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

14 **UNITED STATES DISTRICT COURT**
15 **CENTRAL DISTRICT OF CALIFORNIA**

16 Guzman and Albright, individually on)
behalf of themselves and all others)
17 similarly situated,)
18 Plaintiffs,)
19 v.)
20 Polaris Industries Inc., et al.,)
21 Defendants.)

CASE NO. 8:19-cv-01543
**DEFENDANTS' ANSWER TO
PLAINTIFFS' SECOND
AMENDED COMPLAINT**
Complaint Filed Date: August 8,
2019
Amended Complaint Filed Date:
March 3, 2020
Judge: Josephine L. Staton

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

8 **RESPONSE TO NATURE OF THE ACTION**

9 1. Plaintiffs’ characterization of their claims does not require a response. To
10 the extent a response is required, Polaris admits that plaintiffs purportedly bring this
11 action against Polaris, but otherwise denies the allegations in Paragraph 1.

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

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



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

26 4. Polaris admits that it affixes ROPS labels to certain vehicles. Polaris is
27 without sufficient knowledge or information to admit or deny whether the ROPS label
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1 is “visible at the point of sale” for any individual consumer, and therefore denies
2 plaintiffs’ allegations. Polaris denies the 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
5 state statutes, standards, and regulations and self-adopted regulations is material
6 information for consumers” represents a legal conclusion, and therefore no response is
7 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
9 denies it. Polaris denies the remaining allegations in Paragraph 6.

10 7. Polaris denies the allegations in Paragraph 7.

11 8. Polaris denies the allegations in Paragraph 8.

12 9. Polaris denies the allegations in Paragraph 9.

13 **RESPONSE TO UTVS SOLD BY POLARIS**

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

23 11. Polaris admits that UTVs, unlike ATVs, generally have seats situated side
24 by side or a bench seat, operator and passenger seat belts, and a steering wheel. Polaris
25 further admits that certain Polaris RZR vehicles alleged in plaintiffs’ purported Class
26 Vehicles have top speeds in excess of 60 miles per hour. Polaris admits that certain
27 RZR vehicles have engines with up to 181 horsepower, but denies that such vehicles
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1 fall within the definition of plaintiffs' purported Class Vehicles. Polaris denies the
2 remaining allegations in Paragraph 11.

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

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

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

16 **RESPONSE TO JURISDICTION AND VENUE**

17 15. Polaris states that whether jurisdiction is proper is a legal conclusion, and
18 therefore no response is required from Polaris. To the extent a response is required,
19 Polaris admits that plaintiffs purport to assert subject matter jurisdiction in accordance
20 with the Class Action Fairness Act, 28 U.S.C. § 1332(d), and that their claims as pleaded
21 currently establish subject matter jurisdiction of the Second Amended Complaint.
22 Polaris denies that any class treatment of the plaintiffs' claims is appropriate. Polaris
23 lacks knowledge or information sufficient to form a belief as to the truth of the
24 remaining allegations in Paragraph 15, and therefore denies them.

25 16. Polaris states that whether venue is proper is a legal conclusion, and
26 therefore no response is required from Polaris. To the extent a response is required,
27 Polaris does not challenge venue. Polaris further admits that ROHVA, a not-for-profit
28 trade association based in Irvine, California, adopted 29 C.F.R. § 1928.53 as part of a

1 voluntary ROPS testing standard. Polaris admits it is a member and sponsor of
2 ROHVA. Polaris denies the remaining allegations in Paragraph 16.

3 17. Polaris states that whether personal jurisdiction is established is a legal
4 conclusion, and therefore no response is required from Polaris. To the extent a response
5 is required, Polaris admits that this Court has personal jurisdiction over it.

6 **RESPONSE TO PARTIES**

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

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

11 20. Polaris admits that Polaris Industries Inc. is a Delaware corporation with
12 its principal place of business at 2100 Highway 55, Medina, Minnesota 55340-9770.
13 Polaris further admits that its agent for service of process is The Corporation Trust
14 Company, 1209 Orange Street, Wilmington, Delaware 19801.

