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10 *Attorneys for Defendants*
Polaris Industries Inc.,
11 *Polaris Sales Inc., and*
12 *Polaris Inc. (f/k/a Polaris Industries Inc.)*

13 **UNITED STATES DISTRICT COURT**
14 **EASTERN DISTRICT OF CALIFORNIA**
15 **SACRAMENTO DIVISION**

16 MICHAEL HELLMAN, individually on behalf)
of himself and all others similarly situated;)
17 FRANCISCO BERLANGA, individually on)
behalf of himself and all others similarly situated;)
18 TIM ARTOFF, individually on behalf of)
himself and all others similarly situated;)
19 CY MITCHELL, individually on behalf of)
himself and all others similarly situated; and)
20 JONATHAN LOLLAR, individually on behalf)
of himself and all others similarly situated,)

21 Plaintiffs,)

22 v.)

23 POLARIS INDUSTRIES INC.,)
a Delaware corporation;)
24 POLARIS SALES INC.,)
a Minnesota corporation;)
25 POLARIS INC.)
(f/k/a POLARIS INDUSTRIES INC.),)
26 a Minnesota corporation; and)
DOES 1 through 10, inclusive,)

27 Defendants.)
28

CASE NO. 2:21-cv-00949-JAM-DMC

CLASS ACTION

**DEFENDANTS' ANSWER TO
PLAINTIFFS' FIRST AMENDED
COMPLAINT**

Complaint Filed: May 25, 2021

Amended Complaint Filed: July 14, 2021

Trial Date: Not Set

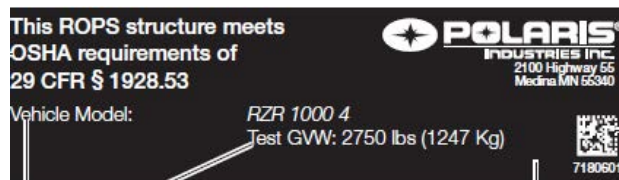
1 Defendants Polaris Industries Inc., Polaris Sales Inc., and Polaris Inc. (f/k/a Polaris Industries
2 Inc.) (collectively, “Polaris”), hereby submit their answer and affirmative defenses to plaintiffs’ First
3 Amended Complaint. Plaintiffs’ First Amended Complaint contains headings for which no response
4 by Polaris is required. To the extent a response is required, Polaris denies all allegations in plaintiffs’
5 headings. Polaris denies all allegations not specifically admitted in this answer and denies that
6 plaintiffs are entitled to any relief:

7 **RESPONSE TO NATURE OF THE ACTION**

8 1. Plaintiffs’ characterization of their claims otherwise does not require a response. To the
9 extent a response is required, Polaris admits that plaintiffs Michael Hellman and Francisco Berlanga
10 purportedly bring this action against Polaris, but otherwise denies the allegations in Paragraph 1.
11 Polaris further responds that the Court dismissed the claims brought by plaintiffs Tim Artoff, Cy
12 Mitchell, and Jonathan Lollar in its February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36).
13 Thus, Polaris does not answer the allegations with respect to those plaintiffs.

14 2. Plaintiffs’ characterization of their claims does not require a response. To the extent a
15 response is required, Polaris admits that plaintiffs purportedly define Class Vehicles to include various
16 models of Polaris vehicles, but denies that class treatment is appropriate on any basis.

17 3. Polaris admits that the image contained in Paragraph 3 of the First Amended Complaint
18 is a cropped image of the ROPS label affixed on Polaris RZR XP 4 1000 model vehicles. Polaris
19 admits that the full image is as follows:



23 Polaris admits that the ROPS label states that the ROPS structure meets the OSHA requirements of 29
24 C.F.R. § 1928.53 using the gross vehicle weight (“GVW”) rating of 2,750 lbs. Polaris denies the
25 remaining allegations in Paragraph 3.

26 4. Polaris admits that it affixes ROPS labels to certain vehicles. Polaris is without
27 sufficient knowledge or information to admit or deny whether the ROPS label is “visible at the point
28

1 of sale” for any individual consumer, and therefore denies plaintiffs’ allegations. Polaris denies the
2 remaining allegations in Paragraph 4.

3 5. Polaris denies the allegations in Paragraph 5.

4 6. Polaris states that whether a vehicle “meet[s] all applicable federal and state statutes,
5 standards, and regulations and self-adopted regulations, including OSHA 29 C.F.R. § 1928.53
6 requirements is material information for consumers” represents a legal conclusion, and therefore no
7 response is required from Polaris. To the extent a response is required, Polaris lacks knowledge or
8 information sufficient to form a belief as to the truth of this allegation, and therefore denies it. Polaris
9 denies the remaining allegations in Paragraph 6.

