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.

ORDER CERTIFYING SETTLEMENT CLASS, APPOINTING CLASS COUNSEL AND CLASS REPRESENTATIVE, PRELIMINARILY APPROVING CLASS SETTLEMENT, APPROVING CLASS NOTICE AND NOTICE PLAN, AND SCHEDULING FINAL APPROVAL HEARING

THIS CAUSE is before the Court on Plaintiff's Motion for Class Certification, Approval of Class Notice, and Preliminary Approval of Class Action Settlement filed on July 27, 2026 (the "Motion"). The Motion is unopposed. The Court held a hearing on the Motion on August 13, 2026. Upon review of the Motion, its supporting exhibits, and the arguments of counsel at the hearing, and being duly advised in the premises, the Court finds that the Motion is due to be granted.

I. Class Certification

In this action, Plaintiff asserts that Defendant, Costa Del Mar, Inc. ("Costa") violated the Magnuson-Moss Warranty Act, 15 U.S.C. § 2301 *et seq.* ("MMWA"), by selling sunglasses with an alleged lifetime warranty against manufacturer's defects and then charging an $11.95 (plus tax) processing fee to repair sunglasses it determined were defective. (*See generally* Compl.) In the Motion, Plaintiff first asks the Court to certify the following settlement class:

> All citizens in the United States who (i) purchased a pair of non-prescription Costa sunglasses prior to January 1, 2016, and (ii) paid Costa a warranty fee to

> repair or replace those sunglasses damaged by a manufacturer's defect from August 20, 2013 to February 29, 2020.

(the "Class"). (Mot. at 8.)

Class certification is governed by Florida Rule of Civil Procedure 1.220, which requires the movant to satisfy the four requirements of subpart (a)—*i.e.*, numerosity, commonality, typicality, and adequacy of representation—and one of the categories set forth in subpart (b). Here, Plaintiff seeks certification under Rule 1.220(b)(3), which requires that common questions predominate and that a class action is superior to other methods of adjudication. The Court has examined the evidence submitted by Plaintiff with the Motion to determine whether the foregoing requirements have been proved by a preponderance of the evidence. As set forth below, the Court finds that each of the requirements is satisfied and that the Class should be certified.

A. Rule 1.220(a)

1. Rule 1.220(a)(1): Numerosity

Rule 1.220(a)(1) requires that "the members of the class are so numerous that separate joinder of each member is impracticable." Here, Costa's business records establish hundreds of thousands of Class members who purchased non-prescription Costa sunglasses and paid the warranty processing fee during the class period. The Court finds that separate joinder of Class members here would be impracticable, so the numerosity requirement is satisfied.

2. Rule 1.220(a)(2): Commonality

Rule 1.220(a)(2) requires that "the claim or defense of the representative party raises questions of law or fact common to the questions of law or fact raised by the claim or defense of each member of the class." The commonality requirement is satisfied here because multiple common issues exist, including whether the sunglasses referenced in the Class definition were sold subject to a warranty for purposes of the MMWA, whether the alleged warranty at issue constitutes a full warranty under the MMWA, whether Costa charged an $11.95 processing fee to repair sunglasses covered by the alleged warranty, and whether doing so violated the MMWA.

3. Rule 1.220(a)(3): Typicality

Rule 1.220(a)(3) requires that the claims of the representative party be typical of the claims of the class. Typicality is satisfied when the claims of the class representative and the class members arise from the same event or course of conduct and are based on the same legal theory. *E.g.*, *Sosa v. Safeway Premium Fin. Co.*, 73 So. 3d 91, 114 (Fla. 2011). Here, Plaintiff purchased Costa sunglasses subject to the same alleged warranty and was charged the same $11.95 processing fee to obtain warranty repair services as the other Class members. Plaintiff claims he was damaged because Costa charged him a processing fee that violated the MMWA. His claims thus arise from the same course of conduct and are based on the same legal theory as those of the other Class members. The typicality requirement is therefore satisfied.