15 21. Polaris admits that Polaris Sales Inc. is a Minnesota corporation with its
16 principal place of business at 2100 Highway 55, Medina, Minnesota 55340-9770.
17 Polaris further admits that its agent for service of process in California is CT
18 Corporation System located at 818 West 7th Street, Suite 930, Los Angeles, California
19 90017.

20 22. Polaris admits that Polaris Inc. (f/k/a Polaris Industries Inc.) is a Minnesota
21 corporation with its principal place of business at 2100 Highway 55, Medina,
22 Minnesota, 55340-9770. Polaris further admits that it is the parent company of Polaris
23 Industries Inc. and Polaris Sales Inc., and that its agent for service of process is CT
24 Corporation System, Inc., 101 Date Street N., St. Paul, Minnesota 55117-5603.

25 23. Polaris admits that it designs in part, tests in part, manufactures in part,
26 supplies in part, markets in part, and sells in part, UTVs. Polaris also admits it sells in
27 part vehicles through distributors and retailers throughout the United States, including
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1 in the State of California, and in Orange County. Polaris denies the remaining
2 allegations in Paragraph 23.

3 24. Only the first sentence of allegations in Paragraph 24 is directed at Polaris.
4 Plaintiffs' allegations in the first sentence of Paragraph 24 contain a characterization of
5 Plaintiffs' claims and therefore no response is required by Polaris. To the extent a
6 response is required, Polaris denies the allegations in the first sentence of Paragraph 24.
7 As to the remaining allegations in Paragraph 24, Polaris states that the allegations are
8 not directed to Polaris and do not require a response. To the extent a response is
9 required, Polaris lacks knowledge or information sufficient to form a belief as to the
10 truth of the allegations in Paragraph 24, and therefore denies them.

11 25. Polaris states that the allegations in Paragraph 25 contain legal
12 conclusions, and therefore no response is required by Polaris. To the extent a response
13 is required, Polaris denies the allegations in Paragraph 25.

14 26. Polaris states that the allegations in Paragraph 26 contain legal
15 conclusions, and therefore no response is required by Polaris. To the extent a response
16 is required, Polaris denies the allegations in Paragraph 26.

17 **RESPONSE TO FACTUAL ALLEGATIONS**

18 27. Polaris admits the allegations in Paragraph 27.

19 28. Polaris admits that on December 12, 2008, the CPSC held a meeting
20 regarding ANSI Standard Development by ROHVA, which included discussion of
21 lateral stability standards. Polaris admits that Ken d'Entremont and Mary McConnell
22 attended on behalf of Polaris. Polaris lacks sufficient knowledge or information to form
23 a belief as the remaining allegations in Paragraph 28, and therefore denies them.

24 29. Polaris lacks knowledge or information sufficient to form a belief as to the
25 truth of the allegations in Paragraph 29, and therefore denies them.

26 30. Polaris lacks knowledge or information sufficient to form a belief as to the
27 truth of the allegations in Paragraph 30, and therefore denies them.

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1 31. Polaris lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations in Paragraph 31, and therefore denies them.

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

5 33. Polaris states that 29 C.F.R. §§ 1928.51–1928.53 speaks for itself, and
6 denies the allegations in Paragraph 33 to the extent they depart from the information in
7 that regulation.

8 34. Polaris states that 29 C.F.R. § 1928.51(a)(4) speaks for itself, and denies
9 the allegations in Paragraph 34 to the extent they depart from the information in that
10 regulation.

11 35. Polaris states that 29 C.F.R. §§ 1928.51–1928.53 speaks for itself, and
12 denies the allegations in Paragraph 35 to the extent they depart from the information in
13 that regulation. Polaris specifically denies the allegations in Paragraph 35 to the extent
14 plaintiffs imply their allegations apply to UTVs like the Class Vehicles.

