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THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAUL GUZMAN, et al.,
Plaintiffs,

v.
POLARIS INDUSTRIES INC., et al.,
Defendants.

MICHAEL HELLMAN, et al.,
Plaintiffs,

v.
POLARIS INDUSTRIES INC., et al.,
Defendants.

Case No.:
8:19-cv-01543-FLA (KESx) (lead case)
2:23-cv-07187-FLA (KESx)

OPPOSITION TO DEFENDANTS' MOTION FOR RECONSIDERATION OF ORDER GRANTING PLAINTIFF'S MOTION FOR CLASS CERTIFICATION

Hon. Fernando L. Aenlle-Rocha

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MEMORANDUM OF POINTS AND AUTHORITIES

I. INTRODUCTION

On July 14, 2024, this Court issued its well-reasoned Order Granting Plaintiff's Motion for Class Certification. (*Berlanga* Dkt. No. 150).[1] Fourteen days later, a mere hour after departing from a mediation where the Parties failed to reach a resolution, Defendants POLARIS INDUSTRIES, INC., POLARIS SALES, INC., and POLARIS INDUSTRIES, INC. (together, "Polaris" or "Defendants") filed a Motion for Reconsideration of the Court's Order. (*Guzman* Dkt. No. 220). Aside from apparent displeasure with the result, Defendants' Motion fails to provide any reason that would justify this Court reversing its own decision.

Polaris's basis for the Motion lies solely as to the scope of the Class definition. Polaris argues that it would be manifest error and confusing to Class Members for the Court to apply plain meaning to the word "present" in the Class definition. Polaris oddly argues that "present" should be interpreted as meaning "three years ago." "Present" clearly means the date the Order was issued – July 16, 2024 the date of Class Certification. That is patently obvious on its face, and it was patently obvious in Plaintiff's Brief when he filed it. Polaris's position that "present" might mean July 14, 2021, three years in the *past* is nonsensical.[2] Present means now. There is nothing confusing to Class Members, or to Polaris about that.[3]

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[1] References to case number 8:19-cv-01543-FLA (KESx) are designated "Guzman" while references to 2:23-cv-07187-FLA (KESx) are designated "Berlanga."

[2] Polaris waived this argument by never raising it during briefing. It is established law that a party cannot seek reconsideration based on a new argument it failed to raise in the first instance during briefing. This waiver is not trivial. Had Polaris raised it earlier, Class Counsel would have taken steps to protect absent class members, like they did by filing *Berlanga* when Guzman's claims were on appeal. Thus, disregarding Polaris's waiver would prejudice the absent class members.

[3] When Counsel for Plaintiffs suggested to Mr. Pixton on a meet and confer call that present means now, i.e. the date of the Order, Mr. Pixton disingenuously stated "I am very surprised you are taking that position." He also admitted the Court may very well agree with Plaintiffs on the issue but that he had to file the motion to preserve his client's right, a concession that the Class Certification Order was not manifest error. Yet he filed the Motion anyways.

Plaintiff's Class Certification papers sought certification through the present and Polaris never challenged that, so there are therefore no new facts, or law, or any showing of manifest error warranting reconsideration.

Putting that to the side, the practical realities of such a ruling would reduce the certified Class by approximately 20,000 vehicles and would force Class Counsel to file and consolidate more lawsuits resulting in a waste of judicial and party resources for no reason other than Polaris creating further delay. Polaris continues to misrepresent OSHA safety compliance to consumers and the CPSC to this very day on the ROPS of Ranger and RZR vehicles. It is routine for Class Certification to be granted through the date of a certification order where, as here, the defendant does nothing to change the common policy or practice during pendency of litigation that would result in a predominance challenge. Class Counsel does it all the time.

Polaris also argues it was manifest error for the Court to have included Rangers in the Class definition.[4] It was not. The Complaint alleged a Class on behalf of both Ranger and RZR purchasers. There is no due process violation for Polaris. Polaris was on notice. Polaris was also on notice from the Class Certification papers, where Plaintiff moved to certify a Class of both vehicle model types in the opening papers. While Polaris did challenge the scope of this Class issue, unlike with respect to the Class Period, the Court considered those arguments and elected to follow the authority and standards and breadth offered by Plaintiff in his Motion, rather than siding with Polaris's Opposition position that only the RZR Subclass should be certified.

