Exhibit A1

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MISSOURI

MARK FANTROY and MARLO GEORGE, individually and on behalf of all others similarly situated, Plaintiffs, v. OAKLEY, INC., LUXOTTICA OF AMERICA INC., and COSTA DEL MAR, INC., Defendants.	Case No. 4:23-cv-00433 **FIRST AMENDED CLASS ACTION COMPLAINT** **JURY TRIAL DEMANDED**

Plaintiffs Mark Fantroy and Marlo George (collectively, "Plaintiffs") bring this action on behalf of themselves and all others similarly situated against Defendants Oakley, Inc. ("Defendant Oakley"), Luxottica of America Inc. ("Defendant Luxottica" or "Sunglass Hut"), and Costa Del Mar, Inc. ("Defendant Costa") (collectively, "Defendants"). Plaintiffs make the following allegations pursuant to the investigation of their counsel and based upon information and belief, except as to the allegations specifically pertaining to themselves, which are based on personal knowledge.

NATURE OF THE CASE

1. This is a class action on behalf of all persons that made a Qualifying Purchase, as defined below, from Defendants' respective internet websites for delivery in the State of Missouri.

2. A "Qualifying Purchase" is a retail transaction for the purchase of tangible personal property from Defendants for which all of the following are true:

(a) the transaction was made via one of the following websites: Glasses.com, LensCrafters.com, OakleySI.com, Oakley.com, Rayban.com, SunglassHut.com,

CostaDelMar.com, and TargetOptical.com (collectively, "Defendants' Websites");

(b) the transaction was completed between April 1, 2020, through April 12, 2023 (such period, the "Class Period");

(c) the purchased property was shipped by or on behalf of Defendants from a location outside the state of Missouri;

(d) the purchaser's delivery address was within the state of Missouri; and

(e) Defendants charged the purchaser an amount of tax on the transaction that exceeded the Vendor's Use Tax Amount for that transaction.

3. Missouri state law mandates that retailers charge a "use tax" on sales of their products through remote means, including an internet website, telephone, catalog or other remote communications system (collectively, "remote sales channel(s)"), to Missouri purchasers that are shipped from an out-of-state facility. The state use tax rate for these sales is 4.225%. *See* Mo. Ann. Stat. §§ 144.600-761. There are also additional local use taxes that are imposed on sales made through remote sales channels based on the delivery address of the Missouri purchasers.

4. Defendants illegally and erroneously overcharged tax monies at a higher tax rate than the correct applicable use tax rate on products purchased through remote sales channels, including from Defendants' Websites, that are shipped to Missouri customers from out-of-state facilities, resulting in the overcollection of monies from Missouri consumers.

5. Plaintiffs bring this action on behalf of themselves and a proposed class of Missouri residents who made Qualifying Purchases for personal, family, or household use from Defendants' through Defendants' Websites.

PARTIES

6. At all relevant times, Plaintiff Mark Fantroy was and is a Missouri citizen residing in Hazelwood, Missouri.

7. On November 10, 2022, Plaintiff Fantroy purchased from Defendant Oakley: one (1) pair of Standard Issue Fuel Cell Tonal Thin Red Line sunglasses for personal, family or household use for delivery to 5007 Tulip Tree Ln, Hazelwood, Missouri 63042. Plaintiff's purchase was shipped from McDonough, Georgia.

8. According to the Missouri Department of Revenue, the applicable use tax rate for sales of products through remote sales channels that are shipped by Defendant Oakley from an out-of-state facility for delivery to 5007 Tulip Tree Ln, Hazelwood, Missouri 63042 on November 10, 2022, is 6.475%.

9. When Plaintiff Fantroy purchased the product from Defendant Oakley's website on November 10, 2022, Defendant Oakley required Plaintiff Fantroy to pay a 9.99% tax rate, resulting in the overcollection of monies.

10. At all relevant times, Plaintiff Marlo George was and is a Missouri citizen residing in Wildwood, Missouri.

11. On November 29, 2021, Plaintiff purchased: one (1) pair of Coach / HC8132 / Standard sunglasses and one (1) pair of Gucci / GG0036S / Standard sunglasses for personal, family or household use for delivery to 108 Sail Port, Ct., Wildwood, Missouri 63040. Plaintiff's purchase was shipped from outside the state of Missouri.

12. According to the Missouri Department of Revenue, the applicable use tax rate for sales of products through remote sales channels that are shipped by Defendant from an out-of-state facility for delivery to 108 Sail Port, Ct., Wildwood, Missouri 63040 on November 29, 2021, is 4.225%.

13. When Plaintiff purchased the products from Sunglass Hut's website on November 29, 2021, Defendant Luxottica required Plaintiff to pay an 8.238% tax rate, resulting in the overcollection of monies.

