So. 2d 339 (Fla. 4th DCA 2001). Additional guidance for content required in a privilege log can also be found in the Civil Discovery Handbook for the United States District Court Middle District of Florida.[2] The Fourth District Court of Appeal explained that a privilege log should:

> describe the document's subject matter, purpose for its production, and a specific explanation of why the document is privileged or immune from discovery. These categories, especially this last category, must be sufficiently detailed to allow the court to determine whether the discovery opponent has discharged its burden

[1] Local Rule 26.1(e)(2), U.S. District Court, Southern District of Florida (Rev. 12/1/20)

[2] Middle District Discovery, a Handbook on Discovery Process (Feb. 1, 2021).

> of establishing the requirements expounded upon in the foregoing discussion. Accordingly, descriptions such as 'letter re claim,' 'analysis of claim,' or 'report in anticipation of litigation'-with which we have grown all too familiar-will be insufficient. This may be burdensome, but it will provide a more accurate evaluation of a discovery opponent's claims and takes into consideration the fact that there are no presumptions operating in the discovery opponent's favor. Any failure to comply with these directions will result in a finding that the plaintiff-discovery opponents have failed to meet their burden of establish the applicability of the privilege."

TIG Ins. Corp. of Am. v. Johnson, 799 So. 2d 339, 341 (Fla. 4th DCA 2001) (citations omitted).

Although the rule does not expressly say that a failure to comply with the rule, by failing to file an adequate privilege log, generally constitutes a waiver of privilege, numerous courts have followed such an approach. *See Bainter v. League of Women Voters of Fla.*, 150 So. 3d 1115, 1129 (Fla. 2014); *Metabolife Intern. Inc. v. Holster*, 888 So. 2d 140, 141 (Fla. 1st DCA 2004); *Kaye Scholer LLP v. Zalis*, 878 So. 2d 447, 449 (Fla. 3d DCA 2004); *Nationwide Mut. Fire Ins. Co. v. Hess*, 814 So. 2d 1240 (Fla. 5th DCA 2002); *General Motors Corp. v. McGee*, 837 So. 2d 1010, 1033 (Fla. 4th DCA 2002). However, Florida courts also generally recognize that such a sanction should be resorted to only when the violation is serious. *Gosman v. Luzinski*, 937 So. 2d 293 (Fla. 4th DCA 2006); *Nevin v. Palm Beach Cty. Sch. Bd.*, 958 So. 2d 1003 (Fla. 1st DCA 2007) (citing *Matlock v. Day*, 907 So. 2d 577 (Fla. 5th DCA 2005)). "Florida's courts generally recognize that an implicit waiver of an important privilege as a sanction for a discovery violation should not be favored, but resorted to only where the violation is serious." *Bankers Sec. Ins. Co. v. Symons*, 889 So. 2d 93, 95 (Fla. 5th DCA 2004) (citations omitted). Moreover, "[w]aiver for failure to file a privilege log should not apply where assertion of the privilege is not document-specific, but category specific and the category itself is plainly protected." *Nevin* 958 So. 2d at 1008 (citing *Matlock*, 907 So .2d at 579); *GKK, etc. v. Cruz*, 251 So. 3d 967, 969 (Fla. 3d DCA 2018) (quoting *Nevin*); *DLJ Mortg. Capital, Inc. v. Fox*, 112 So 3d 644, 645 (Fla. 4th DCA 2013). In addition, it has also been suggested that, given the severe consequences of waiver of the privilege as a sanction, a party filing an insufficiently detailed privilege log ought to be afforded an opportunity to amend it to cure any defect. *See Sedgwick Claims Management Services, Inc. v. Feller*, 163 So. 3d 1252, 1254 (Fla. 5th DCA 2015); *Las Olas River House Condominium Ass'n Inc. v. Lohr, LLC*, 181 So. 3d 556, 559 (Fla. 4th DCA 2015) (citing *Feller)*.

Procedure to Resolve Privilege Claims

Florida Statute provides:

> In any civil case or proceeding in which a party claims a privilege as to a communication necessary to an adverse party, the court, upon motion, may dismiss the claim for relief or the affirmative defense to which the privileged testimony would relate. In making its determination, the court may engage in an in camera inquiry into the privilege.

§90.510, Fla. Stat. The Court is charged with the responsibility of resolving the factual issues of privilege claims based upon the hearing testimony and written submissions of the parties. *Allstate Ins. Co., Inc. v. Walker*, 583 So. 2d 356, 358 (Fla. 4th DCA 1991) ("When the work product and attorney client privileges are asserted, the court must hold an in camera inspection of the discovery material at issue in order to rule on the applicability of the privileges."); *Brevard Community College v. Barber,* 488 So. 2d 93 (Fla. 1st DCA 1986).

Redactions

The Fourth District, citing an Eleventh Circuit decision, held that where the opponent of the fee objected to time allocated as redactions for specific legal research made by the fee applicant because the descriptions "included the attorney's strategy or mental impression," the trial court did not abuse its discretion by including the partially redacted time entries in the fee award. *Spanakos v. Hawk Systems, Inc.*, 362 So. 3d 226, 235, 244 (Fla. 4th DCA 2023). The *Spanakos* court reasoned that the fee applicant redacted only portions of 16 time entries and the lightly-redacted time entries mostly pertained to the specific legal issue being researched, noting that the fee applicant's expert witness testified that even with the redactions, the entries were "adequately described." *Id.* at 244. The *Spanakos* court concluded that "because there was no indication that fee counsel failed to exercise billing judgment, the total amount of time spent on legal research was reasonable, and the number of redacted entries was small, it was well within the trial court's discretion to include the partially redacted time entries in the award." *Id.* If billing information contains descriptions of services rendered which would reveal the mental impressions and opinions of counsel, that information should be redacted as privileged. *Finol v. Finol*, 869 So 2d 666 (Fla. 4th DCA 2004).

F. Fees Incurred by Strategic Litigation Decisions

The opponent of the fee is not entitled to a reduction of fees that were necessarily incurred by its own strategic decisions made in litigating the claims. *See State Farm Fire & Cas. Co. v. Palma*, 524 So. 2d 1035, 1036 (Fla. 4th DCA 1988) *approved,* 555 So. 2d 836 (Fla. 1990). The Fourth District in P*alma* rejected the insurance company's fee reduction argument reasoning that:

> Having chosen to stand and fight over this charge, State Farm, of course, made a business judgment for which it should have known a day of reckoning would come should it lose in the end. The Court described a similar situation in *McGowan, v. King. Inc.*, 66 F. 2d 48, 51 (5th Cir. 1981), in reversing what it termed a "stingy" allowance of attorney's fees.

Id.

G. Award of Fees for Intertwined Claims

"[T]he party seeking fees has the burden to allocate them to the issues for which fees are awardable or to show that the issues were so intertwined that allocation is not feasible." *Conti v. Auchter*, 266 So. 3d 1250, 1251 (Fla. 4th DCA 2019) (citing *Effective Teleservices, Inc. v. Smith*, 132 So. 3d 335, 339 (Fla. 4th DCA 2014) (quoting *Chodorow v. Moore*, 947 So. 2d 577, 579 (Fla. 4th DCA 2007)). "Claims are 'inextricably intertwined' when a 'determination of the issues in one action would necessarily be dispositive of the issues raised in the other.'" *Id.* (quoting *Anglia Jacs & Co. v. Dubin*, 830 So. 2d 169, 172 (Fla. 4th DCA 2002)). "In other words, 'where the claims involve a common core of facts and are based on related legal theories, a full fee may be awarded unless it can be shown that the attorneys spent a separate and distinct amount of time on counts as to which no attorney's fees were sought.'" *Id.* (citing *Boswell v. Shirley's Pers. Care Servs. of Okeechobee, Inc.*, 211 So. 3d 210, 212 (Fla. 4th DCA 2017) (quoting Anglia Jacs & Co., 830 So. 2d at 172)).

H. Recovering Attorney Fees for Litigating the Amount of Attorney's Fees

Although a party generally cannot recover attorney fees for litigating the amount of attorneys' fees where the entitlement to attorney's fees depends on a statute, when prevailing party attorneys' fees were awarded pursuant to the fee shifting provision in a broadly worded agreement or contract, such broad attorneys' fees provisions can encompass fees incurred in litigating fees. *Waverly at Las Olas Condominium Ass'n, Inc. v. Waverly Las Olas, LLC*, 88 So. 3d 386, 388 (Fla.4th DCA 2012). In *Waverly*, the Fourth District found that a fee provision containing language incorporating recovery of fees for "any litigation between the parties under the agreement..." would permit the trial court to also award fees incurred in litigating the amount of fees to be awarded. *Id.* at 389. The Fifth District Court of Appeal analyzed this issue in *Bayview Loan Servicing, LLC v. Cross*, 286 So. 3d 858 (Fla. 5th DCA 2019). The *Bayview* court began its analysis by noting the general rule that attorneys' fees incurred in litigating the amount of attorneys' fees to be awarded are not recoverable, and then explained that an exception to the general rule applies "where an attorney's fees provision in a contract is 'broad enough to encompass fees incurred in litigating the amount of fees.'" *Id.* at 860 (citing *N. Dade Church of God, Inc. v. JM Statewide, Inc.*, 851 So. 2d 194, 196 (Fla. 3d DCA 2003)); *Trial Practices, Inc., v. Hahn Loeser & Parks,* *LLP for Antaramian*, 228 So. 3d 1184, 1186 (Fla. 2d DCA 2017); *Waverly at Las Olas Condominium Ass'n, Inc.*, 88 So. 3d at 389). The *Bayview* court concluded that none of the fee provisions were broad enough to encompass attorneys' fees to be awarded, and thus, the general rule prohibiting such fees applied after comparing the narrow, restrictive fees and costs provisions in the note and mortgage to the broad and undefined fees and costs provisions in the *Waverly* and *TPI* decisions. *Id.* at 862.

III. Findings of Fact

A. The *Rowe* and Rule 4-1.5 Factors

1. Time and Labor Required

Mr. Coker testified this was a case that required very skilled counsel to successfully litigate the case to conclusion, and it necessarily and reasonably required several attorneys for both parties to litigate and try this matter. (Coker June 5, 2023, Aff. ¶ 9.a.). Additionally, Mr. Orr testified that the defense of the case was complicated by the Plaintiff changing its counsel on multiple occasions, and that with these changes in counsel, the theories and claims presented by the Plaintiff would also change. (Orr Test., March 2, 2023, Tr., 83:11–84:4) ("[F]rom that standpoint with good lawyers and a moving of the claim, it became a difficult case in that regard."). A review of the docket, and the exhibits introduced into evidence during the August 9, 2023, hearing, shows that Plaintiff, at different points in the case, was represented by Geoffrey Heekin, Esq. of the Heekin Law Firm, Geddes Anderson, Esq. of the firm Murphy Anderson, and Mark Alexander, Esq. of the firm Alexander, Degance & Barnett, among other attorneys. (*See* Pl.'s Ex. 1, 2, and 9). Plaintiff did not refute this evidence. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

2. The Skill Requisite to Perform the Legal Services Properly

Mr. Coker testified that the skill and experience of opposing counsel is a significant factor in determining the reasonableness of the fees and time expended by counsel for Gusto and Southern Swells in this matter. (Coker June 5, 2023, Aff. ¶ 9.b.). In the matter before the Court, there was no question both sides were very capably represented in this matter by skilled and experienced attorneys. (Coker June 5, 2023, Aff. ¶ 9.b.). Plaintiff did not refute this evidence. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

3. Preclusion of Other Employment Due to the Acceptance of the Case

Mr. Orr testified regarding the long-standing relationship with the owners of Tavus, the party who was required to indemnify Gusto and Southern Swells (which is outlined in greater detail below). (Orr Test., March 2, 2023 Tr., 51:17-52:14). Mr. Orr stated in his testimony that for legacy clients and clients that refer significant work to his firm, he will provide a reduced hourly rate, with the understanding that he will seek to recoup his customary or higher rate if and when he prevails during litigation. (Orr Test., March 2, 2023 Tr., 55:5-21). However, by accepting these cases at a discounted rate, for which there is no guarantee he will recover his customary rate, he is precluding acceptance of other potential claims for which he is capable of charging his full customary rates. (Orr Test., March 2, 2023 Tr., 84:5-15). Plaintiff did not refute this evidence. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

4. The Customary Fee

Mr. Coker provided extensive testimony to establish the customary fee. Mr. Coker testified he was aware of fees sought in civil and contract disputes within the geographic area, and that he took into account the quality of the attorneys involved, the background of the attorneys, and he opined that the customary rates for the attorneys involved were within the following ranges:

Michael Orr (P)	$750 to $900
J. Michael Traynor (P)	$750 to $900
Joseph Pickles (P)	$600 to $750
Kathleen Crowley (P)	$500 to $650
Loreyn Raab (A)	$400 to $550
Alina Fernandez (A)	$375 to $500
Megan Comunale (A)	$300 to $400
Bonnie Fay (Para.)	$200 to $275

(Coker June 5, 2023, Aff. ¶ 9.d.; Coker Aug. 4, 2023, Aff. ¶ 14). In support of his opinion regarding the relevant market rates and how rates have increased over time, Mr. Coker provided numerous orders issued by courts in this locality, which outlined rulings concerning the reasonableness of attorneys' fees. (Coker Aug. 4, 2023, Aff., Composite Ex. A and B).