10 7. Plaintiffs’ characterization of their claims does not require a response. To the extent a
11 response is required, Polaris denies the allegations in Paragraph 7.

12 8. Plaintiffs’ characterization of their claims does not require a response. To the extent a
13 response is required, Polaris denies the allegations in Paragraph 8.

14 9. Plaintiffs’ characterization of their claims does not require a response. To the extent a
15 response is required, Polaris denies the allegations in Paragraph 9.

16 **RESPONSE TO UTVS SOLD BY POLARIS**

17 10. Polaris admits that the Recreational Off-Highway Vehicle Association (“ROHVA”)
18 defines a “Recreational Off-Highway Vehicle” (ROV) as a motorized off-highway vehicle designed
19 to travel on four or more tires, intended by the manufacturer for recreational use by one or more
20 persons. Polaris admits that ROVs are sometimes referred to as Utility Terrain Vehicles (“UTVs”) or
21 side-by-side vehicles (“SxSs”). Polaris further admits that all-terrain vehicles (“ATVs”) are defined
22 by 15 U.S.C. § 2089(e)(1)(A) as “any motorized, off-highway vehicle designed to travel on 3 or 4
23 wheels, having a seat designed to be straddled by the operator and handlebars for steering control.”
24 Polaris denies the remaining allegations in Paragraph 10.

25 11. Polaris admits that UTVs, unlike ATVs, generally have seats situated side by side or a
26 bench seat, operator and passenger seat belts, and a steering wheel. Polaris further admits that certain
27 Polaris RZR vehicles alleged in plaintiffs’ purported Class Vehicles have top speeds in excess of 60
28 miles per hour. Polaris admits that certain RZR vehicles have engines with up to 181 horsepower, but

1 denies that such vehicles fall within the definition of plaintiffs' purported Class Vehicles. Polaris
2 denies the remaining allegations in Paragraph 11.

3 12. Polaris admits that the images contained in the First Amended Complaint depict Polaris
4 RZR and Ranger vehicles. Polaris admits that Rangers and RZRs do not look like slow 1970s farm
5 tractors. Polaris denies the remaining allegations in Paragraph 12.

6 13. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
7 allegations relating to UTV sales by manufacturers other than Polaris in Paragraph 13, and therefore
8 denies them. Polaris admits that its Form 10-Q filing for the 2nd quarter of 2019 ending on June 30,
9 2019 reported \$1,049,321,000 in sales for off-road vehicles and snowmobiles combined. Polaris
10 admits that in 2019 it was the North American market share leader in off-road vehicles. Polaris denies
11 the remaining allegations in Paragraph 13.

12 14. Polaris admits that it sells certain UTVs at prices exceeding \$20,000. Polaris denies the
13 remaining allegations in Paragraph 14.

14 **RESPONSE TO JURISDICTION AND VENUE**

15 15. Polaris states that whether jurisdiction is proper is a legal conclusion, and therefore no
16 response is required from Polaris. To the extent a response is required, Polaris admits that plaintiffs
17 Hellman and Berlanga purport to assert subject matter jurisdiction in accordance with the Class Action
18 Fairness Act, 28 U.S.C. § 1332(d), and that their claims as pleaded currently establish subject matter
19 jurisdiction of the First Amended Complaint. Polaris denies that any class treatment of the plaintiffs'
20 claims is appropriate. Polaris further responds that the Court dismissed the claims brought by plaintiffs
21 Artoff, Mitchell, and Lollar in its February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36).
22 Thus, Polaris does not answer the allegations with respect to those plaintiffs. Polaris lacks knowledge
23 or information sufficient to form a belief as to the truth of the remaining allegations in Paragraph 15,
24 and therefore denies them.

25 16. Polaris states that whether venue is proper is a legal conclusion, and therefore no
26 response is required from Polaris. To the extent a response is required, Polaris does not challenge
27 venue. Polaris denies the remaining allegations in Paragraph 16.

1 26. Polaris admits that it designs in part, tests in part, manufactures in part, supplies in part,
2 markets in part, and sells in part, UTVs. Polaris also admits it sells in part vehicles through distributors
3 and retailers throughout the United States, including in the State of California, and in Tehama County.
4 Polaris denies the remaining allegations in Paragraph 26.

5 27. Only the first sentence of allegations in Paragraph 27 is directed at Polaris. Plaintiffs'
6 allegations in the first sentence of Paragraph 27 contain a characterization of Plaintiffs' claims and
7 therefore no response is required by Polaris. To the extent a response is required, Polaris denies the
8 allegations in the first sentence of Paragraph 27. As to the remaining allegations in Paragraph 27,
9 Polaris states that the allegations are not directed to Polaris and do not require a response. To the extent
10 a response is required, Polaris lacks knowledge or information sufficient to form a belief as to the truth
11 of the allegations in Paragraph 27, and therefore denies them.