14. Defendant Oakley is a Washington corporation with its principal place of business at 1 Icon, Foothill Ranch, CA 92610. Defendant conducts, and at all relevant times, has conducted business in Missouri through remote sales channels, including making sales through its internet website.

15. Defendant Luxottica is an Ohio corporation with its principal place of business in Mason, OH. Defendant conducts, and at all relevant times, has conducted business in Missouri through remote sales channels, including making sales through its internet website.

16. Defendant Costa is a Florida Corporation with its principal place of business in Daytona Beach, FL. Defendant conducts, and at all relevant times, has conducted business in Missouri through remote sales channels, including making sales through its internet website.

JURISDICTION AND VENUE

17. The Court has jurisdiction over this action pursuant to 28 U.S.C. § 1332(d)(2)(A), as modified by the Class Action Fairness Act of 2005, because at least one member of the Class, as defined below, is a citizen of a different state than Defendants, there are more than 100 members of the Class, and the aggregate amount in controversy exceeds $5,000,000 exclusive of interest and costs.

18. This Court has personal jurisdiction over Plaintiffs because Plaintiffs reside in Missouri, are citizens of Missouri, and submit to the jurisdiction of the Court. Additionally, Plaintiffs, while in Missouri, made the Qualifying Purchases.

19. This Court has personal jurisdiction over Defendants because the wrongful

conduct giving rise to this case occurred in, was directed to, and/or emanated from this District.

20. Venue is proper in this Court pursuant to 28 U.S.C. § 1391(b) because a substantial part of the events or omissions giving rise to this claim occurred in this District.

CLASS ALLEGATIONS

21. Plaintiffs seek to represent a class defined as all consumers who made at least one Qualifying Purchase during the Class Period (the "Class"). Excluded from the Class are Defendants, any entity in which Defendants have a controlling interest or which has a controlling interest in Defendants, and Defendants' legal representatives, predecessors, successors, assigns, and employees; Class Counsel and members of the immediate family of Class Counsel; the judge and staff whom this case was assigned, and any member of the judge's immediate family; any customers who returned the product for a full refund.

22. Excluded from the definition of "Qualifying Purchase" is any transaction on which the purchaser received a refund on the entire transaction or previously received a refund of tax charged. On a transaction where a consumer received a partial refund, only the portions of the transaction on which the purchaser did not receive a refund may be a Qualifying Purchase.

23. Subject to additional information obtained through further investigation and discovery, the foregoing definition of the Class may be expanded or narrowed by amendment or amended complaint.

24. **Numerosity.** The members of the Class are geographically dispersed throughout the state of Missouri and are so numerous that individual joinder is impracticable. Upon information and belief, Plaintiffs reasonably estimate that there are tens of thousands of members in the Class. Although the precise number of Class members is unknown to Plaintiffs, the true number of Class members is known by Defendants and may be determined through discovery.

Class members may be notified of the pendency of this action by mail and/or publication through the distribution records of Defendants.

25. **Existence and predominance of common questions of law and fact.** Common questions of law and fact exist as to all members of the Class and predominate over any questions affecting only individual Class members. These common legal and factual questions include, but are not limited to, the following:

(a) whether Defendants charged and collected an incorrect tax rate on sales of their products through remote sales channels, including Defendants' Websites, to Missouri purchasers that were delivered from out-of-state facilities;

(b) whether charging and collecting incorrect tax on sales of products through remote sales channels, including an internet website, that were delivered from an out-of-state facility constituted an unlawful practice;

(c) whether charging and collecting incorrect tax on sales of products through remote sales channels, including an internet website, that were delivered from an out-of-state facility constituted an unfair practice;

(d) whether Defendants misrepresented that a higher tax rate was owed on sales of products through remote sales channels, including Defendants' Websites, that were delivered from out-of-state facilities;

(e) whether Defendants' customers were damaged due to Defendants' unlawful tax practices;

(f) whether Defendants should, under Missouri law, be required to return "tax" monies to Plaintiff and the Class;

(g) whether Defendants are liable to Plaintiffs and the Class for unjust enrichment.

26. **Typicality.** Plaintiffs' claims are typical of the claims of the other members of the Class in that, among other things, all Class members were similarly situated and were comparably injured through Defendants' wrongful conduct as set forth herein. Further, there are no defenses available to Defendants that are unique to Plaintiffs.

27. **Adequacy of Representation.** Plaintiffs will fairly and adequately protect the interests of the Class. Plaintiffs have retained counsel that is highly experienced in complex consumer class action litigation, and Plaintiffs intend to vigorously prosecute this action on behalf of the Class. Furthermore, Plaintiffs have no interests that are antagonistic to those of the Class.