Polaris completely fails to offer any legal analysis showing that it was manifest error for the Court to have determined that the claims of Class Members across different vehicle models were "reasonably coextensive." Indeed, Polaris could not make such an argument, because as the Court correctly ruled, the OSHA

[4] Polaris argues that Generals should also be excluded, but they already are. The class is limited to vehicles "advertised with a sticker on the ROPS system as complying with OSHA requirements." This does not require clarification.

standard was not followed for any vehicles in the Class. Polaris, desperate for a basis for its position, points to language in a filing which was withdrawn and is not even part of the record, and in any case was an *optional* Reply, and argues that such withdrawn briefing constitutes waiver. Dkt. No. 94 in the Berlanga case is not part of the record,[5] but Polaris cites to it six times in its brief as the sole basis for this Motion. This is bad faith.

Even so, the language pointed to by Polaris was not waiver, merely a conciliatory illustrative point of emphasis that if the Court believed the individualized issues raised by Defendant concerning RZR vs. Ranger vehicles in its Opposition papers was persuasive, then the Court should at least certify the RZR Subclass. Polaris did not respond to the Reply, and thus was not prejudiced by a final aside of Class Counsel which merely offered an alternative path to certification for the Court to consider. It cannot be considered waiver when both the Complaint and opening papers laid out a class definition that was ultimately certified. The Court agreed with Plaintiff's opening papers, and found Polaris's position unavailing, which was well within its discretion given that Plaintiff cited over twenty cases in the opening brief showing that broad certification was appropriate under the "reasonably co-extensive" Ninth Circuit standard. Polaris is unhappy because several thousand more Class Members are included in the definition of the Class that will proceed to trial. But these consumers were injured in the same way as the rest of the Class. Again, there is no manifest error, change in facts or change in law. The reconsideration standards are not met.

The Class Certification Order was well-reasoned, thoroughly evaluated, based on a mountain of briefing, evidence and background, and clearly given great

[5] Polaris objected to the filing because it was longer than Judge Mueller's page length limits under her Rules. Plaintiff withdrew the filing. See Berlanga Dkt. No. 95. Plaintiff refiled a shorter Reply brief at Berlanga Dkt. No. 96. Any citations to Berlanga Dkt. No. 94 as a basis for Polaris's Motion for Reconsideration are in bad faith. It is not part of the record, and the reason it is not part of the record is because of Polaris.

consideration by the Court. It is substantiated fully by prevailing certification standards. No new evidence has been introduced. No new legal authority has been cited. Polaris knows its position is not credible on its own merit, and sadly resorts to making inflammatory false statements in declarations concerning Class Counsel to improve its weak position. This amounts to irrelevant mudslinging,[6] not pertinent to the Local Rule test. Polaris has completely failed to show a change in law, a change in fact, or manifest error, and so under the Local Rules' test, its Motion lacks merit and must be denied in its entirety.

II. LEGAL STANDARD

Under Federal Rules of Civil Procedure 59(e) and 60(b), the Court has the discretion to grant reconsideration for a variety of reasons, including "mistake, inadvertence, surprise, [] excusable neglect…[or] any other reason that justifies relief." *See* Fed. R. Civ. P. 60(b); *School Dist. No. 1j, Multnomah Cnty. v. ACandS, Inc.*, 5 F.3d 1255, 1263 (9th Cir. 1993). "A motion for reconsideration should not be granted absent highly unusual circumstances." *Kona Enterprises, Inc. v. Estate of Bishop*, 229 F.3d 877, 890 (9th Cir. 2000). Moreover, such motions are disfavored for good reason. *See In re Pacific Far East Lines, Inc.*, 889 F.2d 242, 250 (9th Cir. 1989) (noting that motions for reconsideration are subject to an "extraordinary circumstances" standard, so as to not permit "a second bite at the apple").