15 36. Polaris admits the ROHVA ANSI standard includes, in part, the ROPS test
16 of 29 C.F.R. § 1928.51, *et seq.* Polaris admits it, along with other UTV manufacturers,
17 is a member and sponsor of ROHVA. Polaris denies the remaining allegations in
18 Paragraph 36.

19 37. Polaris admits that the alleged Class Vehicles have a range of different
20 horsepowers that include engines with 168 horsepower and 68 horsepower,
21 respectively. Polaris denies that class treatment is appropriate on any basis.

22 38. Polaris admits that an accredited third-party testing laboratory organization
23 tests the ROPS of Polaris vehicles using GVW. Polaris further admits that an accredited
24 third-party organization tested the ROPS of the 2019 RZR XP 4 Turbo using the GVW
25 of 2,750 pounds, and that the 2019 RZR XP 4 Turbo has 168 horsepower. Polaris denies
26 the remaining allegations in Paragraph 38, and specifically denies plaintiffs' allegations
27 that the ROPS on Polaris vehicles do not meet the OSHA requirements of 29 C.F.R. §
28 1928.53 using the GVW and that Polaris misled any consumers.

1 39. Polaris admits that its side-by-side vehicles generally weigh less and have
2 greater horsepower than farm tractors. Polaris denies the remaining allegations in
3 Paragraph 39.

4 40. Polaris denies the allegations in Paragraph 40.

5 41. Polaris admits that it affixes ROPS labels to certain Polaris vehicles, and
6 that those labels speak for themselves. Polaris otherwise denies the allegations in
7 Paragraph 41.

8 42. Polaris denies the allegations in Paragraph 42.

9 43. Polaris admits that an accredited third-party testing laboratory organization
10 performs ROPS OSHA certification testing for its vehicles. Polaris further admits that
11 it has various digital computer models used in the design and analysis of its vehicles.
12 Polaris denies the remaining allegations in Paragraph 43.

13 44. Based upon information and belief, Polaris admits the allegations in
14 Paragraph 44.

15 45. Polaris lacks knowledge or information sufficient to form a belief as to the
16 truth of the allegations in Paragraph 45, and therefore denies them.

17 46. Polaris lacks knowledge or information sufficient to form a belief as to the
18 truth of the allegations in Paragraph 46, and therefore denies them.

19 47. Polaris lacks knowledge or information sufficient to form a belief as to the
20 truth of the allegations in Paragraph 47, and therefore denies them.

21 48. Polaris admits that plaintiff Guzman purchased a 2018 Polaris RZR XP on
22 September 17, 2018. Polaris denies the remaining allegations in Paragraph 48.

23 49. Polaris lacks knowledge or information sufficient to form a belief as to the
24 truth of the allegations in Paragraph 49, and therefore denies them.

25 50. Polaris lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations in Paragraph 50, and therefore denies them.

27 51. Polaris lacks knowledge or information sufficient to form a belief as to the
28 truth of the allegations in Paragraph 51, and therefore denies them.

1 52. Polaris admits that plaintiffs' respective vehicles were designed to have
2 ROPS labels affixed to them stating that the ROPS structure on the vehicle meets the
3 OSHA requirements of 29 C.F.R. § 1928.53 using the GVW to test the vehicle. Polaris
4 is without knowledge or information sufficient to form a belief as to the truth of the
5 remaining allegations in Paragraph 52, and therefore denies them.

6 53. Polaris incorporates by reference its admissions and denials in Paragraph
7 4 above. To the extent there are any remaining allegations in Paragraph 53, Polaris
8 denies them.

9 54. Polaris denies the allegations in Paragraph 54.

10 55. Polaris denies the allegations in Paragraph 55.

11 56. Polaris denies the allegations in Paragraph 56.

12 **RESPONSE TO CLASS ALLEGATIONS**

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

16 58. Plaintiffs' characterization of their claims does not require a response. To
17 the extent a response is required, Polaris denies that class treatment is appropriate on
18 any basis, but otherwise lacks knowledge or information sufficient to form a belief as
19 to the truth of the allegations in Paragraph 58, and therefore denies them.

