

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

BRENDAN HANEY, GERALD REED, and
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,

Defendant.

_____ /

**JOINT NOTICE OF FILING AMENDED AND
RESTATED SETTLEMENT AGREEMENT**

In accordance with the Court's directive at the July 17, 2020 hearing on Plaintiffs' Unopposed Motion for Preliminary Approval of Class Action Settlement, Certification of Settlement Class, and Approval of Notice to Settlement Class (Doc. 91), the parties jointly file the following attached documents: (1) **Exhibit 1** – Amended and Restated Settlement Agreement with exhibits; (2) **Exhibit 2** – redline comparison, reflecting the changes from the previously-submitted initial Settlement Agreement to the Amended and Restated Settlement Agreement; (3) **Exhibit 3** – Revised Schedule of Dates and Deadlines, which the parties respectfully request that the Court adopt to govern further settlement proceedings; (4) **Exhibit 4** – Revised Claim Form; (5) **Exhibit 5** – Revised Summary Notice; (6) **Exhibit 6** – Revised Long Form.

The revisions to the Settlement Agreement, as reflected in the Amended and Restated Settlement Agreement: (i) provide for direct payment of claims to the Florida Repair Class, Nationwide Repair Class, and Warranty Class (Section VII(A)); (ii) convert the claims period to 6 months (Section II(5)); and (iii) clarify and further refine the language of the Release and Waiver (Section XII(B)).

Respectfully submitted this 14th day of August, 2020.

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EXHIBIT "1"

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
JACKSONVILLE DIVISION**

BRENDAN HANEY, GERALD REED, and
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,

Defendant.

_____ /

AMENDED AND RESTATED SETTLEMENT AGREEMENT

This Amended and Restated Settlement Agreement (all terms as defined below)¹ is made and entered into by and among Brendan Haney, Gerald Reed, and Troy Smith, individually and on behalf of themselves and each of the Class Members, and Costa Del Mar, Inc..

I. RECITALS

A. **WHEREAS**, on July 28, 2017, former class plaintiff Nicholas Howland filed a class action complaint in the Circuit Court, Fourth Judicial Circuit, in and for Duval County. Through an amendment to the Complaint, Plaintiff Brendan C. Haney was substituted in as class plaintiff. That case is now captioned *Brendan Haney v. Costa Del Mar Inc.*, Case No. 16-2017-CA-004794-XXXX-MA. The Complaint, filed on behalf of (i) Florida consumers who purchased Costa non-prescription, non-promotional, sunglasses (“**plano sunglasses**”), and (ii) Florida consumers who were charged a fee by Costa to repair their Costa plano sunglasses, alleges that Costa’s statement that it replaces scratched lenses, frames and other parts damaged by accident, normal wear and tear, or misuse for a “nominal fee” is false, deceptive, and

¹ All capitalized terms are either defined herein or within the Definition section as set forth in Section II., *supra*.

misleading, in violation of the Florida Deceptive and Unfair Trade Practices Act (“FDUTPA”), Fla. Stat. §§ 501.201, *et seq.*, and constitutes a breach of warranty under the Magnuson-Moss Warranty Act (“MMWA”), 15 U.S.C. §§ 2301, *et seq.* Costa denied and continues to deny liability in the *Haney* Action and further raised several defenses;

B. **WHEREAS**, on April 12, 2019, the court in the *Haney* Action granted class certification following briefing and a hearing (“*Haney* Order”);

C. **WHEREAS**, Costa appealed the *Haney* Order to Florida’s First District Court of Appeal, which appeal was fully briefed and oral argument heard on February 11, 2020;

D. **WHEREAS**, on August 20, 2018, class plaintiff Troy Smith filed a class action complaint in the United States District Court for the Middle District of Florida, Jacksonville Division captioned *Troy Smith v. Costa Del Mar, Inc.*, Case No. 3:18-cv-1011-J-32JRK. The Complaint, filed on behalf of a nationwide class of consumers whose non-prescription sunglasses were repaired by Costa for a manufacturer’s defect, alleges that Costa’s purported “Lifetime Warranty” against manufacturer’s defects violates the substantive requirements of the MMWA, 15 U.S.C. §§ 2301, *et seq.*, because customers must pay a fee to take advantage of the Lifetime Warranty. Costa denied and continues to deny liability in the *Smith* Action and further raised several defenses;

E. **WHEREAS**, on April 3, 2019, former class plaintiff James Seaman filed a class action complaint in the United States District Court for the Middle District of Florida, Jacksonville Division. Through an amendment to the Complaint, Plaintiff Gerald E. Reed IV was substituted in as class plaintiff. That case was transferred *sua sponte* to the Orlando Division in September 2019, and is now captioned *Gerald E. Reed IV v. Costa Del Mar, Inc.*, Case No. 6:19-cv-1751-Orl-37LRH. The Complaint, filed on behalf of a nationwide class of

consumers (excluding Florida consumers – the subject of the *Haney* Action) who were charged a fee by Costa to repair their Costa plano sunglasses, alleges that Costa’s statement that it replaces scratched lenses, frames, and other parts damaged by accident, normal wear and tear, or misuse for a “nominal fee” is false, deceptive, and misleading, and violates FDUTPA, Fla. Stat. §§ 501.201, *et seq.* Costa denied and continues to deny liability in the *Reed* Action and further raised several defenses;

F. **WHEREAS**, in the *Haney*, *Smith*, and *Reed* Actions, the Parties engaged in comprehensive discovery, including the exchange of written discovery, voluminous document productions, the taking of numerous depositions (including the deposition of each of the Plaintiffs, Costa employees, third parties, and expert witnesses), and extensive motion practice including class certification briefing in the *Haney* and *Smith* Actions, and summary judgment and *Daubert* briefing in the *Smith* Action;

G. **WHEREAS**, as a result of the Litigation, but without any admission of liability, Costa has changed certain consumer-facing marketing materials and product packaging, including: (i) covering the “nominal fee” language printed on shipping boxes for plano sunglasses with a sticker; (ii) discontinuing the distribution of plano sunglasses in shipping boxes containing the “nominal fee” language; (iii) disposing of shipping boxes in inventory containing the “nominal fee” language; (iv) discontinuing the description on Costa’s website of its warranty on plano sunglasses as a “Lifetime Warranty”; (v) creating new sunglass shipping boxes that removes any reference to a “nominal fee” language related to repairs of sunglasses; and (vi) modifying the repair section of Costa’s website to disclose repair pricing to the consumer and describe such prices;

H. **WHEREAS**, the negotiations leading up to this Settlement began in the early phases of the *Haney* Action, and continued on July 9, 2019, at the office of Terry White (court-appointed mediator) in Ormond Beach, Florida. After the in-person mediation, the Parties continued to discuss the possibility of settlement;

I. **WHEREAS**, on February 11, 2020, the Parties reached an agreement in principle to globally resolve the Litigation. Thereafter, the parties worked on documenting the settlement;

J. **WHEREAS**, to effectuate the terms of this Settlement, on March 2, 2020, an Amended Complaint was filed in the *Smith* Action, adding the claims, Plaintiffs, and classes from the *Haney* and *Reed* Actions. The Global Action consolidated, for settlement purposes only, all of the Plaintiffs, classes, and claims in the Litigation.

