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Attorney(s) for Plaintiff and the Class

JUDITH MASON, on behalf of herself and others
similarly situated,

Plaintiff,

vs.

COSTCO WHOLESALE CORPORATION, a
Washington Corporation.

Defendants.

SUPERIOR COURT OF NEW JERSEY
CHANCERY DIVISION
MIDDLESEX COUNTY

Docket No.

C-2164-08

Jury Trial Demanded

L10302-08

Class Action

COMPLAINT – CLASS ACTION

Plaintiff Judith Mason brings this action on her own behalf and on behalf of others similarly situated against Defendant CostCo Wholesale Corporation seeking to stop its unlawful practice of using comparisons to “invoice” pricing in the advertisement of automobiles for sale to consumers and to recover money unlawfully gained by a result of this deceptive and misleading act. Plaintiff, for her class action complaint, alleges as follows upon personal knowledge as to herself and her own acts and experiences, and, as to all other matters, upon information and belief, including investigation conducted by her attorneys.

Parties

1. Plaintiff Judith Mason is a resident of Milltown, New Jersey and has been a CostCo Member in good standing during all relevant time periods.

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2. Defendant Costco Wholesale Corporation (“CostCo”) is a Washington corporation with its principal place of business in Issaquah, Washington. CostCo is the largest membership warehouse in the world and is the fourth largest retailer in the United States with 393 locations and 51.8 million members. Through the operation of its twelve warehouses in New Jersey, CostCo is engaged in continuous and substantial business in this State. As part of a CostCo membership, consumers are allowed to participate in the CostCo Auto Program, which has agreements with more than 2400 automobile dealers throughout United States, including several in New Jersey.

Jurisdiction and Venue

3. This Court has personal jurisdiction over the Plaintiff’s claims against Defendants under Rule 4:4-4(a)(6) as Defendants are conducting business in this state and this judicial district and as this action accrued in whole or in part in this State.

4. Venue is properly laid in this County under Rule 4:3-2(a)(3) as Plaintiff resides in this District and some or all of the transactions that are the subject matter of this litigation occurred in such county.

Allegations Common to the Class

5. As part of their annual membership fee with CostCo (\$50 to \$100), CostCo members have the option to participate in the CostCo Auto Program. CostCo claims the CostCo Auto Program will save its members time and money by providing a “no-hassle, no-haggle, prearranged price” for vehicles. CostCo’s representation that its members will save time and money through participating in CostCo Auto Program is material to its members’ decision to participate in the Program. Moreover, some portion of CostCo’s membership fee is attributable to the CostCo Auto Program.

6. CostCo members seeking to utilize the Program are invited to perform on-line “research” at www.costcoauto.com. This website displays, alongside the particular model(s) and model year(s) of cars selected by users, the “invoice” price and manufacturer’s Suggested Retail Price (“MSRP”), safety reports, and available options. Although the various prices are listed according to vehicle options, the above website clearly notes that “Prices on this Web site are intended for reference only. Your ‘Member-only’ price will be provided by the dealership’s Authorized Dealer Contact.”

7. As part of their agreement with CostCo to act as an authorized dealer under the CostCo Auto Program, franchised automobile dealerships pay CostCo a participation fee, appoint an Authorized Dealer Contact to be the point person for transactions with CostCo members, and offer certain automobiles for sale under the CostCo Auto Program’s preset prices (the “‘Member-only’ price”).

8. After selecting their desired vehicle, CostCo members contact a representative of the CostCo Auto Program (either on-line or by telephone). The representative refers the CostCo member to the authorized CostCo dealer and provides both the CostCo member’s information to the Authorized Dealer Contact.

9. CostCo’s representatives inform CostCo members that the Authorized Dealer Contact will contact them within 24 hours with further information about the vehicle selected by the member. CostCo instructs its members that they must deal only with the Authorized Dealer Contact to ensure they receive the preset, “Members-only” prices available under the CostCo Auto Program.

10. CostCo Members then go to the selected dealership where they are to meet with the Authorized Dealer Contact and are required to show proof of their CostCo membership.

Neither Costco nor the Authorized Dealer Contact will disclose the “Members-only” price until the Costco member makes an appointment with the Authorized Dealer Contact.

11. Costco advertises the Costco Auto Program by instructing members to ask the Authorized Dealer Contact to provide the selected vehicle’s invoice and MSRP sheets so that members can compare the vehicle’s invoice price with the “Members-only” price sheet, so that Costco members can determine their purported “savings” under the Costco Auto Program.

12. Costco defines its “Members-only Price Sheet” as “The Costco Auto Program document at the dealership that shows the maximum prearranged price that the dealer has agreed to charge Costco members. The member can calculate their price by using the manufacture’s invoice and the MSRP. The member should ask to see all these documents when meeting with the Authorized Dealer Contact at the dealership.”

13. On information and belief, Costco’s policy is to state the preset, “Members-only” price quoted to Costco members in terms of a variable sum “over invoice.” Costco effectuates this policy through publishing the “Members-only” price sheets and training of the Authorized Dealer Contacts.

14. Costco further advertises that members can “[s]ave even more when you combine manufacture’s rebates and incentives with your low member only price.”

15. The Costco Auto Program is misleading and deceptive because its “Members-only” price is exclusively defined in reference to the “invoice price” of Costco’s authorized dealers. On information and belief, the Costco Auto Program does not control the underlying “invoice price,” and its participating dealers can and do manipulate that price in any number of ways. Ultimately, the “invoice price” does not necessarily bear any relationship to the price paid by the participating dealers – contrary to the implication of the Costco Auto Program’s

references to “invoice price.” On information and belief, Costco does not even necessarily know what its participating dealers’ “invoice prices” are.

Plaintiff’s Individual Allegations

16. On or around December 1, 2006, the Plaintiff visited the Defendant’s website to obtain information on the Costco Auto Program as she was interested in purchasing a new Toyota Highlander. The Defendant’s website provided the above information to the Plaintiff and listed five dealers.

17. After being referred to a local dealer, on or about December 1, 2006, the Plaintiff inquired about the price of a both Toyota Highlander and the Toyota Highlander Hybrid.

18. The Authorized Dealer Contact advertised to the Plaintiff that the “Member-only” price provided by Costco for the Toyota Highlander was “\$200 over invoice” and was “\$500 over invoice” for the Toyota Highlander Hybrid.

19. At that time, the Plaintiff asked for a copy of the invoice and was told by the Authorized Dealer Contact that she could not provide a copy of the invoice price, but could give an “inventory detail.” The Authorized Dealer Contact again confirmed the Plaintiff’s price would be “invoice” plus \$500.

20. Based on these advertisements and the policies of Costco, the Plaintiff agreed to purchase a Toyota Highlander Hybrid and provided the Authorized Dealer Contact with color she wanted as the vehicle needed to be acquired from a lot in southern New Jersey.

21. On December 20, 2006, the Plaintiff purchased Toyota Highlander Hybrid, VIN JTEEW21A670036000. The Authorized Dealer Contact had left the purchase documents for the Plaintiff to fill out and the Plaintiff quickly completed the transaction.

22. After returning home, the Plaintiff more carefully reviewed the purchase documents, the Plaintiff discovered that a new "invoice price" had been provided and that she paid \$2187 more than the promised and advertised "\$500 over invoice."

Allegations As to Class Certification

23. Plaintiff brings this action as a class action pursuant to Rule 4:32 on behalf of herself and on behalf of all persons who purchased new automobiles through the Costco Auto Program within six years preceding the filing of this action (the "Class") and a subclass consisting of all class members who 1) reside in New Jersey, 2) purchased a Costco membership in New Jersey, or 3) purchased their vehicle under the Costco Auto Program in New Jersey (the "Subclass"). Excluded from the Class and Subclass are (i) all persons who are currently engaged in or have been engaged in litigation and/or arbitration with Defendant concerning claims related to the allegations contained in this Complaint; (ii) all persons who have executed valid releases in connection with claims related to the allegations contained in this Complaint; (iii) and all Judges, judicial officers and members of their immediate families;

24. The members of the Class and Subclass are so numerous that joinder of all members is impracticable. While the exact number of the Class and Subclass members can be determined only by appropriate discovery, based on publicly disclosed information several hundred thousand persons have utilized the Costco Auto Program to purchase new vehicles during the relevant time period.

25. Plaintiff's claims are typical of the claims of the members of the Class and Subclass. Plaintiff will fairly and adequately protect and represent the interests of the members of the Class and Subclass and has retained counsel competent and experienced in class action litigation.

26. A class action is superior to other available methods for the fair and efficient adjudication of this controversy. Since the damages suffered by individual members of the Class and Subclass may be relatively small, albeit significant, the expense and burden of individual litigation makes it virtually impossible for the members of the Class effectively to seek redress individually for Defendant's wrongful conduct.

27. Common questions of law and fact exist as to the Plaintiff and all members of the Class and Subclass and predominate over any questions solely affecting the Plaintiff or individual members of the Class and Subclass. Among the common questions of law and fact are:

- A. Whether CostCo used comparisons to "invoice" pricing in the advertisement of automobiles for sale to consumers;
- B. Whether Defendant's practice of using comparisons to "invoice" pricing renders the advertisements or representations deceptive or misleading;
- C. Whether the any comparison to "invoice" price is deceptive or misleading;
- D. Whether CostCo knew or should have know that comparisons to invoice pricing is violation of the New Jersey Administrative Code;
- E. Whether CostCo devised and implemented a misleading advertising campaign or system or scripted representations involving comparisons to invoice pricing;

- F. Whether CostCo's acts constitute deceptive practices within the meaning of N.J.S.A. 56:8-1, *et seq.* and similar statutes in other states nationwide, and therefore warrant an enhanced award of damages;
- G. Whether CostCo acted with the intent to defraud the Class and Subclass;
- H. Whether CostCo's misrepresentations were material to the decisions of the Class and Subclass to purchase vehicles through the CostCo Auto Program; and
- I. Whether the Plaintiff and the Class and Subclass are entitled to relief and the proper form of relief.

28. Plaintiff knows of no difficulty that will be encountered in the management of this litigation that would preclude its maintenance as a class action.

29. The names of the Class and Subclass members can be determined from CostCo's own records and notice can be provided to such persons using techniques and a form of notice similar to those customarily used in class actions.

COUNT ONE

NEW JERSEY CONSUMER FRAUD ACT **(and similar statutes in other states nationwide)**

30. Plaintiff hereby incorporates all facts and allegations set forth above by reference as if fully set forth herein.

31. Plaintiff and all members of the Class and Subclass are each a "person" as defined by N.J.S.A. 56:8-1(d).

32. Defendant is a "person" as defined by N.J.S.A. 56:8-1(d).

33. N.J.S.A. 56:8-2 declares as an unlawful practice:

[t]he act, use or employment of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby.

34. The N.J.A.C 13:45A-26A *et seq.*, provides in relevant part that it is an unlawful advertising practice violative of the Consumer Fraud Act in any motor vehicle advertising the “use, directly or indirectly, of a comparison to the dealer’s cost, inventory price, factory invoice, floor plan balance, tissue, or terms of similar import.”

35. Defendant’s practice of using comparisons to “invoice” pricing in the advertisement of automobiles for sale to consumers is misleading and/or deceptive to consumers, including the Plaintiff, the Class, and the Subclass. Specifically, the Defendant intended to deceive or mislead consumers into believing that they will actually save time and money by taking advantage of the Costco Auto Program’s member’s only prices and advertising these prices to be “x number of dollars” over some amorphous invoice price; such advertisements are inherently misleading.

36. Defendant’s conduct has injured and damaged Plaintiff and the other members of the Class and Subclass by 1) reducing or diminishing the value of the fee they paid for Costco membership, inasmuch as the Costco Auto Program could not save Class members time and money, and 2) leading the Class members to pay inflated prices for vehicles purchased through the Costco Auto Program based on Costco’s false and misleading comparisons to invoice pricing.

37. As a result of Defendant’s conduct, Plaintiff and the Class and Subclass have suffered ascertainable losses and are entitled to the remedies prayed for below.

COUNT TWO

COMMON LAW FRAUD

38. Plaintiff hereby incorporates all facts and allegations set forth above by reference as if fully set forth herein.

39. In advertising, representations to Costco Members, and written “Members-only” prices, Costco knowingly falsely represented and deceived consumers into believing that they will actually save time and money by taking advantage of the Costco Auto Program.