Plaintiff's expert, Christopher Greene, testified it was his opinion that the rates actually charged by Orr Cook were reasonable and within the range charged by law firms in the geographical market of Jacksonville. (Greene Dec. Mar. 31, 2023, ¶ 15). Mr. Greene's testimony, however, failed to provide any supporting orders or other evidence to justify his opinion. Rather, Mr. Greene testified his opinion was based upon the rates charged by his firm, yet he did not provide any testimony as to the rates that are actually charged by his law firm. Further, Mr. Greene did not provide any analysis as to the experience, skill, and reputation of the attorneys that actually worked on the matter. Mr. Greene's testimony was limited only to a determination of whether the discounted rates charged by the Orr Cook firm were reasonable; he did not provide any opinion or testimony with respect to the appropriate and reasonable rates under an alternative fee agreement, such as the one used by Orr Cook in this matter. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

5. The Amounts Involved and the Results Obtained

It was Mr. Coker's that this was an action regarding a dispute over an easement that had significant implications for both sides related to the development and use of their commercial properties in Jacksonville Beach, Florida, and therefore, experienced, and skilled counsel were necessary for this type of dispute. (Coker June 5, 2023, Aff. ¶ 9.e). As such, this is a very significant factor in the reasonableness of the fee sought to be collected. (Coker June 5, 2023, Aff. ¶ 9.e). In reviewing the pleadings, the Plaintiff sought to preclude Gusto and Southern Swells from the continued use of outdoor patio seating, which would negatively impact their businesses, reducing the availability to service their respective clients and, therefore, generate revenue. The efforts of the Orr Cook law firm rendered excellent results for the Defendants. (*See, e.g.*, Order on Motions for Summary Judgment, December 14, 2021). Plaintiff did not refute this evidence. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

6. Time Limitations by the Client or the Circumstances

Hasteh's lawyers filed this action in 2019, and as reflected in the "Background" section of this Order, the case has been litigated extensively, including multiple efforts by Hasteh to vacate the award of entitlement to fees and costs and to delay the evidentiary hearing to determine reasonableness of the attorneys' fees and costs to be awarded. Mr. Coker opined that Gusto and Southern Swells' lawyers acted with diligence under the circumstances, and this is a significant factor in the reasonableness of the fees sought. (Coker June 5, 2023, Aff. ¶ 9.f.). Plaintiff did not refute this evidence. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

7. The Nature and Length of the Professional Relationship with the Client

As both Mr. Coker and Michael Orr testified, Orr Cook has represented the owners of the indemnifying Defendant, Tavus, for several years. (Coker June 5, 2023, Aff. ¶ 9.g; Orr Test., March 2, 2023 Tr., 52:7-10). Orr Cook was required to accept an assignment representing parties who were indemnified by another entity, which adds complication. The nature and length of the professional relationship also resulted in substantial discounts being provided to Gusto and Southern Swells. (Coker June 5, 2023, Aff. ¶ 9.g.). It was, therefore, Mr. Coker's opinion that this was a very significant factor supporting the reasonableness of the requested fees. (Coker June 5, 2023, Aff. ¶ 9.g.).

Mr. Orr testified that his professional relationship with the owners of Tavus, who engaged Orr Cook to represent Gusto and Southern Swells, dates back approximately 8-10 years. (Orr Test., March 2, 2023 Tr., 51:17 – 52 :14). Mr. Orr further testified that his firm was engaged by a very good, long-standing client, and that because of this long-standing relationship and the volume of business referred to his firm, Mr. Orr will charge discounted rates for services provided, subject to the inclusion of an alternative fee agreement under *First Baptist Church of Cape Coral, Florida, Inc. v. Compass Construction, Inc.*, in which his firm will seek to recover the market rate against the adverse party if his client prevails in the case. (Orr Test., March 2, 2023 Transcript, 53:4-12; 55:2-21). Plaintiff did not refute this evidence. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

8. The Experience, Reputation, and Ability of the Attorneys

Mr. Coker testified he was knowledgeable as to the abilities and experience of Gusto and Southern Swells' lawyers from the Orr Cook law firm, and that Orr Cook enjoys a strong reputation for excellent legal work in the legal community, and in particular this geographic region. (Coker

June 5, 2023, Aff. ¶ 9.h.). It was Mr. Coker's opinion that this was a very significant factor justifying an award of the requested fees. (Coker June 5, 2023, Aff. ¶ 9.h.). Even Hasteh's expert, Christopher Greene, conceded the Orr Cook firm has an excellent reputation. (Greene Mar. 31, 2023, Dec. ¶ 13).

With respect to the professionals from the Orr Cook firm that worked on this matter, Mr. Orr testified as follows:

a. Michael Orr, Esq.: Mr. Orr is the managing shareholder of the Orr Cook law firm, and his practice consists mostly of civil litigation, business litigation, and civil trial and appellate work. (Orr Test., March 2, 2023 Tr., 49:5-13). He has successfully tried numerous jury trials, and he is recognized by Best Lawyers in America, Super Lawyers, Florida Trend Legal Elite, and is a member of ABOTA, among a number of other distinctions. (Orr Test., March 2, 2023 Tr., 49:14-50:8). He has been a member of the Florida Bar since 2005. (Orr Test., March 2, 2023 Tr., 49:9-10).

b. J. Michael Traynor, Esq.: Mr. Traynor is a partner with the firm and is a former circuit court judge for the Seventh Judicial Circuit in St. Johns County, Florida. (Orr Test., March 2, 2023 Tr., 69:6-17). Prior to serving on the bench, Mr. Traynor's background was in property and easements. (Orr Test., March 2, 2023 Tr., 69:6-17). He has been a member of the Florida Bar since 1980. (*See,* The Florida Bar, Member Profile of John Michael Traynor, https://www.floridabar.org/mybarprofile/309184).

c. Joseph Pickles, Esq.: Mr. Pickles is a partner in the firm and has previously performed work on behalf of the client who owns the indemnifying entity in this case, and he has previously handled fee hearings. (Orr Test., March 2, 2023 Tr., 72:5-15). He has been a member of the Florida Bar since 2003. (*See,* The Florida Bar, Member Profile of Joseph Daniel Pickles, https://www.floridabar.org/mybarprofile/659886).

d. Kathleen Crowley, Esq.: Ms. Crowley is a partner with the firm and has served as a clerk for Federal Judges Corrigan, Howard, and Smith. (Orr Test., March 2, 2023 Tr., 70:8-18). She has been a member of the Florida Bar since 2011. (*See,* The Florida Bar, Member Profile of Kathleen Henry Crowley, https://www.floridabar.org/mybarprofile/93587).

e. Loreyn Raab, Esq.: Ms. Raab has clerked for Justice Ricky Polston of the Florida Supreme Court, she has extensive appellate experience, and she is a gifted researcher and writer. (Orr Test., March 2, 2023 Tr., 68:14-69:5). She has been a member of the Florida Bar since 2014. (*See,* The Florida Bar, Member Profile of Loreyn Raab, https://www.floridabar.org/mybarprofile/112132).

f. Alina Fernandez, Esq.: Ms. Fernandez has assisted in prior attorneys' fee matters, including serving as a witness and questioning witnesses during evidentiary hearings on the issue. (Orr Test., March 2, 2023 Tr., 70:24-71:11). She has been a member of the Florida Bar since 2019. (*See,* The Florida Bar, Member Profile of Alina Fernandez, https://www.floridabar.org/mybarprofile/alinavincifernandez).

g. Megan Comunale, Esq.: Ms. Comunale graduated college, *Summa Cum Laude*, and then attended and graduated from law school at Washington and Lee. (Orr Test., March 2, 2023, Tr., 71:17-72:1). She has also interned for both circuit and county court judges in Duval County and was a summer associate at the Orr Cook firm. (Orr Test., March 2, 2023, Tr., 71:17-72:1). She has been a member of the Florida Bar since 2021. (*See,* The Florida Bar, Member Profile of Megan Claire Comunale, https://www.floridabar.org/mybarprofile/1031206).

h. Bonnie Fay (Paralegal): Ms. Fay has been a Florida Registered Paralegal since 2008. (*See,* The Florida Bar, Paralegal Member Profile of Bonnie J. Fay, https://www.floridabar.org/mybarprofile/240515).

Plaintiff did not refute this evidence. Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

9. Whether the Fee is Fixed or Contingent

Mr. Coker testified the reasonableness of the requested fee is justified by the mixed-contingent nature of the relationship between Gusto, Southern Swells, and their lawyers. (Coker June 5, 2023, Aff. ¶ 9.i). Specifically, the lawyers agreed to a reduced hourly rate and would only achieve a reasonable full rate if they prevailed in the litigation. (Coker June 5, 2023, Aff. ¶ 9.i). This factor is also accorded additional weight because of the outstanding reputation and skill of the attorneys involved in this case, including the attorneys opposing Gusto and Southern Swells. (Coker June 5, 2023, Aff. ¶ 9.i).

Additionally, Mr. Orr testified the alternative fee agreement used by his firm in this case, the validity of which is recognized by the Florida Supreme Court in *First Baptist Church of Cape Coral, Florida, Inc. v. Compass Construction, Inc.*, is an important factor in agreeing to charge a discounted rate to represent the clients in this matter. (Orr Test., March 2, 2023 Tr., 84:8 – 85:2). Unless Mr. Orr's client prevails in litigation, he would not otherwise be entitled to seek an award of fees representing the market rate; rather, his firm would be limited to recovery of the amounts charged at the discounted rates. (Orr Test., March 2, 2023 Tr., 84:8 – 85:2). Accordingly, this factor weighs in favor of awarding the amount sought by Defendants' counsel.

B. Plaintiff Hasteh's Objections

1. Generally

Plaintiff outlined 636 specific objections, representing a total of 513.6 hours. The objections are separated into seven (7) different categories: redaction of services, which is made up of 314 entries representing 278.4 hours; block billing, which is made up of 20 entries representing 21.1 hours; time related to BACM defenses, which is made up of 46 entries representing 21.2 hours; time rendered on behalf of Tavus, which is made up of 204 entries representing 160.3 hours; services rendered regarding the appeal, which is made up of 32 entries representing 16.1 hours; services rendered deciding entries to redact, which is made up of 14 entries for 15.2 hours; and research on reasonable fees in other counties, which is made up of 3 entries for 1.3 hours. (*See,* Pl.'s Resp. in Opp'n to Defs.' Mot. to Determine Reasonable Attorneys' Fees and Costs, July 5, 2023 [hereinafter: "Pl.'s Resp."], at pages 16-24; Pl.'s Notice of Filing in Support of Pl.'s Resp. at Ex. E). Although the Plaintiff outlined the basis for its objections and addressed them in its Response, filed on July 5, 2023, this Court's May 4 and May 22, 2023, Orders required Plaintiff to cite the supporting legal authority for each objection. However, Plaintiff failed to cite to case law or other legal authorities to support the specific basis of many of its categorical objections. For example, while the Plaintiff argues the Court should not award fees for entries which contain redactions, the Plaintiff failed to cite to a single case in which fees were not awarded due to redactions in the billing records. Defendants, however, provided detailed responses in their Rebuttal, served on August 4, 2023, along with citations to relevant legal authority for all 636 objections outlined by the Plaintiff. (*See*, Defs.' Notice of Filing Rebuttal Aff. Of Howard Coker and Chart of Responses to Pl.'s Objections, Aug. 4, 2023, at Ex. B). Notwithstanding the breadth of the Defendant's Rebuttal, the Court addresses each of the Plaintiff's objections below.

2. Redactions

The entries that are redacted are not redacted in their entirety; rather, each redaction includes sufficient detail to show the basis of the redaction. For example, entry No. 8 on Plaintiff's list of specific objections, states, "Telephone call to Chef Tonino regarding [Redaction]." (*See*, Pl.'s Notice of Filing in Support of Pl.'s Resp. at Ex. E, page 31). Chef Tonino is identified as the client. The substance of the communication, as set forth in Defendants' Rebuttal, was protected by attorney-client privilege. At the time the billing entries were provided, the appeal was pending, as were the claims involving Tavus. As such, there was a legitimate purpose to ensure the protection of the privilege.

This very issue was recently addressed by the Fourth District Court of Appeal in the matter of *Spanakos v. Hawk Systems, Inc.* In *Spanakos*, the appellant plaintiff complained "that a proper analysis of the billing records was 'thwarted' because the GT Defendants 'redacted significant records without explanation.'" *Spanakos v. Hawk Sys., Inc.*, 362 So. 3d 226, 244 (Fla. 4th DCA 2023). The appellate court, however, found "the trial court did not abuse its discretion by including the partially-redacted time entries in the fee award.... The redactions were made because the descriptions 'included the attorney's strategy or mental impressions.'" *Id.*

The redactions at issue in this case clearly evidence and make a prima facie showing that they were made for purposes of addressing attorney-client or work product privilege. The context for each entry is clear based upon the detailed information that was not redacted in each entry. As acknowledged by Defendants' fee expert, Howard Coker, redaction of billing records during fee hearings, for purposes of protecting attorney-client and work product privileges, is standard procedure and is regularly done. (Coker Aug. 4, 2023, Aff. ¶ 55).

Additionally, to the extent Plaintiff is now raising post-evidentiary hearing objections to the Court considering the redacted billing records and materials served with a privilege log based upon claims of discovery violations raising the issues of the adequacy or sufficiency of the Defendants' respective privilege logs, the Court will not consider such arguments as reasons to find Defendants have failed to meet their burden of establishing their entitlement to an award of those fees within the redacted billing records. Plaintiff rendered such challenges to the adequacy or sufficiency of the Defendants' privilege logs moot for the following reasons:

- raising the issues for the first time within its proposed order after the evidentiary hearing concluded;
- failing to object to the adequacy or sufficiency of the Defendants' privilege logs;
- failing to move to compel production of unredacted billing records or request the Court to conduct an *in camera* review of the subject redacted billing records and materials;
- Plaintiff's counsel conceding in response to the Court's questioning during the evidentiary hearing that he was not arguing a "discovery violation" as it concerned the subject redacted time entries, rather he was arguing a "failure of evidence" and "the redaction means you can't evaluate the time entry" – reducing the argument to such redactions prevent the Court from evaluating factually, not legally, whether the time is "reasonable and properly allocated."

As such, under these circumstances, the Plaintiff may not rely upon its lack of diligence to address a discovery dispute as a means to preclude the Defendants from entitlement to an award of fees for work necessarily performed in defending against Plaintiff's claims. Here the redacted billing records in dispute were lightly-redacted and the entries were adequately described, thus, prima facie appearing to be privileged. Therefore, there is "no indication that fee counsel failed to exercise billing judgment," and as such, the Court finds such redactions do not prevent the Court from evaluating whether the time is reasonable and properly allocated and Defendant is entitled to recover fees arising out of these entries, despite the redactions. *Spanakos*, 362 So. 3d at 244. Accordingly, the Court will award the Defendants for the time associated with these entries.