20 59. The allegations in Paragraph 59 of the Complaint are not directed to Polaris
21 and do not require a response. To the extent a response is required, Polaris denies that
22 class treatment is appropriate on any basis, but otherwise lacks knowledge or
23 information sufficient to form a belief as to the truth of the allegations in Paragraph 59,
24 and therefore denies them.

25 60. Polaris denies the allegations in Paragraph 60.

26 61. Polaris denies the allegations in Paragraph 61.

27 62. Polaris denies the allegations in Paragraph 62.

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1 63. Polaris lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations in Paragraph 63, and therefore denies them.

3 64. Polaris denies the allegations in Paragraph 64.

4 65. Polaris denies the allegations in Paragraph 65.

5 66. Polaris denies the allegations in Paragraph 66.

6 67. Polaris denies the allegations in Paragraph 67.

7 68. Plaintiffs' characterization of their claims does not require a response. To
8 the extent a response is required, Polaris admits that plaintiffs seek injunctive relief
9 against Polaris, but denies any violation of law and denies plaintiffs are entitled to any
10 injunctive relief.

11 69. Plaintiffs' characterization of their claims does not require a response. To
12 the extent a response is required, Polaris denies the allegations in Paragraph 69.

13 70. Plaintiffs' characterization of their claims does not require a response. To
14 the extent a response is required, Polaris admits that plaintiffs seek injunctive relief
15 against Polaris, but denies any violation of law and denies plaintiffs are entitled to any
16 injunctive relief.

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

21 72. Polaris denies the allegations in Paragraph 72.

22 73. Polaris denies the allegations in Paragraph 73.

23 74. The allegations in Paragraph 74 are not directed to Polaris and do not
24 require a response. To the extent a response is required, Polaris lacks knowledge or
25 information sufficient to form a belief as to the truth of the allegations in Paragraph 74,
26 and therefore denies them.

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1 75. Plaintiffs' characterization of their claims does not require a response. To
2 the extent a response is required, Polaris denies that class treatment is appropriate on
3 any basis and denies the allegations in Paragraph 75.

4 76. The allegations in Paragraph 76 assert legal conclusions that do not require
5 a response from Polaris. To the extent a response is required, Polaris denies the
6 allegations in Paragraph 76.

7 77. The allegations in Paragraph 77 assert legal conclusions that do not require
8 a response from Polaris. To the extent a response is required, Polaris denies the
9 allegations in Paragraph 77.

10 78. Polaris denies the allegations in Paragraph 78.

11 79. The allegations in Paragraph 79 assert legal conclusions that do not require
12 a response from Polaris. To the extent a response is required, Polaris denies the
13 allegations in Paragraph 79, including those in subparts (i)–(xi).

14 80. The allegations in Paragraph 80 assert legal conclusions that do not require
15 a response from Polaris. To the extent a response is required, Polaris denies the
16 allegations in Paragraph 80.

17 81. The allegations in Paragraph 81 assert legal conclusions that do not require
18 a response from Polaris. To the extent a response is required, Polaris lacks knowledge
19 or information sufficient to form a belief as to the truth of the allegations relating to
20 plaintiffs' retained counsel in Paragraph 81, and therefore denies them. Polaris denies
21 the remaining allegations in Paragraph 81.

22 82. The allegations in Paragraph 82 assert legal conclusions that do not require
23 a response from Polaris. To the extent a response is required, Polaris denies the
24 allegations in Paragraph 82.

25 83. The allegations in Paragraph 83 assert legal conclusions that do not require
26 a response from Polaris. To the extent a response is required, Polaris denies the
27 allegations in Paragraph 83.

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1 84. The allegations in Paragraph 84 assert legal conclusions that do not require
2 a response from Polaris. To the extent a response is required, Polaris denies the
3 allegations in Paragraph 84.

4 **RESPONSE TO CAUSES OF ACTION**

5 85. Polaris adopts and incorporates by reference each and every denial and/or
6 averment in the preceding paragraphs.