Polaris barely gives lip service to the Rule, but in the Central District, Motions for Reconsideration are governed by Local Rule 7-18, which states:

> A motion for reconsideration of an Order on any motion or application may be made only on the grounds of (a) a material difference in fact or law from that presented to the Court that, in the exercise of reasonable diligence, could not have been known to the party moving for

[6] Mr. Pixton's declaration about comments made by Mr. Bacon misquotes and takes out of context the meet and confer. The following statement made by Mr. Pixton did not happen: "Mr. Bacon did not agree that such an amendment should be made and stated that he would not 'look a gift horse in the mouth." Plaintiffs are dismayed by counsel for Polaris's decision to make a spurious false statement in a sworn declaration, as if that would be a deciding factor to this Motion anyways.

> reconsideration at the time the Order was entered, or (b) the emergence of new material facts or a change of law occurring after the Order was entered, or (c) a manifest showing of a failure to consider material facts presented to the Court before the Order was entered. No motion for reconsideration may in any manner repeat any oral or written argument made in support of, or in opposition to, the original motion." L.R. 7-18.

III. LEGAL ARGUMENT

The biggest problem with Polaris's Motion for Reconsideration is that Polaris does not base its position in the actual legal standards set forth under the Local Rule, and barely gives lip service to those standards in its moving papers. This is because Polaris knows it has no basis to seek reconsideration under those standards. Polaris instead is simply unhappy with the Order and wants a do over. That is expressly foreclosed under the Local Rules, and the Court is under no obligation to revisit a well-founded Order which would withstand scrutiny on appeal in any event after final judgment, simply because Polaris is unhappy with the Court's exercise of discretion.

Polaris's Motion fails to establish any of the three circumstances in which a Motion for Reconsideration would be warranted, and merely amounts to an airing of grievances over the parts of the Court's Order not resolved in its favor. Moreover, to the extent that the instant motion raises arguments not raised in Polaris's Opposition to Class Certification, or arguments which have been refashioned after issuance of the Court's Order, any such arguments should be disregarded as improper on a motion for reconsideration. *Daghlian v. Devry Univ. Inc.*, 582 F. Supp. 2d 1231, 1256 (C.D. Cal. 2007); *see also Frietsch v. Refco, Inc.*, 56 F.3d 825, 828 (7th Cir. 1995) ("It is not the purpose of allowing motions for reconsideration to enable a party to complete presenting the case after the Court has ruled against him. Were such a procedure to be countenanced, some lawsuits really might never end, rather than just seeming endless.").[7]

[7] Polaris waived any argument that the class definition in the Motion for Class Certification deviated from the definition in the complaint, and therefore cannot

Polaris does not in fact argue any of the three potential bases upon which a reconsideration motion could be based. There are no new facts. Fact discovery has been closed in these consolidated actions for some time. There is also no new law, with the exception possibly of a recent Ninth Circuit case which actually supports Plaintiff's position and undermines the arguments raised by Polaris. Polaris does not argue a change in law or a change in fact.

The only factor which could even conceivably come into play is a manifest showing of failure by the Court. But Polaris cites to no legal error committed by the Court, nor to any overlooked facts in the briefing. Polaris's argument regarding the class period fails to meet the requirement that it "could not have been known to the party moving for reconsideration at the time the Order was entered." It is also not an "emergence of new material facts or a change of law occurring after the Order was entered." Nor was it a failure for the Court "to consider material facts presented to the Court before the Order was entered." The Court was never presented with this argument by Polaris. Polaris waived it.

Ultimately, none of the factors are met, and the arguments which Polaris makes outside of the legal test don't make any sense either. The Class period argument was waived. The class scope issue as to Rangers is based on facts that are not in the record, and which the Court sided with Plaintiff within its discretion to do so. This is a baseless Motion.

A. Reconsideration Should Be Denied Because There Was No Manifest Failure To Consider Material Facts

Defendants' Motion fails to raise any manifest failure on the Court's part to consider material facts. As an initial matter, the Court permitted all evidence, all argument, and all expert reports to be considered during Class Certification. It is worth mentioning that Polaris had sought Ninth Circuit intervention via a Rule 23(f)

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raise such arguments in this Motion. This argument was never raised in its opposition to class certification. See Berlanga Dkt. No. 90. Given the voluminous briefing in this case, Polaris has had ample opportunity throughout this litigation to litigate and relitigate every issue, so it has nobody to blame but itself.

petition when this Court previously certified the Guzman case, and that was denied. Polaris has failed to cite to a single new fact or new piece of evidence, or indeed to any evidence whatsoever which the Court overlooked or overstepped its authority based upon when certifying the Class. This applies both to the argument that the Class Period is too long, and that Rangers should be excluded.