K. **WHEREAS**, Plaintiffs seek certification of the Classes, as defined and discussed further below;

L. **WHEREAS**, Plaintiffs are represented by Plaintiffs' Class Counsel Holland & Knight LLP;

M. **WHEREAS**, as a result of arm's-length negotiations, Plaintiffs, Plaintiffs' Class Counsel, and Defendant have entered into this Agreement;

N. **WHEREAS**, Plaintiffs' Class Counsel have investigated the facts and underlying events relating to the subject matter of the Litigation, have carefully analyzed the applicable legal principles, and have concluded, based upon their investigation, and taking into account the risks, uncertainties, burdens and costs of further prosecution of the Litigation, as well as having evaluated the strengths and weaknesses of Plaintiffs' claims and Costa's defenses, and taking into account the substantial benefits to be received pursuant to this Agreement as set forth below, which, in the view of Plaintiffs and Plaintiffs' Class Counsel, is designed for the purpose of

putting to rest all controversies with Costa that were or could have been alleged relating to the Litigation and the Global Action, that a resolution and compromise on the terms set forth herein is fair, reasonable, adequate, and in the best interests of Plaintiffs and the Class;

O. **WHEREAS**, Costa, for the purpose of avoiding the burden, expense, risk, and uncertainty of continuing to litigate the Litigation, and for the purpose of putting to rest all controversies with Plaintiffs, the Class, the Litigation and/or the Global Action that were or could have been alleged relating to the Litigation or the Global Action, and without any admission of liability or wrongdoing, desires to enter into this Agreement;

P. **WHEREAS**, Plaintiffs' Class Counsel represent and warrant that they are fully authorized to enter into this Agreement on behalf of Plaintiffs and the Class, and that Plaintiffs' Class Counsel have consulted with and confirmed that Plaintiffs fully support this Agreement; and

Q. **WHEREAS**, it is agreed that this Agreement shall not be deemed or construed to be an admission, concession, or evidence of any violation of any federal, state, or local statute, regulation, rule, or other law, or principle of common law or equity, or of any liability or wrongdoing whatsoever, by Costa or any of the Released Parties (as defined below), or of the truth or validity of any of the claims that Plaintiffs have asserted;

R. **NOW, THEREFORE**, without any admission or concession by Plaintiffs or Plaintiffs' Class Counsel of any lack of merit to their allegations and claims, and without any admission or concession by Costa of any liability or wrongdoing or lack of merit in their defenses, in consideration of the mutual covenants and terms contained herein, and subject to the final approval of the Court, Plaintiffs, Plaintiffs' Class Counsel, and Costa agree as follows:

II. DEFINITIONS

A. As used in this Agreement and the attached exhibits (which are an integral part of this Agreement and are incorporated in their entirety by reference), the following terms have the following meanings, unless this Agreement specifically provides otherwise:

1. **“Agreement”** or **“Settlement Agreement”** means this Amended and Restated Settlement Agreement and the exhibits attached hereto and incorporated herein, including any amendments and any exhibits to such amendments, which constitute the settlement and resolution of the Litigation and the Global Action and all claims of the putative Class therein (the **“Settlement”**).

2. **“Attorneys’ Fees, Costs, and Expenses”** means such funds as may be approved by the Court to compensate Plaintiffs’ Class Counsel, who have assisted in conferring the benefits upon the Class under this Settlement, for their fees and expenses incurred and to be incurred by Plaintiffs’ Class Counsel in connection with the Litigation and the Global Action and the Settlement, as described in Section X. of this Agreement. Attorneys’ Fees, Costs and Expenses do not include and are separate from and in addition to the Incentive Awards to be paid to Plaintiffs. No other attorneys’ fees or related costs and expenses of counsel are contemplated by this Settlement.

3. **“CAFA Notice”** means the notice to the appropriate federal and state officials identified in 28 U.S.C. § 1715(a) required under the Class Action Fairness Act of 2005, in substantially the form as attached hereto as **Exhibit 4**.

4. **“Claim”** means (i) the entitlement to one or more Product Voucher(s) by a Class Member who has not timely excluded themselves from the Florida Repair Class, Nationwide Repair Class, and/or Warranty Class in accordance with the terms of this Agreement,

and/or (ii) the claim of a Class Member or his or her representative submitted on a claim form for the Florida Purchase Class as provided in Section VII. of the Agreement.

5. “**Claim Period**” means the period of time running six (6) months from the date the Long Form Notice is first provided to any Class Member by the Settlement Administrator, during which a Class Member in the Florida Purchase Class may submit a Claim as defined in Section II.A.4.(ii), and after which Claims submitted for the Florida Purchase Class will be considered untimely and invalid.

6. “**Claim Process**” means the process for submitting and reviewing Claims for the Florida Purchase Class as described in the Agreement.

7. “**Claimant**” means (i) any Class Member of the Florida Repair Class, Nationwide Repair Class, or Warranty Class who has not timely excluded themselves from the Settlement, and/or (ii) a Class Member of the Florida Purchase Class who has submitted a valid, timely, and complete Claim.

8. “**Class**” means, for settlement purposes only, all of the below-listed subclasses:

a. The “**Florida Repair Class**” means all citizens of the State of Florida who: (i) purchased Costa plano sunglasses before January 1, 2018; and (ii) were charged a fee by Costa, from July 28, 2012 through the date of entry of the Court’s Final Order, to repair or replace their Costa plano sunglasses damaged by accident, normal wear and tear, or misuse.

b. The “**Nationwide Repair Class**” means all citizens of the United States (excluding citizens of the State of Florida) who: (i) purchased Costa plano sunglasses before January 1, 2018, and (ii) were charged a repair fee by Costa, from April 3, 2015 through

the date of entry of the Court's Final Order, to repair or replace their Costa plano sunglasses damaged by accident, normal wear and tear, or misuse.

c. The "**Florida Purchase Class**" mean all citizens of the State of Florida who purchased Costa plano sunglasses from July 28, 2013 to January 31, 2018.

d. The "**Warranty Class**" means all citizens of the United States who: (i) purchased non-prescription Costa sunglasses prior to January 1, 2016; and (ii) paid Costa a warranty fee to repair or replace non-prescription sunglasses damaged by a manufacturer's defect from August 20, 2013 through the date of entry of the Court's Final Order.

e. Excluded from the Class are: (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(s) to whom Litigation is or has previously been assigned and each judge's respective staff; (3) counsel for each of the Parties in this case; and (4) persons who timely and properly exclude themselves from the Class.²

9. "**Class Member**" means a member of the Class.

10. "**Costa**" means Costa Del Mar, Inc., the named party to the Global Action.

11. "**Costa's Counsel**" means McGuireWoods LLP.

12. "**Court**" means the United States District Court for the Middle District of Florida, Jacksonville Division.

13. "**Cy Pres Payment**" means payment(s) to one or more charitable organizations determined by Costa consisting of either (i) the remaining amount of the Settlement Fund after satisfaction of any approved and valid Claims, and the payment of

² Promotional items excluded from the Florida Purchase Class, Florida Repair Class, and Nationwide Repair Class are as follows: USA Limited Edition, Kenny Chesney Limited Edition, Osearch Special Collection. Additionally, none of the classes subject to this Agreement include sunglasses in the Del Mar and Untangled collections, as these collections were released after the applicable class periods.

approved Attorneys' Fees, Costs and Expenses, Incentive Awards, and costs of class administration and notice; or (ii) One Million and no/100 Dollars (\$1,000,000), whichever amount is less.

14. **"Cy Pres Recipient"** means one or more charitable organizations to be determined by Costa.

15. **"Defendant"** has the same meaning as "Costa."

16. **"Defendant's Counsel"** means McGuireWoods LLP.

17. **"Fairness Hearing"** means the final hearing for the purposes of the Court determining whether to approve this Agreement as fair, reasonable, and adequate.

18. **"Final Effective Date"** means the latest date on which the Final Order and/or Final Judgment approving this Agreement becomes final. For purposes of this Agreement:

a. if no appeal has been taken from the Final Order and/or Final Judgment, "Final Effective Date" means the date on which the time to appeal therefrom has expired; or

b. if any appeal has been taken from the Final Order and/or Final Judgment, "Final Effective Date" means the date on which all appeals therefrom, including petitions for rehearing or re-argument, petitions for rehearing en banc and petitions for certiorari or any other form of review, have been finally disposed of in a manner that affirms the Final Order or Final Judgment; or

c. subject to Court approval, if Plaintiffs' Class Counsel and Defendant agree in writing, the "Final Effective Date" can occur on any other agreed date.

19. **"Final Judgment"** means the Court's final judgment as described in Section XI. of this Agreement.

20. “**Final Order**” means the Court’s order approving the Settlement and this Agreement, as described in Section XI. of this Agreement.

21. “**Global Action**” means the class action lawsuit pending in the United States District Court for the Middle District of Florida, Jacksonville Division, captioned *Brendan Haney, Gerald Reed, & Troy Smith v. Costa Del Mar, Inc.*, Case No. 3:18-cv-1011-J-32JRK.