12 28. Polaris states that the allegations in Paragraph 28 contain legal conclusions, and
13 therefore no response is required by Polaris. To the extent a response is required, Polaris denies the
14 allegations in Paragraph 28.

15 29. Polaris states that the allegations in Paragraph 29 contain legal conclusions, and
16 therefore no response is required by Polaris. To the extent a response is required, Polaris denies the
17 allegations in Paragraph 29.

18 **RESPONSE TO FACTUAL ALLEGATIONS**

19 30. Polaris admits the allegations in Paragraph 30.

20 31. Polaris admits that on December 12, 2008, the CPSC held a meeting regarding ANSI
21 Standard Development by ROHVA, which included discussion of lateral stability standards. Polaris
22 admits that Ken d'Entremont and Mary McConnell attended on behalf of Polaris. Polaris lacks
23 sufficient knowledge or information to form a belief as the remaining allegations in Paragraph 31, and
24 therefore denies them.

25 32. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 32, and therefore denies them.

27 33. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
28 allegations in Paragraph 33, and therefore denies them.

1 34. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 34, and therefore denies them.

3 35. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 35, and therefore denies them.

5 36. Polaris states that 29 C.F.R. §§ 1928.51–1928.53 speaks for itself, and denies the
6 allegations in Paragraph 36 to the extent they depart from the information in that regulation.

7 37. Polaris states that 29 C.F.R. § 1928.51(a)(4) speaks for itself, and denies the allegations
8 in Paragraph 37 to the extent they depart from the information in that regulation.

9 38. Polaris states that 29 C.F.R. §§ 1928.51–1928.53 speaks for itself, and denies the
10 allegations in Paragraph 38 to the extent they depart from the information in those regulations. Polaris
11 specifically denies the allegations in Paragraph 38 to the extent plaintiffs imply their allegations apply
12 to UTVs like the Class Vehicles.

13 39. Polaris admits the ROHVA ANSI standard includes, in part, the ROPS test of 29 C.F.R.
14 § 1928.51, *et seq.* Polaris admits it, along with other UTV manufacturers, is a member and sponsor of
15 ROHVA. Polaris denies the remaining allegations in Paragraph 39.

16 40. Polaris admits that the alleged Class Vehicles have a range of different horsepowers
17 that include engines with 168 horsepower and 68 horsepower, respectively. Polaris denies that class
18 treatment is appropriate on any basis.

19 41. Polaris admits that an accredited third-party testing laboratory organization tests the
20 ROPS of Polaris vehicles using GVW. Polaris further admits that an accredited third-party
21 organization tested the ROPS of the 2019 RZR XP 4 Turbo using the GVW of 2,750 pounds, and that
22 the 2019 RZR XP 4 Turbo has 168 horsepower. Polaris denies the remaining allegations in Paragraph
23 41, and specifically denies plaintiffs' allegations that the ROPS on Polaris vehicles do not meet the
24 OSHA requirements of 29 C.F.R. § 1928.53 using the GVW and that Polaris misled any consumers.

25 42. Polaris admits that its side-by-side vehicles generally weigh less and have greater
26 horsepower than farm tractors. Polaris denies the remaining allegations in Paragraph 42.

27 43. Polaris denies the allegations in Paragraph 43.
28

1 44. Polaris admits that it affixes ROPS labels to certain Polaris vehicles, and that those
2 labels speak for themselves. Polaris otherwise denies the allegations in Paragraph 44.

3 45. Polaris denies the allegations in Paragraph 45.

4 46. Polaris admits that an accredited third-party testing laboratory organization performs
5 ROPS OSHA certification testing for its vehicles. Polaris further admits that it has various digital
6 computer models used in the design and analysis of its vehicles. Polaris denies the remaining
7 allegations in Paragraph 46.

8 47. Polaris states that 29 C.F.R. § 1928.53(d)(2)(iii)(F) speaks for itself, and denies the
9 allegations in Paragraph 47 to the extent they depart from the information in that regulation.

10 48. Polaris admits that it uses test fixtures when conducting tests involving side loads under
11 OSHA standards. Polaris denies the remaining allegations in Paragraph 48.

12 49. Polaris admits that it uses test fixtures when conducting tests involving side loads under
13 OSHA standards. Polaris denies the allegations in Paragraph 49.