7 86. Polaris states that the allegations in Paragraph 86 assert legal conclusions
8 and do not require a response from Polaris. To the extent a response is required, Polaris
9 states the California Consumers Legal Remedies Act (“CLRA”) speaks for itself.
10 Polaris denies the remaining allegations in Paragraph 86.

11 87. Polaris states that the allegations in Paragraph 87 assert legal conclusions
12 and do not require a response from Polaris. To the extent a response is required, Polaris
13 lacks knowledge or information sufficient to form a belief as to the truth of the
14 allegations in Paragraph 87, and therefore denies them.

15 88. Polaris states that the allegations in Paragraph 88 assert legal conclusions
16 and do not require a response from Polaris. To the extent a response is required, Polaris
17 lacks knowledge or information sufficient to form a belief as to the truth of the
18 allegations in Paragraph 88, and therefore denies them.

19 89. Polaris states that the allegations in Paragraph 89 assert legal conclusions
20 and do not require a response from Polaris. To the extent a response is required, Polaris
21 states the CLRA speaks for itself.

22 90. Polaris states that the allegations in Paragraph 90 assert legal conclusions
23 and do not require a response from Polaris. To the extent a response is required, Polaris
24 denies the allegations in Paragraph 90.

25 91. Polaris incorporates by reference its admissions and denials in Paragraph
26 3 above. To the extent there are any remaining allegations in Paragraph 91, Polaris
27 denies them.

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1 92. Polaris incorporates by reference its admissions and denials in Paragraph
2 4 above. To the extent there are any remaining allegations in Paragraph 92, Polaris
3 denies them.

4 93. Polaris admits that plaintiff Guzman purchased a 2018 Polaris RZR XP on
5 September 17, 2018. Polaris denies the remaining allegations in Paragraph 93.

6 94. Polaris lacks knowledge or information sufficient to form a belief as to the
7 truth of the allegations in Paragraph 94, and therefore denies them.

8 95. Polaris lacks knowledge or information sufficient to form a belief as to the
9 truth of the allegations in Paragraph 95, and therefore denies them.

10 96. Polaris lacks knowledge or information sufficient to form a belief as to the
11 truth of the allegations in Paragraph 96, and therefore denies them.

12 97. Polaris denies the allegations in Paragraph 97.

13 98. Polaris denies the allegations in Paragraph 98.

14 99. Polaris admits that on August 13, 2019 it received a letter from plaintiffs'
15 counsel dated August 9, 2019, which letter speaks for itself. Polaris denies the
16 allegations in Paragraph 99 to the extent they depart from the information in that letter.
17 The remaining allegations of Paragraph 99 contain plaintiffs' characterization of their
18 claims, and therefore no response is required from Polaris. To the extent a response is
19 required, Polaris denies the remaining allegations in Paragraph 99.

20 100. Polaris adopts and incorporates by reference each and every denial and/or
21 averment in the preceding paragraphs.

22 101. Polaris states that the allegations in Paragraph 101 assert legal conclusions
23 and do not require a response from Polaris. To the extent a response is required, Polaris
24 states the California Unfair Competition Law ("UCL") speaks for itself.

25 102. Polaris lacks knowledge or information sufficient to form a belief as to the
26 truth of the allegations in Paragraph 102, and therefore denies them.

27 103. Polaris lacks knowledge or information sufficient to form a belief as to the
28 truth of the allegations in Paragraph 103, and therefore denies them.

1 104. Polaris lacks knowledge or information sufficient to form a belief as to the
2 truth of the allegations in Paragraph 104, and therefore denies them.

3 105. Polaris admits that plaintiff Guzman purchased a 2018 Polaris RZR XP on
4 September 17, 2018. Polaris denies the remaining allegations in Paragraph 105.

5 106. Polaris lacks knowledge or information sufficient to form a belief as to the
6 truth of the allegations in Paragraph 106, and therefore denies them.

7 107. Polaris lacks knowledge or information sufficient to form a belief as to the
8 truth of the allegations in Paragraph 107, and therefore denies them.