4. Rule 1.220(a)(4): Adequacy of Representation

Rule 1.220(a)(4) requires that the named plaintiff fairly and adequately protect the interests of the class. This requires both that named plaintiff's interests not be antagonistic to those of the class and that class counsel be competent and qualified to represent the class. *Sosa*, 73 So. 3d at 115. Here, Plaintiff's interests are aligned with the Class because he seeks the same relief as the other Class members for the same alleged conduct. Additionally, Plaintiff's counsel at Holland & Knight LLP have extensive class action and complex litigation experience and have litigated these claims for approximately eight years across multiple proceedings. Accordingly, the Court finds that the adequacy requirement is satisfied.

B. Rule 1.220(b)(3)

Rule 1.220(b)(3) requires that questions of law or fact common to the class predominate over any questions affecting only individual members, and that a class action be superior to other available methods of adjudication. *Sosa*, 73 So. 3d at 111–12.

1. Predominance

Common questions predominate here because all Class members purchased sunglasses subject to uniform written language that Plaintiff alleges constitutes a full warranty under the MMWA, and they were all charged the same $11.95 processing fee that Plaintiff alleges violates the MMWA. The Court can therefore adjudicate liability on a class-wide basis by determining whether the uniform written language constitutes a full warranty under the MMWA and whether charging the $11.95 processing fee violates the MMWA. In addition, the damages caused by the alleged violation could also be adjudicated on a class-wide basis because all Class members paid the same warranty processing fee. For these reasons, the Court finds that common issues predominate over any individualized issues.

2. Superiority

A class action is superior to other available methods of adjudication of this lawsuit because, as noted above, common issues predominate over individualized issues, and the value of each claim is too small to justify individual lawsuits. Absent class certification, it is unlikely that any Class member could economically pursue the claims Plaintiff asserts. The Court therefore finds that the superiority requirement is satisfied.

* * *

Because Plaintiff has proved that the requirements of Rule 1.220(a) and 1.220(b)(3) are satisfied, the Court finds that Plaintiff's request for class certification is due to be granted, that Plaintiff should be appointed as the Class representative, and that Plaintiff's counsel at Holland & Knight should be appointed as Class Counsel.

II. Preliminary Settlement Approval

The Motion next asks the Court to preliminarily approve the Settlement Agreement and Limited Release attached as Exhibit 1 to the Motion (the "Settlement"). Among other things, the Settlement provides that Costa will pay $4.095 million to a qualified settlement fund with Class members entitled to a cash benefit based on an equal share of the fund after deduction of attorney's fees and expenses and administration costs. The Settlement provides for no reverter and a *cy pres* distribution to the Captains for Clean Water organization. Based on the size of the Class, requested attorney's fees and expenses, and current estimates of class administrative costs, Plaintiff represents that participating Class members are expected to receive approximately $2.25 per claim to be paid via paper check, Venmo, PayPal, or Zelle, based on the Class member's preference.

A class-action settlement should be approved if it is fair, reasonable, and adequate. *E.g.*, *Nelson v. Wakulla Cnty.*, 985 So. 2d 564, 570 (Fla. 1st DCA 2008). Because Plaintiff seeks class certification and preliminary settlement approval simultaneously, the Court applies heightened scrutiny, taking an active role in protecting the interests of absent Class members and ensuring that the Settlement is not the product of collusion between the parties. *See, e.g.*, *Grosso v. Fidelity Nat'l Title Ins. Co.*, 983 So. 2d 1165, 1170 (Fla. 3d DCA 2008). In assessing whether the Settlement is fair, reasonable, and adequate, the Court considers *inter alia* (A) the likelihood of success at trial; (B) the range of possible recoveries and the point over or below that range at which a settlement is fair, adequate, and reasonable; (C) the complexity, expense, and duration of the litigation; (D) the substance and amount of opposition to the settlement; and (E) the stage of the proceedings at which the settlement was achieved. *See Nelson*, 985 So. 2d at 570. The Court examines these and other factors below.