14 50. Polaris states that the allegations in Paragraph 50 contain legal conclusions, and
15 therefore no response is required by Polaris. To the extent a response is required, Polaris denies the
16 allegations in Paragraph 50.

17 51. Polaris admits that plaintiff Hellman purchased a 2018 RZR Turbo S on May 26, 2018.
18 Polaris lacks sufficient knowledge or information to form a belief as the remaining allegations in
19 Paragraph 51, and therefore denies them.

20 52. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations in Paragraph 52, and therefore denies them.

22 53. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
23 allegations in Paragraph 53, and therefore denies them.

24 54. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in Paragraph 54, and therefore denies them.

26 55. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in Paragraph 55, and therefore denies them.

28

1 56. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in the first sentence of Paragraph 56, and therefore denies them.

3 57. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 57, and therefore denies them.

5 58. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 58, and therefore denies them.

7 59. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 59, and therefore denies them.

9 60. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 60, and therefore denies them.

11 61. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in the first sentence of Paragraph 61, and therefore denies them.

13 62. Polaris responds that the Court dismissed the claim brought by plaintiff Artoff in its
14 February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
15 these allegations.

16 63. Polaris responds that the Court dismissed the claim brought by plaintiff Artoff in its
17 February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
18 these allegations.

19 64. Polaris responds that the Court dismissed the claim brought by plaintiff Artoff in its
20 February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
21 these allegations.

22 65. Polaris responds that the Court dismissed the claim brought by plaintiff Artoff in its
23 February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
24 these allegations.

25 66. Polaris responds that the Court dismissed the claim brought by plaintiff Artoff in its
26 February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
27 these allegations.

28

1 67. Polaris responds that the Court dismissed the claim brought by plaintiff Mitchell in its
2 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
3 these allegations.

4 68. Polaris responds that the Court dismissed the claim brought by plaintiff Mitchell in its
5 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
6 these allegations.

7 69. Polaris responds that the Court dismissed the claim brought by plaintiff Mitchell in its
8 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
9 these allegations.

10 70. Polaris responds that the Court dismissed the claim brought by plaintiff Mitchell in its
11 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
12 these allegations.

13 71. Polaris responds that the Court dismissed the claim brought by plaintiff Mitchell in its
14 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
15 these allegations.

16 72. Polaris responds that the Court dismissed the claim brought by plaintiff Mitchell in its
17 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
18 these allegations.

19 73. Polaris responds that the Court dismissed the claim brought by plaintiff Lollar in its
20 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
21 these allegations.

22 74. Polaris responds that the Court dismissed the claim brought by plaintiff Lollar in its
23 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
24 these allegations.

25 75. Polaris responds that the Court dismissed the claim brought by plaintiff Lollar in its
26 February 15, 2022 Order on Polaris’s Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer
27 these allegations.

28

1 87. Plaintiffs' characterization of their claims does not require a response. To the extent a
2 response is required, Polaris denies that class treatment is appropriate on any basis, but otherwise lacks
3 knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87,
4 and therefore denies them.

5 88. The allegations in Paragraph 88 of the Complaint are not directed to Polaris and do not
6 require a response. To the extent a response is required, Polaris denies that class treatment is
7 appropriate on any basis, but otherwise lacks knowledge or information sufficient to form a belief as
8 to the truth of the allegations in Paragraph 88, and therefore denies them.

9 89. Polaris denies the allegations in Paragraph 89.

10 90. Polaris denies the allegations in Paragraph 90.

11 91. Polaris denies the allegations in Paragraph 91.

12 92. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
13 allegations in Paragraph 92, and therefore denies them.

14 93. Polaris denies the allegations in Paragraph 93.

15 94. Polaris denies the allegations in Paragraph 94.

16 95. Polaris denies the allegations in Paragraph 95.

17 96. Polaris denies the allegations in Paragraph 96.

18 97. Plaintiffs' characterization of their claims does not require a response. To the extent a
19 response is required, Polaris admits that plaintiffs seek injunctive relief against Polaris, but denies any
20 violation of law and denies plaintiffs are entitled to any injunctive relief.

21 98. Plaintiffs' characterization of their claims does not require a response. To the extent a
22 response is required, Polaris denies the allegations in Paragraph 98.

23 99. Plaintiffs' characterization of their claims does not require a response. To the extent a
24 response is required, Polaris admits that plaintiffs seek injunctive relief against Polaris, but denies any
25 violation of law and denies plaintiffs are entitled to any injunctive relief.