22. “**Haney Action**” means the class action lawsuit pending in the Circuit Court, Fourth Judicial Circuit, in and for Duval County, captioned *Brendan Haney v. Costa Del Mar, Inc.*, Case No. 16-2017-CA-004794-XXXX-MA.

23. “**Incentive Awards**” means the amounts to be paid to Plaintiffs for bringing the *Haney*, *Smith*, and *Reed* Actions and for their time and effort in connection with the Litigation.

24. “**Litigation**” refers collectively to the *Haney* Action, the *Smith* Action, and the *Reed* Action;

25. “**Long Form Notice**” means the Long Form Notice substantially in the form attached hereto as **Exhibit 2**.

26. “**Notice Program**” means the notice program described in Section V.

27. “**Parties**” means Plaintiffs, the Class Members, and Defendant, collectively, as each of those terms is defined in this Agreement.

28. “**Plaintiffs**” mean Brendan Haney, Troy Smith, and Gerald E. Reed IV, as named parties to the Global Action, and each of their respective actions in the Litigation.

29. “**Plaintiffs’ Class Counsel**” means Holland & Knight LLP, and excludes any and all counsel for any Class Member objectors to the Settlement.

30. “**Preliminary Approval Order**” means the order to be entered by the Court preliminarily approving the Settlement as outlined in Section III. of this Agreement.

31. “**Product Vouchers**” means the non-personalized, stackable, transferrable vouchers for Costa merchandise, as set forth in Section IV. of this Agreement.

32. “**Reed Action**” means the class action lawsuit pending in the United States District Court for the Middle District of Florida, Orlando Division captioned *Gerald E. Reed IV v. Costa Del Mar, Inc.*, Case No. 6:19-cv-1751-Orl-37LRH.

33. “**Release**” means the release and waiver set forth in Section XII. of this Agreement and in the Final Judgment and Final Order.

34. “**Released Parties**” or “**Released Party**” means Defendant in the Litigation and the Global Action, Costa, its past, present and future parents, predecessors, parent and affiliated companies, successors, assigns, spin-offs, subsidiaries, holding companies, joint-ventures and joint-venturers, partnerships and partners, including but not limited to EssilorLuxottica SA, and each of their respective past, present and future parents, predecessors, successors, affiliates, assigns, spin-offs, direct and indirect subsidiaries, holding companies, joint-ventures and joint-venturers, partnerships and partners, officers, directors, employees, and attorneys. The Parties expressly acknowledge that each of the foregoing is included as a Released Party even though not identified by name herein.

35. “**Settlement Administrator**” means the third-party agent or administrator agreed to by the Parties and appointed by the Court to give notice to the Class and process the Claims and requirements of this Agreement, subject to the Court’s approval. The Parties agree that Epiq shall serve as Settlement Administrator, subject to approval by the Court.

36. “**Settlement Fund**” means the agreed upon total fund of Forty Million and No/100 Dollars (\$40,000,000) forming the basis of the settlement of the Litigation and the Global Action, from which approved and valid Claims will be paid, and approved Attorneys’ Fees, Costs and Expenses, Incentive Awards, and costs of class administration and notice will be paid, and, if due to be paid in accordance with the terms of this Agreement, the Cy Pres Payment.

37. “**Settlement Website**” means an Internet website established and maintained by the Settlement Administrator for the purpose of facilitating notice to, and communicating with, the Class.

38. “**Smith Action**” means the class action lawsuit pending in the United States District Court for the Middle District of Florida, Jacksonville Division captioned *Troy Smith v. Costa Del Mar, Inc.*, Case No. 3:18-cv-1011-J-32JRK.

39. “**Summary Notice**” means the short form notice substantially in the form as attached hereto as **Exhibit 1**.

B. Other capitalized terms used in this Agreement but not defined in this Section II. shall have the meanings ascribed to them elsewhere in this Agreement.

C. The terms “he or she” and “his or her” include “it” or “its” where applicable.

D. Where appropriate, the singular shall include the plural, and vice versa.

III. CERTIFICATION OF THE CLASS, PRELIMINARY APPROVAL

A. The Parties agree that within 14 days after the execution of this Agreement by all Parties, and for purposes of this Agreement only (and without any finding of admission or wrongdoing or fault by Defendant), Plaintiffs shall seek from the Court, and Defendant will expressly consent to and not oppose, a Preliminary Approval Order that shall, among other things:

1. preliminarily certify the Florida Repair Class, Nationwide Repair Class, Florida Purchase Class, and Warranty Class, approve Plaintiffs as class representatives and appoint Plaintiffs' Class Counsel as counsel for the Class, pursuant to Federal Rule of Civil Procedure 23;
2. preliminarily approve the Settlement;
3. determine that the Notice Program complies with all legal requirements, including, but not limited to, the Due Process Clause of the United States Constitution;
4. schedule a date and time for a Fairness Hearing to determine whether the Settlement should be finally approved by the Court;
5. establish a schedule for the Parties to seek to obtain from the Court a Final Judgment and Final Order;
6. appoint the Settlement Administrator; and
7. issue other related orders to effectuate the preliminary approval of the Agreement.

B. Certification of the Class is conditional on the Court's preliminary and final approval of this Agreement. In the event the Court does not approve all terms of the Agreement, or if for any reason the Court does not grant final approval of the Settlement, or if final approval is not granted following appeal of any order or judgment by the Court, or if the Court construes the settlement as a "coupon" settlement such that the provisions of 28 U.S.C. § 1712 apply, then the certification shall be void and this Agreement and all orders entered in connection therewith, including but not limited to any order conditionally certifying the Class, shall become null and void and shall be of no further force and effect, and each Party shall retain all their respective

rights as they existed prior to the execution of the Agreement as set forth in further detail in Section XIII. of this Agreement.

IV. SETTLEMENT RELIEF

A. **Establishment of Settlement Fund.** In consideration for the dismissal of the Litigation and the Global Action with prejudice, and for the full and complete Release, Final Judgment and Final Order provided below, Defendant further agrees to dedicate a Settlement Fund in the amount of \$40,000,000 (Forty Million and No/100 Dollars), from which the following will be paid: (i) payments to the Class Members in the form of Product Vouchers, as discussed in Sections D. and E. below; (ii) Incentive Awards to Plaintiffs; (iii) payments to Plaintiffs' Class Counsel for approved Attorneys' Fees, Costs, and Expenses; (iv) any costs associated with disseminating the notice and otherwise implementing the notice program and claims administration specified in Section V.; and (v) if due to be paid in accordance with the terms of this Agreement, the Cy Pres Payment. The Parties agree and understand that this Agreement provides additional non-cash benefits to the Class in addition to the Settlement Fund, as set forth below. Except for the Initial Fund (discussed below), the payments specified above in subsections (ii), (iii), and (iv) will be funded within twenty (20) days after the Final Effective Date.

B. **Initial Fund.** Within 15 days of entry of the Preliminary Approval Order of this Agreement by the Court, Costa will fund the initial costs of class notice and administration in an amount to be set based on the anticipated amount of such initial costs and any deposits required following negotiations with the selected Settlement Administrator (the "**Initial Fund**"). This Initial Fund will be credited against the Settlement Fund.

C. **Agreement Regarding the "Nominal Fee" and "Lifetime Warranty" Language on Shipping Boxes and in Marketing Materials.** As a result of this Litigation,

Costa modified its product packaging and marketing materials as set forth in Whereas Clause G., above. In further consideration for the dismissal of the Litigation and the Global Action with prejudice, and for the full and complete Release, Final Judgment and Final Order provided below, Defendant agrees, on its shipping boxes and in marketing materials to: (i) not title its warranty for Costa's plano sunglasses as a "Lifetime Warranty" for so long as the terms and conditions of such warranty are substantially the same as currently offered by Costa; and (ii) refrain from describing fees for replacement of scratched lenses, frames and other parts caused by accidental damage, wear and tear, or misuse as "nominal" fees. Nothing in this Agreement shall prohibit Costa from offering different warranties on later manufactured products or defined collections.