3. Block Billing

Plaintiff objects to certain time entries in which multiple tasks are grouped together, a practice that is commonly referred to as "block billing." However, block billing is not, *per se*, a basis for reducing or omitting those entries from an award of fees. Rather, "block billing does not warrant a reduction where 'the entries are so well-detailed and informative that the lack of segregation does not interfere at all with the Court's task to determine the reasonableness of the time spent,' and 'there are no objectionable tasks that need to be eliminated from the computation of counsel's hours.'" *Id.* at 242. For the "block billing" objections, the descriptions contained within each challenged entry are highly detailed, and there is no indication that any of the tasks incorporated therein are objectionable or are not otherwise appropriate for inclusion in determining a reasonable award. Further, Plaintiff claimed block billing by Defendants even when entries included one single task but were simply long descriptions of that single task. A single task entry is not block billing. For those reasons, the Court does not find that Plaintiff's objections on this ground justifies a reduction of the challenged hours, and as such, the Court will award the Defendants for the time associated with these entries.

4. Time Related to BACM Defenses

BACM was the prior owner of the property on which Gusto and Southern Swells were, and are, tenants. The Plaintiff chose to include BACM as a party to this action, and as such, potential claims directed towards BACM could impact Gusto and Southern Swells. It is unreasonable to believe that counsel for Gusto and Southern Swells would not review all pleadings and papers in this matter for purposes of determining whether such pleadings or papers will impact the claims against Gusto and Southern Swells. It was the Plaintiff who took a strategic action to include BACM as a defendant in this case, and as such, the Plaintiff may not seek a reduction of fees that were necessarily incurred by the strategic decisions made by the Plaintiff in litigating its claims (including the joining of multiple parties to the lawsuit). *See State Farm Fire & Cas. Co. v. Palma*, 524 So. 2d 1035, 1036 (Fla. 4th DCA 1988), *approved*, 555 So. 2d 836 (Fla. 1990). *See also McGowan v. King, Inc.*, 661 F. 2d 48, 51 (5th Cir. 1981) (reversing what it termed a "stingy" allowance of attorney's fees in favor of the plaintiff after protracted litigation resulting from the defendants "stalwart defense"). As such, the Court will award Defendants for the time associated with these entries.

5. Time Rendered on Behalf of Tavus

During the course of the litigation, Orr Cook agreed to represent Co-Defendant Tavus, in addition to Gusto and Southern Swells. However, the claims litigated by and against Tavus arise out of the same operative issues and facts as the claims against Gusto and Southern Swells. A review of the extensive billing records does not reveal any significant time for Tavus that did not necessarily implicate the work product involving the same core facts and issues as those involving Gusto and Southern Swells. Rather, the billing entries as challenged generally relate to work arising out of the defense of Plaintiff's interpretation of the Easement, and such claims were implicitly intertwined with the claims against Gusto and Southern Swells. (Orr Test., March 2, 2023 Tr., 74:17 – 76:9). "[W]here the claims involve a 'common core' of facts and are based on 'related legal theories,' a full fee may be awarded unless it can be shown that the attorneys spent a separate and distinct amount of time on counts as to which no attorney's fees were sought." *Anglia Jacs & Co., Inc. v. Dubin*, 830 So. 2d 169, 172 (Fla. 4th DCA 2002). Based upon the foregoing, the Court finds that the subject billing entries are so intertwined and overlapping with the claims against Gusto and Southern Swells, that a full fee should be awarded. As such, the Court will award Defendants for the time associated with these entries.

6. Services Rendered Regarding the Appeal

As indicated by the Defendants, they are not seeking to recover fees associated with the appeal, and as such, the entries objected to by the Plaintiff for the appeal were not included in the fees and costs being pursued by the Defendants. Because the fees associated with the appeal are not sought by Defendants at this time, the Court will not award Defendants for the time associated with the appeal.

7. Services Rendered Deciding Entries to Redact

The Plaintiff did not provide any legal basis to omit these entries from a fee award. The law provides, however, that if "billing information contained descriptions of services rendered which would reveal the mental impressions and opinions of counsel, that information should be redacted as privileged…." *Finol v. Finol*, 869 So. 2d 666, 666 (Fla. 4th DCA 2004). It, therefore, follows that time spent redacting privileged information, which is necessary to protect privileged information, is recoverable. As such, the Court will award Defendants for the time associated with these entries.

8. Research on Reasonable Fees in Other Counties

The Plaintiff objects to 1.3 hours of time spent researching fee awards in other counties. However, as pointed out by the Defendants, the *Rowe* factors only specify fees customarily charged "in the locality," but there is no indication that the locality must be limited to the county in which the matter is proceeding. The Court finds no legal support for Plaintiff's objection, and as such, the Court will award Defendants for the time associated with these entries.

IV. Analysis

A. Number of Hours Reasonably Expended

In support of their request for fees, Defendants have provided billing records from the inception of Orr Cook's involvement in this matter, up through the end of July 2023. (Defs.' Composite Ex. 1-D and E. Mr. Orr testified that all time, fees, and costs incurred in performing services in this matter as reflected in the billing and time records were reasonable and necessary. (Orr Test., Mar. 2, 2023 Tr, 87:17-88:5; Orr Test., Aug. 9, 2023 Tr,161:2-10). However, Mr. Orr further testified that the number of hours reflected on the billing records are less than the total number of hours incurred in the dispute, as Mr. Orr would routinely speak with the client but not include the time associated with the calls on the billing records. (Orr Test., Aug. 9, 2023 Tr, 160:9 – 161:10; March 2, 2023 Tr., 90:10 – 91:14). Further, the total hours incurred by Orr Cook in litigating the case was less than the aggregate hours incurred by the three firms employed by Plaintiff in this case. (Orr Test., March 2, 2023 Tr., 87:17 – 88:2). While not dispositive, the fact that Orr Cook's hours (representing multiple parties) were less than the hours billed to Hasteh by three law firms demonstrates the efficiency of the defense work. (Aug. 9, 2023 Tr., 147:19 – 148:4, Exhibits 1-D and E).

Defendants also seek to recover their fees incurred litigating the amount of fees due, pursuant to the Attorneys' Fees provision of the subject Easement. (*See*, Defs.' Amd. Mot. to Determine Reasonable Attorneys' Fees and Costs, Feb. 24, 2023, at pages 4-5). The fees provision in the Easement reads:

> Attorney's Fees and Costs. In connection with any litigation arising out of this Agreement, the prevailing party shall be entitled to recover all costs incurred, including reasonable attorney's fees.

(*See*, Defs.' Amd. Mot. to Determine Reasonable Attorneys' Fees and Costs, Feb. 24, 2023, at pages 4-5). Courts have construed similar language as broad enough to encompass fees incurred in litigating fees. In *Waverly at Las Olas Condominium Ass'n, Inc. v. Waverly Las Olas, LLC*, 88 So. 3d 386, 388 (Fla. 4th DCA 2012), the Fourth District Court of Appeal found that a fee provision containing language incorporating recovery of fees for "any litigation between the parties under the agreement..." would permit the trial court to also award fees incurred in litigating the amount of fees to be awarded. *Id.* at 389. Based upon the authority of *Waverly*, the Defendants are also entitled to an award of fees for litigating the amount of reasonable fees because the fees provision at issue in this case entitles the prevailing party to an award of fees for "any litigation arising out of this [Easement]."

The total amount of hours sought by the Defendants, as reflected in Composite exhibits 1-D and E, after 171.2 hours associated with the appeal were deducted, reflect 1,043.7 hours for which the Defendants are seeking to recover. (Coker Aug. 4, 2023 Aff. ¶ 63, Exhibit C). Mr. Orr testified that additional hours, incurred between July 31, 2023, through the date of the August 9, 2023 evidentiary hearing, were as follows: 29 hours for Michael Orr; 12 hours for Joseph Pickles; 18 hours for Megan Comunale; and 4 hours for Alina Fernandez. The total compensable hours sought by the Defendants amount to 1,106.7. (Orr Test., Aug. 9, 2023 Tr, 169:4-21). By individual timekeepers, Defendants seek to recover fees as follows: Michael Orr: 366.4 hours; Michael Traynor: 51.3 hours; Joseph Pickles 38.6 hours; Kathleen Crowley: 4.1 hours; Loreyn Raab: 396.4 hours; Alina Fernandez: 130.1 hours; Megan Comunale: 108.7 hours; and Bonnie Fay: 11.1 hours. Mr. Coker opined as to the reasonableness of the hours expended by Defendants' counsel and testified that the hours incurred, with the deduction of those dedicated to the appeal, were reasonable and necessary in defending against Plaintiff's claims. (Coker June 5, 2023, Aff. ¶ 10, Coker Aug. 4, 2023, Aff. ¶ 62). Notably, Plaintiff's expert, Christopher Greene, was not engaged to opine as to the reasonableness of the hours expended by counsel for the Defendants. (Greene March 31, 2023 Dec. ¶ 18).

After review of all the relevant evidence and the file in this matter, and hearing the testimony, the Court finds and concludes that this matter represents a complex case. The docket also reflects this was a heavily litigated case by skilled counsel. The Court further finds and concludes, based on the preponderance of the evidence submitted, the number of compensable hours that should have been reasonably expended by Defendants' counsel during the relevant time period to be as follows:

Michael Orr	366.4 hours
J. Michael Traynor	51.3 hours
Joseph Pickles	38.6 hours
Kathleen Crowley	4.1 hours
Loreyn Raab	396.4 hours
Alina Fernandez	130.1 hours
Megan Comunale	108.7 hours
Bonnie Fay	11.1 hours

B. Reasonable Hourly Rates

Mr. Orr testified the Defendants are seeking to recover a rate in excess of the amounts charged to his clients during his firm's representation, pursuant to the alternative fee provisions contained in the engagement agreement dated April 14, 2021. (Orr Test., March 2, 2023 Tr, 79:2-12; 114:11-24). While Orr Cook had a prior engagement agreement, dated March 31, 2020, which did not include the alternative fee provision, the omission was inadvertent because all engagements involving the owners of Tavus, who engaged Orr Cook in this matter, are to include the alternative fee provision in exchange for charging a discounted rate. (Orr Test., March 2, 2023 Tr, 57:16-60:16). Upon discovering the omission, a revised engagement agreement was prepared, which included the subject alternative fee provision as provided by the Florida Supreme Court's decision in the *First Baptist Church* case. (Orr Test., March 2, 2023 Tr., 57:1 – 58:17). These agreements were all executed prior to the December 14, 2021, summary judgment in this case. Based upon the alternative fee provision in the April 14, 2021 engagement agreement, Defendants are relying upon the opinion of Mr. Coker to establish the reasonable rates for each of the attorneys and paralegals who worked on this matter for the Defendants. (Orr Test., Aug. 9, 2023 Tr, 161:11 – 162:15).

In response, the Plaintiff has argued the Court should not award any attorneys' fees to Defendants or, alternatively the fees awarded should not exceed the amount that was billed by Orr Cook to the Defendants. (*See, e.g.*, Pl.'s Resp., at pages 9-13). However, Plaintiff's arguments are unpersuasive and not supported by law or fact. Orr Cook's engagement agreement has a valid and enforceable alternative fee recovery provision, and the law is clear that "requiring the losing party to pay an amount exceeding the prevailing party's fee agreement does not violate *Rowe*'s prohibition against awarding fees in excess of the fee agreement if the agreement contains an alternative fee recovery clause." *First Baptist Church*, 115 So. 3d at 982. Additionally, Murphy Anderson, one of the prior law firms representing Plaintiff in this matter, had an engagement agreement with a similar alternative fee provision. (*See* Pl.'s Ex. 2 fn. 1 ("Should anyone other than Client be required to pay Client's attorney's fees, the Firm attorneys' hours rates range from $395 to $450, or such amount as is determined by a court to be reasonable, whichever is higher.")). As acknowledged by Mr. Orr, had Murphy Anderson prevailed in its representation of the Plaintiff in this case, Murphy Anderson would have been entitled to seek an enhanced hourly rate to be determined by the Court. (Orr Test., Aug. 9, 2023 Tr., 169:17 – 170:20). As such, Plaintiff's argument – to effectively ignore the valid and enforceable language of the alternative fee provision – is without merit.

Based on the complex issues litigated and taking into consideration the testimony of the respective witnesses, evidence presented, and the Court's own knowledge and experience of reasonable hourly rates in the locality for this type of work, by lawyers with similar skill level, the Court agrees with the testimony from Mr. Coker, Defendants' expert, and finds the following hourly rates to be reasonable in this matter:

Michael Orr	$900
J. Michael Traynor	$900
Joseph Pickles	$750
Kathleen Crowley	$650
Loreyn Raab	$550
Alina Fernandez	$500
Megan Comunale	$400
Bonnie Fay	$275

C. Reasonable Lodestar Determination

Based on the evidence presented and the above findings, the Court determines the reasonable Lodestar in this matter based on reasonable time incurred and reasonable hourly rates to be as follows:

ATTORNEY/ PARALEGAL	REASONABLE HOURS	REASONABLE HOURLY RATE	FEES PER TIMEKEEPER
Michael Orr	366.4 hours	$900	$329,760.00
J. Michael Traynor	51.3 hours	$900	$46,170.00
Joseph Pickles	38.6 hours	$750	$28,950.00
Kathleen Crowley	4.1 hours	$650	$2,665.00
Loreyn Raab	396.4 hours	$550	$218,020.00
Alina Fernandez	130.1 hours	$500	$65,050.00
Megan Comunale	108.7 hours	$400	$43,480.00
Bonnie Fay	11.1 hours	$275	$3,052.50

TOTAL FEE AWARD: $737,147.50

D. Costs and Attorneys' Fee Expert Witness Expense

With respect to taxable total costs, Defendants seek an award in the amount of $24,927.58 (exclusive of Defendants' attorneys' fees expert Mr. Coker). (Coker Aug. 4, 2023, Aff. ¶ 63, Exhibit D). The Court heard testimony from Mr. Orr (Orr Test., Aug. 9, 2023 Tr, 162:14-19) and from Defendants' expert, Mr. Coker, that $24,927.58 in costs should be awarded (exclusive of Defendants' attorneys' fees expert), along with an itemization for the costs incurred. (Coker Aug. 4, 2023, Aff. ¶ 63, Exhibit D). Mr. Coker further testified the costs incurred were reasonable and necessary under the applicable law. *Id.*

The Plaintiff did not contest or otherwise challenge the requested costs in its June 5, 2023, Response, nor through its expert Christopher Greene, or during the evidentiary hearing conducted in this matter. "It is the moving party's burden to show that the requested costs were reasonably necessary to defend the case at the time the action precipitating the cost was taken." *Nasser v. Nasser,* 975 So.2d 531, 532 (Fla. 4th DCA 2008). The Court finds the Defendants have met their burden with respect to taxable costs and showed they were reasonably necessary to defend the case. As such the Court awards Defendants' costs in the amount of $24,927.58, exclusive of expert witness fees.