28. **Superiority.** A class action is superior to all other available means for the fair and efficient adjudication of this controversy. The damages or other financial detriment suffered by individual Class members are relatively small compared to the burden and expense of individual litigation of their claims against Defendants. It would, thus, be virtually impossible for the Class on an individual basis, to obtain effective redress for the wrongs committed against them. Furthermore, even if Class members could afford such individualized litigation, the court system could not. Individualized litigation would create the danger of inconsistent or contradictory judgments arising from the same set of facts. Individualized litigation would also increase the delay and expense to all parties and the court system from the issues raised by this action. By contrast, the class action device provides the benefits of adjudication of these issues in a single proceeding, economies of scale, and comprehensive supervision by a single court, and presents no unusual management difficulties under the circumstances.

29. In the alternative, the Class may also be certified because:

(a) the prosecution of separate actions by individual Class members would create a

risk of inconsistent or varying adjudications with respect to individual Class members that would establish incompatible standards of conduct for the Defendants;

(b) the prosecution of separate actions by individual Class members would create a risk of adjudications with respect to them that would, as a practical matter, be dispositive of the interests of other Class members not parties to the adjudications, or substantially impair or impede their ability to protect their interests; and/or

(c) Defendants have acted or refused to act on grounds generally applicable to the Class as a whole, thereby making appropriate final declaratory and/or injunctive relief with respect to the members of the Class as a whole.

COUNT I
Violation of the Missouri Merchandising Practices Act

30. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

31. Defendants' actions alleged herein violated, and continue to violate, the Missouri Merchandising Practices Act ("MMPA"), Mo. Rev. Stat. § 407.010 *et seq*.

32. Defendants are each a "person" within the meaning of the MMPA, Missouri Revised Statutes § 407.010(5).

33. The goods purchased from Defendants are "merchandise" within the meaning of the MMPA, Missouri Revised Statutes § 407.010(4).

34. The goods purchased from Defendants are for personal, family or household use.

35. The transactions resulting in purchases of goods from Defendants in Missouri are a "sale" within the meaning of the MMPA, Missouri Revised Statutes § 407.010(6).

36. Defendants' actions alleged herein constituted and continue to constitute, illegal deceptive practice in violation of Mo. Rev. Stat. § 407.020.1 in that they were and are deception,

fraud, false pretense, false promise, misrepresentation, unfair practice and/or the concealment, suppression, or omission of material fact in connection with the sale of merchandise in trade or commerce, within the meaning of the MMPA.

37. Defendants' actions alleged herein violated, and continue to violate, the MMPA because they constituted, and continue to constitute, unfair practices as that term is defined in Mo. Code Regs. Tit. 15, § 60-8.020. Specifically, they were and are, *inter alia*, unethical.

38. Plaintiffs and the Class have suffered ascertainable loss due to the unfair and deceptive practices described in this Count.

39. Plaintiffs and the Class seek actual damages for all monies paid in violation of Chapter 144, Missouri Revised Statutes.

40. Plaintiffs and the Class acted as reasonable consumers would in light of all circumstances.

41. Defendants' unlawful practices would cause a reasonable person to enter into the transaction that resulted in damages.

42. Individual damages stemming from Defendants' unlawful practices can be calculated with a reasonable degree of certainty.

43. Appropriate injunctive relief is necessary to prevent Defendants' MMPA violations from continuing. If Defendants' violations of the MMPA are not stopped by such injunctive relief, Plaintiffs and the members of the Class will continue to suffer injury by being charged a higher tax rate on sales of products through remote sales channels, including Defendants' Websites, that were delivered from out-of-state facilities.

44. The conduct of Defendants was malicious, corrupt, and intentional and/or reckless to a degree sufficient to support an award of punitive damages against Defendants.

45. Due to Defendants' violations of the MMPA, Plaintiffs seek damages, an order enjoining Defendants from the unlawful practices described above, reasonable attorneys' fees and any other relief the Court deems proper under the MMPA.

COUNT II
Unjust Enrichment

46. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

47. As alleged above, Defendants charged and collected a higher tax rate than the correct applicable use tax rate on sales of products through remote sales channels, including Defendants' Websites, that were delivered from out-of-state facilities.

48. Defendants have been unjustly enriched in that they received and retained the benefit of funds to which they were not entitled and received in violation of Missouri law.

49. Said funds were conferred on Defendants by Plaintiff and the Class members under a mistake of fact due to Defendants' misrepresentations, and unlawfully obtained to the detriment of Plaintiffs and the Class members.

50. Defendants' retention of these funds is unjust because Defendants misrepresented the amount of tax due for the provision of their goods and services, and collected more tax than allowed under Missouri law.

51. Allowing Defendants to retain the aforementioned benefits violates fundamental principles of justice, equity, and good conscience.

52. Because Defendants' retention of the non-gratuitous benefits conferred on them by Plaintiffs and the Class is unjust and inequitable, Defendants must pay restitution to Plaintiffs and the Class for their unjust enrichment, as ordered by the Court.