26 100. Polaris responds that the Court dismissed the claims brought by Oregon plaintiff Artoff,
27 Nevada plaintiff Mitchell, and Texas plaintiff Lollar in its February 15, 2022 Order on Polaris's
28 Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer the allegations with respect to those

1 plaintiffs or Oregon, Nevada, and Texas consumers. Polaris further responds that plaintiffs'
2 characterization of their claims does not require a response. To the extent a response is required,
3 Polaris admits that plaintiffs seek injunctive relief against Polaris, but denies any violation of law and
4 denies plaintiffs are entitled to any injunctive relief.

5 101. Polaris denies the allegations in Paragraph 101.

6 102. Polaris denies the allegations in Paragraph 102.

7 103. The allegations in Paragraph 103 are not directed to Polaris and do not require a
8 response. To the extent a response is required, Polaris lacks knowledge or information sufficient to
9 form a belief as to the truth of the allegations in Paragraph 103, and therefore denies them.

10 104. Plaintiffs' characterization of their claims does not require a response. To the extent a
11 response is required, Polaris denies that class treatment is appropriate on any basis and denies the
12 allegations in Paragraph 104.

13 105. The allegations in Paragraph 105 assert legal conclusions that do not require a response
14 from Polaris. To the extent a response is required, Polaris denies the allegations in Paragraph 105.

15 106. The allegations in Paragraph 106 assert legal conclusions that do not require a response
16 from Polaris. To the extent a response is required, Polaris denies the allegations in Paragraph 106.

17 107. Polaris responds that the Court dismissed plaintiffs' claims for violations of the Oregon
18 Unlawful Trade Practices Act, Nevada Deceptive Trade Practices Act, and Texas Deceptive Trade
19 Practices Act in its February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris
20 does not answer the allegations with respect to those claims. Polaris denies the remaining allegations
21 in Paragraph 107.

22 108. Polaris responds that the Court dismissed plaintiffs' claims for violations of the Oregon
23 Unlawful Trade Practices Act, Nevada Deceptive Trade Practices Act, and Texas Deceptive Trade
24 Practices Act, as well as their claims for equitable restitution under the CLRA, FAL, and UCL, in its
25 February 15, 2022 Order on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer the
26 allegations with respect to those claims. The remaining allegations in Paragraph 108 assert legal
27 conclusions that do not require a response from Polaris. To the extent a response is required, Polaris
28 denies the allegations in Paragraph 108, including those in subparts (i)–(vii), (ix)–(x) and (xiv).

1 information sufficient to form a belief as to the truth of the allegations in Paragraph 118, and therefore
2 denies them.

3 119. Polaris states that the allegations in Paragraph 119 assert legal conclusions and do not
4 require a response from Polaris. To the extent a response is required, Polaris states the CLRA speaks
5 for itself.

6 120. Polaris states that the allegations in Paragraph 120 assert legal conclusions and do not
7 require a response from Polaris. To the extent a response is required, Polaris denies the allegations in
8 Paragraph 120.

9 121. Polaris incorporates by reference its admissions and denials in Paragraph 3 above. To
10 the extent there are any remaining allegations in Paragraph 121, Polaris denies them.

11 122. Polaris incorporates by reference its admissions and denials in Paragraph 4 above. To
12 the extent there are any remaining allegations in Paragraph 122, Polaris denies them.

13 123. Polaris admits that plaintiff Hellman purchased a 2018 RZR Turbo S on May 26, 2018.
14 Polaris lacks sufficient knowledge or information to form a belief as the remaining allegations in
15 Paragraph 123, and therefore denies them.

16 124. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
17 allegations in Paragraph 124, and therefore denies them.

18 125. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
19 allegations in Paragraph 125, and therefore denies them.

20 126. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
21 allegations in Paragraph 126, and therefore denies them.

22 127. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
23 allegations in Paragraph 127, and therefore denies them.

24 128. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in Paragraph 128, and therefore denies them.

26 129. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in Paragraph 129, and therefore denies them.

28

1 130. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 130, and therefore denies them.

3 131. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 131, and therefore denies them.

5 132. Polaris denies the allegations in Paragraph 132.

6 133. Polaris denies the allegations in Paragraph 133.

7 134. Polaris admits that on June 1, 2021 it received a letter from plaintiffs' counsel dated
8 May 27, 2021, which letter speaks for itself. Polaris denies the allegations in Paragraph 134 to the
9 extent they depart from the information in that letter. The remaining allegations of Paragraph 134
10 contain plaintiffs' characterization of their claims, and therefore no response is required from Polaris.
11 To the extent a response is required, Polaris denies the remaining allegations in Paragraph 134.

12 135. Polaris adopts and incorporates by reference each and every denial and/or averment in
13 the preceding paragraphs.

14 136. Plaintiffs' characterization of their claims does not require a response. To the extent a
15 response is required, Polaris admits that plaintiffs assert a purported class of California consumers,
16 but denies that class treatment is appropriate on any basis.