As to Defendants' attorney's fees expert, Defendants seek a total award in the amount of $20,900.00 for time incurred by Howard Coker, Esq. of 19 hours at a rate of $1,100.00 per hour. (Orr Test., Aug. 9, 2023 Tr., 162:23 – 163:7; Coker Aug. 4, 2023, Aff. ¶ 65). Pursuant to Section 92.231(2), "[a]ny expert or skilled witness who shall have testified in any cause shall be allowed a witness fee including the cost of any exhibits used by such witness in an amount agreed to by the parties, and the same shall be taxed as costs." Defendants' expert, Howard Coker, Esq., testified he was charging for his work and expected to be paid for his services in this matter. (Coker

Aug. 4, 2023, Aff. ¶ 65). He further testified that he spent significantly more time than expected in providing his opinion in this matter, which included both initial and rebuttal affidavits. (Coker Aug. 4, 2023, Aff. ¶ 65). Mr. Coker's reputation in the community is noteworthy and excellent, and Plaintiff's counsel did not object to the reasonableness of Mr. Coker's time and rate. The Court, therefore, finds that Mr. Coker's time and rate are reasonable. The Court concludes that the reasonable number of hours in this case for expert work by Howard Coker, Esq. is 19 hours at a rate of $1,100.00 per hour. As such, the Court awards Defendants $20,900.00 for expert fee costs.

V. Conclusion and Order

Based on the foregoing, it is hereby **ORDERED AND ADJUDGED** that:

1. Defendants, Southern Swells Brewing Company, LLC and Due Amici Restaurateurs, Inc. d/b/a Gusto are hereby awarded $737,147.50 for reasonable attorneys' fees; $24,927.58 in taxable costs; and $20,900.00 in costs for Defendants' fees expert, for a total of **$782,975.08** against Plaintiff, Hasteh, LLC.

2. A final judgment consistent with this Order shall be entered.

3. This Court reserves jurisdiction to enforce the terms of this Order, including the award of additional attorneys' fees in the event further proceedings are necessary to enforce any of the terms.

DONE and ORDERED in Chambers in Duval County, Florida this 29th day of January 2024.

BRUCE R. ANDERSON, JR.
Circuit Court Judge

cc: All Counsel of Record

CLASS COUNSEL'S UNOPPOSED MOTION
<u>FOR ATTORNEY'S FEES AND COSTS</u>

<u>Exhibit D</u>

Final Judgment on Echo River Sanctuary, LLC's Attorney's Fees and Cost Claim for Slander of Title

21st Mortgage Corp. v. Harrell, No. 17-CA-188 (Fla. 3d Jud. Cir. Mar. 5, 2025)

21ST MORTGAGE CORP.,
PLAINTIFF

VS.

MERI L. HARRELL; CURTIS R. HARRELL ET AL.,
DEFENDANTS
_______________________________/

IN THE 3RD JUDICIAL CIRCUIT COURT, IN AND FOR SUWANNEE COUNTY, FLORIDA

CASE #17-CA-188

FINAL JUDGMENT
ON ECHO RIVER SANCTUARY, LLC'S ATTORNEYS' FEES AND COST CLAIM FOR SLANDER OF TITLE

This Court held an Evidentiary Hearing on December 10, 2024, on Intervenor-Defendant/Counter-Claimant, ECHO RIVER SANCTUARY, LLC's ("ECHO") damages related to its Attorneys' Fees and Cost Claim against 21ST MORTGAGE CORPORATION ("21st" or "21st MORTGAGE") for disparagement [slander] of title. This Court held an evidentiary hearing on the matter. ECHO originally claimed entitlement to $752,031.25 in attorneys' fees and costs in the amount of $13,428.36.

21st MORTGAGE raised objections to every time entry in the case as described below. There are 578 separate time entries spanning 7-8 years. During the exchange of information regarding the fees and costs between the parties, ECHO reduced some time entry claims resulting in a claim for $752,031.25. 21st MORTGAGE never objected to the cost claim.

Having reviewed the Court's record, heard testimony of the witnesses, read and reviewed the exhibits, the parties' submissions, and having heard arguments of Counsel, this Court hereby grants [in part] ECHO's Claim for the reasons set forth below and in the amounts set forth below.

RELEVANT PROCEDURAL BACKGROUND

The First District Court of Appeal describes the history and key facts in this case at *Echo River Sanctuary, LLC's vs. 21st Mortgage Corp.,* 348 So.3rd 1191, 1193-1194 (Fla. 1st DCA 2022).

ECHO intervened in 21st MORTGAGE's replevin claim to protect its property. 21st MORTGAGE sued ECHO for replevin and ECHO's counter-claims included three counts - slander of title, alleging that null liens were filed against the mobile home, 21st MORTGAGE did not have lien priority, and 21st MORTGAGE improperly took the DMV titles slandering ECHO's rights and vendibility. There was a Declaratory Judgement count alleging the same facts and issues. There were 26 paragraphs of the same facts pled in the Slander and Declaratory counts. A third count related to a lien right ECHO claimed if it lost. This count was not litigated and the parties deferred the issue. Unclean hands defenses were raised by each party.

On May 2019, ECHO sought a final hearing. 21st MORTGAGE objected and sought hearing on Motions for Summary Judgment. ECHO objected to Motions for Summary Judgment because of the unclean hands defenses raised by each side. ECHO cited *Frisbie v. Carolina Cas. Ins. Co.,* 162 So. 3d 1079 (Fla. 5th DCA 2015) holding that it was inappropriate to hear the matter by summary judgment due to unclean hands claims and sought a final hearing. 21st MORTGAGE argued that they would show the Court why summary judgment was proper and obtained hearings for summary judgment before the final hearing as sought by ECHO.

At the summary judgment hearing held on June 12, 2019, 21st MORTGAGE failed to serve ECHO or the Court with affidavit support for its summary judgment, despite being so advised in advance by ECHO. The Court allowed ECHO to proceed with its Motion for Summary Judgment, which raised unclean hands and lien priority issues. After the unclean hands issues were presented, the Court granted Summary Judgment on unclean hands only.

21st MORTGAGE appealed the Summary Judgment. The Summary Judgment was reversed by the Florida First District Court of Appeal which found that there was a genuine issue of material fact as to the damage sustained by the subsequent title holder (ECHO) as a result of

21st MORTGAGE's improper conduct in Bankruptcy Court. The case was remanded for further proceedings to the Trial Court.

On December 8, 2020, the Trial Court conducted a bench trial by Zoom. In its counterclaim, ECHO had claimed attorney's fees and costs as "special damages" in the slander of title claim. In the Pre-Trial Stipulation, it was stipulated that attorneys' fees could be later pursued after the court's decision on who owned the mobile home. Five months later May 20, 2021, Judgment was entered on behalf of 21st MORTGAGE finding that it had lien priority and had the right to replevin the mobile home.

ECHO appealed and the Florida First District Court of Appeal reversed, finding that 21st MORTGAGE's improper conduct in Bankruptcy Court resulted in null and void liens. Therefore, it was improper for 21st MORTGAGE to impair and take the title by claiming to be first lienholder. The case was remanded to the Trial Court for further proceedings with instructions to declare the liens a nullity. *See, Echo River Sanctuary, LLC's vs. 21st Mortgage Corp.,* 348 So.3rd 1191 (Fla. 1st DCA 2022). The court entered a Declaratory Judgment in accordance with the 1st DCA Instructions. The court reserved jurisdiction to assess fees and costs.

On March 23, 2023, the Court entered an agreed Order regarding ECHO's claim for attorneys' fees and costs which stated, "The parties agree that ECHO RIVER may claim as an element of damage certain attorneys' fees and costs incurred." The order set a Disclosure Schedule for each party regarding the attorneys' fees and costs claim for damages. The Disclosure Schedule required ECHO to serve its fee claim within 45 days, 21st MORTGAGE had 60 days to:

> respond to the Fee and Cost Claim identifying the hourly rates, hourly time entries, and costs to which it agrees and with specificity and particularity the ones which it challenges/objects to and shall state the basis for the challenge/objection. Any supporting expert

> shall be identified at that time with an affidavit supporting said challenges/objections;
>
> Thereafter within 60 days, ECHO RIVER shall notify 21st MORTGAGE of any agreement to the challenges/objections and the basis for non-agreement to any challenges/objections. It shall contemporaneously provide a supporting affidavit of an expert witness supporting its position;

The order also provided the costs should be handled on the same basis and the parties would then obtain a hearing and submit to the court the materials exchanged and briefs addressing the objections at least 20 days in advance of the hearing.

Thereafter the following occurred:

On April 7, 2023, ECHO served its fee and cost materials, along with an accompanying affidavit of lead attorney, Thomas S. Edwards, Jr.;

On June 6, 2023, 21st MORTGAGE served its objections to fees with an accompanying affidavit from its expert, Adam Morrison. Though the objections addressed multiple issues, the expert affidavit submitted by 21st MORTGAGE only addressed the hourly rate of lead attorney Edwards. It did not address the hourly rates of any other attorney involved in the case. Nor did the affidavit challenge the time claimed in the case, nor did the objections or affidavit address any objections to costs claimed by ECHO. There were 578 separate time entries originally submitted by ECHO and 21st MORTGAGE objected to every single time entry with a broad variety of objections, most of which had no expert affidavit support;

On August 7, 2023, ECHO responded to the objections and supplied supporting affidavits of fee expert attorney, Howard Coker, and from lead attorney, Thomas S. Edwards, Jr., supporting ECHO's responses to the objections.[1]

The final hearing on attorneys' fees and costs was set for December 10, 2024, and on November 20, 2024, each party served a Memorandum of Law with the materials called for by the Trial Court Order. However, 21st MORTGAGE raised new objections, not previously raised, in violation of this Court's Order.

As a result of the new issues raised on December 5, 2024, ECHO filed an Objection to 21st MORTGAGE raising new issues;

On December 6, 2024, 21st MORTGAGE filed a response to the Objection filed by ECHO; and

On December 10, 2024, this Court conducted an evidentiary hearing as addressed below.

On the same date, an additional evidentiary hearing took place regarding ECHO's Motion for Injunction and Sanctions due to 21st MORTGAGE's alleged violation of court orders by 21st MORTGAGE sending unlicensed repossessors to ECHO's property to try to repossess the mobile home after the above events and court orders.

THE GOVERNING LAW FOR DETERMINING ATTORNEYS' FEES

A. THE DUTY TO EXCHANGE INFORMATION

Florida law requires the parties to exchange fee and cost materials in advance of a hearing. The moving party has a burden to establish entitlement to fees. Entitlement was stipulated to

[1] In the response filed by ECHO, some time entries were withdrawn, and later during depositions of the experts, additional time entries were withdrawn.

herein and was supported by extensive documentation, including 578 separate time entries spanning approximately 7 to 8 years.

The opponent then has the burden to specify the items to be deducted and must be reasonably precise in objecting to, and proving unreasonable or unnecessary hours. An opponent's failure to explain with specificity the particular hours he or she views as "excessive, redundant, or otherwise unnecessary is generally fatal." *See, Universal Property & Casualty Ins. Co. v. Deshpande*, 314 So.3d 416 (Fla. 3rd DCA 2020); and *Seelta v. Delicatessen Support Services, Inc.*, 203 F.Supp.2d 1328, 1333 (ND Fla. 2002) citing *Gray v. Lockheed Aeronautical Systems Co.,* 125 F.3d 1387 (11th Cir. 1997). As the opponent of the fee award, Defendant has the burden of pointing out with specificity which hours should be deducted." *Centex-Rooney Const. Co. v. Martin Ctv*., 725 So. 2d 1255, 1259 (Fla. 4th DCA 1999); see also *Am. Home Assur. Co. v. Weaver Aggregate Transp. Inc.,* 89 F. Supp. 3d 1294. 1306 (M.D. Fla. 20I5).

Florida law is also clear that expert testimony is required for both the hourly rate to be applied to an attorney's work and whether the hours are reasonable given the facts and issues in dispute in the case. *See, Horowitz v. Rossdale CLE, Inc.*, 357 So.3d 260, 262 (Fla. 5th DCA 2023) – "An award of attorney's fees . . . must be supported by competent substantial evidence . . . This evidence should include . . . expert testimony to establish "both the reasonableness of the hours and the reasonable hourly rate." As explained in *Universal Property, Seelta,* and *Gray* cited above, the party opposing the fees has the same burdens. In addition, in recent years, Florida courts have made clear that *Daubert* standards apply to attorneys' fee expert testimony. *See, Philip Morris v. Naugle*, 337 So.3d 13 (Fla. 4th DCA 2022).

In this case, the court entered an order which implemented Florida standards requiring the exchange of information with "specificity and particularity," and which was expressly required support by expert testimony. This follows the pre-existing Florida case law.

The purpose of requiring this exchange of information, both supported by expert testimony and with "specificity and particularity" is to narrow and frame the issues well advance of a hearing, to enhance the chance of resolution of the issues, and to avoid last second demands on the attorneys and the courts. Parties are not at liberty to ignore these standards and certainly are not at liberty to ignore court's orders.