A. Likelihood of Success at Trial

While Plaintiff expresses confidence in his ability to prevail at trial, Plaintiff acknowledges that Costa advanced several defenses to liability and/or damages, some of which could result in Class members recovering nothing. For example, Costa argues that Plaintiff's claim is barred entirely by the statute of limitations. If Costa were to prevail on this defense, Plaintiff and the Class members would recover nothing. While the Court denied Costa's Motion to Dismiss on limitations grounds at the pleading stage, the ultimate outcome of the defense was uncertain and posed meaningful risk to Plaintiff and the Class. Based on Costa's defenses and the other risks inherent in complex litigation and trial, the Court finds that, in addition to significant expense and delay, continued litigation and trial pose meaningful risks to the Class's ability to recover. This factor weighs heavily in favor of the Settlement, which provides meaningful relief while eliminating the risk of no recovery.

B. Range of Possible Recoveries

The range of possible recoveries in this action goes from the full amount of the alleged processing fee—*i.e.*, $11.95, plus tax—on the high end, to $0.00 on the low end, if, for example, Costa's statute-of-limitations-defense is successful. The Court finds the anticipated recovery of approximately $2.25 per claim reasonable in light of the range of possible recoveries and given the litigation risks identified above, as well as the substantial costs and delays that will occur if the case does not settle and litigation continues.

C. Complexity, Expense, and Duration of Further Litigation

The claim in this case is that Costa's warranty constitutes a full warranty under the MMWA and that the warranty processing fee charged by Costa violates the MMWA. The claim is not subject to any binding precedent, and liability was far from certain, even putting aside Costa's affirmative defenses. The claims in this action have already been litigated for nearly eight years, and they remain a significant way off from final resolution. Therefore, in the absence of a settlement, the Class will experience significant delays and expenses before having a chance to recover anything on their claims. The Court finds that these complexities, delays and expenses weigh heavily in favor of the Settlement.

D. Substance & Amount of Opposition to the Settlement

Because the Class has not yet been notified of the Settlement or given the opportunity to object or opt out, consideration of this factor is premature. The Court will consider this factor, if necessary, during final approval proceedings.

E. Stage of the Proceedings

The Court finds that the stage of the proceedings also weighs in favor of the Settlement. This action and other related actions against Costa concerning similar issues have been pending for approximately eight years. Substantial discovery has been obtained from Costa, and expert reports have been prepared on various issues relating to the claims asserted herein. Plaintiff and Class Counsel thus have sufficient familiarity with the relevant facts and law to properly assess the strength and weaknesses of the claims and defenses and evaluate the Settlement in light of those strengths and weaknesses.

At the same time, the case remains a significant way from final resolution, having been re-filed in this Court less than one year ago, meaning that the Settlement still provides substantial benefits in avoiding the costs and delays of further litigation. The Class has already experienced significant delays in obtaining relief, and, without a settlement, it could still take years before the Class recovers anything, if Plaintiff is ultimately successful. For these reasons, the Court finds that the stage of the proceedings also weighs heavily in favor of the Settlement.

F. Other Factors

In addition to the factors considered above, the Court considers circumstances indicating that the Settlement is the result of "lengthy, hard-fought, adversarial, arm[']s length negotiations." *Lazarus v. City of Hallandale Beach*, No. 10-29090 21, 2013 WL 6331156, at *3 (Fla. 17th Cir. Ct. Apr. 22, 2013). Specifically, as discussed above, this action and other claims against Costa handled by Class Counsel have been pending for many years, with both sides investing substantial resources. The Court finds this indicative that the parties have not engaged in collusion in reaching the settlement. In addition, the Court notes the involvement of mediator Terrence M. White in the parties' negotiation of the Settlement and finds that the involvement of a mediator is a further indication that the Settlement is not collusive. *See, e.g.*, *D'Amato v. Deutsche Bank*, 236 F.3d 78, 85 (2d Cir. 2001); *Holman v. Student Loan Xpress, Inc.*, No. 8:08-cv-305, 2009 WL 4015573, at *5 (M.D. Fla. Nov. 19, 2009).