Polaris in its Motion does not argue even a single instance of a manifest failure to consider material facts. Courts are not required to scour the record looking for evidence in support of Defendants' arguments. *See Perfect 10, Inc. v. Giganews, Inc.*, 2015 WL 1746406, at *6 (C.D. Cal. Mar. 6, 2015) (citing *Carmen v. San Francisco Unified School Dist.*, 237 F.3d 1026, 1031 (9th Cir. 2001); *Equal Emp. Opportunity Comm'n v. Telecare Mental Health Servs. of Washington, Inc.*, 2023 WL 5348880, at *4 (W.D. Wash. Aug. 21, 2023) (quoting *United States v. Dunkel*, 927 F.2d 955, 956 (7th Cir. 1991)). Moreover, the Court is not required to reference all evidence submitted by the parties in an order ruling on a motion. *See, e.g.*, *Tuttelman v. City of San Jose*, 2005 WL 8163029, at *2 (N.D. Cal. Dec. 13, 2005). If Polaris wants reconsideration, it would be obligated to point to a fact in the record that the Court overlooked, which would show manifest error had it been considered. Neither of the two arguments raised by Polaris meet this standard, nor are they argued to meet this standard by Polaris in the Motion. Polaris fails to satisfy this factor. Accordingly, Polaris's argument again fails to identify any manifest error and reconsideration should be denied.

B. Reconsideration Should Be Denied Because Defendants Have Failed To Identify Any New Material Facts or Change in Legal Authority

Polaris's Motion does not identify any new facts or new law which has emerged since the class certification briefing was taken under submission, much less since the Order was issued. The only relevant appellate authority that has been issued relating to this case was *Lytle v. Nutramax Laboratories, Inc.*, 99 F.4th 557 (9th Cir. 2024). But in *Lytle*, the Ninth Circuit reaffirmed the very same standards

argued by Plaintiff in his class certification papers regarding the proper treatment of materiality, reliance, and damages pursuant to *Comcast*. Polaris does not cite to any new facts, or new law, and thus its argument again fails to identify any manifest error and reconsideration should be denied.

C. Polaris's Irrelevant Arguments Are In Bad Faith

a. Polaris Waived any Argument Concerning the Class Period

In Plaintiff's Motion for Class Certification, Plaintiff sought certification of the following Class and Subclass:

> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR, Ranger, or General UTVs, in California, which were advertised with a sticker on the ROPS system as complying with OSHA requirements as set forth under 29 C.F.R. § 1928.53,16 and which were tested using Gross Vehicle Weight, not Tractor Weight.
>
> Plaintiff also seeks class certification for the following Subclass:
>
> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR UTVs, in California, which were advertised with a sticker on the ROPS system as complying with OSHA requirements as set forth under 29 C.F.R. § 1928.53, and which were tested using Gross Vehicle Weight, not Tractor Weight.

Berlanga Dkt. No. 86-1 at Pg. 17 (emphasis added). The record shows that Polaris to this very day continues to sell Ranger and RZR vehicles advertised to meet the OSHA test for its ROPS, even though Polaris objectively fails to test to the standard, as has been briefed ad nauseum before this Court, before Judge Mueller, and before the Ninth Circuit. Polaris never introduced any evidence suggesting otherwise into the record. In opposing class certification, Polaris made many arguments, but an argument which it objectively failed to make was that "present" was a vague term or a term which denied Polaris due process rights for the reasons stated in its Reconsideration Motion. The argument was waived. Polaris did not raise the argument at oral argument before Judge Mueller either. It is nowhere in the record.