D. **Product Vouchers.** Following the Final Effective Date, Claimants shall be entitled to receive from the Settlement Fund one or more Product Voucher(s) with a two-year expiration date from the date of issuance of the Product Voucher, which can be redeemed via Costa's online web store or via a toll-free number for Costa merchandise. The Parties intend for the Product Vouchers to be redeemable for certain Costa whole good merchandise (as opposed to a discount or coupon off the purchase price) without the necessity for Class Members to pay any amount to Costa, separate and apart from the Product Voucher, in order to receive Costa merchandise. Claimants will not be required to travel to any retail establishment to redeem the Product Vouchers. Product(s) claimed using the Product Vouchers will not be assessed sales tax and will be shipped free of charge. Product Vouchers may also be used to purchase any Costa products in excess of the Product Voucher amount, and the Claimant need only to pay the price difference, plus applicable sales tax. A non-exhaustive list of Costa merchandise that Class Members may be able to obtain based on the value or number of Product Vouchers received is

delineated on **Exhibit 3**. It is acknowledged and understood that, given the expiration period of the Product Vouchers, merchandise availability may vary over time. The Parties agree that merchandise can be updated or modified by Costa provided the substituted merchandise is of a reasonably similar quality and manufacturer's suggested retail price ("MSRP") value and is available to Claimants through and until the Product Voucher's expiration date. The estimated minimum value of the Product Vouchers by Class are set forth on the below schedule:

Class	Estimated Minimum Product Voucher Value
Florida Repair Class	\$19.99
Nationwide Repair Class	\$19.99
Florida Purchase Class	\$10.00
Warranty Class	\$8.99

E. **Multiple Vouchers.** A Claimant who, by definition, would fall into both the Florida Repair Class and Florida Purchase Class, shall only be entitled to Product Voucher(s) from the Florida Repair Class for those sunglasses which were repaired and a fee was paid to Costa. To the extent a Class Member may have additional purchases beyond the number of repair claims in the Florida Repair Class, that Class Member may submit a claim for those additional purchases not covered by a Florida Repair Class Product Voucher(s). A Claimant, if entitled, may receive Product Vouchers from the Florida Repair Class, the Nationwide Repair Class, and the Warranty Class. A Claimant may receive multiple Product Vouchers within each Class to which they are eligible to receive Product Vouchers according to the prior two sentences. However, any one Claimant in the Florida Purchase Class may not be entitled to

greater than five (5) Product Vouchers, unless the Claimant submits verifiable proof of purchase for more than five (5) purchases, as acceptable to the Settlement Administrator.

F. **Stackable, Transferable, Use as Credit.** The Parties intend for this Agreement to provide each Claimant with flexibility in connection with the use of the Product Vouchers. In that regard, the Product Vouchers will be non-personalized, transferrable, and stackable. Claimants with multiple Product Vouchers may combine the value of the Product Vouchers received to obtain higher value merchandise, if desired by the Claimant. The Product Vouchers are also intended to operate, in the alternative, akin to a gift card, which can be used to offset the cost of merchandise of a higher value, if desired by the Claimant and solely within their discretion. Whereas each separate Product Voucher is subject to one-time use with no residual value, a Claimant may use multiple Product Vouchers at different times prior to their expiration, or stack some or all of the Product Vouchers to obtain higher valued products at no cost to the Claimant.

G. **Free Shipping.** In connection with the redemption of the Product Voucher(s), Costa shall bear the cost of standard shipping, handling and processing of merchandise ordered by and delivered to the Claimants under this Agreement in connection with the redemption of the Product Voucher(s). The costs of such standard shipping, handling, and processing shall not be deducted from the Settlement Fund.

H. **Issuance of Product Vouchers.** Product Vouchers will be issued to Claimants by the Settlement Administrator in batches no sooner than thirty (30) days after the Settlement Administrator has notified the Parties of the number of approved and denied Claims of the Florida Purchase Class (as set forth in Section VII.E. of the Agreement), and then proceeding on an ongoing basis until either (1) all Claimants have been provided the Product Voucher(s) to

which they are entitled, or (2) the date on which the Product Vouchers issued, if all redeemed, would exhaust the remaining balance of the Settlement Fund, whichever is earlier. The Settlement Administrator shall issue to each Claimant, by electronic mail or, if elected by the Claimant, first-class mail, the appropriate number of Product Vouchers claimed and approved in accordance with this Agreement. Any Product Vouchers returned to the Settlement Administrator with a forwarding address will be re-mailed to the new address provided. The Settlement Administrator shall not be obligated to conduct additional research to locate Claimants whose Product Voucher(s) is/are returned as undeliverable with no forwarding address or to provide any notification to Claimants whose Product Vouchers are returned.

I. **Cy Pres Payment.** If the Settlement Fund has not been exhausted after all Claimants have been provided the Product Voucher(s) to which they are entitled, Costa agrees to make a charitable contribution to the Cy Pres Recipients, equal to either the remaining amount of the Settlement Fund, or One Million and No/100 Dollars (\$1,000,000), whichever is less. The breakdown of the Cy Pres Payment between the Cy Pres Recipients is at the discretion of Costa.

V. **NOTICE TO THE CLASS**

A. Following entry of the Preliminary Approval Order, and to comply with all applicable laws, including but not limited to, Federal Rule of Civil Procedure 23, the Due Process Clause of the United States Constitution, and any other applicable statute, law or rule, the Settlement Administrator shall take the following below actions in connection with disseminating notice to Class Members, unless otherwise specified or provided for as set forth in the Preliminary Approval Order. The costs of disseminating the notices and otherwise implementing the notices specified in this Section V. of this Agreement shall be paid by Costa from the Settlement Fund.

1. **Summary Notice.**

The Settlement Administrator shall cause the publication of the Summary Notice as described in the Declaration of the Settlement Administrator within thirty (30) days following entry of the Preliminary Approval Order, and in such additional newspapers, magazines and/or other media outlets as shall be agreed upon by the Parties. The form of Summary Notice agreed upon by the Parties is in the form substantially similar to the one attached to this Agreement as **Exhibit 1**.

2. **Long Form Notice.**

Where addresses are reasonably and readily available to Costa through its own databases or other such lists as it may possess, the Settlement Administrator shall send the Long Form Notice within thirty (30) days following entry of the Preliminary Approval Order to potential Class Members thus identified by email or by first-class mail. The Long Form Notice shall be in a form substantially similar to the document attached to this Agreement as **Exhibit 2**, which contains a plain and concise description of the nature of the Global Action, the history of the litigation of the claims and the terms of the Settlement, including how the Settlement would provide relief to the Class and Class Members, the rights of Class Members to opt out of or object to the Settlement, and the deadlines and procedures for exercising those rights. The Settlement Administrator shall also send the Long Form Notice by first-class mail to any persons who request it in writing or through the toll-free telephone number. The Long Form Notice shall be available on the Settlement Website.

3. CAFA Notice.

Defendant shall send CAFA Notice substantially in the form as attached hereto as **Exhibit 4** to the appropriate federal and state officials as identified in 28 U.S.C. § 1715(a) not later than ten (10) days after this Settlement Agreement is filed with the Court,.

4. Settlement Website.

The Settlement Administrator shall establish the Settlement Website to inform Class Members of the terms of this Agreement, their rights and the deadlines by which those rights must be exercised, important dates, and related information. The Settlement Website shall include a copy of the operative Complaint in the Global Action, the Long Form Notice, the Settlement Agreement, Frequently Asked Questions and Answers, and other materials agreed upon by the Parties and/or required by the Court. The Settlement Website shall also provide an online claim portal through which a Class Member can submit a Claim. The Settlement Website shall be accessible at least five (5) days prior to mailing the Long Form Notice described above.

5. Toll-Free Telephone Number.

The Settlement Administrator shall establish a toll-free telephone number that will provide settlement-related information to Class Members using an automated response system.

6. Internet Banner Notifications.

The Settlement Administrator shall establish banner notifications on the internet that will provide settlement-related information to Class Members.