Longstanding federal and state case law explains the importance of the proper and appropriate exchange of facts and information, not only to the parties, but to our system of justice. Cases are to be determined based upon relevant facts and issues and not based upon gamesmanship, surprise, or superior trial tactics. *See, Hickman v. Taylor,* 329 U.S. 495(1947) stating:

> A search for the truth and justice can be accomplished only when all relevant facts are before the judicial tribunal. These relevant facts should be the determining factor rather than gamesmanship, surprise, or superior trial tactics.

And, *See, Dodson v. Persell*, 390 So.2d 704, 707 (Fla. 1980) and *Surf Drugs, Inc. v. Vermette*, 236 So.2d 108 (Fla. 1970), holding that proper exchange of information is necessary for the appropriate handling of cases and to ensure effectiveness and efficiency of the judicial system.

B. SLANDER OF TITLE – FEES AND COMPENSATORY DAMAGES

In *Old Plantation Corporation v. Maule Industries, Inc.*, 68 So.2d 180, 181 (Fla. 1953), The Florida Supreme Court held that "slander of title" may be defined as a false and malicious statement, oral or written, made in disparagement of a person's title of real or personal property, or some right of his, causing him special damage. Any attorneys' fees or costs incurred in correcting the slandered or disparaged title or other impaired rights are recoverable as "special damages." "In a disparagement [slander] action, the pecuniary loss recoverable for the injurious falsehoods is restricted to that which results directly and immediately from the falsehood's effect on the conduct of third persons **and the expenses incurred to counteract the publication**." (emphasis supplied). *See, Bothmann v. Harrington*, 458 So.2d 1163, 1170 (Fla. 3rd DCA, 1984)

Gates v. Utsey, 177 So.2d 46 (Fla. 1st DCA 1965) is instructive. The case holds that liability is generally imposed upon a defendant who communicates to any third person statements disparaging plaintiff's title to property, which is not true in fact and causes actual damage. *Id.* at 488. Actual damage includes attorneys fees and costs for repairing vendibility of title. Malice, in this context, simply means a lack of legal justification and is presumed if a disparagement is made that is false.

In this case, the 1st DCA found that the liens placed against the titles were null and void, and therefore false. *Gates* explains that a disparagement occurs when the improper statements "affects [the properties'] value and marketability." *Id.* In this case, the void lien did that but marketability was also directly affected by the taking of the DMV titles, without which ECHO had no ability to do anything with the mobile home. Thus, to restore marketability of the property, the liens not only had to be removed but the titles had to be returned so that they could be replaced[2].

C. THE ROWE FACTORS

In determining reasonable attorneys' fees to be awarded in a case, Florida law is governed by *Florida Patients' Compensation Fund v. Rowe*, 472 So.2d 1145 (Fla. 1985). The Florida Supreme Court set out a three-step analytical process which is modeled after the Federal Lodestar approach. The Circuit Court first determines the number of hours reasonably expended on the litigation. *Id.* at 1150. The Court must then determine a reasonable hourly rate for the prevailing

[2] This is a doublewide mobile home, so there are two titles at issue.

parties' attorneys. *Id.* at 1151. The Court then multiplies the results of Step 1 by the result of Step 2 to produce a "Lodestar Figure." *Id.* The third step then permits the Court to adjust up or down the Lodestar Figure total attorneys' fee by assessing two additional elements, if relevant, contingency risk factor and the results.

Thus, under a Rowe analysis the following factors apply in the following steps:

A. Step 1, the Court considers:

1. The number of hours reasonably expended on the litigation by attorneys or paraprofessionals involves the review of two elements. *See, Rowe* at p. 1150:

   (a) The number of hours reasonably expended on the litigation after using "billing judgment" (the time a lawyer would bill a client in the case); and

   (b) The novelty and difficulty of handling the case is normally reflected in the number of hours.

B. Step 2 – the Reasonable Hourly Rate – *Id.*, p. 1151:

(a) The court should assume the fee will be paid irrespective of the results;

(b) The elements required for consideration are:

   (i) Skill requisite to perform the legal services properly;

   (ii) The likelihood (if apparent to the client) but the acceptance and the particular employment will preclude other employment by the lawyer;

   (iii) The fee customarily charged in the locality for similar legal services;

   (iv) The amount in controversy;

(v) The time limitations imposed by the client or by the circumstances;

(vi) The nature and length of the professional relationship with the client; and

(vii) The experience, reputation, and ability of the lawyers performing the services.

C. The court then multiplies the Step 1 hours by the Step 2 hourly rate for each professional to get the "Loadstar Fee";

D. Step 3 – The court may then add or subtract based upon two factors, if relevant:

(a) Contingency fee – this potentially implicates a multiplier – with separate elements based upon other risk factors. (Contingency was not involved herein); and

(b) Results obtained in the case.

21st MORTGAGE did not challenge any of the costs in this case. Thus, ECHO will recover the costs claimed in the amount of $13,427.36. In addition, in the objections provided, and in the supporting expert testimony provided, 21st MORTGAGE did not provide any expert evidence challenging or proposing alternative reasonable hourly rates of any attorney in this case, other than Mr. Edwards, nor did 21st MORTGAGE supply any expert testimony to support challenges to the time expended in the case, despite fact intensive issues it raised. Thus, 21st MORTGAGE did not comply with this Court's Order requiring objections with "specificity and particularity" and supported by expert testimony; and see *United States Ex rel Bilokumsky v. Tod, 263 U.S. 149, 153-154 (1923)* (stating "silence is often evidence of the most persuasive character.").

In the Memorandum of Law filed just before the hearing, 21st MORTGAGE raised new issues, in violation of long-standing case law and this court's order setting out the duties of the parties. For the first time, and with no expert support, it advocated using an "blended rate" for all the attorneys in the case, other than Mr. Edwards. The Court rejects this objection and argument because it was not timely or properly raised. It is not supported by expert testimony. Further, cases have rejected a "blended hourly rate." Under *Rowe*, the Court must evaluate each of the attorneys, their work, and their credentials. *See, H C. v. Bradshaw*, 426 F.Supp. 3d 1266, 1276 (USDC SD Fla. 2019). Thus, this issue is waived.

The Court will address one of the issues below because 21st MORTGAGE's response and argument on the appellate fees claims that the issue is "jurisdictional."[3] 21st MORTGAGE argues neither ECHO, nor the Court can compel compliance with the law or the Court's Order to identify issues in advance of this trial on fees and costs as it relates to this jurisdictional issue. However, as discussed above, additional new issues were raised.

THE ATTORNEYS' FEES/COSTS HEARING

Prior proceedings in this case were conducted by The Honorable David W. Fina. The undersigned took over this matter in or about November of 2024 and conducted the attorneys' fees and costs evidentiary hearing on December 10, 2024.

Prior to, during, and since the hearing, the Court was in possession of the Court's record and the parties' submissions. At the hearing, ECHO presented the live testimony of its expert, Attorney Howard Coker; the live testimony of lead trial lawyer, Thomas S. Edwards, Jr., and ECHO admitted twelve (12) exhibits during the hearing.

21st MORTGAGE presented the live testimony of its expert, Adam Morrison, and admitted seven (7) exhibits at the hearing.

[3] This issue relates to appellate fees incurred in this case. Regardless of whether an issue is jurisdictional or not, it is not appropriate for a party to ignore a court order.

THE TESTIMONY

Mr. Coker's testimony is at Pages 11-78 of the hearing transcript, which is filed with the Court. Mr. Coker noted that ECHO's counsel reduced some of the time after looking at the issues raised by 21st MORTGAGE which included reduction of 11.0 hours, including some of the time spent on the unclean hands issue. Thereafter, Mr. Coker addressed the *Rowe* elements for fees. Mr. Coker testified that the hourly rates sought and the time expended by each of ECHO's attorneys and paraprofessionals were reasonable and appropriate based upon the *Rowe* factors. Mr. Coker testified that appropriate billing judgment was used by counsel for ECHO and the hours submitted in total on the claim were fewer than the hours submitted by 21st MORTGAGE's attorneys to 21st MORTGAGE for payment. ECHO is claiming approximately 866 hours, while 21st MORTGAGE paid its attorneys for over 900 hours of work for the same period of time and on the same issues. In his testimony, Mr. Coker testified that:

> The complexity of this case required a high degree of skill as there were numerous complex commercial issues raised by 21^{ST}. The issues identified included issues of foreclosure, lien priority, specialty mobile home statutes impacting both foreclosure and lien priority, title issues, bankruptcy issues, unclean hands, slander of title, and multiple appeals.

Mr. Coker further addressed that there had been a "scorched earth" approach taken by 21st MORTGAGE in aggressively raising and litigating numerous issues. On the issue of whether the employment in the case precluded the employment of other cases, Mr. Coker testified that this was a high-demand and high-time case which would impact the law firm and the lawyers' ability to take on additional cases. Further, the scorched earth approach increased those demands.

Next, Mr. Coker addressed the fee customarily charged in the locality for similar legal services. He confirmed he reviewed a matrix of court orders awarding civil fees which addressed all different types of civil litigation, spans orders throughout the State for decades, but is weighted more heavily towards North Florida. He acknowledged that the matrix contains between 700-800 different entries regarding fee orders and attorneys of all ages. He confirmed that he also looks to other resource materials relating to fees. The orders he has reviewed include orders from the Third Circuit, the Seventh Circuit, Jacksonville and other North Florida areas including numerous rural counties.

Mr. Coker reviewed the issues relating to the work on the defense of unclean hands. Unclean hands was raised by both parties. He testified that the unclean hands issues were based upon the same foundational facts that went to slander of title, as were the issues pertaining to the declaratory judgment count. There were twenty-six (26) factual paragraphs alleged in the Counterclaim and they were foundational facts in all three issues. Mr. Coker found that factually they were inextricably intertwined in the work done on those issues and all contributed to the outcome. He described how all the work in this case went to restoring marketability of the mobile home after it was damaged by 21st MORTGAGE's conduct. In sum, he testified that the hours expended, the hourly rates, and the costs expended in the case were all reasonable after evaluating the *Rowe* factors.

Mr. Coker was familiar with fee awards in the Third Circuit and also addressed the locality from the standpoint of the issues and the attorneys retained in this case. He referred to *Philip Morris v. Jordan* and addressed the concept of an expanded locality due to the advent in recent years of attorneys from all over the state and region being retained to litigate cases in areas of the state other than where the litigation resides. He testified that 21st MORTGAGE had availed itself of attorneys from all over the Southeastern United States, retaining attorneys from Orlando; two different law firms from Jacksonville, Florida; Atlanta, Georgia; and Birmingham, Alabama. No Live Oak attorney(s) appeared in the case until the months just before the attorneys' fee hearing.

Mr. Coker described the background and experience of some of the attorneys involved in the case for 21st MORTGAGE and identified that the firms that were brought in by 21st MORTGAGE were regional and national firms utilizing top-end trial lawyers including lawyers he was familiar with. One of the attorneys retained in this litigation was the current Chair of the Florida Bar Trial Lawyers Section. Another attorney in one of the firms served as an instructor with Mr. Coker in the Advanced Trial Advocacy Seminars and was in law school with him.

Since none of these attorneys who actively litigated the case resided in or worked in the Live Oak area, Mr. Coker testified that an expanded locality is appropriate for the same or similar reasons as discussed in *Philip Morris v. Jordan*. Mr. Coker also addressed the complexity of the case and the fact that a scorched earth approach in this case was consistent with the conduct discussed in the Florida Supreme Court case of *State Farm v. Palma*, 555 So.2d 836 (Fla. 1990). Because of the locale of 21st MORTGAGE's attorneys, the complexity of the case, and the aggressive pattern of 21st MORTGAGE's challenge to all issues in the case, Mr. Coker also looked at the fee awards spanning other areas including Jacksonville where, offices for two of 21st MORTGAGE's firms exist, as did the lawyers handling the case.

He found that there were fee awards to Third Circuit lawyers over the last one to two decades that were generally consistent with fee awards in other jurisdictions in Florida. He also addressed that the locality is only one of eight factors in the *Rowe* decision that must be considered in setting the hourly rate. Mr. Coker opined that the hourly rates sought by each of the attorneys and paralegals were reasonable and appropriate in this litigation.

Mr. Coker was aware that in recent years lead counsel, Thomas S. Edwards, Jr., has been paid by clients more in hourly rates than the amounts claimed in this case ($950 per hour); and that there have been multiple awards by courts to Edwards for amounts equal to or higher than that sought in this case.

Mr. Coker addressed the other *Rowe* factors in addition. When asked about the amount in controversy, Mr. Coker observed that the amount in controversy in this case was irrelevant because it was somewhere between $30,000.00 and $81,000.00; yet 21st MORTGAGE expended many multiples of that in hotly and aggressively litigating the case. He explained that 21st MORTGAGE certified this as a case of great public importance with ramifications throughout the mobile home industry and throughout the state in its filings with the First District Court of Appeal and the Supreme Court of Florida. Thus, the case was litigated in an extraordinary way and appeared to have been litigated for reasons other than the value of the asset.

Next, Mr. Coker was asked about the time limitations imposed by either the client or the circumstances. He found that that was a significant factor because the circumstances of the case were such that there were high time demands and the aggressive method of handling of the case made those time sensitive also.

In addressing the experience, reputation, and ability of the lawyer performing services, Mr. Coker acknowledged that Mr. Edwards is considered a "very high-level litigator, both in the medical malpractice and commercial areas." Mr. Coker acknowledged that he thought so much of Mr. Edwards' skills that in the last year Mr. Coker had brought him into a piece of highly complex commercial litigation to assist in handling it for "dear friends of his." Mr. Coker testified that Mr. Edwards and his firm's work "is excellent." He was aware of awards to Mr. Edwards between $900.00 and $1,250.00 and was aware of commercial litigation Mr. Edwards handled within the last year while being paid $1,000.00 per hour with an additional contingency incentive bonus based upon production in another commercial case. Mr. Coker was further aware of hourly fees paid to Mr. Edwards ranging from $750.00 back in the 2018-2019 timeframe, to $900.00 to $950.00 in the years since then and higher rates over the last year. In this case, Mr. Edwards' claim is for $950.00 per hour and Mr. Coker testified that based upon the *Rowe* factors this fee is reasonable in this case.