17 137. Polaris states that the allegations in Paragraph 137 assert legal conclusions and do not
18 require a response from Polaris. To the extent a response is required, Polaris states the California
19 Unfair Competition Law ("UCL") speaks for itself.

20 138. Polaris admits that plaintiff Hellman purchased a 2018 RZR Turbo S on May 26, 2018.
21 Polaris lacks sufficient knowledge or information to form a belief as the remaining allegations in
22 Paragraph 138, and therefore denies them.

23 139. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
24 allegations in Paragraph 139, and therefore denies them.

25 140. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
26 allegations in Paragraph 140, and therefore denies them.

27 141. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
28 allegations in Paragraph 141, and therefore denies them.

1 142. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 142, and therefore denies them.

3 143. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 143, and therefore denies them.

5 144. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 144, and therefore denies them.

7 145. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 145, and therefore denies them.

9 146. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 146, and therefore denies them.

11 147. Polaris denies the allegations in Paragraph 147.

12 148. Polaris denies the allegations in Paragraph 148.

13 149. The allegations in Paragraph 149 assert a legal conclusion and do not require a response
14 from Polaris. To the extent a response is required, Polaris states that the UCL speaks for itself.

15 150. The allegations in Paragraph 150 assert a legal conclusion and do not require a response
16 from Polaris. To the extent a response is required, Polaris states that the UCL speaks for itself.

17 151. Polaris incorporates by reference its admissions and denials in Paragraph 3 above. To
18 the extent there are any remaining allegations in Paragraph 151, Polaris denies them.

19 152. Polaris incorporates by reference its admissions and denials in Paragraph 4 above. To
20 the extent there are any remaining allegations in Paragraph 152, Polaris denies them.

21 153. Polaris denies the allegations in Paragraph 153.

22 154. Polaris denies the allegations in Paragraph 154.

23 155. Polaris denies the allegations in Paragraph 155.

24 156. Polaris denies the allegations in Paragraph 156.

25 157. Polaris denies the allegations in Paragraph 157.

26 158. Plaintiffs' allegations in Paragraph 158 contain legal conclusions and characterizations
27 of their claims, which do not require a response from Polaris. To the extent a response is required,
28 Polaris denies the allegations in Paragraph 158.

1 159. Plaintiffs' characterization of their claims does not require a response from Polaris. To
2 the extent a response is required, Polaris admits that plaintiffs seek injunctive relief against Polaris,
3 but denies any violation of law and denies plaintiffs are entitled to any injunctive relief.

4 160. Plaintiffs' characterization of their claims does not require a response from Polaris. To
5 the extent a response is required, Polaris admits that plaintiffs purport to seek injunctive relief against
6 Polaris, but denies any violation of law and denies that plaintiffs are entitled to any injunctive relief.

7 161. Plaintiffs' characterization of their claims does not require a response from Polaris. To
8 the extent a response is required, Polaris responds that the Court dismissed plaintiffs' claims for
9 equitable restitution under the UCL in its February 15, 2022 Order on Polaris's Motion to Dismiss
10 (Dkt. 36). Polaris admits that plaintiffs purport to seek declaratory relief and disgorgement of profits,
11 but denies any violation of law warranting and denies that plaintiffs are entitled to any form of relief.

12 162. Polaris adopts and incorporates by reference each and every denial and/or averment in
13 the preceding paragraphs.

14 163. Plaintiffs' characterization of their claims does not require a response. To the extent a
15 response is required, Polaris admits that plaintiffs assert a purported class of California consumers,
16 but denies that class treatment is appropriate on any basis.

17 164. The allegations in Paragraph 164 assert a legal conclusion and do not require a response
18 from Polaris. To the extent a response is required, Polaris states that the California False Advertising
19 Law ("FAL") speaks for itself.

20 165. Polaris denies the allegations in Paragraph 165.

21 166. Polaris admits that plaintiff Hellman purchased a 2018 RZR Turbo S on May 26, 2018.
22 Polaris lacks sufficient knowledge or information to form a belief as the remaining allegations in
23 Paragraph 31, and therefore denies them.

24 167. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
25 allegations in Paragraph 167, and therefore denies them.

26 168. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
27 allegations in Paragraph 168, and therefore denies them.

28

1 169. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
2 allegations in Paragraph 169, and therefore denies them.

3 170. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
4 allegations in Paragraph 170, and therefore denies them.

5 171. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
6 allegations in Paragraph 171, and therefore denies them.

7 172. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
8 allegations in Paragraph 172, and therefore denies them.

9 173. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
10 allegations in Paragraph 173, and therefore denies them.