*   *   *

For the foregoing reasons, the Court makes a preliminary finding that the Settlement is fair, reasonable, and adequate, such that it is appropriate to proceed with notice and schedule a final approval hearing, as set forth below. In addition, consistent with the terms of the Settlement and in light of evidence that Epiq Class Action & Claims Solutions ("Epiq") is a nationally recognized and well-regarded provider of class-action administration services that can effectively administer the Settlement, the Court approves the designation of Epiq as the Settlement Administrator.

III. Approval of Notice Plan

The Motion next asks the Court to approve the form of and manner of disseminating notice of the Settlement to the Class. Rule 1.220 provides as follows with respect to notice:

> As soon as is practicable after the court determines that a claim or defense is maintainable on behalf of a class, notice of the pendency of the claim or defense shall be given by the party asserting the existence of the class to all the members of the class. The notice shall be given to each member of the class who can be identified and located through reasonable effort and shall be given to the other members of the class in the manner determined by the court to be most practicable under the circumstances. . . . The notice shall inform each member of the class that (A) any member of the class who files a statement with the court by the date specified in the notice asking to be excluded shall be excluded from the class, (B) the judgment, whether favorable or not, will include all members who do not request exclusion, and (C) any member who does not request exclusion may make a separate appearance within the time specified in the notice.

Fla. R. Civ. P. 1.220(d)(2). The rule further provides that "[n]otice of any proposed . . . compromise [of a certified class action] shall be given to all members of the class as the court directs." Fla. R. Civ. P. 1.220(e).

In the Motion, Plaintiff proposes to issue a notice of the Settlement to absent Class members substantially in the forms attached as Exhibit 1 to the Settlement (the "Settlement Notice"). The Settlement Notice comprises short-form, long-form, and postcard notices which, together and as appropriate to each medium, contain plain and concise descriptions of the nature of the action, the history of the litigation, the terms of the Settlement, the rights and obligations of each Class member, and the procedures and deadlines that apply to those rights and obligations. The Court finds that the proposed Settlement Notice complies with Rule 1.220's requirements.

Plaintiff proposes to disseminate the Settlement Notice to the Class through the procedures set forth in the Declaration of Cameron R. Azari attached as Exhibit 14 to the Motion (the "Notice Plan"). Among other things, the Notice Plan provides that the Settlement Administrator will use Costa's records to send the Settlement Notice to Class members by email when an email address is available or, for other Class members, via First-Class Mail through the United States Postal Service. Costa maintains electronic records (with emails, phone numbers, and addresses) for Class members because Class members sent their sunglasses to Costa, communicated with Costa by email and telephone, and had their sunglasses returned to them at an address on file with Costa. For this reason, the Court finds that the Notice Plan is likely to reach a large majority of the Class with individual notice via email or first-class U.S. mail. The Court further finds that the Notice Plan constitutes the best notice practicable under the circumstances and otherwise meets the requirements of Rule 1.220(d)(2) and due process under the United States and Florida constitutions.

Accordingly, the Settlement Notice and Notice Plan are due to be approved.

IV. Further Proceedings

In accordance with Rule 1.220(e), the Court will schedule a final approval hearing before determining whether to finally approve the Settlement. At the final approval hearing, the Court will hear evidence and argument relevant to this determination, including consideration of any properly submitted objections. The procedures and deadlines for submitting objections to the Settlement are specified below. The Court will also consider Plaintiff's unopposed motion for attorney's fees and costs at the final approval hearing.