Mr. Coker further opines that there is a significant difference in rates in firms for clients who provide volume work. One representations clients are typically charged higher rates than a client who negotiates lower rates for providing regular volume work. He testified 21st MORTGAGE CORPORATION is a significant corporation with work all over the country and is a subsidiary of Berkshire Hathaway. Thus, Mr. Coker anticipated that attorney fee rates paid by it are based on lower negotiated rates as opposed to what would be typical in a single-shot representation.

As it relates to issues pertaining to enhancement of any award, Mr. Coker opined that the win in this case was a "total and complete win." Although ECHO did not win the appeal relating to the unclean hands summary judgment, in its Final Opinion, the First District quoted heavily from its prior opinion relating to the unclean hands. The facts that were established in that summary judgment proceeding remained the facts established at the trial of the matter and were crucial to winning the case as they were cited extensively and quoted from the prior Opinion. Further, it was the conduct of 21st MORTGAGE which forced those issues to be fought to get to a final hearing to resolve these issues and restore marketability.

Next, the Court heard from lead counsel, Thomas S. Edwards, Jr. Mr. Edwards' testimony is found at Pages 81 through 115. Mr. Edwards' curriculum vitae was attached as an exhibit at Page 99 and demonstrates extraordinary credentials.

Mr. Edwards is a 40-year lawyer who has been Board Certified since 1991, the first year of his eligibility for Board Certification. He has been a civil trial lawyer and appellate lawyer throughout that time. He is a past president of the Jacksonville Bar, the Florida Justice Association, multi-term member of the Florida Bar Trial Lawyers Section Executive Council, past president of ABOTA Jacksonville, a member of the ABOTA National Board for more than a decade, a member of the Board of Directors of the International Academy of Trial Lawyers, Chaired the 4th Circuit Grievance Committee, he served multi terms on the Florida Standard Jury Instruction – Civil, and along with one judge who served on the Civil Jury Instructions Committee, was asked to serve as a founding member of the Florida Supreme Court Florida Standard Jury Instructions Committee for Business Jury Instructions, Edwards has served between one and two decades as an instructor for the Florida Bar Advanced Civil Trial Seminar and serves in a similar capacity for the Advanced Civil Trial Seminar provided annually by the Florida Justice Association, he has received numerous Trial Lawyer awards including for professionalism and outstanding achievements including the Justice Ray Ehrlich Award from the Jacksonville Bar, Trial Lawyer of the Year from ABOTA, the Masterson Award for Professionalism, he has some of the top verdicts in the State, and has published extensively including multiple book chapters in Inns of Court and Florida Bar books, the Florida Bar's top legal article Award for an article relating to the Fabre opinion, and recent Florida Bar Journal article regarding *Daubert*. He has been in Best Lawyers of America for numerous years, and for the last 12 years has been picked as one of the top trial lawyers in his region in one of two different areas every other year for the last 12 years.

Mr. Edwards has testified extensively as a fee expert witness including serving as the expert witness in the Engle Progeny cases of both *Brown and Jordan.* Earlier in his career, he served as a volunteer for the Florida Bar in the Fee Arbitration Program where he was responsible for setting fees in fee disputes between attorneys and clients. Mr. Edwards also testified on the reasonableness of the fees and costs in this case. Mr. Edwards practiced originally as an insurance defense attorney who also tried commercial litigation cases at both Marks Gray Conroy & Gibbs and Commander, Legler, Werber, Dawes, Sadler & Howell, now known as Foley & Lardner. Since that time, he has had his own firm where he continues to do both personal injury and commercial litigation, which was discussed by Mr. Coker. Mr. Edwards, Mr. Coker, and 21st MORTGAGE's expert, Mr. Morrison, all agree that the skill set for the top litigators in civil litigation is the same and that the compensation is the same or very similar regardless of type of litigation.

At Pages 81-84, Mr. Edwards provided background on how this case came to be and why it was litigated. Between Pages 84-87, Mr. Edwards testified as to why he continued to handle the matter. Included among the reasons is he knew some of the attorneys and law firms retained in this case and knew that they were bringing in top-tier lawyers from all around the Southeastern United States, and he did not know of a lawyer in the Live Oak area who he could rely upon to matchup against big firm lawyers being retained by this major corporation. Mr. Edwards further explained that because of unique statutes relating to a mobile home, there is no marketability of title without the DMV title. He explained that you cannot do anything with the mobile home without this title. The statutes provide that the first lienholder has the right to take the title and keep it until the lien is paid. Without that title, the mobile home is worthless and you cannot do anything with it. Mr. Edwards researched the issues when he first learned of the problem relating to the mobile home and was convinced that the liens were improper, and that the title had been improperly impaired and taken by 21st MORTGAGE. Mr. Edwards made efforts from the beginning of the case to try to resolve the case to no avail.

Like Mr. Coker, Mr. Edwards explained that the Paragraphs 1-26 of the Counter-claim were the foundational facts which were used in both the Declaratory Relief and the Disparagement of Property/Slander of Title claims. He further explained that this case is significantly different than the case relied upon by 21st MORTGAGE supporting its argument that the work done in a slander of title claim must be completely segregated from the other Counts. The case relied upon by the Defense contained eight (8) Counts and included both Florida and Federal Statutory claims with significant differences in proof to a slander of title claim.

He testified, this declaratory judgment and slander of title claims were founded upon the exact same facts. The only other Count related to a lien against the mobile home and the parties agreed not to litigate that until they saw what happened in this case. Mr. Edwards testified the unclean hands were raised by each party, and the core facts litigated with the unclean hands were the same core facts that went to the slander of title, the improperly filed liens. Those facts revolve around MORTGAGE's improper conduct in Bankruptcy Court which were a violation of the Bankruptcy Stay and a failure to report to the Court that the liens had been filed to get permission to reinstate them. Thus, the same core facts permeated all of the issues.

Mr. Edwards provided further explanation regarding the Defendant forcing the summary judgment hearing rather than agreeing to go to the final hearing on the merits as requested by ECHO. Mr. Edwards, like Mr. Coker, opined that the 866.9 hours were necessary to clear the slander and to get the title returned. This was compared to 904 hours expended by 21st MORTGAGE's attorneys who were billing 21st MORTGAGE. There was no time submitted by Mr. Edwards' firm for time after the title was returned and restored. Further, at the beginning of the case, time was submitted for intervening after he was deemed by Judge Fina to be a proper intervenor in the case because there was a vested right to the property which was potentially impaired by 21st MORTGAGE's claims.

Mr. Edwards described that he used billing judgment and eliminated some of the hours that were in the time sheets. During Mr. Edwards' testimony, he not only described the foundational facts that support all of the issues in the case; but counsel also presented a highlighted version of the final First District Court of Appeal opinion which highlighted either direct quotations from the first unclean hands opinion and highlighted in another color identical facts that were addressed in both opinions. Those facts from the unclean hands opinion and the quotations were an extensive part of the First District's Final Opinion.

At Page 92-96, Mr. Edwards explained how he tried to obtain a final hearing and opposed a hearing on summary judgments. 21st MORTGAGE insisted on summary judgment hearings and they were provided by the Court over ECHO's objections, raised pursuant to *Frisbie v. Carolina Cas. Ins. Co., 162 So.3d 1079 (Fla. App. 2015).*

Beginning at Page 99 of the transcript, Mr. Edwards addressed the *Rowe* factors in a manner consistent with the testimony of Mr. Coker. Mr. Edwards reiterated that the aggressive approach taken by 21st MORTGAGE appeared to have been completely unrelated to the value of the asset. At Pages 106-108, he also described how 21st MORTGAGE's attorneys attempted to convince the Florida Supreme Court to take the case claiming it was a case that would have a state-wide devastating impact on the housing market.

Mr. Edwards addressed the other *Rowe* elements as well as some of the objections raised. He explained that his firm was composed of four (4) full-time lawyers during the vast bulk of this litigation. The Defense argued that he should have had associates doing more of the work and Mr. Edwards explained that his firm is not structured that way. Further, even if he had access to one of the associates in the firm, complexities of this case were such that it would have taken him as much time to explain background facts to others as it would for him to do the work himself.

Mr. Edwards also addressed the issue of use of current rates. He pointed out that the time standard for a normal civil case is 18 months. This case has taken 7-8 years and had multiple appeals. He opined that the same factors that the First District set out in its *Brown* Opinion on this issue, supports use of current rates in this case. He further explained that his law firm agreed to wait and hold the bills until the end of the case, although the costs had been paid as the case went along. There was an agreement within the firm that the money is owed and the costs are owed and will be paid at the end of this case. He analogized to a personal injury case where a doctor has performed work but has not yet been paid for that work. He testified since the fees and costs are owed, they are proper damage claims.

In describing some of the scorched earth tactics, Mr. Edwards described how 21st MORTGAGE and its attorneys would not even discuss with him methods to obtain the mobile home after they asked for it following the trial court's ruling, but prior to the appellate court ruling in ECHO's favor. There were multiple threats to come take the home at a time of their choosing. Mr. Edwards described that he had to file a pleading citing to state statute that provided that when a new owner of a property who had not taken the loans had a mobile home subject to repossession on their property, the repossessor was required to come to agreement on a time to pickup the mobile home and an agreement to pay any damages caused by removal of it from the property. 21st MORTGAGE refused to ever agree to that. Therefore, a motion was filed with the Court for protection citing to the statute requiring that this be coordinated with him and that either they agreed to be responsible for damages or ECHO had the right to have the Judge require a bond.

Mr. Edwards testified that the hours expended were reasonable for the work done to restore marketability of the mobile home, the hourly rates sought and costs in the case were also reasonable.

Following Mr. Edwards' direct testimony, 21st MORTGAGE declined to cross-exam him.

Thereafter, Mr. Edwards attached excerpts from 21st MORTGAGE corporate representative, Mr. Warkins' deposition. He noted that the entirety of the deposition had been filed with the Court and the excerpts were attached as Exhibit 6. In those excerpts, Mr. Warkins, who is Associate General Counsel and Corporate Representative of 21st MORTGAGE, acknowledged that based upon the Policies & Procedures and training in place, 21st MORTGAGE personnel should have known that they didn't have perfected liens from the very beginning of the case. Mr. Warkins admitted multiple mistakes in multiple phases of the case for their personnel not determining that there was no perfected lien.

After ECHO closed its case, 21st MORTGAGE called their expert witness attorney Adam Morrison. Mr. Morrison's testimony is found at the transcript pages 128-166. As was done in Mr. Morrison's Affidavit supplied prior to the hearing at page 153 of the transcript, Mr. Morrison expressly limited his testimony to the hourly rate of Mr. Edwards. Mr. Morrison testified that the highest hourly rate he is aware of for the locality of Live Oak, Florida and the Third Circuit is $500-$650 per hour and that is the high reasonable end of the hourly rate for attorneys in that area. He stated he supported Mr. Edwards receiving a top rate for the area. He later agreed that $675 per hour is reasonable and appropriate as a current rate for the locale. Mr. Morrison explained that he is using current rates and that when a case becomes protracted under the case law current rates should be used.

He agreed he was familiar with the "fee matrix." In addressing the factors that go to a reasonable hourly rate, Mr. Morrison stated that Mr. Edwards did not practice in the commercial litigation area, he agreed that this case was "quite complex" and that this is the most complex case he has testified in. He agreed that Mr. Edwards is a highly talented lawyer and that based upon his reputation and the results, he deserves a top rate for the locality.

During the course of the discussion of the hourly rate, Mr. Morrison argued that because this case was not a contingency case and Mr. Edwards was not facing the risk factors associated with contingency fee cases, the fee should be lower. Under cross examination, even when presented with quotations from *Rowe* that require the Court to consider that the hourly rate would be paid in considering the reasonable hourly rate, Mr. Morrison maintained that the contingency factor is considered as a part of determining the hourly rate.

Mr. Morrison, when presented with his deposition testimony, agreed that this was a "highly complex case." Mr. Morrison agreed that he was "willing to give the highest rate in history of the Third Circuit" to Mr. Edwards. He agreed that "he does have experience. He has a wonderful reputation. He is an exceptional attorney who was able to get an exceptional result in providing that service." See transcript at page 141. At page 145 he then conceded that "so that gets you to the very high end of reasonable for doing a case such as this." Mr. Morrison agreed that the case should be adjusted for current rates and then agreed that the rates should be adjusted upwards to $675 per hour. He testified during cross examination at page 149 that he treats contingency cases differently for hourly rates than non-contingency cases. He stated "that's how I read 4-1.5."

Like Mr. Coker and Mr. Edwards, Mr. Morrison agreed that "litigation is litigation. It is the same whether it's personal injury litigation, commercial litigation, family law litigation. It is a skill set. It is all the same." Mr. Morrison agreed that the Court is bound to follow the *Rowe* factors. He agreed that "this case was very complex and I am going to give you *Palma*." Mr. Morrison conceded that the case was hotly contested. He further agreed that if the Court found that *Palma* applied to this case he did not believe that was an unreasonable finding. Though, he objected that he was limiting his opinions in this case to the hourly rate, he then conceded that the some of the factors *Palma* impacts go to the hourly rate.

Mr. Morrison testified that 21st MORTGAGE argued that this was a case of great public importance and treated the case that way and, therefore, this case took a high level of skill to perform the case properly. He also agreed that he avoided this kind of case and that the case was litigated without regard to the value of the assets at issue. Mr. Morrison agreed that he viewed this case as a complete win on behalf of ECHO, and he further agreed that based upon his review of the case and the concessions and testimony from 21st MORTGAGE's own personnel "they screwed up and shouldn't have opposed this case." In fact, Mr. Morrison testified "somebody should have gotten fired over this thing."

THE ROWE ANALYSIS

A. STEP ONE – REASONABLE HOURS EXPENDED

THE APPELLATE TIME CLAIMS and OBJECTIONS

This matter is before the Court for an Evidentiary Hearing to assess damages for 21st MORTGAGE's slander of title relating to the mobile home owned by ECHO. Slander of title is a unique cause of action where attorneys' fees and costs of litigation may be recovered as an element of damages. See generally *Price v. Tyler,* 890 So.2d 246, 250-251 (Fla. 2004) holding that in general, attorneys' fees are not considered actual or compensatory damages. However, the Florida Supreme Court acknowledged that there are certain unique causes of action in Florida where attorneys' fees are considered an element of special damage because the wrongful acts of a defendant caused the plaintiff to become involved in litigation. *Id*. at Headnote 3.