11 174. Polaris lacks knowledge or information sufficient to form a belief as to the truth of the
12 allegations in Paragraph 174, and therefore denies them.

13 175. Polaris incorporates by reference its admissions and denials in Paragraph 3 above. To
14 the extent there are any remaining allegations in Paragraph 175, Polaris denies them.

15 176. Polaris incorporates by reference its admissions and denials in Paragraph 4 above. To
16 the extent there are any remaining allegations in Paragraph 176, Polaris denies them.

17 177. Polaris denies the allegations in Paragraph 177.

18 178. Polaris denies the allegations in Paragraph 178.

19 179. Polaris denies the allegations in Paragraph 179.

20 180. Polaris denies the allegations in Paragraph 180. Polaris further responds that he Court
21 dismissed plaintiffs' claims for equitable restitution under the FAL in its February 15, 2022 Order on
22 Polaris's Motion to Dismiss (Dkt. 36).

23 181. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
24 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

25 182. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
26 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

27 183. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
28 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

1 184. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
2 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

3 185. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
4 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

5 186. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
6 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

7 187. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
8 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

9 188. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
10 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

11 189. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
12 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

13 190. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
14 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

15 191. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
16 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

17 192. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
18 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

19 193. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
20 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

21 194. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
22 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

23 195. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
24 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

25 196. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
26 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

27 197. The Court dismissed plaintiffs' Fourth Cause of Action in its February 15, 2022 Order
28 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

1 198. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
2 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

3 199. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
4 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

5 200. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
6 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

7 201. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
8 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

9 202. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
10 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

11 203. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
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13 204. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
14 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

15 205. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
16 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

17 206. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
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19 207. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
20 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

21 208. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
22 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

23 209. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
24 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

25 210. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
26 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

27 211. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
28 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

1 212. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
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3 213. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
4 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

5 214. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
6 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

7 215. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
8 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

9 216. The Court dismissed plaintiffs' Fifth Cause of Action in its February 15, 2022 Order
10 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

11 217. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
12 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

13 218. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
14 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

15 219. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
16 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

17 220. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
18 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

19 221. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
20 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

21 222. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
22 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

23 223. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
24 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

25 224. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
26 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

27 225. The Court dismissed plaintiffs' Sixth Cause of Action in its February 15, 2022 Order
28 on Polaris's Motion to Dismiss (Dkt. 36). Thus, Polaris does not answer these allegations.

1 otherwise rest with plaintiffs, Polaris alleges the following affirmative defenses to the First Amended
2 Complaint and to the relief sought therein:

3 **First Affirmative Defense**

4 1. Plaintiffs' First Amended Complaint fails in whole or in part to state a claim against
5 Polaris upon which relief may be granted.

6 **Second Affirmative Defense**

7 2. Plaintiffs' putative class's claims are barred in whole or in part by the applicable
8 statute of limitations as plaintiffs' proposed class definition goes back to May 25, 2017, which exceeds
9 the statute of limitations for some of plaintiffs' claims.

10 **Third Affirmative Defense**

11 3. Some or all of the claims in the First Amended Complaint, including claims made on
12 behalf of the proposed class, are barred because the plaintiffs or members of the proposed class lack
13 standing.

14 **Fourth Affirmative Defense**

15 4. On information and belief, the alleged damages were proximately caused in whole or
16 in part by the acts or omissions of the plaintiffs, members of the proposed class, or others for whose
17 conduct Polaris is not responsible.

18 **Fifth Affirmative Defense**

19 5. Any claims for damages or other monetary recovery by the plaintiffs or members of
20 the proposed class must be offset and reduced by the value received from the products purchased.

21 **Sixth Affirmative Defense**

22 6. If in this Court or other courts any persons or entities claiming to be members of the
23 proposed class have settled, or are in the process of settling, similar or the same claims as those alleged
24 in the First Amended Complaint, such settlements may bar recovery in this case in whole or in part.

25 **Seventh Affirmative Defense**

26 7. If any persons or entities claiming to be members of the proposed class have resolved
27 similar or the same claims as those alleged in the First Amended Complaint, the doctrines of accord
28 and satisfaction may bar recovery in this case in whole or in part.

Eighth Affirmative Defense

8. The claims of the plaintiffs and members of the proposed class are barred, in whole or in part, under the applicable statutes of repose, or the doctrines of waiver, estoppel, or laches.

Ninth Affirmative Defense

9. If any persons or entities claiming to be members of the proposed class have released claims, the releases may bar recovery in this case in whole or in part, by such releases.

Tenth Affirmative Defense

10. The claims of the plaintiffs and members of the proposed class may be barred, in whole or in part, for any of them who failed to provide adequate notice to Polaris as required by applicable law.