Polaris's position is undermined by the fact that it is quite commonplace for

class actions to be certified through the date of class certification. For example, just in this District, undersigned counsel have certified several other class actions through a class certification date by contested motion. *See Makaron v. Enagic USA, Inc.*, 324 F.R.D. 228 (C.D. Cal. 2018) (certifying a class period "between July 8, 2011 and Present"); *Wolf v. Hewlett Packard Company*, 2016 WL 7743692 (C.D. Cal. Sept. 1, 2016). Did Judge Pregerson, and Judge O'Connell engage in manifest error? No. It is common for Courts to certify class actions through the date of class certification.

Polaris filed its opposition papers on July 10, 2023. Berlanga Dkt. No. 90. The oral argument occurred on August 11, 2023. That was a year ago. Polaris never made the argument that its due process rights were violated because there was not alignment between the class definition in the Complaint, and the class definition in the certification motion.[8] Polaris is represented by two of the biggest and most reputable law firms in the country. They have fought tooth and nail throughout this litigation on everything. They have challenged, relitigated, appealed, and even filed a writ. They were well equipped to have briefed this issue if they believed the filings were not in alignment, or perceived something vague in the terms used by Plaintiff in the papers. That argument is nowhere in the record, except in the first instance, in this Reconsideration Motion. Polaris waived the argument, presumably because it was not a winning argument anyways and Polaris wanted to focus its limited briefing space on better arguments.

Arguments that are waived cannot serve as a basis for reconsideration under Local Rule 7-18.

> Absent the law of the case doctrine, the parties could freely relitigate issues that had previously been decided or, as is the case here, raise a new argument that could have been, but was not, made earlier. In other words, parties do not get multiple bites at the same apple, and

[8] There is alignment, the Complaint is open ended and does not specify an end date to the class period. It just envisions a backwards looking four-year period due to the statute of limitations period. So on the merits Polaris is wrong too.

> arguments that a party fails to make are ordinarily deemed waived. See Sechrest v. Ignacio, 549 F.3d 789, 802 (9th Cir. 2008) ("[W]e have discretion to depart from a prior decision if '(1) the decision is clearly erroneous and its enforcement would work a manifest injustice, (2) intervening controlling authority makes reconsideration appropriate, or (3) substantially different evidence was adduced at a subsequent trial.c) (quoting Minidoka Irrigation Dist. v. United States Dep't of Interior, 406 F.3d 567, 573 (9th Cir. 2005)); Yeti by Molly, Ltd. v. Deckers Outdoor Corp., 259 F.3d 1101, 1108 (9th Cir. 2001) ("Deckers has waived the right to appeal several issues by not raising them or raising them too late to the district court. 'Generally, an appellate court will not hear an issue raised for the first time on appeal.' ") (quoting Arizona v. Components Inc., 66 F.3d 213, 217 (9th Cir. 1995)); Kesselring v. F/T Arctic Hero, 95 F.3d 23, 24 (9th Cir. 1996) ("Since appellant failed to raise this issue in its first appeal, it is waived."); Munoz v. Imperial County, 667 F.2d 811, 817 (9th Cir. 1982) ("We need not and do not consider a new contention that could have been but was not raised on the prior appeal."). Because Clemmons is an unpublished decision and is based on long-standing principles of state law, it is not "intervening controlling authority" that would justify departing from the Ninth Circuit's decision in this case that the Complaint's federal claims are adequately alleged.

Alvarado v. Bratton, 2009 WL 10712929 *2 (C.D. Cal. Feb. 23, 2009); *Cunniingham v. City of Los Angeles*, 2021 WL 6752243 *4 (C.D. Cal. Dec. 28, 2021) (denying reconsideration pursuant to L.R. 7-18 and holding "the Court will not consider these new arguments raised by Plaintiff as they have been waived"); *Selectron Indus. Co., Inc. v. Selectron Intern*., 2007 WL 5193735 *3 (C.D. Cal. Sept. 25, 2007) (Denying reconsideration on the grounds that the motion was "improper in that it is does not appear to be brought on any of the three authorized grounds for reconsideration as set forth in Local Rule 7-18" as well as deeming a four-month delay to raise new issue on reconsideration not previously argued having been waiver); *Lopez v. Liberty Mutual Insurance Co*., 2018 WL 7348842 *2-3 (C.D. Cal. Nov. 18, 2018) (denying a reconsideration motion as to a class certification order on the grounds that "Defendants present nothing new that they did not—or could not have—presented earlier" and specifically noting that the class period should be appropriately defined to "include an end date of September 24, 2018" i.e.