In this case, this Court is not presiding over a traditional attorney fee claim under the American Rule where the fees are predicated upon a statutory right to fees, a contractual right to fees, or fees as sanctions, such as in a Proposal for Settlement. Instead, this Court is serving as a fact finder on a compensatory damage claim relating to special damages arising from Slander of Title which uniquely include attorneys' fees and costs as damages.

Both ECHO and 21st MORTGAGE elected not to have a jury determine these damage issues.

Multiple cases have held that the Rule requiring that the Appellate Court must either determine or consent to the award of Appellate Fees is "generally the rule" in Florida. See *Respiratory Care Services, Inc. v. Marie D. Sheer, P.A.,* 715 So.2d 1054, 1056 (Fla. 5th DCA 1998) – "Generally the Appellate Court has exclusive jurisdiction to award appellate attorneys fees and in order to invoke the jurisdiction of the court to award fees, the party seeking attorneys fees must timely file a motion, pursuant to Florida Rule of Appellate Procedure 9.400(b), in the Appellate Court." And, see *Malkani v. Hannah*, 380 So.3d 1229, 1232 (Fla. 6th DCA 2024) – "Appellate Courts generally have exclusive jurisdiction to award appellate fees." (Emphasis supplied in both cites). However, had a jury then been requested by either ECHO or 21st MORTGAGE, then the damages to be awarded in this case would be within the province of a jury as factfinder. Then there would be a substantive constitutional right not to have those damages decided by a judge.

Based upon the fact that the courts have consistently held that the American Rule requiring the Appellate Court consent to an award of fees granted by statute, contract, or as a sanction is "generally" the rule. That means there are exceptions. The fact that this is not an American Rule case and is instead one of the unusual cases where the attorneys' fees are "special damages" to be awarded by a factfinder at the trial level, this Court finds that ECHO was not required to obtain permission of the Appellate Court for the award of fees. The award of damages in the form of fees and costs made by the factfinder may be reviewed as a damage finding by the Appellate Court under normal appellate standards.

WAS THE DENIAL OF THE APPELLATE FEES "ON THE MERITS"

This Court's finding is that because this is a damages award and this case involves fees and costs as damages, the American Rule and the Florida Rule of Appellate Procedure do not apply. The Court must also determine whether the denial of the appellate fees was "on the merits" in the 1st District Final Opinion case. 21st MORTGAGE also argues that the Appellate Court's denial of fees in the Appellate Court proceeding which resulted in the Final Opinion[4], is law of the case and that ECHO cannot pursue the Appellate Fees in that case. The denial was issued without any explanation.

The original Motion was filed at the start of the appeal when ECHO had lost at trial and did not yet know the ruling or rationale of the appellate court. ECHO's motion was filed without identifying all the bases that have been presented to this Court, because some did not exist at the time of filing the motion.

The factors supporting an award of fees in that case include, ECHO properly pled special damages, including attorneys' fees and costs, in its counterclaim. 21st MORTGAGE stipulated in the Pre-Trial Stipulation that properly preserved fee or cost claims could be pursued after the Court's determinations on the merits. ECHO won on appeal to the 1st District. *See, Echo River Sanctuary, LLC's vs. 21st Mortgage Corp.*, 348 So.3rd 1191, (Fla. 1st DCA 2022). Following the Declaratory Judgment entered by the trial court after the First District's Mandate, 21st MORTGAGE stipulated in the Fee Order governing this hearing that fees could be recovered in this case.

[4] See, *Echo River Sanctuary, LLC's vs. 21st Mortgage Corp.*, 348 So.3rd 1191 (Fla. 1st DCA 2022).

ECHO had no right to fees until it won the appeal and 21st MORTGAGE stipulated to the fees. This was not before the Appellate Court which denied fees without providing any explanation. That determines the issue of whether the appellate denial of the fees was a determination "on the merits." It was not. *TKH Coastal Property Investments, LLC v. Talcor Group, Inc.*, 380 So.3d 1203, 1207 (Fla. 5th DCA 2023) at Headnotes 6, 7, 8 and 9 – "However, in order for denial of appellate attorneys fees without explanation to constitute the law of the case, it must be clear that the decision was on the merits." Citing to *Candyworld, Inc. v. Granite St. Ins. Co.*, 700 So.2d 424, 425 (Fla. 4th DCA 1997).

For 21st MORTGAGE to prevail on this argument, it must demonstrate that the record on appeal was sufficiently developed for the appellate court to rule on the merits. Based upon the discussion above, the record was not sufficiently developed for the appellate court to determine this issue on the merits. Developments after the appellate action, including 21st MORTGAGE's consent to the award of fees as damages herein preclude such a finding. See *Horowitz v. Rossdale CLE, Inc.,* 356 So.3d 260 (Fla. 5th DCA 2023).

It is also notable in this case that 21st MORTGAGE failed to raise this issue timely, despite Florida case law and a Court Order expressly requiring that they timely notify ECHO of all bases for their objections to the fees in this case. They did not comply with prior case law or this Court's Order. That conduct should not be condoned. The Court denies the objections regarding "law of the case" for this reason also. Further, the Court finds that the fees herein are damages and not treated as an Attorney's Fee Claim under Rule 9.400(b), Fla. Rules of App. Proc.

Based upon all of the above, at least as to the appellate fees incurred for the Final Opinion, ECHO has the right to recover those fees, even if the Court applies the American Rule and Florida Rule of Appellate Procedure 1.400(b). Because this matter was not on the merits, the Court finds that the appellate work relating to the Final Opinion was reasonable and appropriate and, from the start of the 1st DCA Appeal leading to the Final Opinion, to the conclusion of the appellate work in the 1st DCA, ECHO's time records reflect 155.6 hours of appellate time spent on the Final Opinion from time entry numbered 427 and dated June 17, 2021 up through 1st DCA related work found up to time entry numbered 539 and dated November 7, 2022.

21st MORTGAGE's OBJECTION TO HOURS EXPENDED BEFORE OWNERSHIP

21st MORTGAGE objected to the hours expended before ownership without support of an expert.

In Old Plantation Corporation v. Maule Industries, Inc., 68 So.2d 180, 181 (Fla. 1953) The Florida Supreme Court held "slander of title may be defined as a false and malicious statement, oral or written, made in disparagement of a person's title to real property or personal property, **or of some right of his, causing him special damage**." (emphasis supplied) Thus, disparagement impairing <u>any</u> right is slander of title and is not dependent on already being an owner.

The 1st DCA found in its Opinion based on stipulations in the record, that ECHO had entered into a contract for this property five (5) years earlier and was owner of the property. *Echo River Sanctuary, LLC v. 2P1 Mortgage Corporation*, 348 So.3d 1191, 1194-1195. The evidence presented at trial shows that when ECHO was put on notice of 2lst's conduct, it had already put a deposit down on the property and was doing a walk through for the closing. This Court heard ECHO's intervention motion arguing it had vested rights to protect in the litigation. 21st MORTGAGE objected and lost. This Court found ECHO had a vested legal right in the property which was threatened with replevin. Thus, this Court granted the intervention so ECHO could protect its rights. The 1st District held that ECHO had a right to a clean title to the mobile home unimpaired by 21st MORTGAGE's void and improper liens. This is law of the case. Therefore, the time at issue covers the work required for the intervention granted in this case. The Court finds this time is recoverable and the objection is denied.

THE REASONABLE NUMBER OF HOURS

After due consideration of the pleadings, the record evidence, and the materials submitted by both parties, and all of the Rowe factors, the Court finds that the testimony regarding the reasonable expenditure of time in restoring vendibility of title was credible and appropriate. That testimony was supplied by both Mr. Coker and Mr. Edwards. Mr. Edwards' testimony went unchallenged. Equally important, 21st MORTGAGE failed to present any testimony challenging the time in this case through an expert or otherwise. As previously noted, "silence is often evidence of the most persuasive character." See *United States ex rel. Bilokumsky*, at 153-154.

21st MORTGAGE had the opportunity to present expert testimony on these issues and chose not to. At a minimum, the issues of whether the facts litigated relating to slander of title, declaratory judgment and unclean hands were inextricably intertwined is a disputed issue of fact, and 21st MORTGAGE chose not to present expert testimony to rebut ECHO's testimony on this issue. The pleadings show that the same core facts were necessary for both the slander of title claim and the declaratory judgment claim, particularly when the property could not be made vendible/marketable without requiring return of the DMV title. In addition, the unclean hands dispute was explained by both Mr. Edwards and Mr. Coker and there was no expert testimony provided to the contrary as it related to the core identical facts. This was further demonstrated by presentation of the highlighted Appellate Opinion showing the facts from the unclean hands dispute and the prior appeal were essential to determining the lien priority and ownership issues. ECHO's expert testimony also supported that 21st MORTGAGE forced ECHO to first litigate the summary judgment issues before obtaining a final hearing to determine lien priority.

21st MORTGAGE argues that *Local Mortg. Co. of Georgia v. Powell*, 420 So.2d 311 (Fla. 1st DCA 1982) requires ECHO to segregate time for every issue in the case. But *Powell* involved not only a count for Slander of Title, but involved seven (7) additional disparate counts. The counts included multiple common law and state and federal statutory claims, including fraud, forgery, liable and slander, Truth in Lending, Home Improvement Sales Act violations, FDUPTA (s.501.201 Fla. Stat.) and Consumer Collections Practice Act Violations (s.559.72 Fla. Stat.). Plaintiff in *Powell* claimed all of the work on every count related to Slander of Title with no further explanation.

By contrast here, ECHO's witnesses persuasively explained that there were the same 26 paragraphs of core facts alleged in both the slander of title count and the declaratory judgment count. All were the same and involved the improper liens against the DMV titles to the mobile home. The same core facts were litigated on the unclean hands defense and the Mobile Home was not vendible without the cleared and returned DMV title. Thus, the testimony from ECHO's witnesses that the facts and issues were inextricably intertwined was credible and persuasive. 21st MORTGAGE failed to counter the persuasive and credible testimony with any evidence.

Based upon the lack of expert testimony provided by 21st MORTGAGE, and the evidence presented, the Court finds the testimony of Mr. Coker and Mr. Edwards properly supported these determinations.

The Court finds the hours claimed by ECHO as shown below were reasonable and appropriate in restoring marketability of the titles:

TIMEKEEPER	**HOURS**
Jennifer L. Reiber	**8.50**
Jennifer R. Peters	**19.65**
Kim A. Hathy	**1.50**
Michelle H. Martino	**8.80**

Rebecca A. Rudolph	**53.70**
Thomas S. Edwards, Jr.	**767.65**
W. Joel Powell	**18.10**
TOTALS (originally claimed)	**877.80**
Dropped claims	**11.00**
TOTAL HOURS	**866.80**

B. STEP TWO – REASONABLE HOURLY RATE

WHETHER TO USE CURRENT BILLING RATES

ECHO argues in its materials and in its expert witness testimony from both Mr. Coker and Mr. Edwards that the Court should use current billing rates. 21st MORTGAGE opposes the use of current billing rates in its materials; however, it's expert witness, Mr. Morrison, testified that he used current billing rates, he adjusted his testimony to address current billing rates, and acknowledged that when a case becomes protracted current billing rates should be used.

In *Philip Morris USA, Inc. v. Brown,* 313 So.3d 898 (Fla. 1st DCA 2021), the court upheld that use of current hourly billing rates. The court cited to *Florida Department of Agriculture and Consumer Services v. Bogorff,* 132 So.3d 249, 257 (Fla. 4th DCA 2013) which upheld current rates rather than historic hourly rates after over a decade of litigation. Likewise, the court cited to *Purdue v. Kenny A.,* 559 U.S. 542 (2010) and *Gray v. Bostic,* 613 F.3d 1035 (11th Cir. 2010). These cases support the use of current rates, rather than the use of an economic adjustment factor. For rates spanning long periods of time, the court is required to do a present day evaluation through use of either current rates or an economic adjustment.

This case began in 2017 and we are now in 2025. That spans nearly eight (8) years. 21st MORTGAGE'S own expert agreed that current rates are appropriate in protracted cases. Case law explains that there does not have to be a showing of fault by anyone to use current rates in the fee calculation. The opposing side need not have unjustifiably caused the delay. See *Bogorff* 132 So.

3d at 257. ("[A]n enhancement of an attorney's fee could be appropriate where an attorney's performance involves an exceptional delay in the payment of fees **or** where the attorney assumes costs in the face of unanticipated delay. particularly where the delay is unjustifiably caused by the defense.")(emphasis added). Considering current rates is appropriate when there is an exceptional delay, and is only made more appropriate when the opposing side triggers that delay.

Florida judicial standards call for average civil litigation cases to be completed in approximately eighteen (18) months. The Court finds that the nearly 8 year period this case spanned warrants the use of current rates as does the testimony herein.

THE REASONABLE HOURLY RATES AND "LOCALITY"

In analyzing the reasonable hourly rate as a part of *Rowe* Lodestar analysis, the court is cognizant that locality is one of eight factors the court must consider. The rates historically awarded or charged in the locality where the litigation takes place, is relevant and the court gives consideration to those rates.

However, the court also considers the facts of this case and the rationale of *Philip Morris USA v. Jordan,* 333 So.3d 300 (Fla. 1st DCA 2022). In *Jordan,* the court explained that there are cases where there is an expanded "locality" in modern litigation. The court analyzed a variety of issues unique to *Engle* Progeny cases that warranted the use of an expanded locality.

ECHO and its experts argue that there is an expanded locality in this case. While 21st MORTGAGE argues that the court is bound to only consider the rates relevant to the locality for the Live Oak area and the Third Circuit.