7. Notice Procedures.

Costa shall use commercially reasonable efforts to review its records and identify each individual meeting the Class definitions. The list produced at the end of this process shall be a

complete list of the members of the Nationwide Repair Class, the Florida Repair Class, and the Warranty Class.

VI. ADMINISTRATION OF THE SETTLEMENT

A. The Settlement Administrator shall be responsible for, without limitation:

1. arranging for the publication of the Summary Notice;
2. establishing a Post Office box for the receipt of any correspondence;
3. emailing, printing, mailing and/or arranging for the mailing of the Long Form Notice;
4. handling returned mail not delivered to Class Members, including attempting to obtain updated address information for any Long Form Notices returned without a forwarding address;
5. responding to requests for the Long Form Notice;
6. making any additional emails or mailings required under the terms of this Agreement;
7. receiving and maintaining on behalf of the Court any Class Member correspondence regarding requests for exclusion and/or objections to the Settlement, and providing copies of any requests for exclusion, objections and/or related correspondence to the Parties promptly upon receipt;
8. establishing the Settlement Website and a toll-free interactive voice response unit with message capabilities to which Class Members may refer for information about the Global Action and the Settlement;
9. establishing Internet banner notifications and for consulting on the Notice Program;

10. forwarding written inquiries to Plaintiffs' Class Counsel or their designee for a response, if warranted;

11. responding to requests from Plaintiffs' Class Counsel and/or Costa's Counsel; and

12. otherwise implementing and/or assisting with the dissemination of the Long Form Notice and Summary Notice of the Settlement.

B. The Settlement Administrator shall also be responsible for, without limitation, implementing the terms of the Claim Process and related administrative activities.

C. At least fourteen (14) days before the date of the Fairness Hearing, the Settlement Administrator shall prepare a declaration detailing the scope, method and results of the Notice Program and Claim Process, and containing a list of those persons who have excluded themselves from the Settlement, and the Parties shall file the declaration with the Court.

D. The Settlement Administrator may retain one or more persons to assist in the completion of his or her responsibilities.

E. The Settlement Administrator shall minimize costs in effectuating the terms of this Agreement.

F. If the Settlement Administrator makes a material or fraudulent misrepresentation, conceals requested material information, or fails to perform adequately on behalf of Defendant or the Class, the Parties may agree to remove and replace the Settlement Administrator. Disputes regarding the retention or dismissal of the Settlement Administrator shall be referred to the Court for resolution.

VII. CLAIM PROCESS

A. Class Members in the Florida Repair Class, Nationwide Repair Class, and Warranty Class need not take any action to receive Product Voucher(s). The applicable number

of Product Vouchers to which members of the Florida Repair Class, Nationwide Repair Class, and Warranty Class are entitled to receive under this Agreement will be automatically sent to those Class Members by the Settlement Administrator via electronic mail or, if no electronic mail is available (or the electronic mail is no longer valid) for a particular Class Member, by first class mail. Persons who believe that they are Class Members of the Florida Purchase Class may complete and submit a Claim Form indicating that they wish to be eligible for the relief provided in this Settlement Agreement for the Florida Purchase Class. The Claim process described in Section VII.B., C., and D., applies only to Claims by the Florida Purchase Class.

B. The Claim form shall be available on the Settlement Website both as a downloadable .pdf document, which can be completed and submitted to the Settlement Administrator by mail, and as an online claim portal enabling Class Members of the Florida Purchase Class to directly submit claims electronically through the Settlement Website. Commencing on the date on which the Long Form Notice is first issued to the Class by email or first-class mail, Class Members of the Florida Purchase Class who have not excluded themselves from the Settlement may submit a Claim to the Settlement Administrator for review. The Claim form will be available during the Claim Period.

C. The Settlement Administrator shall receive and process Claims received from the Florida Purchase Class to determine whether submitted Claims are timely, valid, and complete. The Settlement Administrator shall use its best efforts to complete its review of each Claim within thirty (30) days of receipt.

D. The Settlement Administrator shall review Claims received from the Florida Purchase Class on a first-come, first-serve basis and shall have sole authority to determine whether submitted Claims are timely, valid, and complete. If the Settlement Administrator

determines that a Claim is incomplete or invalid, or if a Claim is received either (i) after the Settlement Fund has been or would be exhausted based on the value of Product Vouchers issued, or (ii) after the Claim Period, whichever is earlier, the Claim shall be denied without further notice to the Class Member. The online claim portal shall be configured to only accept Claims that are deemed to be timely and complete. Class Members of the Florida Purchase Class who submit a Claim by means other than through the online claim portal that is determined to be untimely, invalid, or incomplete will be notified by mail or email of the deficiency(ies) in their Claim and will have the opportunity to correct the deficiency(ies) thus identified by responding to such notice by mail or email to the Settlement Administrator within twenty-one (21) days of the date of the Settlement Administrator's notice. A timely, valid, and complete Claim will not ensure acceptance and issuance of Product Vouchers if all conditions of redemption, as described herein, have not been met.

E. Thirty (30) days after the Final Effective Date, the Settlement Administrator shall notify the Parties of the number of approved and denied Claims. A Claim for the Florida Repair Class, Nationwide Repair Class, and Warranty Class shall be considered approved if the Class Member has not excluded themselves from the Class as set forth in the Agreement. A Claim for the Florida Purchase Class shall be considered approved when the Administrator deems it timely, valid, and complete. Plaintiffs have the right to request reasonable additional data or information on denied Claims.

F. No person shall have any claim against Plaintiffs, Plaintiffs' Class Counsel, Costa, Costa's Counsel, or the Settlement Administrator based on any eligibility determinations made in accordance with the Agreement.

VIII. REQUESTS FOR EXCLUSION

A. Any potential Class Member who wishes to be excluded from the Class must mail a written request for exclusion to the Settlement Administrator at the address provided in the Long Form Notice, such that it is received no later than twenty-one (21) days before the date of the Fairness Hearing. Exclusion requests may not be submitted by phone, email, or fax. The written request for exclusion shall include (a) the potential Class Member's full name, telephone number, and address (the potential Class Member's actual residential address must be included); (b) a statement that the potential Class Member wishes to be excluded from the Settlement; and (c) the potential Class Member's dated, and handwritten or electronically validated signature. The Settlement Administrator shall promptly forward copies of any written requests for exclusion to Plaintiffs' Class Counsel and Costa's Counsel. If a potential Class Member files a request for exclusion, he or she may not file an objection under Section IX., nor may he or she submit a Claim. If a Class Member submits a Claim after filing a request for exclusion, the request for exclusion is considered waived and void.

B. Any potential Class Member who does not file a timely written request for exclusion as provided in this Section VIII. shall be bound by all subsequent proceedings, orders and judgments, including, but not limited to, the Release, Final Judgment and Final Order in the Global Action.

C. In the event that more than 5% of the Class Members submit elections to opt-out of the Settlement, Costa will have the right to rescind and terminate the Settlement without prejudice to its pre-settlement positions and defenses in the Litigation. Should the 5% threshold for opt-outs be exceeded, the Settlement Administrator shall notify lead counsel for all Parties via email immediately. If Costa exercises this right to rescind the Settlement, it will pay all reasonable settlement administration costs incurred by the Settlement Administrator to that date.

IX. OBJECTIONS TO SETTLEMENT

A. Any Class Member who has not filed a timely written request for exclusion and who wishes to object to the fairness, reasonableness, or adequacy of this Settlement Agreement, the requested award of Attorneys' Fees, Costs, and Expenses, or the requested Incentive Awards to Plaintiffs, must file with the Court and provide copies to Plaintiffs' Class Counsel and Costa's Counsel a written statement of his or her objections, such that it is received by all Parties no later than twenty-one (21) days before the date of the Fairness Hearing. The written objection of any Class Member must include: (a) a heading which refers to the Global Action; (b) the objector's full name, telephone number, and address (the objector's actual residential address must be included); (c) if represented by counsel, the full name, telephone number, and address of all counsel; (d) a statement that the objector is a Class Member, including when and where the Class Member's eligible sunglasses were purchased and date(s) of any repair or warranty claims on such eligible sunglasses; (e) all of the reasons for his or her objection; (f) whether the objector intends to appear at the Fairness Hearing on his or her own behalf or through counsel; and (g) the objector's dated, and handwritten or electronically validated signature. Any documents supporting the objection must also be attached to the objection. If any testimony is proposed to be given in support of the objection, the names of all persons who will testify must be set forth in the objection. Class Members may object either on their own or through an attorney retained at their own expense. The objection must include proof that the Class Member falls within the definition of the Class.