the date of the class certification order); *Kiewit Power Constructors Co. v. City of Los Angeles by…*, 2018 WL 5902591 *3 (C.D. Cal. May 22, 2018) ("LADWP fails to adequately explain why it failed to make this argument before the Court ruled on the parties' summary judgment motions….LADWP's failure to timely make this argument weighs against reconsidering the Court's summary judgment order."); *McKinsty v. Swift Transportation Co., of Arizona, LLC*, 2017 WL 8943524 *2-5 (C.D. Cal. Sept. 18, 2017) (holding that repeating arguments previously rejected, failure to raise new facts or law, and importantly, a new citation to legal authority which was available at the time of briefing constituted waiver and was improper, thereafter denying reconsideration of a class certification order); *Yang Ming Marine Transport Corp. v. Oceanbridge Shipping International Inc*., 48 F.Supp.2d 1049, 1057 (C.D. Cal. 1999) ("This is a mere attempt by Laufer to reargue its position by directing this Court to additional case law and an agency argument which Laufer clearly could have made earlier, but did not. This is not the purpose of motions for reconsideration...").

Polaris could have raised its arguments about the class period at any point in the last fifteen months since Berlanga moved for class certification, but waited until this motion to raise the issue in the first instance. The position Polaris now takes is problematic for the Class if adopted by the Court, because there are, day by day, absent class members who are part of the certified class, whose claims would become, by operation of a reconsideration order siding with Polaris, outside of the three-year statute of limitations for a CLRA claim. Class counsel has shown a history of action in this consolidated litigation of taking measures to protect absent class members from such risk where orders may cause gaps in the ability for absent class members to seek remuneration, as evidenced by the very filing of the Berlanga action after Guzman's claims were dismissed. Polaris, by virtue of having never raised this issue until now, caused prejudice to those absent Class Members and now seeks unfair advantage solely due to its attorneys' own sloppiness and failure to ever have thought of this argument in the first instance. That should not be rewarded,

and more importantly, is not a legitimate basis for reconsideration. These bad faith efforts must be properly framed, and the Motion should be summarily denied.

b. Polaris's Argument Regarding Rangers is Based Almost Entirely Outside the Record

As a recap, the operative Complaint expressly names dozens of models of Ranger vehicles within the "class vehicle" definition. Berlanga Dkt. No. 22 ¶ 2. Plaintiff dedicated an entire section of the Motion for Class Certification, including citations to dozens of cases, regarding the inclusion of both RZRs and Rangers in the class definition. Berlanga Dkt. No. 86-1 Pgs 26-27. Plaintiff cited to the operative legal test as well:

> "The test is one best analyzed under typicality and predominance, and the question comes down to whether 1) plaintiff was exposed to the same misrepresentation as was made in other class products, and 2) whether plaintiff's claims are "reasonably co-extensive" with those of the remainder of class members.34 There is no legitimate difference between the vehicle Plaintiff purchased and the vehicles of other Class Members. The overwhelming majority of district court certification orders agree that this case should be certified broadly"

Id. On these grounds, Plaintiff sought class certification of the following class and subclass:

> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR, Ranger, or General UTVs, in California, which were advertised with a sticker on the ROPS system as complying with OSHA requirements as set forth under 29 C.F.R. § 1928.53,16 and which were tested using Gross Vehicle Weight, not Tractor Weight.
>
> Plaintiff also seeks class certification for the following Subclass:
>
> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR UTVs, in California, which were advertised with a sticker on the ROPS system as complying with OSHA requirements as set forth under 29 C.F.R. § 1928.53, and which were tested using Gross Vehicle Weight, not Tractor Weight.

Berlanga Dkt. No. 86-1 at Pg. 17 (emphasis added). Both the Complaint and the

class certification Motion specifically sought inclusion of Rangers.