The court gives due consideration to the locality rates in the Third Circuit as testified to in this case. However, while not matching perfectly with the elements discussed regarding *Engle* cases in *Jordan*, this case presents some unique circumstances also. The circumstances that arise in this case warrant consideration of an expanded “locality” given several factors. First, 21st MORTGAGE elected to use lawyers spanning the entire region of the Southeastern United States. No lawyer from the Live Oak area or the Third Circuit appeared in this case until after the litigation was concluded, other than the attorneys fees and costs issues, and a sanctions issue for alleged violations of Court Orders by 21st MORTGAGE. Thus, for the first seven (7) years of the litigation 21st MORTGAGE elected to use several regional and national multi-office firms with top-tier litigators and appellate lawyers from areas other than Live Oak Florida and the Third Circuit.

The lawyers retained by 21st MORTGAGE include lawyers who have been or are presidents of legal organizations, a chair of the Florida Bar Trial Lawyer’s Section, teachers/instructors at top-tier complex advanced trial advocacy seminars and lawyers who have been awarded recognition in Best Lawyers of America. 21st MORTGAGE advocates that in compensating its opposition, ECHO should be restricted to Live Oak / Third Circuit rates. It is notable that 21st MORTGAGE elected to use attorneys from two different firms in Jacksonville, Florida (one with multiple offices), a multi-office firm based in Orlando, a regional firm with attorneys based in Atlanta, a national firm with attorneys based in Birmingham, Alabama. Most or all these firms are multi-office firms spanning either the State, the Southeastern Region, or they are national firms.

By contrast, ECHO used one firm from Jacksonville, Florida, the same locale of two of the offices of two of the firms retained by 21st MORTGAGE in this litigation. The firm used by ECHO had four (4) full-time lawyers and one office according to lead counsel, Thomas Edwards.

From the testimony, 21st MORTGAGE is a major national corporation that has attorneys that perform work for them. 21st MORTGAGE is a subsidiary of Berkshire Hathaway. ECHO’s lead counsel, Mr. Edwards, is one of the owners of ECHO and knew at least some of the attorneys involved in this litigation prior the start of the litigation, was familiar with the background training, experience and expertise of these attorneys. He deemed it appropriate and necessary for the proper representation of his corporation to use an attorney from outside the Live Oak area who he felt could match up with the credentials of the adversary's retained attorneys.

It is also notable that Mr. Edwards identified at the beginning of the case that the case was likely to be complex and demanding. The Court's review of this case and the Appellate Opinions confirms that this case was a complex case and was hotly litigated by 21st MORTGAGE without regard to the value of the asset. 21st MORTGAGE's own expert stated that it would not be unreasonable to find that the type of litigation discussed in *State Farm v. Palma*, 555 So.2d 836 (Fla. 1990) applies to this case.

The experts for ECHO, Mr. Coker and lead counsel, Mr. Edwards, describe numerous complexities in the case and the case spanned issues involving real estate foreclosure and lien priority interests, both of these litigation issues were impacted by the specialty statutes and case law relating to mobile homes, the UCC, bankruptcy issues, and a review of the Appellate Opinion reveals that 21st MORTGAGE raised numerous other complex issues regarding whether the mobile home was a fixture, whether bankruptcy rules applied when a husband files bankruptcy but not the wife, and a long list of additional issues. 21st MORTGAGE's expert agreed that the case was extremely complex and he added at the end of his testimony that it was the most complex case he has testified in and that the results were exceptional.

This case involved two (2) appeals to the First District, and an attempt by 21st MORTGAGE to appeal to the Florida Supreme Court based upon claims that the case was of state-wide importance and could impact the entire housing industry in the State of Florida.

Given the dynamics of this case, it is this Court's decision that while the Court gives consideration to the locality of the litigation – the Third Circuit, the Court should also consider hourly rates in other locales in Florida, as well as the fees and rates paid to the lawyers handling the case for 21st MORTGAGE and the fees and rates charged to other clients by ECHO's counsel.

While considering all of the above evidence, there are eight (8) factors, not just one (1), in analyzing the reasonable rate and the Court will employ all factors including the locality of the Third Circuit and other hourly rate information given the regional range of the lawyers hired by 21st MORTGAGE. Given the regional range of lawyers hired by 21st MORTGAGE, a review of the eight factors is as follows:

A. The skilled requisite to perform the legal services properly was a high degree of skill;

B. The likelihood (if apparent to the client) that the acceptance and the particular employment will preclude other employment by the lawyer – this was apparent to Mr. Edwards;

C. The fee customarily charged in the locality – the locality issue is discussed extensively and all evidence discussed is considered by the Court;

D. The amount in controversy was approximately $30,000-80,000, but the case was litigated by 21st MORTGAGE without regard to the vale of the asset;

E. Time limitations imposed by the client or by the circumstances – in the circumstances of this case there were high time demands and multiple instances of time limitations;

F. The nature and length of professional relationship with the client – the relationship between Mr. Edwards and the corporation this is not a significant consideration; and

G. The experience, reputation and ability of the lawyers performing the services – all experts, including 21st MORTGAGE's experts, agreed that Mr. Edwards' credentials, reputation and ability were extraordinary and at the highest level.

THE HOURLY RATES FOR THE TIMEKEEPERS

21st MORTGAGE failed to comply with longstanding case law and this Court's Orders regarding providing timely and complete objections identifying its opposition to the fee claims in advance of the hearing. 21st MORTGAGE raised new objections twenty days before the hearing in violation of Florida law and this Court's disclosure order. Based upon 21st MORTGAGE's response to ECHO's objection it appears that this was done knowingly and intentionally. The Court will not condone this conduct. It is prejudicial to ECHO and it's counsel, and it adversely impacts the Court's ability to properly and efficiently handle its cases, including this one.

21st MORTGAGE failed to retain an expert witness that challenged or even addressed the hourly rates of any lawyer in this case other than lead counsel, Thomas Edwards. It then suggested in its late filed objections that the Court utilize a "blended rate" which has been condemned in the case law. *H C. v. Bradshaw*, 426 F.Supp. 3d 1266, 1276 (USDC SD Fla. 2019). 21^{st} failed to identify any expert testimony to perform the calculation on either the rate or the purported "collateral hours." This does not meet Daubert standards, which apply to attorneys' fee issues and is based only upon 21st MORTGAGE's lawyers' untimely objections/argument. *Philip Morris v. Naugle*, 337 So.3d 13 (Fla. 4^{th} DCA 2022). One of the fundamentals of Daubert is that a proper methodology for these determinations must be supplied by expert testimony so that it can be challenged by the opposition in cross examination. Thus, the Court declines to address 21st MORTGAGE's new untimely arguments that are not supported by expert testimony, when ECHO provided appropriate expert supporting testimony and timely disclosures.

Therefore, the rates and time of all of the lawyers, with the exception of Mr. Edwards, went unchallenged under this Court's Ordered procedures. Those rates are hereby approved as reasonable herein, particularly when the Court had the opportunity to consider all the *Rowe* factors, as well as the locality issues addressed above.

As it relates to Mr. Edwards, the Court has addressed the testimony that was supplied regarding Mr. Edwards' rates above. The Court also is cognizant of Florida case law that holds that the best evidence of reasonable rate for an attorney is what they have been paid by willing clients. See *Smith v. School Bd. of Palm Beach County,* 981 So.2d 6 (Fla. 4th DCA 2007) – "Perhaps the strongest and best evidence of an attorney's market rate is the hourly rate he/she charges clients. *Dillard v. City of Greensboro*, 213 F.3d 1347, 1354 (11th Cir.2000)." In this case, there is undisputed testimony from both Mr. Edwards and Mr. Coker that Mr. Edwards in the last year, was actually paid for handling commercial litigation at a rate of $1,000 an hour plus a contingency "kicker" based upon production in a case he was hired to try. Mr. Coker testified about retaining Mr. Edwards to assist in complex commercial litigation for $1,000 an hour, for close friends of Mr. Coker, though he has not yet been paid in that litigation. The Court heard and saw evidence that Mr. Edwards has received fee awards in recent years ranging from $950 an hour to $1,250 an hour from other judges. In addition the testimony presented by ECHO on the eight (8) *Rowe* factors was credible and accepted by this Court.

Given the locality issues and after due consideration of all eight (8) factors, the Court finds that Mr. Edwards' rate of $950 an hour is reasonable in this highly unique commercial case where the opposition, a major corporation hired top tier lawyers spanning the South Eastern Region of the United States.

Based upon the above, the Court finds the following rates to be reasonable and appropriate in this case:

TIMEKEEPER	RATE
Jennifer L. Reiber	$750
Jennifer R. Peters	$125
Kim A. Hathy	$125
Michelle H. Martino	$600
Rebecca A. Rudolph	$150
Thomas S. Edwards, Jr.	$950
W. Joel Powell	$600

C. MULTIPLYING STEP ONE BY STEP TWO FOR THE LODESTAR

TIMEKEEPER	HOURS	RATE	AMOUNT
Jennifer L. Reiber	8.50	$750	6,375.00
Jennifer R. Peters	19.65	$125	2,456.25
Kim A. Hathy	1.50	$125	187.50
Michelle H. Martino	8.80	$600	5,280.00
Rebecca A. Rudolph	53.70	$150	8,055.00
Thomas S. Edwards, Jr.	767.65	$950	729,267.50
W. Joel Powell	18.10	$600	10,860.00
TOTALS (originally claimed)	877.80		762,481.25
Dropped claims	11.00	$950	10,450.00
NEW TOTAL	866.80		752,031.25

D. STEP THREE – ADDITIONAL FACTORS – CONTINGENCY ISSUES/RESULTS OBTAINED

In the Third Step of the Rowe factors, if applicable to the case, the Court is to consider issues relating to any contingency fee and the results obtained in the case by the party that prevailed. There was no contingency fee in this case, although Mr. Edwards' law firm agreed to wait to be paid until the end of the case. Thus, the Court does not consider the contingency a contingency fee factor.

As it relates to the results obtained in the case, the Court finds that to be an important factor given the dynamics of this case. Mr. Coker testified that this was an extraordinary result in a difficult, hotly contested case that was litigated in a way that was extreme and by a major corporation that utilized high-end regional and national counsel. Mr. Coker testified that this, although the unclean hands summary judgment resulted in a reversal in the appellate court, those facts were foundational to the ultimate win in the 1st DCA on behalf of ECHO. Further, he explained 21st MORTGAGE forced that fight and for ECHO to restore marketable title it had to deal with these issues to obtain resolution. As catalogued in the First District's Final Opinion, there were numerous legal and fact issues raised by 21st MORTGAGE that ECHO was forced to fight, even when 21st MORTGAGE's Corporate Representative acknowledges that its personnel should have known they did not have lien priority on the mobile home at issue.

The 1st District Final Opinion discusses 21st MORTGAGE's failures in the bankruptcy court to follow known procedures, which it's Corporate Representative agrees should have been followed. This Court experienced 21st MORTGAGE's conduct regarding its late filed objections in violation of this Court's Order. Further, after ECHO prevailed in this case, 21st MORTGAGE attempted to repossess the mobile home while using illegal, unlicensed repossessors. In sum, there has been a pattern of 21st MORTGAGE creating a high demand piece of litigation, which placed extraordinary demands on its opposition. That was done in the face of circumstances where 21st MORTGAGE now acknowledges multiple mistakes in the handling of this litigation. This litigation, and the approach taken by 21st MORTGAGE, placed high demands on ECHO, its counsel, and all aspects of our court system, when 21st MORTGAGE now acknowledges this was all a series of mistakes. Yet, 21st MORTGAGE continued to hotly contest this litigation.

ECHO and its counsel faced a major corporation that hired multiple attorneys to fight this case on every front and with no regard for the value of the asset. They did this when their own Corporate Representative now admits they should not have pursued these claims. 21st MORTGAGE forced ECHO and its counsel to fight and expend tremendous time and resources just to keep what it rightfully owned.

21st MORTGAGE's expert witness characterized this case as "a complete win for ECHO" and he testified that the work done by Mr. Edwards was extraordinary. ECHO's expert agrees with this. The Final Opinion in this case describes numerous complex issues ECHO's counsel had to overcome, despite well funded, aggressive, well trained opposing counsel that left no stone unturned in trying to take and asset owned by ECHO but which 21st MORTGAGE claimed as its own. Mr. Edwards testified that regardless of the outcome of these hearings this case will be a "loss" for him. This Court finds that testimony credible.

As a result, the Court has the discretion pursuant to *Rowe* to either enhance or detract from the *Rowe* Lodestar Fee totaled in the section above, based upon the results obtained in the case. Although this Court finds it is a complete win under extraordinary and demanding circumstances the Court is not enhancing or otherwise adjusting the fee.

It is hereby ORDERED AND ADJUDGED:

ECHO RIVER SANCTUARY, LLC. shall take Judgment for damages caused herein as follows:

1. Attorneys' fees in the amount of [$762,481.25] are awarded to ECHO RIVER SANCTUARY, LLC, and shall be payable by Plaintiff, 21st MORTGAGE COMPANY, INC.
2. Litigation costs in the amount of $13,428.36 are awarded to ECHO RIVER SANCTUARY, LLC, and shall be payable by Plaintiff, 21st MORTGAGE COMPANY, INC.
3. The Court reserves jurisdiction to determine costs relating to these damage proceedings.
4. Intervenor-Defendant/Counter-Claimant, ECHO RIVER SANCTUARY, LLC, 4401 Salisbury Road, Suite 200, Jacksonville, FL 32216. EIN Number 46-2152714, recovers from Plaintiff, 21ST MORTGAGE CORPORATION, INC., 620 Market Street, #100, Knoxville, TN 37902, EIN No. 76-0478830, these special damages for attorneys fees and costs in the total amount of [$775,909.61] which shall bear interest at the rate prescribed by law, from this date of execution forthwith.

DONE AND ORDERED in Chambers, Live Oak, Suwannee County, Florida this 5th day of March 2025.

MARK E. FEAGLE, Circuit Court Judge

cc: All Counsel of Record

Echo River Sanctuary, LLC
4401 Salisbury Rd., Ste. 200
Jacksonville, FL 32216

21st Mortgage Corporation
620 Market Street, #100
Knoxville, TN 37902