Accordingly, it is hereby ORDERED and ADJUDGED as follows:

1. Plaintiff's Motion for Class Certification, Approval of Class Notice, and Preliminary Approval of Class Action Settlement filed on July 27, 2026, is **GRANTED**.

2. Plaintiff's request for class certification of a settlement class is **GRANTED**.

   a. The Court **CERTIFIES** the following Class for settlement purposes only:

      All citizens in the United States who (i) purchased a pair of non-prescription Costa sunglasses prior to January 1, 2016, and (ii) paid Costa a warranty fee to repair or replace those sunglasses damaged by a manufacturer's defect from August 20, 2013 to February 29, 2020.[1]

   b. The Court **APPOINTS** Plaintiff, Troy Smith, as Class Representative.

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

3. Plaintiff's request for preliminary approval of the Settlement is **GRANTED**.

   a. The Court **PRELIMINARILY APPROVES** the Settlement. The Court will consider final approval of the Settlement at a final approval hearing. The Court hereby authorizes the Parties to take such further steps as necessary and appropriate to establish the means necessary to implement the terms of the Agreement.

[1] Excluded from the Class are Costa, any entity or division in which Costa has a controlling interest, their legal representatives, employees, officers, directors, assigns, and successors, the undersigned judge presiding over this action and the judge's staff, and counsel for the parties.

b. If: (a) the Agreement is terminated as provided in Section 12 of the Agreement; or (b) any specified material term or condition of the Settlement as set forth in the Agreement is not satisfied as provided in Section 12 of the Agreement, then this Order may not be introduced as evidence or referred to in any actions or proceedings by any person or entity and shall be treated as vacated, *nunc pro tunc* (except Paragraph 3(c) of this Order shall remain in effect), and each party shall be restored to his, her, or its respective position in this Action as it existed prior to the execution of the Agreement.

c. Neither this Order, the fact that settlement was reached and filed, the Agreement, nor any other related negotiations, statements, or proceedings shall be construed as, offered as, admitted as, received as, used as, or deemed to be an admission or concession of liability or wrongdoing whatsoever or breach of any duty on the part of Costa, the Class Representative, or the Settlement Class Members. This Order is not a finding of the validity or invalidity of any of the claims asserted or defenses raised in the Action. In no event shall this Order, the fact that a settlement was reached, the Agreement, or any negotiations relating to it in any way be used in this Action, in any other action, or in any judicial, administrative, regulatory, arbitration, or other proceeding, by any person or entity, to argue that Costa is liable for the actions alleged in the Complaint or that a class can or should be certified for any reason, except for purposes of settlement. The only exception to this provision shall be that the Parties may refer to the settlement, Settlement Agreement, and any Orders of Court in order to take actions in furtherance of the Settlement.

d. The Court **APPROVES** designation of Epiq as Settlement Administrator. The Settlement Administrator is hereby authorized to establish, in accordance with the terms of the Settlement Agreement, a "Qualified Settlement Fund" within the meaning of Treasury Regulation Section 1.468B-1, promulgated under Section 468B of the Internal Revenue Code of 1986, as amended.

4. Plaintiff's request for approval of the Notice Plan is **GRANTED**.

a. The Court **APPROVES** as to form and content the parties' proposed Settlement Notice attached as Exhibit 1 to the Settlement Agreement.

b. The Court **APPROVES** the proposed distribution procedures set forth in the Notice Plan described in Exhibit 14 to the Motion.

c. The Court **AUTHORIZES** Class Counsel to make minor modifications to the Settlement Notice and/or Notice Plan and to reasonably extend any deadline as the parties jointly deem necessary or appropriate without further Court action or approval, provided that the sufficiency of Class notice in light of any modifications to the Settlement Notice or Notice Plan will be subject to consideration at the final approval hearing.

d. The Court **DIRECTS** the Settlement Administrator to establish the Settlement Website and disseminate Settlement Notice in accordance with the Notice Plan no later than **TWENTY-ONE DAYS** after the date of this Order.

e. The Court further **DIRECTS** that the costs of implementing the Notice Plan, including creating and maintaining the settlement website, processing claims, and other settlement-administration expenses shall be paid from the qualified settlement fund in accordance with the Settlement.

5. Plaintiff's request for the Court to schedule a final approval hearing is **GRANTED**.

a. The Court **SETS** a Final Approval Hearing to take place on **January 20, 2027 at 9:30am ET** at the Duval County Courthouse, 501 W. Adams Street, Jacksonville, FL 32202. At the Final Approval Hearing, the Court will address the motion for final approval of the Settlement, any pending objections to the Settlement, and Class Counsel's motion for attorneys' fees and costs. Plaintiff shall file a notice of hearing for the Final Approval Hearing and include Plaintiff's unopposed motion for attorney's fees and costs. The Court reserves the right to continue the date of the Final Approval Hearing without further notice to the Members of the Class, and retains jurisdiction to consider all further applications arising out of or connected with the proposed Settlement. The Court may approve the Settlement with such modifications as may be agreed to by the Parties, if appropriate, without further notice to the Class.

b. Any Class member who wishes to be excluded from the Settlement Class must send a written request to be excluded to the Settlement Administrator that is postmarked with a date no later than **THIRTY DAYS** after the first mailing of the Settlement Notice (the "**Notice Period**") and must: (a) identify the case name; (b) identify the name and address of the person requesting exclusion; (c) be personally signed by the person requesting exclusion; and (d) contain a statement that indicates a desire to be excluded from the Settlement Class, such as "I hereby request that I be excluded from the proposed Settlement Class in the Action." Mass or class opt outs shall be void. If a Class member submits a timely and proper request for exclusion consistent with the Notice Plan, the Class member's claims will be dismissed without prejudice. All Class Members who do not exclude themselves from the Settlement Class by properly and timely submitting a Request to Opt Out shall be bound by all determinations and judgments in the Action concerning the Settlement, whether favorable or unfavorable to the Class. Pending final determination of whether the Settlement should be approved, and upon expiration of the Notice Period, all Class Members who do not timely and validly exclude themselves from the Settlement Class, and each of them, and anyone who purports to act on their behalf, are barred from directly or indirectly maintaining, commencing, prosecuting, or pursuing directly, representatively, or in any other capacity, any Released Claim subsumed and covered by the Release in the Agreement, including in any court or arbitration forum.

c. A Class Member (other than Plaintiff) may object to this Settlement during the Notice Period, provided that such objection must be made in writing, filed with the Court, and served via U.S. Mail to Class Counsel and counsel for Costa postmarked before expiration of the Notice Period. To be considered, the objection must be timely filed and mailed and include the following:

    i. the case name and number;

    ii. the objector's full name, mailing address, and telephone number;

    iii. the name, mailing address, and telephone number of the lawyer representing the objector, if any;

    iv. the basis for the objection; and

    v. a statement on whether the objector intends to personally appear at the final approval hearing either with or without a lawyer.

No individual may be heard at the final approval hearing if that individual has not complied with these requirements. Any individual who fails to comply with these requirements will be deemed to have waived any right to object and any objection to the Settlement.

d. After expiration of the Notice Period and at least **FOURTEEN DAYS** prior to the final approval hearing, Plaintiff shall file a motion for final approval of the Settlement. Plaintiff shall include a declaration by the Settlement Administrator outlining the manner in which the Settlement Administrator has provided notice to the Class. Plaintiff shall also include a list of the names of Class members who (i) have requested exclusion from the Settlement Class as provided in the notice, and (ii) submitted objections as provided in the notice. Plaintiff shall also file copies of any requests for exclusion from the Class and copies of any objections.

DONE and **SIGNED** in Chambers in Jacksonville, Florida, this Monday, August 17, 2026.

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ROBERT M. DEES, CIRCUIT JUDGE

Robert Dees, Judge
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