COUNT III

Money Had and Received

53. Plaintiffs hereby incorporate by reference the allegations contained in all preceding paragraphs of this complaint.

54. Defendants have received money from Plaintiffs and the Class by charging a higher tax rate than the correct applicable use tax rate on sales of products through remote sales channels, including Defendants' Websites, that were delivered from out-of-state facilities rather than the use tax rate mandated by Missouri law, which in equity and good conscience ought to be returned to Plaintiffs and the Class.

55. Defendants owe Plaintiffs and members of the Class for money had and received, including, but not limited to, the monies that Plaintiffs and the Class were charged at a higher tax rate than the correct applicable use tax rate on the sales at issue.

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, seek judgment against Defendants, as follows:

(a) For an order certifying the Class under Rule 23 of the Federal Rules of Civil Procedure and naming Plaintiffs as representatives of the Class and Plaintiffs' attorneys as Class Counsel to represent the Class;

(b) For an order finding in favor of Plaintiffs and the Class on all counts asserted herein;

(c) For compensatory and punitive damages in amounts to be determined by the Court and/or jury;

(d) For prejudgment interest on all amounts awarded;

(e) For an order of restitution and all other forms of equitable monetary relief;

(f) For an order directing Defendants to cease the illegal actions detailed herein; and

(g) For an order awarding Plaintiffs and the Class their reasonable attorneys' fees and expenses and costs of suit.

DEMAND FOR TRIAL BY JURY

Pursuant to Federal Rule of Civil Procedure 38(b), Plaintiffs demand a trial by jury of any and all issues in this action so triable of right.

Dated: June 28, 2024

Respectfully submitted,

BURSOR & FISHER, P.A.

By: */s/ Yitzchak Kopel*
Yitzchak Kopel

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Counsel for Plaintiffs

AO 440 (Rev. 06/12) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

MARK FANTROY and MARLO GEORGE

Plaintiff(s)

v.

OAKLEY, INC., LUXOTTICA OF AMERICA INC., and COSTA DEL MAR, INC.

Defendant(s)

Civil Action No. 4:23-cv-00433

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Costa Del Mar, Inc.
c/o NRAI Services, Inc.
1200 South Pine Island Road
Plantation, FL 33324

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are: Yitzchak Kopel
Bursor & Fisher, P.A.
1300 Avenue of the Americas
32nd Floor
New York, NY 10019
ykopel@bursor.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:23-cv-00433

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc:

AO 440 (Rev. 12/09) Summons in a Civil Action

UNITED STATES DISTRICT COURT

for the

Eastern District of Missouri

MARK FANTROY and MARLO GEORGE

Plaintiff

v.

OAKLEY, INC., LUXOTTICA OF AMERICA INC., and COSTA DEL MAR, INC.

Defendant

Civil Action No. 4:23-cv-00433

SUMMONS IN A CIVIL ACTION

To: *(Defendant's name and address)* Luxottica of America Inc.
c/o National Registered Agents, Inc.
1209 Orange Street
Wilmington, DE 19801

A lawsuit has been filed against you.

Within 21 days after service of this summons on you (not counting the day you received it) — or 60 days if you are the United States or a United States agency, or an officer or employee of the United States described in Fed. R. Civ. P. 12 (a)(2) or (3) — you must serve on the plaintiff an answer to the attached complaint or a motion under Rule 12 of the Federal Rules of Civil Procedure. The answer or motion must be served on the plaintiff or plaintiff's attorney, whose name and address are:

Yitzchak Kopel
Bursor & Fisher, P.A.
1300 Avenue of the Americas
32nd Floor
New York, NY 10019
ykopel@bursor.com

If you fail to respond, judgment by default will be entered against you for the relief demanded in the complaint. You also must file your answer or motion with the court.

CLERK OF COURT

Date: _____

_____
Signature of Clerk or Deputy Clerk

Civil Action No. 4:23-cv-00433

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 4 (l))

This summons for *(name of individual and title, if any)* _____ was received by me on *(date)* _____ .

❒ I personally served the summons on the individual at *(place)* _____ on *(date)* _____ ; or

❒ I left the summons at the individual's residence or usual place of abode with *(name)* _____ , a person of suitable age and discretion who resides there, on *(date)* _____ , and mailed a copy to the individual's last known address; or

❒ I served the summons on *(name of individual)* _____ , who is designated by law to accept service of process on behalf of *(name of organization)* _____ on *(date)* _____ ; or

❒ I returned the summons unexecuted because _____ ; or

❒ Other *(specify):*

.

My fees are $ _____ for travel and $ _____ for services, for a total of $ 0.00 .

I declare under penalty of perjury that this information is true.

Date: _____

_____
Server's signature

_____
Printed name and title

_____
Server's address

Additional information regarding attempted service, etc: