



IN THE SUPERIOR COURT OF THE STATE OF DELAWARE

<p>BRIAN LOVETT, PHIL BARTEL, and MEDLODEE BARTEL, individually and on behalf of all others similarly situated,</p> <p><i>Plaintiffs,</i></p> <p>v.</p> <p>BENETEAU GROUP AMERICA, INC.; BENETEAU, S.A., d.b.a. GROUPE BENETEAU;</p> <p><i>Defendants.</i></p>	<p>COMPLEX COMMERCIAL LITIGATION DIVISION</p> <p>CLASS ACTION</p> <p>Jury Trial Demanded</p>
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CLASS ACTION COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiffs Brian Lovett, Phil Bartel, and Melodee Bartel (“Plaintiffs”), individually and on behalf of all others similarly situated, bring this Class Action Complaint and Demand for Jury Trial against Defendants Beneteau Group America, Inc. (“BGA”) and Beneteau, S.A., d.b.a. Groupe Beneteau (collectively, “Beneteau” or “Defendants”). Plaintiffs allege the following based upon personal knowledge as to Plaintiffs’ own experiences, and as to all other matters upon information and belief, including investigation conducted by Plaintiffs’ counsel.

NATURE OF THE CASE

1. This case arises from Defendants’ violations of the Magnusson Moss Warranty Act, 15 U.S.C. § 2301, *et seq.* (the “MMWA,” “Act,” or “Magnusson Moss”) and its enabling regulations. Specifically, Defendants improperly condition the continued validity of their warranties on consumers paying for expensive inspections and repairs that may *only* be performed by Defendants’ service providers.

2. Beneteau is one of the largest builders of recreational boats in the world. Beneteau holds itself out as a superior ship builder, striving to create the impression of a brand synonymous with quality. In its marketing materials, Beneteau repeatedly touts its supposedly generous warranty program as a key reason why someone should buy a Beneteau boat.

3. Unfortunately, Beneteau's warranties are deceptive and violate U.S. law. As described below, Beneteau requires boats under warranty to be serviced periodically at a Beneteau dealership to maintain the warranty, regardless of whether the boat needs service. Crucially, and illegally, Beneteau frequently does not tell consumers that they must pay for these required services out of pocket. Worse yet, if a consumer finds a better price elsewhere at another dealer for these required services that Beneteau hasn't approved, or if the consumer declines to purchase unneeded inspections, then the consumer forfeits their valuable warranty.

4. Making matters worse, as a result of Beneteau's warranty practices, consumers often wait months for even relatively minor and routine repairs. On information and belief, Beneteau does this to make it as difficult as possible for consumers to take advantage of warranties.

5. Beneteau tracks warranty costs as a key performance indicator at the CEO and board level. On information and belief, the company has instituted policies and incentives to make it as difficult as possible for consumers to submit warranty claims, allowing Beneteau to increase its profits at the expense of its customers.

6. Beneteau's deliberately deceptive and anti-competitive behavior has caused harm to Plaintiffs and the Class in the form of significant financial expenditures and lost

enjoyment of their boats. As outlined below, Plaintiffs seek damages to make themselves and the class they seek to represent whole, disgorgement to deter other companies from similar actions, and declaratory and injunctive relief requiring Defendants to alter practices and conform with the law.

PARTIES

7. Plaintiff Brian Lovett is a citizen of Florida. Plaintiff purchased a 2020 Lagoon 52F sailing catamaran boat (“Mr. Lovett’s Boat”), subject to Defendants’ Warranty, on May 1, 2021. Mr. Lovett’s Boat was manufactured by Beneteau and was serviced by Beneteau Group America, a Delaware subsidiary pursuant to Defendant’s Warranty.

8. Plaintiffs Phil and Melodee Bartel are citizens of Canada and purchased a 2020 Beneteau brand Oceanis 46.1 sailboat (“The Bartels’ Boat”) on or about November 29, 2021. The Bartels’ Boat was manufactured by Beneteau and distributed by Defendant Beneteau Group America. It was serviced by Beneteau Group America, a Delaware subsidiary, pursuant to Defendant’s Warranty.

9. Defendant Beneteau, S.A., d.b.a. Groupe Beneteau is a multinational corporation headquartered in France. Groupe Beneteau’s primary consumer products are sailboats and powerboats, and it generally oversees all aspects of these products including, but not limited to, their design, manufacture, marketing, distribution, and warranty services. Groupe Beneteau operates as a parent company to multiple subsidiaries including, but not limited to, Beneteau Group America.

10. Defendant Beneteau Group America, Inc. is the American subsidiary of Groupe Beneteau, headquartered in Fort Lauderdale, Florida and incorporated in Delaware.

11. As described below in the complaint, Beneteau S.A. completely dominates and controls every action of its subsidiaries, who are no more than alter egos of their parent. Alternatively, Beneteau S.A.'s exercises requisite control over their subsidiaries to create a principal-agent relationship.

JURISDICTION AND VENUE

12. This Court has jurisdiction to hear this matter pursuant to Article IV § 7 of the Delaware Constitution and 10 Del. C. § 541

13. Plaintiffs respectfully request assignment to the Complex Commercial Litigation Division (CCLD) because the case exceeds the \$1 million amount in controversy, is not subject to any exclusions, and involves sufficiently complex questions of fact and law.

14. Jurisdiction exists over Defendant Beneteau Group America because the company is incorporated in Delaware. The true and correct Delaware certificate of incorporation for this company is attached as **Exhibit C**.

15. Jurisdiction exists over Defendant Beneteau S.A. because, as described below, Beneteau S.A. took acts directed at and involving Delaware. This includes, but is not limited to, forming a Delaware company as part of a conspiracy, and using a Delaware company as its agent and/or alter ego as part of a fraudulent scheme that impacted the state of Delaware. Beneteau S.A. also solicits and conducts business within the State of Delaware and otherwise purposefully avails itself of the protection of Delaware laws.

EXCLUSIVE STATE COURT JURISDICTION PURSUANT TO 15 U.S.C. § 2310

16. Exclusive jurisdiction for this Action lies with this Court, pursuant to 15 U.S.C. § 2310.

17. Magnuson-Moss authorizes injured consumers to bring suit for “legal and equitable relief ... in any court of competent jurisdiction in any State.” 15 U.S.C. § 2310(d)(1)(A).

18. However, the Act imposes specific limitations on the exercise of jurisdiction by federal courts, stating that “no claim shall be cognizable” in federal district court “(A) if the amount in controversy of any individual claim is less than the sum or value of \$25; (B) if the amount in controversy is less than the sum or value of \$50,000 (exclusive of interests and costs) computed on the basis of all claims to be determined in this suit; or (C) if the action is brought as a class action, and the number of named plaintiffs is less than one hundred.” *Id.* § 2310(d)(3)(A)–(C).

19. Plaintiffs are the only named plaintiffs in this action. Because there are not one hundred named plaintiffs in this action, the requirement for federal jurisdiction set forth under § 2310(d)(3)(C) is not satisfied.

20. Because the requirements for federal jurisdiction of a class action are not satisfied under § 2310(d)(3), this Court has exclusive jurisdiction over this Action. *See, Rowland v. Bissell Homecare, Inc.*, 73 F.4th 177 (3d Cir. 2023).

COMMON FACTUAL ALLEGATIONS

I. The Structure of the Groupe Beneteau

21. To properly understand this scheme, an explanation of Defendants’ structure is helpful.

22. As described above, Beneteau S.A. is a French incorporated company with its headquarters in Saint-Gilles-Croix de-Vie, France. It also goes by the name “Groupe Beneteau” or “Group Beneteau.”

23. As described in this complaint, Beneteau S.A. completely dominates BGA. Indeed, BGA is little more than a division of Beneteau S.A. with a mere certificate of incorporation used to create a misleading appearance of division. Additionally, in practice, Beneteau S.A., relegates BGA to little more than an agent with Beneteau S.A. as a dominating principal.

A. Beneteau S.A. Forms A Delaware Company as Part of Its “Conquest” of the American Market

24. When entering the United States market, Beneteau S.A. formed a Delaware subsidiary corporation—BGA.

25. Beneteau S.A., in partnership with other subsidiaries, manufactures all the boats that BGA sells. BGA then distributes these boats to dealers, who sell and service them across the United States, including to American consumers, including those that live and/or dock their boat in Delaware.

26. Beneteau S.A. also sells products directly to the United States, including to Delaware via its online store. As described below, Beneteau S.A., and not BGA, manages this e-commerce website that actively solicits business and sales from American (including Delaware) consumers.

27. As described below, Delaware consumers can (and, on information and belief, do) purchase products directly from Beneteau S.A. to Delaware. Below is a true and correct screenshot of a check-out page for the purchase of Beneteau S.A. merchandise. The transaction, approved for payment processing, has the consumer’s address of 500 N King Street, Wilmington, DE, which is the address of the Leonard L. Williams Justice Center. This demonstrates Beneteau’s ability to sell merchandise to Delaware consumers and ship

it directly to the state—even to the courthouse in Wilmington, DE.¹

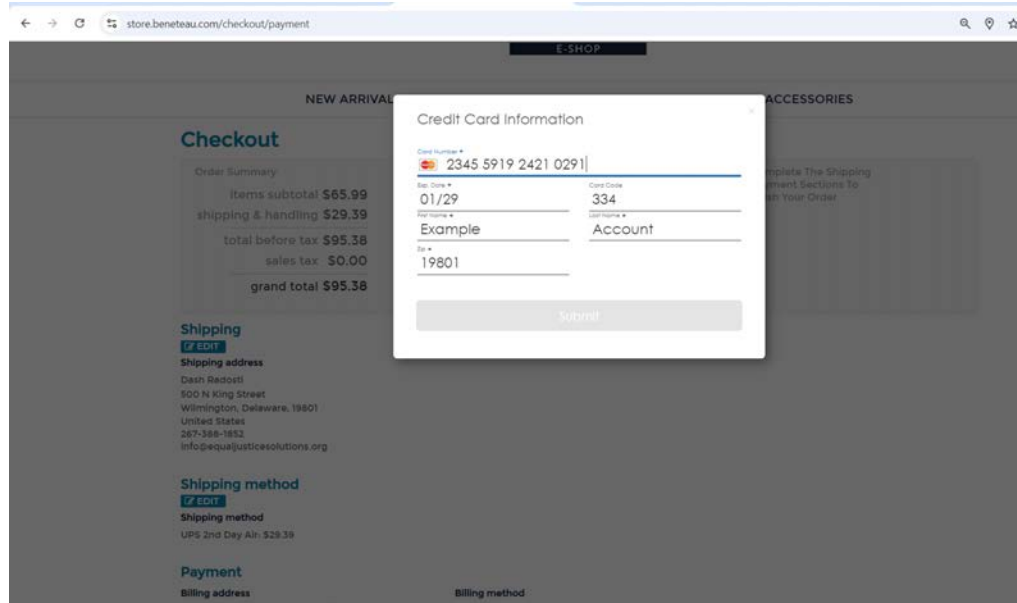


Figure 1—Sample checkout window from Beneteau S.A. to Delaware

B. Beneteau S.A. Completely Dominates Its Delaware Subsidiary

28. Beneteau S.A. is the 100% owner of Delaware-incorporated BGA.

29. Beneteau S.A. plainly admits in its last three annual reports that BGA is a subsidiary which is “an entity controlled by the Group.” In other words, Beneteau S.A. admits it controls BGA.

30. Beneteau S.A.’s control over BGA is granular and goes well beyond the typical function of a board of directors. In practice, BGA is little more than a division of Beneteau S.A.

31. In addition to hand-selecting a board of carefully chosen insiders, the officers of BGA also have dual roles as officers or high-level employees of Beneteau S.A.

¹ Despite this, Beneteau S.A. does not appear to have registered with the Delaware Division of Corporations or appointed a registered agent, as required by 8 Del. C. § 371 and 8 Del C. § 132, respectively.

32. For instance, Mr. Gianguido Girotti is the second in command of Beneteau S.A. His title is “Deputy CEO & Boat Division CEO.” He works out of Beneteau S.A.’s French headquarters, and his personal LinkedIn page is in French.² His profile on Beneteau S.A.’s website mentions nothing about his affiliation with BGA.³ His LinkedIn page makes no mention of his position as President of the Delaware subsidiary. Only on page 188 of 220 of Beneteau S.A.’s 2023 annual report is it revealed that Mr. Girotti is the “President of Beneteau Group America Inc.” Mr. Girotti is also a director of BGA.

33. The CEO of Beneteau S.A., Mr. Bruno Thivoyon, is also a Director of BGA.

34. On information and belief, all other officers and directors of BGA are employees, officers, directors, or otherwise closely affiliated with Beneteau S.A.

35. Key employees of BGA also conflate their affiliations between the role with the parent Beneteau S.A. and BGA. For instance, company blogs describe Mr. Jean Francois Lair as the President of BGA in 2020.⁴ Yet at the same time, on his LinkedIn page, he describes himself as simply the “Sales Director” for BGA. Regardless, Mr. Lair now works for Beneteau S.A. in France as the “Brand Director.”⁵

36. Mr. Thibaud Maudet is the Vice President of Business Development and Director of International Team for Beneteau S.A. His LinkedIn profile indicates that he works for “Group Beneteau” and that he leads “overall sales, marketing, and service

² Gianguido Girotti, LinkedIn, <https://fr.linkedin.com/in/gianguido-girotti-0931725>, last accessed Sept. 21, 2024.

³ Beneteau, *Gianguido Girotti*, <https://press.beneteau-group.com/experts/gianguido-girotti.html>, last accessed September 6, 2024

⁴ Beneteau, *Congratulations to all the 2020 BENETEAU Best Dealerships & 2019 Top Gun Winners!*, <https://www.beneteau.com/en-us/newsroom-actualite/congratulations-all-2020-beneteau-best-dealerships-2019-top-gun-winners>, last accessed Sept. 6, 2024.

⁵ Jean Francis Lair, LinkedIn, <https://www.linkedin.com/in/jean-francois-lair5b046246/?originalSubdomain=fr>, last accessed Sept. 21, 2024.

operations in North and South America.” Despite having such a high-level role in the American market, he says nothing about his affiliation with BGA.⁶

37. Other important employees appear to use Beneteau S.A./Group Beneteau interchangeably with BGA. For instance, Ms. Aurore Bordage describes herself as a “Marketing Manager” for Groupe Beneteau. Yet further down on the page, she had a similar title with BGA, even though both roles were in the United States.^{7, 8}

38. Yet other employees bounce between indicating employment and/or affiliation with Beneteau S.A. and BGA. For instance, David Farrington is the “Customer Relations Manager” for BGA. Mr. Farrington dealt directly with Plaintiff, Mr. Lovett. Prior to achieving his current position, he worked for Beneteau S.A. for 19 years in its Bordeaux, France headquarters.⁹ On information and belief, Beneteau S.A. executives in France hand-picked Mr. Farrington to oversee customer relations in the U.S.

39. On information and belief, Beneteau S.A. executives in France supervised Mr. Farrington in his dealings with American customers—including Mr. Lovett.

40. Beneteau S.A. uses emails and domains registered in France to communicate with U.S. consumers.

41. All of the above are just examples of how Beneteau S.A. does not adhere to corporate formalities and distinctions between itself and BGA in the management and oversight of key employees. Beneteau S.A. employees frequently conflate their roles and

⁶ Thibaud Maudet, LinkedIn, <https://www.linkedin.com/in/thibaudmaudet/>, last accessed Sept. 21, 2024.

⁷ Aurore Borage, LinkedIn, <https://www.linkedin.com/in/aurore-bordage-50439756/>, last accessed Sept. 21, 2024.

⁸ To be clear, some employees in the U.S. clearly describe themselves as working for the Delaware subsidiary. However, a careful review by counsel of over two dozen LinkedIn pages reveals that most of these employees are managers or subordinate to managers.

⁹ David Farrington, LinkedIn, <https://www.linkedin.com/in/david-farrington-09000b59/>, last accessed Sept. 21, 2024.

responsibilities with that of BGA, showing the differences between the two companies are effectively non-existent.

42. Beneteau S.A.'s domination of its Delaware subsidiary is not limited to the roles of employees. The parent company, largely from its French headquarters, controls virtually all aspects of BGA.

43. For instance, Beneteau S.A. employees in France supervise all sales operations of BGA. Mr. Olivier Dupont, the Global Sales Director for Beneteau S.A., explains on his LinkedIn how he brings “strategic thinking” to “managing, coaching, and motivating regional sales teams.”¹⁰ In other words, the Global Sales Director of Beneteau S.A. appears to describe BGA as little more than a regional sales team.

44. Beneteau S.A. sets all sales, revenue, financial, and profit goals for BGA.

45. Beneteau S.A. does all strategic planning for BGA, including which goals to prioritize and which direction to take operations in America.

46. Beneteau S.A. directly controls BGA's marketing and branding. For instance, Beneteau S.A. sets the company logo and color scheme. BGA, in the ordinary course, does not display a distinctive brand or logo—it simply uses the Beneteau S.A. logo and color scheme. This is because Beneteau S.A. dictates branding decisions and strategies to BGA.

47. BGA does not maintain a separate website—its website simply redirects to that of Beneteau S.A.¹¹ Beneteau S.A.'s website is extensive, covering dozens (if not hundreds) of pages of photos, content marketing, and blog posts which undoubtedly drive

¹⁰ Olivier Dupont, LinkedIn, <https://www.linkedin.com/in/olivier-dupont56/>, last accessed Sept. 21, 2024.

¹¹ Groupe Beneteau, *Contact Us*, <https://www.beneteau-group.com/en/contact/>, last accessed Sept. 21, 2024.

traffic and sales. Again, Beneteau S.A., *not* BGA, manages and creates this web content that is targeted to an American (and Delaware) audience. With limited exception, Beneteau S.A. is responsible for all marketing and advertising BGA conducts.

48. Beneteau S.A. directly controls the media and public relations strategy of BGA. For instance, Ms. Barbara Bidan, an employee in France for the parent company, is the media contact for both Beneteau S.A. and BGA.

49. Although there is a separate U.S. address for the Delaware subsidiary on the Beneteau website, there is no publicly available phone number for BGA's corporate offices. This is because all external communications with the Delaware subsidiary are monitored and controlled by the parent company.

50. While BGA maintains separate social media pages from Beneteau S.A., these pages share the same brand and color logo as the parent company. Many posts are the same or substantially similar. It appears that the only difference between the subsidiary's social media page and the parent company is that the former advertises boat shows and expositions across the United States that Beneteau S.A. sponsors—including in the Chesapeake Bay and Delmarva peninsula region.

51. Beneteau S.A. also dictates almost all compliance policies to BGA. For instance, Beneteau S.A. published a 17-page code of conduct that it then decreed applied to its subsidiaries, including BGA. Beneteau S.A.—and not BGA—made the conscious decision to omit any reference to complying with consumer protection laws, aside from a few sentences of lip service.

52. Beneteau S.A. also directly oversees all risk and insurance matters for BGA, with the management team in France directly supervising and instructing BGA on how to

manage risk and insurance. This extends to litigation risk and claims—Beneteau S.A. also instructs BGA on how to handle, fight, and resolve claims and litigation.

53. Beneteau S.A. sets the culture for BGA—including a culture that does not comply with consumer protection laws. For instance, Beneteau S.A.’s last three annual reports have entire sections on various compliance measures but have little directly related to preventing violations of consumer protection laws and avoiding unfair or deceptive trade practices.

54. Beneteau S.A. has direct control over which products and services BGA offers to the American market. Beneteau S.A. also supervises and controls which third-party dealers are part of the Beneteau network in North America.

55. In fact, Beneteau S.A.’s control over the warranty process is so granular that Beneteau S.A. employees in France directly oversee and approve which parts to use and how many hours to allocate in servicing boats under warranty in the United States. Beneteau S.A. then sends these parts directly to the United States to the dealer/service provider, warehouse/distribution center, or directly to the American consumer’s home.

56. Beneteau S.A. also tracks, monitors, regulates, and controls all expenses of BGA. This includes controlling how BGA allocates and spends capital expenditures.

57. Although BGA tailors its employee training to its American workforce, Beneteau Group S.A. sets the core parameters of this training. Beneteau S.A. also tracks every single BGA employee and monitors their retention and reason for departure. On information and belief, Beneteau S.A. is also responsible for recruiting and hiring employees that technically work for BGA.

58. In summary, Beneteau S.A. is far from a passive parent company that allows its subsidiary to operate independently. Beneteau S.A. controls all facets of both the strategic and day-to-day operations of BGA, including marketing, sales, warranty service, finance, and compliance. Beneteau S.A. completely dominates BGA—to the point that key employees even conflate who they work for.

59. On information and belief, this structure exists so that Beneteau S.A. can exercise complete control over BGA, and then improperly claim plausible deniability when faced with liability, tax penalties, or risk from creditors. Moreover, it exists to allow Beneteau S.A. to avoid being subject to jurisdiction in United States courts.

60. At the very least, the facts above give rise to a reasonable inference that Beneteau S.A. exercises enough control over BGA to constitute a principal-agent relationship. Beneteau S.A. benefits from this relationship by using BGA as a conduit to American markets and a wholesaler/distributor. Even if Beneteau S.A.'s Delaware subsidiary, BGA, was supposed to act completely independent of its parent company (a doubtful proposition given the above), the lack of any distinctive branding, advertising, and organization show that BGA had actual and apparent authority to act as Beneteau S.A.'s agent in the United States.

C. Beneteau S.A.'s Sales Model

61. Beneteau S.A. derives roughly 1/3 of its revenue from its North American operations. In 2023, this was €447,262,000. The vast majority of this revenue came from the United States, and a non-insignificant amount of both sales and consumers came from people who either live in Delaware or dock their boats in Delaware.

62. To drive sales, Defendants engage in extensive brand and content marketing

throughout the United States. As described above, there is no distinction in the marketing materials from Beneteau S.A. and BGA.

63. Beneteau S.A. manufactures all its boats. It then uses BGA to serve as a distributor to third-party retail dealers, who sells them to consumers and provides after-sales warranty service.

64. While the sales are completed by third-party retailers, Defendants provide the warranty for their products. In many instances, American consumers seeking warranty coverage must pay for the repairs out-of-pocket and submit the claims through Beneteau dealers to Beneteau S.A., or to BGA, for payment. BGA then reimburses for these warranty repairs.

65. Recognizing that boat buyers are inherently people that like to travel, and the transient nature of its industry and business, Beneteau S.A. explicitly encourages U.S (and Delaware) consumers to buy a Beneteau boat because of the global network.



Figure 2—Screenshot of Beneteau promotional highlighting the “World Wide Network” as a selling point

66. For instance, Beneteau prominently displays information about the “Beneteau network” on its website, discussing how there are over 400 global locations of in-network dealers where one can get their boat serviced, and how this is an advantage of buying from Beneteau. Beneteau S.A. calls its network of independent dealers a “family” and tells American (and Delawarean) consumers that they can take advantage of this dealer network “anytime, anywhere” and in 110 countries.¹² In another post, Beneteau writes, in bold letters, that it has “Services offered in every corner of the world” and boasts that it has “one of the largest dealer networks in the world.”¹³

67. Additionally, Beneteau S.A. actively encourages U.S. consumers to buy their boats overseas from network dealers and bring them home to the U.S.

68. For example, Beneteau S.A. is currently encouraging American consumers to buy their boats in Spain at a trial base. In another tongue-in-cheek post, Beneteau S.A. created a webpage with “Pitfalls of buying your new boat in Europe.”¹⁴ (sic). On that informational webpage, Defendants do not inform US based customers that an overseas purchase will remove protections guaranteed under U.S. warranty laws, including the MMWA.

69. In other words, Beneteau S.A. actively encourages U.S. consumers to buy Beneteau S.A. boats from its “family” of 400 third-party dealers abroad, in locations that the consumer has little connection to, with the promise that Defendants will stand behind those products in the United States.

¹² Beneteau, *Why Join Beneteau Family*, <https://www.beneteau.com/en-us/newsroom-news/why-join-beneteau-family>, last accessed Sept. 5, 2024.

¹³ Beneteau, *Why Boating is Easy for First-Time-Boaters*, <https://www.beneteau.com/en-us/newsroom-news/why-boating-easy-first-time-boaters>, last accessed Sept. 5, 2024.

¹⁴ Beneteau, *Pitfalls of buying your new boat in Europe*, <https://www.beneteau.com/en-us/news/pitfalls-buying-your-new-boat-europe>, last accessed Sept. 27, 2024.

II. Warranties Are a Crucial Part of a Boat's Value. Beneteau Tells Consumers that Its Warranty is a Major Reason to Buy a Beneteau Boat.

70. One of the biggest risks a prospective boat owner faces is unexpected repair and maintenance costs. Indeed, a blog published on the Beneteau S.A. website, written by one of the Beneteau network dealers, discusses these legitimate consumer concerns: “The first concern of any consumer... is that they are not going to get what they paid for.” The dealer then went on to laud Beneteau’s service.¹⁵

71. Given this dynamic, boat warranties are a crucial factor in a purchasing decision. Indeed, Boating Magazine explains that “a solid warranty can mean the difference between making boat ownership a hassle or a joy.” The article goes on to explain that a choice between “two boats of equal quality may come down to the better warranty.”¹⁶

72. Another boat broker cautions that there are “huge variations in warranties in the marketplace” and explained “as a rule of thumb, the better and more comprehensive the [warranty] coverage is, the higher the price tag [of the boat] will be.”¹⁷

73. Online resources also note the importance of examining the warranty, noting that a boat warranty is “an essential tool for protecting your boat investment.” The article in question concludes by stating, “in conclusion, a boat warranty is more than just a promise; it’s a safety net against unexpected boat repair costs.”¹⁸

¹⁵ Beneteau, *Team Beneteau All the Way*, <https://www.beneteau.com/en-us/newsroom-interview/team-beneteau-all-way>, last accessed Sept. 6, 2024.

¹⁶ McDonald, Pete, *What to Look for in a Boat Warranty*, Boating Magazine, Oct. 19, 2015; <https://www.boatingmag.com/what-to-look-for-in-boat-warranty/>, last accessed Sept. 9, 2024.

¹⁷ Rudow, Lenny, *Boat Warranties: A Handbook for Buyers*, Boat Trader, July 17, 2019; <https://www.boatstrader.com/research/boat-warranties/>, last accessed Sept. 9, 2024.

¹⁸ Fish and Ski Marine, *Understanding Your Boat Warranty: What Does It Really Cover?*, Jan. 8, 2024; <https://www.fishandski.com/blog/understanding-your-boat-warranty-what-does-it-really-cover--66391>, last accessed Sept. 11, 2024.

74. Boat brokers on social media also market warranties as reasons to buy boats. Below are screenshots from X (formerly Twitter) of a Beneteau dealer, Denison Yachting, citing Beneteau boat's warranty as a "highlight" why someone should buy.¹⁹ In fact, some boat sellers even use the word "warranty" as a hashtag (#warranty), in the hopes that the X algorithm will show this to people looking for Beneteau boats under warranty²⁰:

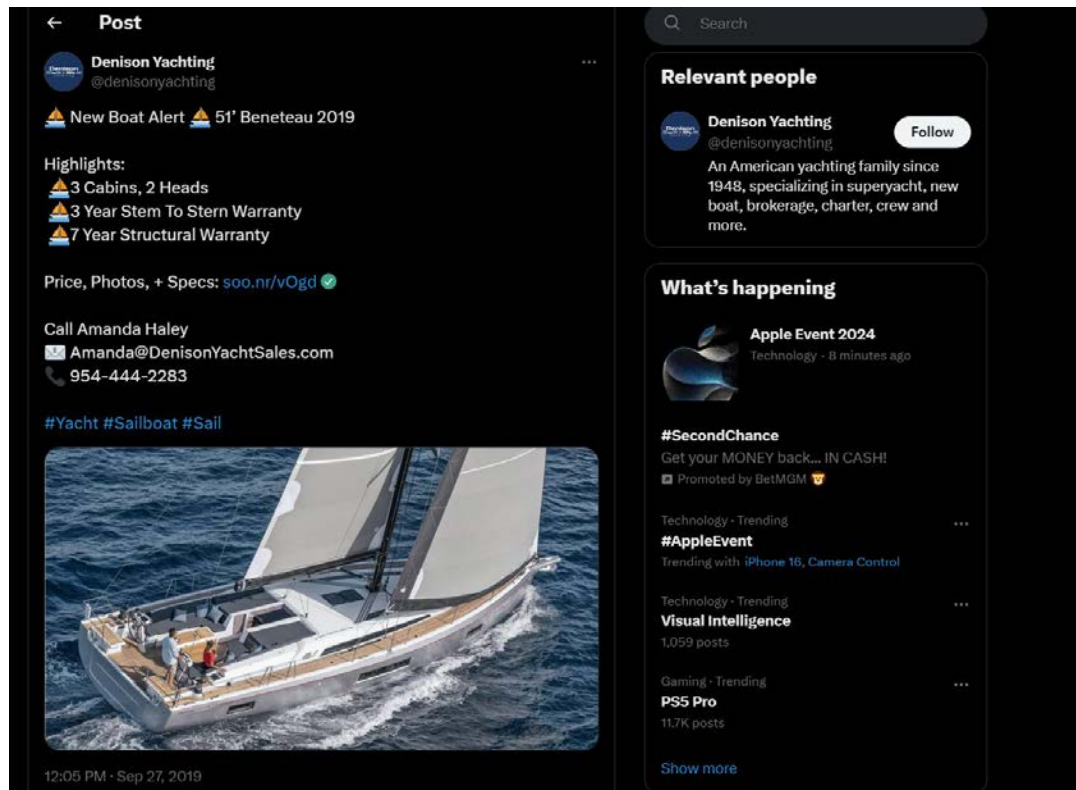


Figure 4—Screenshot of Denison Yachting, an approved sales and service vendor for Beneteau, advertising on X

¹⁹ Denison Yachting (@denisonyachting), X, Sept. 27, 2019, <https://x.com/denisonyachting/status/1177615276675928064>, last accessed Sept. 9, 2024

²⁰ Shane Faunce (@sfaunce512), X, <https://x.com/sfaunce512/status/910878859922468864>, last accessed Sept. 9, 2024

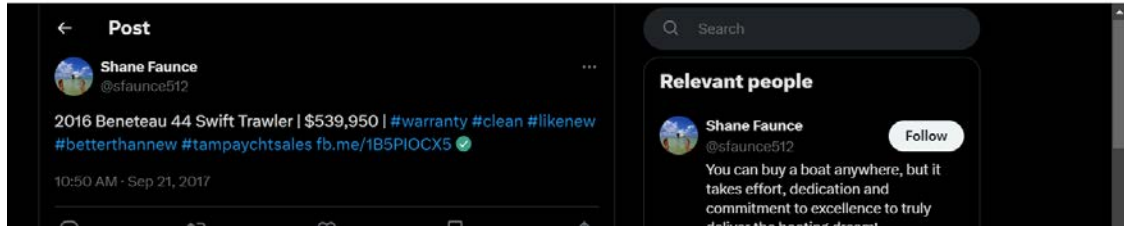


Figure 5—Screenshot of an X advertisement of a Beneteau boat emphasizing the accompanying warranty

75. Defendants are well aware that boat warranties are critical to a buyer. For instance, in a Beneteau S.A.-authored article called, “5 Key Considerations When Buying a Boat”, Beneteau S.A. explains, “One major benefit of buying a new boat is that the boat usually comes with a warranty.” The article goes on to explain some basic facts about boat warranties before claiming, “Beneteau takes warranty another step, ensuring virtually bow to stern coverage for 3 years, provided you follow the mandated service schedule. The warranty program and the associated service work are covered by Beneteau and your dealer.”. The article then goes on to explain that Beneteau’s warranty would become a “key selling point” if the buyer later decided to sell.²¹

76. Importantly, even though the company discusses the mandated service schedule in the blog, there is nothing about consumers being charged to follow the mandated service schedule.²²

77. Similarly, in a Beneteau S.A.- published “Buyer’s guide to motorboats: finding your perfect boat,” Beneteau S.A. explicitly talks about the importance of a boat

²¹ Beneteau, *5 Key Considerations When Buying a Boat*, Mar. 27, 2020; <https://www.beneteau.com/en-us/newsroom-actualite/5-key-considerations-when-buying-boat>, last accessed Sept. 9, 2024.

²² And even if there was, that disclosure would still be a violation of the anti-tying provision of Magnuson Moss. See 16 CFR § 700.10

warranty.²³ The company explains: “You benefit from a more extensive warranty cover coupled with an after-sales service that you call at anytime.”

78. In other marketing materials, Defendants hype up the quality of their warranty. In an article called “Success Story: Why So Many Love the BENETEAU Swift Trawler” (sic), the company boasts they have “one of the most generous manufacturer backed warranties in the industry.”²⁴

79. Given the above, it’s reasonable for a consumer to: (1) purchase a Beneteau S.A.-manufactured boat because of the warranty; (2) assign a significant value to that warranty; (3) pay a premium for the purchase because of the warranty; and (4) expect the warranty to support the boat’s value on resale.

80. Indeed, the above isn’t speculation. An advertisement masquerading as a consumer testimonial published on Beneteau S.A.’s website called “Why We Bought Our New Boat from BENETEAU—And Why We Would Do It Again” (sic) is particularly instructive. There, a couple who purchased a Beneteau boat walked through all the reasons they were happy with their purchase. At the end of the article, the couple explained:

Still, that [all the reasons above] is not the main reason why we will buy from Beneteau again. And [the reason above] is not the main reason why we are happy we bought a brand-new boat. **The main reason is the warranty and the way BENETEAU (sic) has stood by us in the last 16 months.**²⁵ (emphasis in original).

²³ Beneteau, *Powerboat & Motor Yacht Buyer’s guide: How to Find Your Perfect Boat*, June 9, 2021; <https://www.beneteau.com/en-us/newsroom-news/powerboat-motor-yacht-buyers-guide-how-find-your-perfect-boat>, last accessed Sept. 9, 2024.

²⁴ Beneteau, *Success Story: Why So Many Love the Beneteau Swift Trawler*, Apr. 10, 2020; <https://www.beneteau.com/en-us/newsroom-actualite/success-story-why-so-many-love-beneteau-swift-trawler>, last accessed Sept. 9, 2024.

²⁵ Beneteau, *Why We Bought Our New Boat from Beneteau-And Why We Would Do It Again*, Feb. 8, 2021; <https://www.beneteau.com/en-us/newsroom-actualite/why-we-bought-our-new-boat-beneteau-and-why-we-would-do-it-again>, last accessed Sept. 9, 2024.

III. Magnuson-Moss and Its Prohibition of Tying Provisions in Consumer Warranties

81. The MMWA was enacted in 1975 to clarify how written warranties may be used when marketing products to consumers.²⁶ Relevant to this lawsuit, the law prohibits warrantors from conditioning warranty coverage on the consumer's use of an article or service identified by brand, trade, or corporate name.²⁷ More specifically, a warrantor cannot "condition the continued validity of a warranty on the use of only authorized repair service and/or authorized replacement parts for non-warranty service and maintenance (other than an article of service provided without charge under the warranty[.])."²⁸

82. The provision goes on to dissect an illustrative, violative statement—"This warranty is void if service is performed by anyone other than an authorized 'ABC' dealer and all replacement parts must be genuine 'ABC' parts"—stating that it violates the MMWA in two ways: first, it impermissibly ties repairs to the manufacturer, but second, *"a warrantor cannot, as a matter of law, avoid liability under a written warranty where a defect is unrelated to the use by a consumer of 'unauthorized' articles or service."*²⁹

83. Finally, the FTC recently clarified that the disclaimer of liability does not need to be explicit. Instead, "a warrantor would violate the MMWA if its warranty led a reasonable consumer exercising due care to believe that the warranty conditioned coverage 'on the consumer's use of an article or service identified by brand, trade or corporate name....' Moreover, misstatements leading a consumer to believe that the consumer's

²⁶ 15 U.S.C. §§ 2301, *et seq.*

²⁷ 15 U.S.C. § 2302(c).

²⁸ 16 C.F.R. § 700.10(c) (this is commonly referred to as "tying").

²⁹ *Id.* (emphasis added).

warranty is void because a consumer used ‘unauthorized’ parts or service may also be deceptive under Section 5 of the FTC Act.”³⁰

84. The animating purpose of Magnuson-Moss’s anti-tying provision was explained by then FTC Chairman Lewis Engman in the early 1970s in the run-up to the Act’s introduction:

This [anti-tying] provision addresses the anticompetitive practice which the Commission has opposed in numerous court actions wherein a manufacturer uses a warranty unreasonably to tie his supplementary products or services to the warranted product. This leaves the consumer in the undesirable posture of losing his warranty protection if he purchases the supplementary items from another and perhaps less expensive source—even if he does so in complete ignorance of the warranty’s provisions.³¹

85. “In short,” the FTC more recently reiterated, “[The MMWA’s] anti-tying provision bars manufacturers from using access to warranty coverage as a way of obstructing consumers’ ability to have their consumer products maintained or repaired using third-party replacement parts and independent repair shops.”³²

86. In its Report accompanying to 2021 Financial Services and General Government Appropriations Bill, Congress specifically directed the FTC as follows:

Consumer Repair Rights.—The Committee is aware of the FTC’s ongoing review of how manufacturers...may limit repairs by consumers and repair shops, and how those limitations may increase costs, limit choice, and impact

³⁰ *Final Action: Magnuson-Moss Warranty Act Interpretations; Rules Governing Disclosure of Written Consumer Product Warranty Terms and Conditions, Pre-Sale Availability of Written Warranty Terms, and Informal Dispute Settlement Procedures and Ad Guides*, Federal Trade Commission, 11 (May 22, 2015), https://www.ftc.gov/system/files/documents/federal_register_notices/2015/05/150522mag-mossfrn.pdf (“2015 FTC Final Action”).

³¹ Statement of Hon. Lewis A. Engman, Chairman, Federal Trade Commission, included in H. Rep. No. 93-17, at 58 (1973).

³² *Nixing the Fix: An FTC Report to Congress on Repair Restrictions*, Federal Trade Commission, 5 (May 2021), https://www.ftc.gov/system/files/documents/reports/nixing-fix-ftc-report-congress-repair-restrictions/nixing_the_fix_report_final_5521_630pm-508_002.pdf hereinafter referred to as “2021 FTC Report”), last accessed Sept. 27, 2024.

consumers’ rights under the Magnuson-Moss Warranty Act. Not later than 120 days after the enactment of this Act, the FTC is directed to provide to the Committee, and to publish online, a report on anticompetitive practices related to repair markets. The report shall provide recommendations on how to best address these problems.

87. Subsequently, the FTC produced a report to Congress that “synthesized the knowledge gained from its July 16, 2019 workshop titled ‘Nixing the Fix: A Workshop on Repair Restrictions’ (the “Workshop”), public comments, responses to a Request for Empirical Research and Data, and independent research.”³³ (“2021 FTC Report”).

88. Per the 2021 FTC Report, “[e]ven when a warranty does not explicitly require that repairs be performed by the original equipment manufacturer (OEM) using OEM parts, many manufacturers restrict independent repair and repair by consumers through [*inter alia*] Product designs that complicate or prevent repair; ... Policies or statements that steer consumers to manufacturer repair networks; ... [and] Disparagement of non-OEM parts and independent repair[.]”³⁴

89. The 2021 FTC Report confirmed that MMWA-violative conduct was rampant in the marketplace:

The Commission continues to receive reports of companies not complying with the MMWA. In response to staff’s call for empirical research and comments related to the Workshop, several organizations reported that warranty tying continues to be prevalent in the marketplace. For example, the Education Fund of U.S. PIRG, the federation of state Public Interest Research Groups (PIRGs), submitted an October 2018 study analyzing warranties from 50 companies. U.S. PIRG concluded that 45 of the 50 companies had warranties that appeared to violate Section 102(c) of the MMWA. Likewise, the Specialty Equipment Market Association (SEMA) submitted a comment stating that it regularly receives complaints that automobile

³³ *Id.*

³⁴ *Id.*

dealerships void automobile warranties if the dealership finds a specialty part (e.g., custom wheels) had been installed on the automobile, regardless of whether the specialty part caused the automobile to malfunction. Other commenters submitted information claiming that certain warrantors either expressly or by implication continue to condition warranty coverage of the use of particular products or services.

...Tying is illegal where the effect is to impair competition and harm consumers in the market for either the tying product or the tied product.³⁵

IV. Defendants' Warranty Leads a Reasonable Consumer to Believe Warranty Validity Is Conditioned "On the Consumer's Use of an Article or Service Identified by Brand, Trade or Corporate Name" and That the Warranty Would Become Void if a Consumer Used "Unauthorized" Parts or Service.

90. Defendants' Warranty expressly—and unlawfully—conditions its validity on services that are not provided to the consumer free of charge, yet which must be conducted by a service center authorized by Defendants. While Defendants offer different warranties for different brands of boat, the unlawful provisions are substantively the same across brands. A full copy of the warranty the Lovett Boat is attached as **Exhibit A**, and a full copy of the warranty for the Bartel Boat is attached as **Exhibit B**.

91. For example, Defendants' Warranty for the Lovett Boat states, in pertinent part:

The benefit of the warranty is contingent upon the completion, by an official Lagoon distributor or authorised service centre, of a full and compulsory annual overhaul at the expense of the purchaser-user.

See, Ex. A.

³⁵ *Id.*

92. In addition to the requirement that service be performed by authorized entities, Defendants require a yearly inspection be performed for the Warranty to remain valid:

The following documents, constituting the Yachting Contract, must be duly completed and sent to CNB After-Sales Service, in the conditions mentioned for each of them:

- Distributor-reseller/purchaser-user delivery certificate (Customer Service and Delivery Certificate, Commissioning Inventory)
- Service Certificates after 1 year following the delivery (Services A and B); and
- Service Certificates after 2 years following the delivery (Services B and C)

Id. (emphasis added).

93. Defendants' Warranty for the Bartel Boat contains similar unlawful conditions, stating in pertinent part that:

This Limited Warranty shall be valid ONLY IF the mandatory initial commissioning trial, and the periodic inspections and checks required by Beneteau (at original commissioning including an initial commissioning trial and at one (1) year after original commissioning) have been accomplished and duly documented by an authorized Beneteau dealer or service provider approved in writing by Beneteau.

...

Unless otherwise authorized by Beneteau, the Owner must have the boat delivered to an authorized dealer or authorized repair facility located within continental North America for repairs or replacements under this Limited Warranty. All transportation charges, storage charges and duties shall be borne by the Owner.

See Ex. B.

94. While Defendants' Warranty may have some variances from brand to brand, the above-identified requirements of "authorized" inspection—at the consumer's expense—are a uniform condition for the Warranty's continued validity.

95. All the above is forbidden under the MMWA. In 2018, the FTC "sent warning letters to six major companies that market and sell automobiles, cellular devices, and video gaming systems in the United States."³⁶ The purpose of the letters was to "warn that FTC staff has concerns about the companies' statements that consumers must use specified parts or service providers to keep their warranties intact. Unless warrantors provide the parts or services for free or receive a waiver from the FTC, such statements generally are prohibited by the Magnuson-Moss Warranty Act[.]"³⁷ The FTC sent substantially similar letters to no less than five companies in July 2024.³⁸

96. The FTC further stated that companies should review additional promotional materials and representations surrounding their warranties, so as not to create confusion among consumers.³⁹

97. Despite the unambiguous requirements of the MMWA, Defendants continue to represent to its customers both explicitly and implicitly that they must use "authorized" service centers, for annual inspections and at the consumer's expense, in order to keep Defendants' Warranty intact. These representations—which have been in effect for

³⁶ *FTC Staff Warns Companies that It Is Illegal to Condition Warranty Coverage on the Use of Specified Parts or Services*, Federal Trade Commission, Apr. 10, 2018, <https://www.ftc.gov/news-events/news/press-releases/2018/04/ftc-staff-warns-companies-it-illegal-condition-warranty-coverage-use-specified-parts-or-services>, last accessed Sept. 25, 2024.

³⁷ *Id.*

³⁸ *FTC Warns Companies to Stop Warranty Practices That Harm Consumers' Right to Repair* Federal Trade Commission, July 3, 2024, <https://www.ftc.gov/news-events/news/press-releases/2024/07/ftc-warns-companies-stop-warranty-practices-harm-consumers-right-repair>, last accessed Sept. 25, 2024.

³⁹ *Id.*

years—unambiguously require consumers to pay for “authorized” service in order to maintain the Warranty, all in violation of the MMWA.

V. The Significance of Third-Party Repair of Consumer Products.

98. Beyond unlawfully proscribing customers’ federal consumer protection rights, Defendants’ conduct further harms consumers by stifling the third-party repair industry, thereby allowing Defendants (and comparable manufacturers who engage in similar practices) a monopolistic grasp on the repair of its own products.

99. Specifically, Defendants illegally create conditions that incentivize third-party dealers to create excessive wait times for consumers needing repairs covered under the Beneteau warranty. Defendants did this as part of a calculated effort to dissuade consumers from getting repairs and, thus, reduce Beneteau S.A.’s warranty costs.

100. Plaintiff Lovett’s experience is illustrative: Mr. Lovett began attempting to get repair services in the US under his Warranty on or about July 29, 2021. It was not until three months later (on or about October 25, 2021) that the repair center agreed simply to “make a plan” for warranty service, and it was not until December 2021 that the parties agreed to terms as to docking fees (approximately \$1,200 a month) for Plaintiff Brian Lovett’s Boat while the warranty repairs were undertaken. Repairs did not begin until Jan 5, 2022. Thus, Mr. Lovett had to wait 5 months from initial reach-out for warranty repairs to get to the point of *arriving* at the dealer’s dock for said repairs.

101. When consumers are unable to get a necessary product repaired or serviced in a timely manner under warranty terms, there is a real need to hire a third-party to solve the issues, and consumers should not have to risk their warranty coverage in order to meet these needs.

102. Against this backdrop, it is more important than ever that consumers be allowed to service their products without restriction.

103. To date, Defendants have done nothing to proactively alert consumers to their rights under federal law. Defendants' unlawful behavior, coupled with their failure to affirmatively alert consumers of their rights, has created and continues to create an ongoing injury.

VI. Beneteau S.A. And Beneteau Group America's Fraudulent Scheme

104. Defendants' non-compliance with the MMWA was not accidental or a mere oversight. Rather, it was part of a larger scheme to prioritize cost-cutting on consumer warranties to increase profits.

105. Indeed, since 2019, Beneteau S.A. has created a program to potentially cut warranty costs. For instance, in 2019, warranty costs were 0.69% of revenue. In 2023, they were 0.5% of revenue, with a 2025 target of 0.45%.⁴⁰

106. By reducing warranty costs from 0.69% of revenue to 0.5% of revenue, Beneteau realized millions of dollars in cost savings.⁴¹

107. In its investor documents, Beneteau claims that improvements in the manufacturing process have reduced warranty claims. However, this is not completely true. The reason Beneteau has been able to reduce its warranty costs is that its warranty processes and the inherent delays in obtaining warranty inspections and repairs have made the process so burdensome that consumers either abandon the effort or obtain service elsewhere, making it easier for the company to declare a warranty as void.

⁴⁰ Beneteau, 240605 BENETEAU Annual Financial Report 2023, <https://press.beneteau-group.com/assets/240605-beneteau-annual-financial-report-2023-c401-49529.html>, last accessed September 27, 2024.

⁴¹ *Id.*

108. Defendants also fail to educate or train their employees in a manner designed to ensure compliance with the MMWA and other U.S. warranty laws.

109. In other words, Defendants created a culture and processes designed to stymie consumer efforts to obtain warranty coverage—resulting in Beneteau saving money and meeting key performance indicators tied to company profits.

110. All funds earned, as well as “cost savings” from illegal warranty activity constitute illicit profit, and should be disgorged, as set forth in the prayer for relief.

VII. PLAINTIFFS’ SPECIFIC ALLEGATIONS

A. Plaintiff Brian Lovett

111. Plaintiff Brian Lovett purchased a 2020 Lagoon 52F Boat. One of the major draws for Mr. Lovett was the Beneteau three-year warranty, which began in February 2020 and was set to expire in February 2023. At the time of the purchase, Mr. Lovett’s boat warranty was valid, and Mr. Lovett’s Boat had undergone the first one-year warranty check.

112. Mr. Lovett was never told that by buying the boat, he would have to pay thousands of dollars in out-of-pocket costs just to maintain the warranty.

113. Although Mr. Lovett, an American citizen, purchased the boat abroad, as Defendants encourage its customers to do, he always intended to transport his boat back to the United States. In fact, Mr. Lovett specifically inquired upon purchase whether his warranty would apply in the United States. He was assured by the Beneteau “family” dealer that the warranty was transferable and would apply in the United States. On information and belief, Mr. David Farrington, the Head of Customer Relations⁴² for BGA, after

⁴² Mr. Farrington’s title may have been “National US Sales Manager” at this time, but his role was substantially the same, in relevant part.

consulting with records and/or superiors at the French parent company, is the one who confirmed to the dealer that Mr. Lovett's boat would be under warranty in the United States.

114. Mr. Lovett was never told U.S. law would not apply just because he happened to be abroad when he purchased his boat. Had he known Defendant's U.S. warranty would not have applied, he would have never purchased the boat abroad or even purchased his boat at all. Mr. Lovett purchased the boat manufactured by the large, international company Beneteau with the manufacturer warranty fully and reasonably expecting (and intending) to be able to take advantage of the warranty in the United States.

115. Shortly after purchasing the boat, Mr. Lovett sailed to the mid-Atlantic United States, arriving first in at Norfolk, Virginia. After Norfolk, he planned to sail his vessel in Delaware and New Jersey waters while he upgraded the boat and looked for a permanent place to dock.

116. Some potential locations for his boat's permanent home were in Delaware. Mr. Lovett also registered his boat in Delaware.

117. Unfortunately, shortly after arriving back in American waters, Mr. Lovett experienced major issues with his Boat. These issues should have been covered by Mr. Lovett's warranty.

118. On July 29, 2021, Mr. Lovett contacted various representatives of Defendants to troubleshoot the issues. On September 3, 2021, the Defendants' National US Sales Manager, Mr. David Farrington, confirmed that there was a warranty attached to his Boat. Mr. Farrington, who had an email address that ended in .FR (denoting a domain name registered in France, where Beneteau S.A. is headquartered), worked in Beneteau S.A.'s Bordeaux, France headquarters for 19 years. On information and belief, Mr. Farrington was

directed on how to handle Mr. Lovett's warranty from Beneteau S.A. personnel in France. However, the US dealer to which Defendants directed him to take the Boat for repair informed Mr. Lovett that he would need to pay for repair service first, then seek a claim for reimbursement.

119. On or about November 2, 2021, after significant back and forth, Defendants offered to set up repairs with an authorized service center in the US, but would not guarantee that it would all be performed within Warranty: "work that is not designated by the Lagoon factory as warranty, and any additional work, plus all extraneous costs that are not covered by the terms and conditions of the limited Lagoon warranty (such as dockage), will be the responsibility of the Vessel, that is, you."

120. Among other times, in or about November 2021, Defendants contacted Mr. Lovett and told him that "To remind you, all Lagoon warranty works must be handled by a Lagoon dealer in US or an authorized Service Center." Defendants also represented to Mr. Lovett that he would need to pay hauling and docking fees while the boat was being repaired, in addition to paying for the required inspection for the warranty to be renewed for its final third year. ("As for the warranty extension, we remind you that the boat will need to be hauled and inspected").

121. In the course of these exchanges, Defendants sent Mr. Lovett an email that included a different version of the warranty with differing language, but both warranty documents are subject to the "authorised service center" limitation and yearly inspection requirement. Defendants have also represented that each warranty claim needs preapproval to be covered, and that Defendants have final say on the costs covered by non-authorized service centers.

122. In other words, Beneteau took months to service the Plaintiff's boat, an unreasonably long time. But if the Plaintiff took his boat to a third-party repair center outside Beneteau's so-called "family", he would risk being denied fair reimbursement, and potentially voiding his warranty.

123. All said, Mr. Lovett first contacted Beneteau in July 2021 about getting repairs covered under his warranty. It took over five months, and hours of back and forth (resulting in aggravation, docking costs while waiting, and loss of enjoyment of his boat), just to get a dealer in Beneteau's "family" to take his boat in for repair.

124. On top of this, Mr. Lovett had to pay \$1,200 a month in storage fees while his boat was being repaired under warranty (later increased to \$1,300), which was never disclosed to Mr. Lovett when he initially obtained the warranty.

125. Mr. Lovett's ordeal is an example of the real cost, economic and otherwise, of Beneteau's deceptive and anti-competitive conduct in violation of the MMWA. It has cost him thousands of dollars in hidden fees, hours of time he could have spent doing other things, and a boat with substantially lower value than he expected.

126. Adding to all of this, Mr. Lovett spends a significant amount of time living on his boat. His boat is his home. Having a boat in disrepair, with a warranty that is not being honored and subject to anti-competitive tying provisions significantly and ascertainably diminishes both the value of his boat, as well as his ability to enjoy his boat.

127. None of this was disclosed to Mr. Lovett when he purchased the "warranted" boat, and would have dissuaded him from buying the vessel.

128. Additionally, the reduced value of the warranty has adversely impacted the resale value of Mr. Lovett's boat.

B. Plaintiffs Phil and Melodee Bartel

129. Plaintiffs Phil and Melodee Bartel purchased a 2020 Beneteau brand Oceanis 46.1 Boat on November 29, 2021 in the United States. Like Mr. Lovett, the Bartels sailed their boat down the east coast of the United States.

130. The Bartels' Boat was subject to Defendants' warranty, including its unlawful tying provisions and its unclear and inconspicuous description of the obligations required of the Bartels.

131. The authorized dealer to whom Defendants directed the Bartels for their 1-year service inspection was unresponsive and they had trouble getting the inspection, due January 2023, to preserve the Bartels' Boat Warranty. Nonetheless, they did complete their warranty inspection, for which they paid out-of-pocket.

132. Since Beneteau took an unreasonably long time to repair the Bartels' boat as required by their warranty, the Bartels had to pay thousands of dollars in docking fees.

133. In addition to the unreasonably slow warranty repairs, the Bartels had to deal with dealers that were unresponsive to or outright ignoring their scheduling inquiries. This left the Bartels waiting and in limbo trying to reschedule their travel plans.

134. When their boat was finally under repair at the approved Beneteau "family" of dealers/repair facilities, the couple was forced to pay thousands of dollars out-of-pocket for the required warranty, inspection, and docking fees. These out-of-pocket costs were never disclosed to the Bartels when they purchased their boat.

135. Perhaps worst of all, boat ownership was a lifelong dream for the Bartels. After years of hard work in the construction industry, Mr. Bartel, along with his wife who worked hard for years as an accountant, finally saved enough money to step back from

their careers and realize their dream of sailing around the United States and Caribbean. Yet because Beneteau refused to honor its warranty in a timely fashion, and then saddled the Bartels with thousands of dollars of hidden fees and costs, the couple was forced to delay and change a significant part of their travel.

136. As a result of Defendant's anti-competitive and deceptive conduct, the Bartels were forced to pay thousands of dollars in inspection and other related costs just to maintain their warranty—in violation of the Magnusson Moss Warranty Act.

137. Had the Bartels known about the anti-competitive inspections, they would have potentially chosen another boat from another company, as the hidden costs in the warranty were material to their purchase.

138. Additionally, the reduced value of the warranty has adversely impacted the resale value of the Bartels' boat.

VIII. CLASS ALLEGATIONS

139. Plaintiffs bring this action on behalf of the following class of similarly situated individuals pursuant to Rule 23 of the Rules of Civil Procedure for the Superior Court of the State of Delaware.

140. Plaintiff respectfully requests the court certify the following class:

All consumers in the United States who owned a Boat
subject to Defendants' Warranty within the Class Period.

141. Plaintiffs reserve the right to modify or refine the Class definition based upon discovery of new information or in order to accommodate any concerns of the Court.

142. Excluded from the Class are Defendants, Defendants' parents, subsidiaries, affiliates, officers and directors, any entity in which any defendant has a controlling interest, governmental entities, and all judges presiding over this litigation, as well as their

immediate family members, and members of the staffs of the judges to whom this case may be assigned.

143. The Class is so numerous that joinder of its Class Members is impracticable. As described above, Beneteau S.A. makes between 30%-35% of its total revenue from its North America operations—the vast majority of which comes from the United States. Its warranties are virtually the same for all its new boats manufactured by Beneteau S.A. and distributed by Beneteau Group America.^{43, 44} Thus, it is reasonably conceivable that there are thousands (if not tens of thousands) of American consumers who have been subject to, and adversely impacted by Beneteau’s unfair, deceptive, and anti-competitive warranty that violates Magnusson Moss.

144. To further support the assertion of numerosity, in June 2023, the company celebrated manufacturing (and presumably selling) its 500th Oceanis 46.1—the exact same model the Bartels purchased.⁴⁵ If Beneteau S.A. delivered and Beneteau Group America sold 1/3 of those boats to the United States, that would be 166 boats subject to the warranties at question—for just one model. Beneteau has 12 distinct brands.⁴⁶ Each brand has at least five different models (conservatively). Thus, even if each brand only sold 100 boats, that would conservatively be 6,000 American consumers. Dozens of these consumers either reside in Delaware or dock their boats in Delaware. An even larger

⁴³ Beneteau, *What is the warranty period for a new boat?*; last accessed Sept. 9, 2024
<https://help.beneteau.com/hc/en-us/articles/360019415597-What-is-the-warranty-period-for-a-new-boat>

⁴⁴ Beneteau, *The Beneteau After-Sales Service*,
<https://www.beneteau.com/en-us/service/the-beneteau-after-sales-service>, Last accessed Sept. 9, 2024

⁴⁵ Beneteau, *The 500th Oceanis 46.1 Has Been Built in Cholet*, June 12, 2023;
<https://www.beneteau.com/en-us/news/500th-oceanis-461-has-been-built-cholet>, last accessed September 9, 2024

⁴⁶ Beneteau, *Brands and Services*, <https://www.beneteau-group.com/en/brands-services/>, Last accessed Sept. 9, 2024

number of these consumers (on information and belief, hundreds if not more) register their boats in Delaware.

145. Regardless, the precise number of American and Delaware consumers can be determined by reference to Defendants' records.

146. Plaintiffs and each Class Member share numerous common questions of law and fact that will drive the resolution of the litigation and predominate over any individual issues. These common questions of fact and law include, but are not limited to:

- i. The single common answer to the questions of whether Defendants' warranty violates the anti-tying provision of the Magnuson Moss Warranty Act;
- ii. Whether the hidden costs related to repairs in each warranty constitute violations of the Magnuson Moss Warranty Act;
- iii. Whether Beneteau S.A. executives at the highest level created the incentives and conditions for the company, both directly and through its Delaware subsidiaries and "family" of dealers, to make obtaining warranty coverage as difficult and lengthy as possible;
- iv. Whether the above was concealed from or disclosed to consumers;
- v. The extent of damages suffered by the Plaintiffs and Class members, including, but not limited to, the diminution of value as a result of a deceptive, unfair, and illegal warranty;
- vi. The appropriate relief, including declaratory and injunctive relief.

The answers to these questions are the same for Plaintiffs and each Class Member, and each Plaintiff and Class Member require the same proof to answer these questions. These questions, and others, predominate over any individual issues.

147. Plaintiffs' claims are typical of the claims of each Class Member because the claims are based on the same legal theories and arise from the same conduct. Every claim arises under the Magnuson Moss Warranty Act. The Plaintiffs obtained virtually identical warranties that had both illegal tying provisions and deceptively hidden fees as all other class members. The motivation for Beneteau to create this scheme is typical of all other class members.

148. Each Plaintiff is an adequate representative of the Class because the interests of Plaintiffs and Class Member align. Plaintiffs will fairly, adequately, and vigorously represent and protect the interests of each Class Member and have no interest antagonistic to any Class Member. Plaintiffs retained counsel who are competent and experienced in the prosecution of class action litigation generally and consumer class actions specifically. Wade Kilpela Slade LLP is a national law firm with extensive experience litigating consumer class actions. The firm has partnered with Equal Justice Solutions, a Delaware-based public interest law firm and public benefit corporation. Delaware counsel is a former Deputy Attorney General within the Delaware Department of Justice's Fraud and Consumer Protection Unit who previously represented the state of Delaware in complex multi-district litigation and multi-plaintiff litigation across the country.

149. Plaintiffs have or can acquire adequate financial resources to assure that the interests of each Class Member will not be harmed.

150. Del R. Civ. P. Super. Ct. 23(b). Given the nature of the issues presented and the relief requested, the expense and time necessary to obtain such relief, and the anticipated recovery and relief that Plaintiffs and each Class Member may obtain, the class action mechanism is by far the preferred and most efficient litigation mechanism to adjudicate the claims of Plaintiffs and Class Members. Additionally, requiring Plaintiffs and each Class Member to file individual actions would impose a crushing burden on the court system. Class treatment presents far fewer management difficulties and provides benefits of a single adjudication and economies of scale. Absent class certification, the parties risk incredibly duplicative discovery (including redundant depositions of Beneteau officers) and inconsistent adjudications.

151. Given the international and multijurisdictional nature of Beneteau S.A.'s business (and the boat industry writ-large), this forum is the most desirable to adjudicate all these matters, as Beneteau Group America is incorporated here and Beneteau S.A. purposefully availed itself of this court's jurisdiction. Any other forum would (and already has, as described below) provoke heated and prolong procedural battles that waste judicial resources and prevent adjudication on the merits. Additionally, a non-insignificant amount of the Class are Delaware consumers or dock their boats in Delaware waters. An even larger cohort (at least hundreds) register their boats in Delaware.

152. Based on Plaintiffs' knowledge and of undersigned counsel, there are no similar cases currently pending in this Court against Defendants.

IX. TOLLING

153. **Discovery Rule Tolling:** Plaintiffs and other Class members had no way of knowing about Defendants' unlawful practices with respect to their Warranties.

154. Within the period of any applicable statutes of limitation, Plaintiffs and the other Class Members could not have discovered through the exercise of reasonable diligence that Defendants were hiding their true practices.

155. All applicable statutes of limitation have been tolled by operation of the discovery rule.

156. **Fraudulent Concealment Tolling:** All applicable statutes of limitation have also been tolled by Defendants' knowing and active fraudulent concealment and denial of the facts alleged herein throughout the period relevant to this action.

157. Defendants deliberately concealed this information from consumers, including Plaintiffs and Class members.

158. **Estoppel:** Defendants were under a continuous duty to disclose to Plaintiffs and the other Class members the true character, quality, and nature of the unlawful conditions in the Warranty.

159. Defendants knowingly, affirmatively, and actively concealed true facts from consumers, including Plaintiffs and Class members.

160. Based on the foregoing, Defendants are estopped from relying on any statutes of limitations in defense of this action.

161. **Cross-Jurisdictional Tolling:** In October 2023, the Plaintiffs filed a substantially similar civil action against the Defendants in the Allegheny County, Pennsylvania Court of Common Pleas. Jurisdiction was proper in light of the United States Supreme Court's decision in *Mallory v. Norfolk Southern Railway Co.*, 600 U.S. 122 (2023) and Beneteau Group America's decision to register in Pennsylvania and consent to general jurisdiction in that forum. Notwithstanding this, Beneteau Group America vigorously

contested jurisdiction, leading the court to order jurisdictional discovery. Seeking to avoid months (if not years) of procedural delays while continuing to incur damages, the Plaintiffs, in good faith, approached Defendants about litigating this matter in the neutral forum of Delaware where there was general jurisdiction over the Defendants. The Defendants did not voice any procedural objections to litigating this case on the merits in this forum, and any statute of limitations should be tolled since the filing of the Pennsylvania action. *See Dow Chem. Corp. v. Blanco*, 67 A.3d 392, (Del. 2013)(Recognizing cross jurisdictional tolling); *Marquinez v. Dow Chem. Co.*, 183 A.3d 704 (Del. 2018)(taking an expansive approach to cross-jurisdictional tolling).

CAUSES OF ACTIONS

FIRST CAUSE OF ACTION

Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301, *et seq.* (Anti-Tying - 15 U.S.C. § 2302(c))

162. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

163. Plaintiffs and Class members are “consumers” as defined in MMWA, 15 U.S.C. § 2301(3).

164. Defendants are “warrantors” as defined in MMWA, 15 U.S.C. § 2301(5).

165. Defendants’ Warranty is a “written warranty” as defined in MMWA, 15 U.S.C. § 2301(6).

166. Defendants’ products are “consumer products,” as defined in MMWA, 15 U.S.C. § 2301(1).

167. Consistent with, *inter alia*, 15 U.S.C. § 2302(c) and 16 C.F.R. § 700.10, Defendants may not prohibit third-party repair as a condition of its Warranty. Nor may

Defendants make statements that would lead a reasonable consumer exercising due care to believe that the warranty conditioned coverage on the consumer's use of an article or service identified by brand, trade or corporate name unless that article or service is provided without charge to the consumer. 16 C.F.R. § 700.10; *see, also* 2015 FTC Final Action at 11.

168. Yet this is precisely what Defendants do through the conduct complained of herein. This includes, *inter alia*, the representation that consumers must utilize Defendants' "authorized" servicers—at the consumers' own expense—as a condition precedent for maintaining coverage under the Warranty.

169. The FTC has stated, either directly through statute and regulation or through guidance, that such representations violate Magnuson-Moss and its anti-tying provisions.

170. Defendants' non-compliant Warranties have ascertainably harmed and continue to harm Plaintiffs and the Class members by depriving them of the warranty benefits guaranteed to them by federal law.

171. The Defendants' non-compliant Warranties have also caused Plaintiffs significant, ascertainable, out-of-pocket economic damages.

172. As a result of such harm, Plaintiffs and Class members are entitled to damages, injunctive relief, and corresponding declaratory relief.

SECOND CAUSE OF ACTION
Violation of the Magnuson-Moss Warranty Act,
15 U.S.C. §§ 2301, *et seq.*
(Insufficient Disclosure of Warranty Terms - - 15 U.S.C. § 2302(a))

173. Plaintiffs incorporate by reference the allegations contained in the preceding paragraphs of this Complaint.

174. Plaintiffs and Class members are “consumers” as defined in MMWA, 15 U.S.C. § 2301(3).

175. Defendants are “warrantors” as defined in MMWA, 15 U.S.C. § 2301(5).

176. Defendants’ Warranty is a “written warranty” as defined in MMWA, 15 U.S.C. § 2301(6).

177. Defendants’ products are “consumer products,” as defined in MMWA, 15 U.S.C. § 2301(1).

178. Magnuson-Moss requires that warrantors, like Defendants, “fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty.” 15 U.S.C. § 2302(a).

179. However, Defendants’ Warranty merely states, *inter alia*, that, consumers must engage in a multitude of “overhauls,” and “periodic” “inspections,” “checks,” and “service” by authorized personnel in order for their Warranties to remain valid. Yet consumers are not made aware of the contours of these conditions that must be met in order for their Warranty to remain valid.

180. Consumers are also not told that Beneteau S.A. and Beneteau Group America knowingly delay and obstruct warranty coverage and/or have no system or process to ensure prompt warranty coverage, repair, and reimbursement.

181. Thus, the Warranty fails to “fully and conspicuously disclose in simple and readily understood language the terms and conditions of such warranty.”

182. Defendants’ non-compliant Warranties have harmed and continue to harm Plaintiffs and the Class members by depriving them of the warranty benefits guaranteed to

them by federal law. This has also resulted in the Plaintiffs paying thousands of dollars in out-of-pocket costs for repair, as well as a diminution in value of their boats.

183. As a result of such harm, Plaintiffs and Class members are entitled to damages, injunctive relief, and corresponding declaratory relief

PRAYER FOR RELIEF

WHEREFORE, Plaintiffs, individually and on behalf of all others similarly situated, respectfully requests that this Court:

a. Certify this case as a class action, appoint Plaintiffs as Class representative, and appoint Plaintiffs' counsel to represent the Class;

b. Find that Defendants' actions, as described herein, constitute violations of Magnuson-Moss;

c. Enter judgment against Defendants for all damages, including punitive damages, nominal damages, injunctive, declaratory, and other equitable relief sought;

d. Disgorge all illicit profit;

e. Award all costs, including experts' fees, attorneys' fees, and the costs of prosecuting this action; and

f. Grant such other legal and equitable relief as the Court may deem appropriate.

JURY DEMAND

Plaintiffs respectfully demand a trial by jury on all claims and issues so triable.

Dated: September 27, 2024

Respectfully submitted,

/s/ Dashiell Radosti

Dashiell “Dash” R. Radosti,
DE Bar No. 7100

Attorney,

Equal Justice Solutions

A Public Benefit Corporation

(302) 281-2649 (office)

302-276-8514 (direct)

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ek@waykayslay.com

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jlamarca@waykayslay.com

* Pro Hac Vice Forth Coming

EXHIBIT A

GENERAL WARRANTY CONDITIONS FOR YOUR LAGOON

Applicable only to the following products : Lagoon 40, Lagoon 42, Lagoon 450 S, Lagoon 450 F, Lagoon 46, Lagoon 50, Lagoon 52 F, Lagoon 52 S, Lagoon 560, Lagoon 620, Lagoon 630 MY, SIXTY 5, SIXTY 7 (hereinafter referred to as the "Products").

a- Products sold by CNB are warrantied for a period of three (3) years^{*} against any defect that is detected on a Product by its technical services department, with the exception of Products that are not manufactured by CNB which benefit from the warranty offered and implemented by the manufacturer and their network.

The benefit of the warranty is contingent upon the completion, by an official Lagoon distributor or authorised service centre, of a full and compulsory annual overhaul at the expense of the purchaser-user. The following documents, constituting the Yachting Contract, must be duly completed and sent to CNB After-Sales Service, in the conditions mentioned for each of them:

- Distributor-reseller/purchaser-user delivery certificate (Customer Service and Delivery Certificate, Commissioning Inventory)
- - Service Certificates after 1 year following the delivery (Services A and B); and
- - Service Certificates after 2 years following the delivery (Services B and C).

b- The hull and deck of CNB boats are warrantied for a period of five (5) years^{*} against any structural or manufacturing defect detected by the technical services department of CNB.

The hull and deck warranty does not extend to the steering system, which benefits from the aforementioned three (3)^{*} year warranty as set forth in Article a.

Any event which affects the structure of the boat and which is not the result of a structural or manufacturing defect covered by the warranty, whether or not the relevant damages have been repaired, will result in the immediate cancellation of the warranty. Such cancellation will not entitle the purchaser to an indemnity or compensation.

c- General provisions

1. The warranties referred to in Articles a and b (hereinafter the “**Warranties**”) shall begin from the date of delivery by the distributor-reseller (the Distributor-reseller/purchaser-user delivery certificate) at the latest from 31 December of the calendar year in which the boat was built. In order to validate the Warranties, a copy of the distributor-reseller/purchaser-user delivery certificate, completed in full and signed by both parties, must be sent to CNB’s sales department within 8 days of signing (date as postmarked). Such delivery certificates are issued upon delivery of the boat, and available on CNB’s professional website.

2. Notwithstanding Articles a and b, the term of the Warranties cannot exceed one (1) year^{*} for boats equipped for competition, or constructed as bespoke, one-off design boats or operated for professional purposes, such as charter rental, training, fishing or service.

3. The Warranties are strictly limited, at the sole discretion of CNB, to the free replacement or repair of any structural defects and parts that have been certified as defective by the technical services department of CNB, without any entitlement to an indemnity of any kind.

4. The Warranties shall not apply to the following events, deterioration and structural damages or their potential consequences:

- parts that rapidly deteriorate due to wear and tear, including but not limited to sails, paints, running rigging, batteries, external decorations, cushions, antifouling, anodes, filters, etc.;
- costs of transporting, towing, hauling out, storing, dry-docking or skippering the boat. Customs fees and shipping costs of any defective part and/or equipment as well as any additional costs due to the impossibility of using the boat and/or the equipment, which are to be borne exclusively by the purchaser-user;
- paint or gel-coat fissures, cracks, fading or discolouration;

- any repairs or alterations made to the boat by any person or entity not approved to do so in writing by CNB prior to the repairs or alterations;
- harm, deterioration or damage resulting from:
- failure to observe maintenance recommendations as described in the owner's manual issued with the boat, or non-compliance with generally accepted good practices of boat maintenance;
- improper use, especially negligent, reckless, abusive or abnormal use,
- sanding of the gelcoat;
- corrosion or slow deterioration;
- inappropriate handling, storage or transportation conditions;
- installation of parts from a different origin and/or modification or alteration of original parts;
- participation in competitions;
- failure to take normal and prudent precautionary measures;
- accident or disaster such as explosion, fire, flood, storm, lightning, transportation, riot, theft, shock, collision, stranding/beaching or any other force majeure event.

The above exclusions shall not impact the legal warranty in case of latent defect, according to Article 1641 and the subsequent articles of the French Civil Code.

5. In order to be covered by the Warranties, the purchaser-user must (i) present the distributor-reseller/purchaser-user delivery certificate mentioned above in Article c-1, and (ii) provide the distributor-reseller with written notice clearly identifying the technical non-conformity, defect or fault. Notification must be detailed and precise and made within fifteen (15) calendar days from the day the defect is discovered.

Upon receipt of notice from the purchaser-user, the distributor-seller shall then notify the manufacturer of such notice within eight (8) days. Failing to do so shall result in the distributor-seller's liability for bearing the cost of any potential repair or replacement of the Products.

Each warranty claim must be made by means of the form provided for this purpose on CNB's professional website. The claim shall be documented with pictures and/or a descriptive sketch of the problem, indicate the model and H.I.N. of the boat, the reference number of the part concerned, as well as a comprehensive description of the circumstances under which the damage occurred.

CNB reserves the right to inspect the boat before any repairs are undertaken to ensure the validity and the nature of the claim.

The method and cost of repair must be approved by CNB's technical services department before any warranty repair services commence. In the event of non-compliance with this procedure, CNB shall under no circumstances accept an invoice for any repairs performed without the approval of its technical services department.

CNB may demand that the presumed defective parts be returned to the builder. Furthermore, any cost related to the return of defective parts are to be borne exclusively by the purchaser-user.

6. In accordance with Article L.217-16 of the French Consumer Code, the term of the Warranty will be extended, solely for those parts repaired or replaced, by a period equal to the time required for the warranty repairs to be undertaken, provided the repairs require the boat to be immobilised for a period of at least seven (7) consecutive days.

7. THE WARRANTIES REPLACE ALL OTHER WARRANTIES AND SHALL ONLY BENEFIT THE FIRST PURCHASER-USER, UNLESS CNB EXPLICITLY AGREES OTHERWISE. CNB EXCLUDES ALL OTHER LIABILITIES OF ANY KIND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, AND DOES NOT ASSUME OR AUTHORISE ANYONE, INCLUDING ITS DISTRIBUTOR-RESELLERS, TO ASSUME IN ITS NAME ANY OTHER OBLIGATION OR LIABILITY IN RELATION TO THE SALE AND USE OF CNB

BOATS.

8. BEYOND THE SCOPE OF THE WARRANTIES, AND WITHIN THE LIMITS AUTHORISED BY APPLICABLE LAWS, CNB SHALL NOT, UNDER ANY CIRCUMSTANCES, ACCEPT ANY LIABILITY TO ANY BOAT OWNER OR ANY OTHER PERSON OR ENTITY FOR ANY DAMAGES OF ANY KIND, INCLUDING BUT NOT LIMITED TO INDIRECT, SPECIAL, INCIDENTAL OR CONSEQUENTIAL DAMAGES ARISING FROM THE SALE OR IN CONNECTION WITH THE USE OR INOPERABILITY OF THE BOAT, IRRESPECTIVE OF WHETHER SUCH CLAIMS OR ACTIONS IN CONNECTION WITH SUCH DAMAGES ARE BASED ON CONTRACT, TORT, STRICT LIABILITY, WARRANTY, OR ANY OTHER OBLIGATION.

9. IN THE EVENT THAT ONE OR MORE TERMS AND CONDITIONS SET OUT IN THESE WARRANTIES IS FOUND TO BE INVALID OR OTHERWISE UNENFORCEABLE, SUCH TERMS AND CONDITIONS SHALL BE SET ASIDE SO THAT THE VALIDITY AND APPLICABILITY OF THE WARRANTIES ARE NOT AFFECTED OR IN ANY WAY IMPAIRED.

** the warranty periods of 3 years and 5 years apply to Boats delivered by the distributor-reseller to the purchaser-user from the 1st of September 2019. For the Boats delivered before such date, the warranty periods are respectively of 1 year and 3 years.*

EXHIBIT B

BENETEAU LIMITED WARRANTY**For Boats Manufactured and/or Delivered After July 1, 2018**

Beneteau America, Inc., a South-Carolina registered corporation, with business offices at 105 Eastern Avenue, Suite 203, Annapolis, MD ("Beneteau") warrants to the original purchaser or any subsequent lawful owner (collectively the "Owner"), during the duration of this limited warranty (the "Limited Warranty"), that a boat which has been sold new to the original purchaser by an authorized Beneteau dealer, and for which a valid warranty has been signed by the original purchaser, and registered with, and received by, Beneteau, excluding parts or accessories not manufactured by Beneteau or by any affiliates of Groupe Beneteau, France, will be free from defects in material and workmanship until the earliest of: (i) three (3) years from the date of the delivery of the boat to the original purchaser; or (ii) four (4) years after first utilization of the boat by a dealer or other person for demonstration purposes or for any other in service use. This Limited Warranty shall be valid ONLY IF the mandatory initial commissioning trial, and the periodic inspections and checks required by Beneteau (at original commissioning including an initial commissioning trial and at one (1) year after original commissioning) have been accomplished and duly documented by an authorized Beneteau dealer or service provider approved in writing by Beneteau. For any subsequent lawful owner to benefit from this Limited Warranty, please contact Beneteau's Customer Relations Department for any information about transferring this Limited Warranty. No Limited Warranty coverage shall be provided to subsequent lawful owners unless they have followed Beneteau's transfer procedures in this respect. In addition, Beneteau warrants to the Owner, except for prototypes, that the hull and deck structure of the boat will be free from structural defects for a period of seven (7) years from the earliest of: (i) the date of delivery of the boat to the original purchaser; or (ii) the first utilization of the boat by a dealer or any other person for demonstration purposes or for any other in service use.

Beneteau's sole and exclusive obligation under this Limited Warranty shall be to repair the defect(s) or replace the defective item(s) (or to cause them to be repaired or replaced), at Beneteau's sole option, provided they occur and are reported to Beneteau during the applicable warranty period. These remedies shall be exclusive of all other remedies. A structural defect means a significant defect to the structural components of the hull or deck (such as stringers or structural bulkheads) which materially affects the structural integrity and seaworthiness of the hull or deck. Minor cracking, blistering or voids of the gelcoat surfaces of a boat is normal after a period of time and not a structural concern. Beneteau will repair minor cosmetic blisters, cracks and voids in gelcoat surfaces of the hull and deck, but only if they (i) are the result of defects in material and/or workmanship; (ii) are not the result of aggressive gelcoat sanding or other unauthorized repairs or alterations; (iii) occur within three (3) years of the date of delivery to the original purchaser; and (iv) for sailboats, are not on the rudder or keel. The method and the cost of any warranty repair or replacement must be approved in advance by Beneteau prior to the commencement of any repairs. Beneteau may decline or modify proposed repairs or replacements which are outside the normal customs and practices of the recreational boating industry.

For Customer in the USA: Some States do not allow limitations on how long an implied warranty lasts, so the above limitation may not apply to you.

Parts or accessories visibly bearing the trademark of another supplier only benefit from the warranty provided by that supplier and his local network.

Repairs under this Limited Warranty do not result in a renewal or extension of the original warranty for the boat or a part thereof. Unless otherwise authorized by Beneteau, the Owner must have the boat delivered to an authorized dealer or authorized repair facility located within continental North America for repairs or replacements under this Limited Warranty. All transportation charges, storage charges and duties shall be borne by the Owner. Beneteau requires reasonable proof of purchase of the boat on which an Owner is seeking warranty repairs. Failure to notify Beneteau or an authorized Beneteau dealer of a warranty claim, in writing, within fifteen (15) days of discovery of the warranty item needing repair or prior to the end of the applicable warranty period, whichever is earlier, shall constitute a waiver of any such claim. Claims or requests for repairs or replacement under this Limited Warranty should be submitted to the dealer contact for warranty service listed below. Upon receipt of notice from the purchaser/user, the distributor/seller shall then have eight (8) days to notify the builder. His failure to notify the builder within eight (8) days shall result in his liability for the consequences of his delay.

This Limited Warranty does not cover, and does not extend to, loss or damage resulting directly or indirectly, from any of the following:

- (1) Accident, disaster or Act of God;
- (2) Normal wear and tear;
- (3) Improper or inadequate maintenance, including, without limitation, aggressive gelcoat sanding;
- (4) Abuse, misuse or neglect, including, without limitation, navigation in unsafe or inappropriate weather or sea conditions;
- (5) Repair or modification of the boat or any part thereof without Beneteau's prior written approval;
- (6) Unauthorized modifications in design or construction made to the boat;
- (7) Defects or damage to antifouling, varnishes, paints, acrylon, naugahyde, fabrics, headliners, chrome, anodized coatings, keel coatings, sails, cushions, or running rigging, as these items are subject to deterioration from climate, corrosion, normal use conditions, and wear and tear;
- (8) Reasonable and necessary maintenance, including, but not limited to, periodic rebedding of chain plates, stanchion bases, windows and/or window frames, and winches;
- (9) Damages or deterioration due to the failure to observe maintenance recommendations as described in the owner's manual or to comply with the normal standards and practices of boat maintenance;
- (10) Failure to take reasonable measures to protect the boat;
- (11) Participation in a competitive sporting event;
- (12) Loss of use, loss of hire, diminution in value, storage or transportation expenses, survey expenses, insurance premiums, or principal or interest payments on boat loans.

The Limited Warranty is limited to one (1) year with respect to commercial use of the boat, including but not limited to, the rental, lease, charter or any other non-consumer use of the boat. In addition, with respect to such commercial use of the boat, the hull and deck structural warranty as set forth in the first paragraph above shall be limited to three (3) years.

In addition, if any structural defects or damage to the boat are (a) caused by anything other than a defect in material or workmanship (whether or not such damage requires or results in any repairs to the hull or deck), or (b) caused by repairs or alterations to the boat of any nature whatsoever (other than recommended owner's manual maintenance) made by an unapproved person or without prior written authorization by Beneteau, such structural damage shall not be covered by this Limited Warranty.

This Limited Warranty is expressly in lieu of all other warranties, except those enumerated herein. The implied warranties of merchantability and fitness for a particular purpose, and the implied conditions of merchantable quality and fitness for a particular purpose, are hereby limited to the applicable warranty periods set forth herein. Beneteau hereby disclaims all other liabilities of whatsoever nature to the extent allowed by applicable law, and Beneteau does not assume, nor authorizes any person, including but not limited to, the dealer, to assume for it, any other obligation or liability in connection with the sale and use of Beneteau boats.

Beneteau shall in no event, to the extent permitted by applicable law, be liable to the Owner or any other person or entity for damages of any kind, including but not limited to direct, indirect, special, incidental or consequential damages (as to all consequential damages except those arising from personal injury), arising from the sale or in connection with the use or inability to use the boat for any purpose whatsoever, irrespective of whether the claims or actions for such damages are based upon contract, tort, negligence, strict liability, warranty, or other legal theories of liability.

For Customer in the USA: Some States do not allow the exclusion or limitation of incidental or consequential damages, so the above limitation or exclusion may not apply to you.

For the purposes of compliance with the Federal Boat Safety Act of 1971, and the regulations promulgated thereunder, and all notification procedures set forth therein, Beneteau requires that the purchaser complete the information requested below concerning your current address and contact information, which shall be returned to Beneteau by your dealer.

Beneteau reserves the right, at any time, to make changes in the specifications, design of, or make additions, substitutions or improvements to, the boats without prior notice or obligation to incorporate such change, addition, or improvement in any boat manufactured prior thereto.

Except as otherwise specified, this Limited Warranty shall be governed by the Uniform Commercial Code as adopted in the State where the boat is originally purchased.

Any disputes arising under or relating directly or indirectly to this contract shall be resolved by binding arbitration pursuant to the rules and procedures of the American Arbitration Association. The arbitration shall be held in Baltimore, Maryland, unless the parties agree on an alternate location. This arbitration agreement shall be governed by the federal arbitration act. This Limited Warranty gives you specified legal rights, and you may also have other rights, which may vary from state to state. The Owner's failure to sign and acknowledge this Limited Warranty shall not deprive Beneteau of the exclusions and limitations in the same if the Limited Warranty was communicated to or made available to the Owner or the Owner was on actual or constructive notice of its terms.

I hereby acknowledge that this Beneteau America, Inc. Limited Warranty was available for my/our review prior to purchase of the boat; that it was attached to dealer's purchase order in its entirety at the time that I purchased my boat from said dealer; that I have read and understood such Limited Warranty in its entirety; and that I have a copy of such Limited Warranty, as attached to dealer's purchase order, for future reference.

PHIL BARTEL
Owner's Name/Please Print Clearly

Owner's E-mail

Owner's Preferred Contact Phone Number

City, State, Zip

1/17/2022
Commissioning Date (Tentative)

Country

Boat Model & Official Hull #

Owner's Signature

Date

Contact for Warranty and Service:

Jean-Michel Morisson
Contact Name

St. Barts Yachts
Dealership Name

Charleston, SC 29401
City, State, Zip, Country

Phone Number

service@st-barts.com
E-mail

06 juillet 2018

EXHIBIT C



Secretary of State
Statement and Designation by
Foreign Corporation

S&DC-S/N

IMPORTANT — [Read Instructions](#) before completing this form.

Must be submitted with a current **Certificate of Good Standing** issued by the government agency where the corporation was formed. [See Instructions.](#)

Filing Fee — \$100.00 (for a foreign stock corporation) or
\$30.00 (for a foreign nonprofit corporation)

Copy Fees — First page \$1.00; each attachment page \$0.50;
Certification Fee - \$5.00

Note: Corporations may have to pay minimum \$800 tax to the California Franchise Tax Board each year. For more information, go to ftb.ca.gov.

FILED

Secretary of State
State of California

4795695

Filing Number

09/29/2021

Filing Date

This Space For Office Use Only

1. Corporate Name (Go to www.sos.ca.gov/business/be/name-reservations for general corporate name requirements and restrictions.)

2. Jurisdiction (State, foreign country or place where this corporation is formed - **must match** the Certificate of Good Standing provided.)

Beneteau Group America, Inc.

Delaware

3. Business Addresses (Enter the complete business addresses. Items 3a and 3b cannot be a P.O. Box or "in care of" an individual or entity.)

a. Initial Street Address of Principal Executive Office - Do not enter a P.O. Box 105 Eastern Ave., Ste. 203	City (no abbreviations) Annapolis	State MD	Zip Code 21403
b. Street Address of Principal Office in California, if any - Do not enter a P.O. Box	City (no abbreviations)	State CA	Zip Code
c. Mailing Address of Principal Executive Office, if different than item 3a	City (no abbreviations)	State	Zip Code

4. Service of Process (Must provide either Individual OR Corporation.)

INDIVIDUAL – Complete Items 4a and 4b only. Must include agent's full name and California street address.

a. California Agent's First Name (if agent is not a corporation)	Middle Name	Last Name	Suffix
b. Street Address (if agent is not a corporation) - Do not enter a P.O. Box	City (no abbreviations)	State CA	Zip Code

CORPORATION – Complete Item 4c. Only include the name of the registered agent Corporation.

c. California Registered Corporate Agent's Name (if agent is a corporation) – Do not complete Item 4a or 4b

Corporation Service Company Which Will Do Business In California As CSC - Lawyers Incorporating Service

5. Read and Sign Below ([See instructions](#). Office or title not required.)

I am a corporate officer and am authorized to sign on behalf of the foreign corporation.


Signature

Dianne Brian
Type or Print Name

4795695

Delaware

The First State

Page 1

I, JEFFREY W. BULLOCK, SECRETARY OF STATE OF THE STATE OF DELAWARE, DO HEREBY CERTIFY "BENETEAU GROUP AMERICA, INC." IS DULY INCORPORATED UNDER THE LAWS OF THE STATE OF DELAWARE AND IS IN GOOD STANDING AND HAS A LEGAL CORPORATE EXISTENCE SO FAR AS THE RECORDS OF THIS OFFICE SHOW, AS OF THE TWENTY-NINTH DAY OF SEPTEMBER, A.D. 2021.

AND I DO HEREBY FURTHER CERTIFY THAT THE ANNUAL REPORTS HAVE BEEN FILED TO DATE.

AND I DO HEREBY FURTHER CERTIFY THAT THE SAID "BENETEAU GROUP AMERICA, INC." WAS INCORPORATED ON THE FOURTH DAY OF DECEMBER, A.D. 1985.

AND I DO HEREBY FURTHER CERTIFY THAT THE FRANCHISE TAXES HAVE BEEN PAID TO DATE.



A handwritten signature in black ink, appearing to read "JBullock", is written over a horizontal line. Below the line, the text "Jeffrey W. Bullock, Secretary of State" is printed.

2077311 8300

SR# 20213371049

You may verify this certificate online at corp.delaware.gov/authver.shtml

Authentication: 204276955

Date: 09-29-21