B. Any Class Member who files and serves a written objection, as described in the preceding Section IX.A., may appear at the Fairness Hearing, either in person or through personal counsel hired at the Class Member's expense, to object to the fairness, reasonableness, or adequacy of this Agreement or the Settlement, or to the award of Attorneys' Fees, Costs and

Expenses or the award to Plaintiffs. Class Members or their attorneys who intend to make an appearance at the Fairness Hearing must deliver a notice of intention to appear to Plaintiffs' Class Counsel and to Costa's Counsel identified in the Long Form Notice, and file said notice with the Court, on a date ordered by the Court.

C. Any Class Member who objects to the Settlement shall be entitled to all of the benefits of the Settlement (with the exception noted below) if this Agreement and the terms contained herein are approved, as long as the objecting Class Member complies with all requirements of this Agreement applicable to Class Members, including the timely submission of a Claim and other requirements herein. However, the Parties hereto agree that a Class Member who objects to the Settlement shall not be entitled to recovery of all or any portion of Attorneys' Fees, Costs and Expenses, and that the equitable common-fund doctrine does not apply to this Settlement.

D. No later than fourteen (14) days before the date of the Fairness Hearing, Plaintiffs' Class Counsel shall file with the Court their responses to any timely and valid objections received.

X. ATTORNEYS' FEES, COSTS, AND EXPENSES AND PLAINTIFFS' INCENTIVE AWARDS

A. After agreeing to the principal terms set forth in this Settlement Agreement, the Parties' counsel negotiated the amount of Attorneys' Fees, Costs, and Expenses that, separate and apart from the consideration for this Settlement, following application to the Court and subject to Court approval, would be paid by Costa as the fee award and costs award to Plaintiffs' Class Counsel. As a result of negotiations, Plaintiffs' Class Counsel agrees to make and Defendant agrees not to oppose, an application for an award of Attorneys' Fees, Costs, and Expenses in the Global Action equal to 30% (thirty percent) of the total Settlement Fund. This

Attorneys' Fees, Costs and Expenses award shall be the sole compensation paid by Costa for all Plaintiffs' Class Counsel work and/or for all other work incurred that inured to the benefit of the Class, and shall be payable to Holland & Knight LLP. These Attorneys' Fees, Costs and Expenses do not include the Incentive Award payments to Plaintiffs set forth in the paragraph below which shall separately and additionally be paid by Costa out of the Settlement Fund. Any reduction by the Court in the amount of Attorneys' Fees, Costs, and Expenses to be awarded to Plaintiffs' Class Counsel shall inure to the benefit of the Class.

B. In recognition of the time and effort Plaintiffs expended in pursuing the *Haney* Action, the *Smith* Action, and the *Reed* Action, in participating in discovery, including having depositions taken, in fulfilling their obligations and responsibilities as class representatives, and all of the benefits conferred on all the members of the Class, Plaintiffs' Class Counsel will ask the Court to award an Incentive Award to each Plaintiff in an amount not to exceed \$10,000.00 per Plaintiff. Defendant agrees not to oppose such application. These Incentive Awards are to be paid by Costa out of the Settlement Fund and are separate from and in addition to the Attorneys' Fees, Costs and Expenses to be paid by Costa, as set forth in the paragraph above.

C. Within fourteen (14) days after the Final Effective Date, Costa shall pay the Attorneys' Fees, Costs, and Expenses, plus the separate and additional Incentive Awards that are awarded by the Court, to Holland & Knight LLP. Thereafter, Plaintiffs' Class Counsel shall distribute the Incentive Awards to Plaintiffs.

XI. FINAL JUDGMENT AND FINAL ORDER

A. At least fourteen (14) days before the date of the Fairness Hearing, Plaintiffs' Class Counsel, after consulting with Costa's Counsel, shall file with the Court their motion for final approval of the Settlement seeking to obtain a Final Judgment and Final Order. The Final Judgment and Final Order shall, among other things:

1. find that the Court has personal jurisdiction over Plaintiffs, the Class Members, and Defendant, that the Court has subject matter jurisdiction over the claims asserted in the Global Action, and that venue is proper;

2. finally approve the parties' agreement as memorialized in this Settlement Agreement, pursuant to Federal Rule of Civil Procedure 23;

3. finally certify the Class for settlement purposes only;

4. find that the notice and the notice dissemination methodology complies with all laws, including, but not limited to, the Due Process Clause of the United States Constitution;

5. dismiss the Global Action with prejudice and without costs (except as provided for herein as to costs);

6. order the Parties to take all steps necessary to ensure that the *Reed* and *Haney* Actions are dismissed with prejudice and without costs (except as provided herein as to costs), including the pending appeal in the *Haney* Action;

7. incorporate the Release set forth in the Agreement and make the Release effective as of the date of the Final Judgment and Final Order;

8. authorize the Parties to implement the terms of the Settlement Agreement;

9. retain jurisdiction relating to the administration, consummation, enforcement, and interpretation of the Agreement, the Final Judgment and Final Order, and for any other necessary purpose;

10. issue related Orders to effectuate the final approval of the Agreement and its implementation; and

11. make a determination on Plaintiffs' Counsel's unopposed request for Attorneys' Fees, Costs, and Expenses and Plaintiffs' Incentive Awards.

XII. RELEASE AND WAIVER

A. The Parties agree to the following release and waiver, which shall take effect upon entry of the Final Judgment and Final Order.

B. In consideration for the Settlement, Plaintiffs and each Class Member, on behalf of themselves and each of their present, former, and future heirs, executors, administrators, partners, co-obligors, co-guarantors, guarantors, sureties, family members, spouses, attorneys, insurers, agents, representatives, predecessors, successors, assigns, and any other legal or natural persons who may claim by, through or under them, agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties, as set forth below:

1. The Florida Repair Class, Florida Purchase Class, and Nationwide Repair Class agree to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims and damages of any kind and/or type that was or could have been brought related to Costa's statement that it replaces scratched lenses, frames and other parts damaged by accident, normal wear and tear, or misuse for a "nominal fee", including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, contingent or non-contingent, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, RICO, or the Magnuson-Moss Warranty Act ("**Nominal Fee Released Claims**"). The Nominal Fee Released Claims do not include

claims and damages related to payment of a warranty fee under Costa's Lifetime Warranty on sunglasses damaged by a manufacturing defect.

2. The Warranty Class agrees to fully, finally and forever release, relinquish, acquit, discharge and hold harmless the Released Parties from any and all claims and damages of any kind and/or type that was or could have been brought related to payment of a warranty fee in connection with Costa's Lifetime Warranty on sunglasses damaged by a manufacturing defect, including, but not limited to, compensatory, exemplary, punitive, expert and/or attorneys' fees or by multipliers, whether past, present, contingent or non-contingent, asserted or un-asserted, whether based on federal, state or local law, statute, ordinance, regulation, code, contract, common law, violations of any state's deceptive, unlawful, or unfair business or trade practices, false, misleading or fraudulent advertising, consumer fraud or consumer protection statutes, any breaches of express, implied or any other warranties, RICO, or the Magnuson-Moss Warranty Act ("**Warranty Released Claims**"). The Warranty Released Claims do not include claims and damages related to Costa's statement that it replaces scratched lenses, frames and other parts damaged by accident, normal wear and tear, or misuse for a "nominal fee."

3. The Nominal Fee Released Claims and Warranty Released Claims are referred to collectively in the Agreement as "**Released Claims**."

C. Notwithstanding the foregoing, the Released Parties shall be held harmless by any Plaintiffs or Class Members for any Released Claim asserted against the Released Parties, by those Plaintiffs or Class Members, either directly or by any legal or natural persons who claim by, through, or under those Plaintiffs or Class Members.