40. Costco made the representations with the intent to induce members of the Class and Subclass to pay membership fees to obtain the use of the Costco Auto Program.

41. Costco’s misleading representations regarding the vehicle pricing in relation to the “invoice” price were material to the decisions of members of the Class and Subclass to purchase or retain memberships with Costco.

42. Plaintiff and Members of the Class relied on Costco’s representations regarding vehicle pricing in relation to the “invoice” price in making their decision to purchase vehicles through the Auto Program and were damaged as a result.

43. Defendant’s conduct has injured and damaged Plaintiff and the other members of the Class and Subclass by reducing or diminishing the value of the fee they paid for Costco membership, inasmuch as the Costco Auto Program could not save Class and Subclass members time and money.

COUNT THREE

NEGLIGENT MISREPRESENTATION

44. Plaintiff hereby incorporates all facts and allegations set forth above by reference as if fully set forth herein.

45. In advertising, representations to Costco members, and written "Members-only" prices, Costco falsely represented and deceived consumers into believing that they will actually save time and money by taking advantage of the Costco Auto Program. Through the references to "invoice price" incorporated in its representations regarding "Members-only" pricing, Costco falsely represented that the "Members-only" price quoted to Class and Subclass members was the stated sum more than the price actually paid by dealers participating in the Costco Auto Program.

46. Costco made these representations with the intent to induce members of the Class and Subclass to pay membership fees to obtain the use of the Costco Auto Program.

47. Costco intended or should have known that its representations would cause Class and Subclass members to purchase automobiles through the Costco Auto Program.

48. Costco otherwise had a duty to make accurate, non-misleading representations to members of the Class and Subclass regarding the benefits and features of the Costco Auto Program and about the pricing of the vehicles purchased through the Costco Auto Program.

49. Costco's misleading representations regarding the vehicle pricing in relation to the "invoice" price were material to the decisions of members of the Class and Subclass to purchase their vehicles through the program. Plaintiff and Members of the Class and Subclass justifiably relied on Costco's representations regarding vehicle pricing in relation to the "invoice" price in making their decision to purchase vehicles through the Auto Program and were damaged as a result.

50. Defendant's conduct has injured and damaged Plaintiff and the other members of the Class and Subclass by 1) reducing or diminishing the value of the fee they paid for Costco membership, inasmuch as the Costco Auto Program could not save Class and Subclass members

time and money, and 2) leading the Class and Subclass members to pay inflated prices for vehicles purchased through the CostCo Auto Program based on CostCo's false and misleading comparisons to invoice pricing.

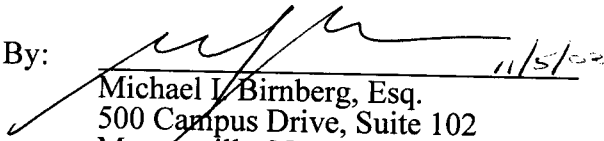
WHEREFORE, Plaintiff, the Class, and Subclass respectfully pray for the following relief:

- (a) An Order certifying the Class and Subclass as defined above and appointing the undersigned as counsel for the Plaintiff and the Class, pursuant to Rule 4:32;
- (b) Judgment in favor of Plaintiff, the Class, and Subclass and against Defendant, awarding actual damages;
- (c) An Order requiring Defendant to provide notice to the Class and Subclass under Rule 4:32;
- (d) An Order declaring Defendant's conduct as set forth herein to be a violation of the N.J.S.A. and the Consumer Fraud Act,
- (e) An Order declaring Defendant's conduct as set forth herein to be fraudulent;
- (f) An Order affording the Class and Subclass final injunctive relief compelling Defendant to cease its practice of advertising or otherwise referring to "invoice" pricing in the advertisement or other services related to its Auto Program;
- (g) An Order awarding Plaintiff and the Class and Subclass treble damages on applicable Counts;
- (h) An Order awarding Plaintiff and the Class and Subclass the costs and expenses associated with the prosecution of this action, including reasonable attorney's fees; and
- (i) Such other and further legal or equitable relief as to the Court shall seem just, proper and fair.

JURY TRIAL DEMAND

The Plaintiff hereby demands a trial by jury of all issues so triable.

By:

 11/5/02

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