Eleventh Affirmative Defense

11. To the extent the First Amended Complaint seeks injunctive or other equitable relief, neither plaintiffs nor any putative class member are entitled to such relief because, among other reasons, the claims for equitable remedies in the First Amended Complaint are barred because the plaintiffs and the members of the proposed class have an adequate remedy at law. Furthermore, the hardship that would be imposed on Polaris by any such relief would be greatly disproportionate to any hardship that plaintiffs or putative class members might suffer in its absence.

Twelfth Affirmative Defense

12. To the extent plaintiffs and members of the putative class claim exemplary or punitive damages, such awards are prohibited under the Fifth, Eighth, and Fourteenth Amendments to the United States Constitution. Plaintiffs and the putative class members also fail to allege facts to entitle them to such an award.

Thirteenth Affirmative Defense

13. Plaintiffs and putative class members have failed to mitigate their damages, if any.

Fourteenth Affirmative Defense

14. Plaintiffs' proposed class claims are barred, in whole or in part, by the doctrine of third-party standing, as many putative class members suffered no injury at all and thus would not have standing to bring suit.

1 **Fifteenth Affirmative Defense**

2 15. The claims in the First Amended Complaint are barred, in whole or in part, because
3 plaintiffs and/or members of the proposed class were not actually deceived by and/or did not rely upon
4 statements on the part of Polaris in deciding whether to purchase the products in question. Moreover,
5 plaintiffs and/or putative class members may have relied upon industry and/or media publications,
6 reviews, or advertisements, none of which were created or published by Polaris.

7 **Sixteenth Affirmative Defense**

8 16. This action is not appropriate for class treatment because the claims in the First
9 Amended Complaint necessarily revolve around the individual knowledge and conduct of plaintiffs
10 and each putative class member.

11 **Seventeenth Affirmative Defense**

12 17. Plaintiffs and/or putative class members whose vehicle have been sold or given to
13 another are barred, in whole or in part, from recovery.

14 **Eighteenth Affirmative Defense**

15 18. The claims of plaintiffs and putative class members are barred, in whole or in part,
16 because they did not suffer any injury in fact or damages as a result of Polaris's actions.

17 **Nineteenth Affirmative Defense**

18 19. This action is not appropriate for class treatment because the proposed class is
19 overbroad.

20 **Twentieth Affirmative Defense**

21 20. This action is not appropriate for class treatment because plaintiffs cannot satisfy the
22 commonality requirement.

23 **Twenty-first Affirmative Defense**

24 21. This action is not appropriate for class treatment because plaintiffs cannot satisfy the
25 numerosity requirement.

26 **Twenty-second Affirmative Defense**

27 22. This action is not appropriate for class treatment because plaintiffs cannot satisfy the
28 ascertainability requirement.

1 **Twenty-third Affirmative Defense**

2 23. This action is not appropriate for class treatment because plaintiffs cannot show that
3 damages are capable of measurement on a classwide basis.

4 **Twenty-fourth Affirmative Defense**

5 24. This action is not appropriate for class treatment because plaintiffs will not fairly or
6 adequately protect the interests of the members of the class.

7 **Twenty-fifth Affirmative Defense**

8 25. This action is not appropriate for class treatment because a class action is not a superior
9 means of adjudicating the issues in plaintiffs' Complaint.

10 **Twenty-sixth Affirmative Defense**

11 26. The claims of plaintiffs and putative class members fail because plaintiffs cannot
12 demonstrate that any representation by Polaris was false or misleading.

13 **Twenty-seventh Affirmative Defense**

14 27. The purported Class Vehicles comply with industry standards and any applicable local,
15 state, and federal codes, standards, or regulations.

16
17 Polaris avers it may have additional affirmative defenses available that are not now fully
18 known. Polaris, accordingly, reserves the right to assert additional affirmative defenses after they have
19 been determined.

20 WHEREFORE, Polaris respectfully requests:

- 21 (1) That plaintiffs and the members of the proposed class take nothing;
22 (2) Entry of judgment in Polaris' favor;
23 (3) That the proposed certification of any class be denied; and
24 (4) The costs of suit and such further relief as the Court deems proper.

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DATED: March 7, 2022

By: */s/ Andrew B. Bloomer*

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Attorneys for Defendants
Polaris Industries Inc., Polaris Sales Inc., and
Polaris Inc. (f/k/a Polaris Industries Inc.)

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CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2022, I caused the foregoing document to be served on the following counsel for plaintiffs via the Court’s electronic filing system:

/s/Andrew B. Bloomer

Andrew B. Bloomer