D. The Final Judgment and Final Order will reflect these terms.

E. Plaintiffs and each Class Member expressly agree that this Release, the Final Order, and/or the Final Judgment is, will be, and may be raised as a complete defense to matters released through this Settlement or related to the Released Claims, and will preclude any action or proceeding encompassed by, this Release.

F. Plaintiffs and each Class Member shall not now or hereafter institute, maintain, prosecute, assert, and/or cooperate in the institution, commencement, filing, or prosecution of any suit, action, and/or proceeding, against the Released Parties, either directly or indirectly, on their own behalf, on behalf of a class or on behalf of any other person or entity with respect to the claims, causes of action and/or any other matters released through this Settlement or related to the Released Claims

G. In connection with this Agreement, Plaintiffs and each Class Member acknowledge that they may hereafter discover claims presently unknown or unsuspected, or facts in addition to or different from those that they now know or believe to be true concerning the Released Claims or the subject matter of the Global Action and/or the Release herein. Nevertheless, it is the intention of Plaintiffs' Class Counsel, Plaintiffs, and each Class Member to fully, finally and forever to settle, release, discharge, and hold harmless all such matters, and all claims relating thereto which exist, hereafter may exist, or might have existed (whether or not previously or currently asserted in any action or proceeding) with respect to the Global Action and Released Claims.

H. Warranties and Representations of Plaintiffs and Claimants.

1. Plaintiffs represent and warrant that they are the sole and exclusive owner of all claims that they personally are releasing under the Agreement. Plaintiffs further acknowledge that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or

encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Global Action or Released Claims, including without limitation, any claim for benefits, proceeds or value under the Global Action and Released Claims, and that Plaintiffs are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Global Action and Released Claims

2. Class Members of the Florida Purchase Class submitting Claim forms represent and warrant therein that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Nominal Fee Released Claims, including without limitation, any claim for benefits, proceeds or value under the Global Action and Nominal Fee Released Claims, and that such Class Member(s) are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Global Action and Nominal Fee Released Claims or in any benefits, proceeds, or values under the Global Action and Repair Released Claims.

3. Upon issuance of the Product Voucher(s) to Claimants of the Florida Repair Class, Nationwide Repair Class, and Warranty Class, those Claimants shall be deemed to have represented and warranted that they are the sole and exclusive owner of all claims that they personally are releasing under the Settlement and that they have not assigned, pledged, or in any manner whatsoever, sold, transferred, assigned or encumbered any right, title, interest or claim arising out of or in any way whatsoever pertaining to the Global Action or Released Claims (as applicable to the Claimant's specific Class), including without limitation, any claim for benefits, proceeds or value under the Global Action and Released Claims, and that such Class Member(s)

are not aware of anyone other than themselves claiming any interest, in whole or in part, in the Global Action and Released Claims or in any benefits, proceeds, or values under the Global Action and Released Claims.

I. Without in any way limiting its scope, and, except to the extent otherwise specified in the Agreement, this Release covers by example and without limitation, any and all claims for attorneys' fees, costs, expert fees, or consultant fees, interest, or litigation fees, costs or any other fees, costs, and/or disbursements incurred by any attorneys, Plaintiffs' Class Counsel, Plaintiffs, or Class Members who claim to have assisted in conferring the benefits under this Settlement upon the Class.

J. In consideration for the Settlement, the Released Parties shall be deemed to have, and by operation of the Final Approval Order shall have, released Plaintiffs' Class Counsel and each current and former Plaintiffs from any and all causes of action that were or could have been asserted pertaining solely to the conduct in filing and prosecuting the litigation or in settling the Global Action.

K. Plaintiffs' Class Counsel who receive attorneys' fees and costs from this Settlement acknowledge that they have conducted sufficient independent investigation to enter into this Settlement Agreement and, by executing this Settlement Agreement, state that they have not relied upon any statements or representations made by the Released Parties or any person or entity representing the Released Parties, other than as set forth in this Settlement Agreement.

L. In accordance with and further to the existing stay orders in the Litigation, the Parties specifically understand that there may be further pleadings, discovery requests and responses, testimony, or other matters or materials owed by the Parties pursuant to existing pleading requirements, discovery requests, or pretrial rules, procedures, or orders, and that, by

entering into this Agreement, the Parties expressly waive any right to receive, hear, or inspect such pleadings, testimony, discovery, or other matters or materials.

M. Nothing in this Section shall preclude any action to enforce the terms of the Agreement, including participation in any of the processes detailed herein.

N. Plaintiffs and Plaintiffs' Class Counsel hereby agree and acknowledge that the provisions of this Section, including the Release herein, together constitute an essential and material term of the Agreement and shall be included in any Final Judgment and Final Order entered by the Court.

XIII. MODIFICATION OR TERMINATION OF THIS AGREEMENT

A. The terms and provisions of this Agreement may be amended, modified, or expanded by written agreement of the Parties and approval of the Court; provided, however, that after entry of the Final Judgment and Final Order, the Parties may by written agreement effect such amendments, modifications, or expansions of this Agreement and its implementing documents (including all exhibits hereto) without further notice to the Class or approval by the Court if such changes are consistent with the Court's Final Judgment and Final Order and do not limit the rights of Class Members under this Agreement.

B. If an option to withdraw from and terminate this Agreement arises under this Section XIII. above, neither Costa nor Plaintiffs are required for any reason or under any circumstance to exercise that option and any exercise of that option shall be in good faith.

C. If, but only if, this Agreement is not approved pursuant to Sections III. and XI. above, then:

1. This Agreement shall be null and void and shall have no force or effect, and no Party to this Agreement shall be bound by any of its terms;

2. The Parties will petition the courts in the *Haney* and *Reed* Actions to have any stay orders entered in the *Haney* and *Reed* Actions pursuant to this Agreement lifted;

3. Plaintiff Smith will file a Second Amended Complaint returning the claims, class definitions and allegations to the form originally filed in the *Smith* Action, and Plaintiffs Haney and Reed will pursue their respective claims in the *Haney* Action and the *Reed* Action;

4. All of its provisions, and all negotiations, statements, and proceedings relating to it shall be without prejudice to the rights of Costa, Plaintiffs, or any Class Member, all of whom shall be restored to their respective positions existing immediately before the execution of this Agreement, except that the Parties shall cooperate in requesting that the Court set a new scheduling order such that no Party's substantive or procedural rights are prejudiced by the settlement negotiations and proceedings;

5. The Released Parties expressly and affirmatively reserve all defenses, arguments, and motions as to all claims that have been or might later be asserted in the Litigation, including, without limitation, the argument that the Global Action and/or Litigation may not be litigated as a class action;

6. Plaintiffs and all other Class Members, on behalf of themselves and each of their present, former, and future heirs, executors, administrators, partners, co-obligors, co-guarantors, guarantors, sureties, family members, spouses, attorneys, insurers, agents, representatives, predecessors, successors, assigns, and all those who claim through them or could claim through them, expressly and affirmatively reserve and do not waive all motions as to, and arguments in support of, all claims, causes of actions or remedies that have been or might later

be asserted in the Litigation or Global Action including, without limitation, any argument concerning class certification, and other damages;

7. Costa, and the other Released Parties, expressly and affirmatively reserve and do not waive all motions and positions as to, and arguments in support of, all defenses to the causes of action or remedies that have been sought or might be later asserted in the Litigation, including without limitation, any argument or position opposing class certification, liability, or damages;

8. Neither this Agreement, the fact of its having been made, nor the negotiations leading to it, nor any discovery or action taken by a Party or Class Member pursuant to this Agreement, shall be admissible or entered into evidence for any purpose whatsoever.

XIV. GENERAL MATTERS AND RESERVATIONS

A. The obligation of the Parties to conclude the Settlement is and shall be contingent upon each of the following:

1. Entry by the Court of the Final Judgment and Final Order approving the Settlement, from which the time to appeal has expired or which has remained unmodified after any appeal(s); and

2. Any other conditions stated in this Agreement.

B. Costa's execution of this Agreement shall not be construed to release – and Costa expressly does not intend to release – any claim Costa may have or make against any insurer for any cost or expense incurred in connection with this Settlement, including, without limitation, for attorneys' fees and costs.