When the Court broadly certified the Class in its Order to include all models of Polaris UTVs which falsely advertised OSHA compliance, the Court correctly cited to two Ninth Circuit decisions which emphasized the "reasonable co-extensive" standard. See. Berlanga Dkt. No. 150 Pg 11 citing *Hanon v. Dataproducts Corp*., 976 F.2d 497, 508 (9th Cir. 1992), *Castillo v. Bank of Am., N.A*., 980 F.3d 723, 729 (9th Cir. 2020). To make this finding, the Court correctly referred to the following facts: "Polaris adopted the OSHA regulations for the ROPS on its RZR, Ranger, and General UTVs. *Id*. at 4. Thus, certain Polaris vehicles have a sticker containing the language: "This ROPS structure meets OSHA requirements of 29 C.F.R. § 1928.53," along with the vehicle model and test gross vehicle weight ("GVW"). Mot. at 6." *Id*. at Pg. 3.

Polaris opposed broad class certification on many grounds, including arguments that Rangers and RZRs were different (even though they were not materially different). Discovery shows that approximately 70% of the vehicles sold and advertised falsely to meet OSHA compliance were RZRs and 30% were Rangers. The Court correctly applied the facts and the law to this case, and within its discretion, granted class certification broadly just as Plaintiff asked to be done in the Complaint and in the Class Certification Motion.

Polaris bases its entire reconsideration position regarding the class definition including Rangers on a single line in Plaintiff's optional Reply Brief: "both Ranger and RZRs were sold under the guise that the ROPS met OSHA requirements. To streamline and avoid what Plaintiff ultimately views as a distraction, Plaintiff voluntarily agrees to narrow the proposed class definition to the proposed Subclass" Dkt. No. 96 Pg. 11. Polaris cites on at least six occasions to briefing that is not part of the record because it was withdrawn at Polaris's insistence, but that cannot be considered, because Dkt. No. 94 replaced Dkt. No. 96 after 94 was withdrawn. See Dkt. No. 95. This constitutes the entire basis of Polaris's position. It is not founded upon an argument that Polaris was right about the "reasonably co-extensive" issue,

nor could it be because this Court has discretion to determine the breadth of a certified class, and followed established Circuit authority as to the standards. Polaris wants this Court to be upset at Plaintiff, and resorts to making false statements about the meet and confer between the parties, citing to briefs that are not part of the record, and inaccurately depicting the single statement above as a waiver of Plaintiff's right to seek certification of the broader class.

The truth is that Polaris threw up a lot of smoke in the certification briefing, and Plaintiff did not want the Court to deny class certification outright, which is why a subclass was offered as an alternative. But the conciliatory statement above, which was proffered in an optional reply brief, was not a waiver. It was a conciliatory illustration that the Court could certify more narrowly if it found Polaris's arguments about the scope of certification to be availing. Clearly the Court did not find those arguments persuasive, and Plaintiff believes that is the correct outcome, which is why Plaintiff sought certification of the broader class that included Rangers since the case was filed back in 2021. There was only so much space in the brief – Plaintiff had ten pages in the optional Reply. Rather than spending all of those pages on the smoke and mirrors, Plaintiff made that conciliatory illustration to the Court, with the hopes that the Court would nonetheless certify broadly, which ultimately it did.

It is worth closing by reminding the Court that none of this fits within the three factors under L.R. 7-18. Polaris's motion should be denied.

IV. CONCLUSION

As stated herein, Polaris's arguments are all either irrelevant, insufficient, outside the record, or waived. Polaris has failed to identify any manifest failure by this Court to consider any material fact, failed to raise any new material facts that were unavailable to prior to this Court's ruling, and failed to identify any change in binding legal precedent. For the foregoing reasons, Plaintiffs respectfully request this Court deny Polaris's Motion in its entirety.

Dated: August 9, 2024

Law Offices of Todd M. Friedman, P.C.

/s/ Adrian R. Bacon
Todd M. Friedman
Adrian R. Bacon
Attorneys for Plaintiffs

CERTIFICATE OF SERVICE

Filed electronically on this 9th day of August, 2024, with:

United States District Court CM/ECF system

Notification sent electronically via the Court's ECF system to:

Honorable Fernando L. Aenlle-Rocha
United States District Court
Central District of California

And All Counsel of Record As Recorded On The Electronic Service List.

This 9th day of August, 2024

s/Adrian R. Bacon, Esq.
Adrian R. Bacon