C. Plaintiffs' Class Counsel represent that: (1) they are authorized by Plaintiffs to enter into this Agreement with respect to the claims in this Global Action and Litigation; and (2) they are seeking to protect the interests of the Class.

D. The Parties acknowledge and agree that no opinion concerning the tax consequences of the Settlement to Class Members is given or will be given by the Parties, nor are any representations or warranties in this regard made by virtue of this Agreement. Each Class Member's tax obligations, and the determination thereof, are the sole responsibility of the Class Member, each Class Member will be solely responsible for correctly characterizing this payment for tax purposes and for paying any taxes owed on this payment, and it is understood that the tax consequences may vary depending on the particular circumstances of each individual Class Member.

E. Costa represents and warrants that the individual(s) executing this Agreement is authorized to enter into this Agreement on behalf of Costa.

F. This Agreement, complete with its exhibits, sets forth the sole and entire agreement among the Parties with respect to its subject matter, and it may not be altered, amended, or modified except by written instrument executed by counsel for each of the Parties. The Parties expressly acknowledge that no other agreements, arrangements, or understandings not expressed in this Agreement exist among or between them, and that in deciding to enter into this Agreement, they rely solely upon their judgment and knowledge. This Agreement supersedes any prior agreements, understandings, or undertakings (written or oral) by and between the Parties regarding the subject matter of this Agreement.

G. This Agreement and any amendments thereto shall be governed by and interpreted according to the laws of Florida, notwithstanding its conflict of laws provisions.

H. Any disagreement and/or action to enforce this Agreement shall be commenced and maintained only in the United States District Court for the Middle District of Florida, Jacksonville Division.

I. Whenever this Agreement requires or contemplates that one of the Parties shall or may give notice to the other, notice shall be deemed effective upon receipt and provided by e-mail and/or next-day (excluding Saturdays, Sundays and Federal Holidays) express delivery service as follows:

1. If to Plaintiffs, then to:

Peter P. Hargitai
Holland & Knight LLP
50 North Laura Street, Suite 3900
Jacksonville, Florida 32202
Tel.: 904-353-2000
Fax: 904-358-1872
E-mail: Peter.Hargitai@hkllaw.com

2. If to Costa, then to:

Sara F. Holladay-Tobias
McGuireWoods LLP
50 North Laura Street, Suite 3300
Jacksonville, Florida 32202
Tel.: 904-798-3200
Fax: 904-798-3207
E-mail: stobias@mcguirewoods.com

J. All time periods set forth herein shall be computed in calendar days unless otherwise expressly provided. In computing any period of time prescribed or allowed by this Agreement or by order of the Court, the day of the act, event, or default from which the designated period of time begins to run shall not be included. The last day of the period so computed shall be included, unless it is a Saturday, a Sunday or a Federal Holiday, or, when the act to be done is the filing of a paper in court, a day on which weather or other conditions have made the office of the clerk of the court inaccessible, in which event the period shall run until the end of the next day that is not one of the aforementioned days. As used in this Section XIV., “Federal Holiday” includes New Year’s Day, Birthday of Martin Luther King, Jr., Presidents’ Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Patriot’s

Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday by the President, the Congress of the United States or the Clerk of the United States District Court for the Middle District of Florida.

K. The Parties reserve the right, subject to the Court's approval, to agree to any reasonable extensions of time that might be necessary to carry out any of the provisions of this Agreement.

L. The Class, the Parties, and their respective counsel shall not be deemed to be the sole drafter of this Agreement or of any particular provision, nor shall they argue that any particular provision should be construed against its drafter. All Parties agree that this Agreement was drafted by counsel for the Parties during extensive arm's length negotiations. No parol or other evidence may be offered to explain, construe, contradict, or clarify its terms, the intent of the Parties or their counsel, or the circumstances under which this Agreement was made or executed.

M. The Parties expressly acknowledge and agree that this Agreement and its exhibits, along with all related drafts, motions, pleadings, conversations, negotiations, and correspondence, constitute an offer of compromise and a compromise within the meaning of Federal Rule of Evidence 408 and any equivalent rule of evidence in any state. In no event shall this Agreement, any of its provisions or any negotiations, statements or court proceedings relating to its provisions in any way be construed as, offered as, received as, used as, or deemed to be evidence of any kind in the Global Action, any other action, or in any judicial, administrative, regulatory or other proceeding, except in a proceeding to enforce this Agreement or the rights of the Parties or their counsel. Without limiting the foregoing, neither this Agreement nor any related negotiations, statements, or court proceedings shall be construed as,

offered as, received as, used as or deemed to be evidence or an admission or concession of any liability or wrongdoing whatsoever on the part of any person or entity, including, but not limited to, the Released Parties, Plaintiffs, or the Class; or as a waiver by the Released Parties, Plaintiffs, or the Class of any applicable privileges, claims, or defenses.

N. Plaintiffs expressly affirm that the allegations contained in the operative complaints were made in good faith, but consider it desirable for the Global Action and Litigation to be settled and dismissed because of the substantial benefits that the Settlement will provide to Class Members.

O. The Parties, their successors and assigns, and their counsel undertake to implement the terms of this Agreement in good faith, and to use good faith in resolving any disputes that may arise in the implementation of the terms of this Agreement.

P. The waiver by one Party of any breach of this Agreement by another Party shall not be deemed a waiver of any prior or subsequent breach of this Agreement.

Q. If one Party to this Agreement considers another Party to be in breach of its obligations under this Agreement, that Party must provide the breaching Party with written notice of the alleged breach and provide a reasonable opportunity to cure the breach before taking any action to enforce any rights under this Agreement.

R. The Parties, their successors and assigns, and their counsel agree to cooperate with one another in seeking Court approval of this Agreement, and to use their best efforts to effect the prompt consummation of this Agreement and the Settlement.

S. This Agreement may be signed with a facsimile signature and in counterparts, each of which shall constitute a duplicate original.

T. In the event any one or more of the provisions contained in this Agreement shall for any reason be held to be invalid, illegal, or unenforceable in any respect, such invalidity, illegality, or unenforceability shall not affect any other provision if Costa, on behalf of Defendant, and Plaintiffs' Class Counsel, on behalf of Plaintiffs and Class Members, mutually agree in writing to proceed as if such invalid, illegal, or unenforceable provision had never been included in this Agreement. Any such agreement shall be reviewed and approved by the Court before it becomes effective.

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Agreed to on the date indicated below.

APPROVED AND AGREED TO BY PLAINTIFFS' CLASS COUNSEL
AS AUTHORIZED BY PLAINTIFFS

BY *Peter P. Hargitai*
PETER P. HARGITAI
HOLLAND & KNIGHT LLP

DATE: August 12, 2020

BY _____
BRENDAN C. HANEY

DATE: August _____, 2020

BY _____
GERALD E. REED, IV

DATE: August _____, 2020

BY _____
TROY SMITH

DATE: August _____, 2020

APPROVED AND AGREED TO BY COSTA DEL MAR, INC.

BY _____
SARA HOLLADAY-TOBIAS
MCGUIREWOODS LLP

DATE: August _____, 2020

BY _____
COSTA DEL MAR, INC.

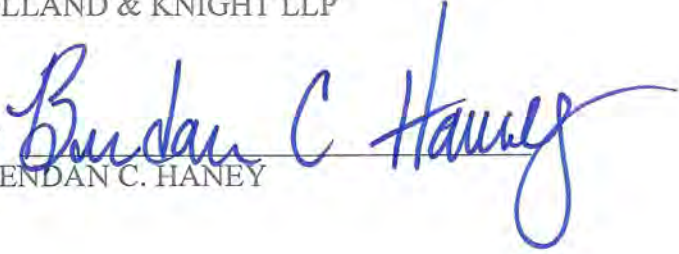
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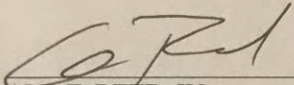
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MCGUIREWOODS LLP

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BY  _____
COSTA DEL MAR, INC.

DATE: August 13, 2020