9 108. Polaris lacks knowledge or information sufficient to form a belief as to the
10 truth of the allegations in Paragraph 108, and therefore denies them.

11 109. Polaris denies the allegations in Paragraph 109.

12 110. Polaris denies the allegations in Paragraph 110.

13 111. The allegations in Paragraph 111 assert a legal conclusion and do not
14 require a response from Polaris. To the extent a response is required, Polaris states that
15 the UCL speaks for itself.

16 112. The allegations in Paragraph 112 assert a legal conclusion and do not
17 require a response from Polaris. To the extent a response is required, Polaris states that
18 the UCL speaks for itself.

19 113. Polaris incorporates by reference its admissions and denials in Paragraph
20 3 above. To the extent there are any remaining allegations in Paragraph 113, Polaris
21 denies them.

22 114. Polaris incorporates by reference its admissions and denials in Paragraph
23 4 above. To the extent there are any remaining allegations in Paragraph 114, Polaris
24 denies them.

25 115. Polaris denies the allegations in Paragraph 115.

26 116. Polaris denies the allegations in Paragraph 116.

27 117. Polaris denies the allegations in Paragraph 117.

28 118. Polaris denies the allegations in Paragraph 118.

1 119. Polaris denies the allegations in Paragraph 119.

2 120. Plaintiffs' allegations in Paragraph 120 contain legal conclusions and
3 characterizations of their claims, which do not require a response from Polaris. To the
4 extent a response is required, Polaris denies the allegations in Paragraph 120.

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

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

13 123. Plaintiffs' characterization of their claims does not require a response from
14 Polaris. To the extent a response is required, Polaris admits that plaintiffs purport to
15 seek declaratory relief, restitution, and disgorgement of profits, but denies any violation
16 of law warranting and denies that plaintiffs are entitled to any form of relief.

17 124. Polaris adopts and incorporates by reference each and every denial and/or
18 averment in the preceding paragraphs.

19 125. The allegations in Paragraph 125 assert a legal conclusion and do not
20 require a response from Polaris. To the extent a response is required, Polaris states that
21 the California False Advertising Law ("FAL") speaks for itself.

22 126. Polaris denies the allegations in Paragraph 126.

23 127. Polaris admits that plaintiff Guzman purchased a 2018 Polaris RZR XP on
24 September 17, 2018. Polaris denies the remaining allegations in Paragraph 127.

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

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

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

3 131. Polaris incorporates by reference its admissions and denials in Paragraph
4 3 above. To the extent there are any remaining allegations in Paragraph 131, Polaris
5 denies them.

6 132. Polaris incorporates by reference its admissions and denials in Paragraph
7 4 above. To the extent there are any remaining allegations in Paragraph 132, Polaris
8 denies them.

9 133. Polaris denies the allegations in Paragraph 133.

10 134. Polaris denies the allegations in Paragraph 134.

11 135. Polaris denies the allegations in Paragraph 135.

12 136. Polaris denies the allegations in Paragraph 136.

13 **RESPONSE TO PRAYER FOR RELIEF**

14 Polaris denies that plaintiffs are entitled to all forms of relief requested in their
15 Prayer for Relief, and further denies that plaintiffs are entitled to any form of relief from
16 Polaris.

17 **AFFIRMATIVE AND OTHER DEFENSES**

18 Polaris asserts the following defenses based on a good-faith assessment of the
19 claims as known at this time, and without having yet conducted any discovery of the
20 plaintiffs and their claims. Without assuming the burden of proof as to any of the
21 defenses set forth herein where such burden would otherwise rest with plaintiffs, Polaris
22 alleges the following affirmative defenses to the Second Amended Complaint and to
23 the relief sought therein:

24 **First Affirmative Defense**

25 1. Plaintiffs' Second Amended Complaint fails in whole or in part to state a
26 claim against Polaris upon which relief may be granted.

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Second Affirmative Defense

2. Plaintiffs’ putative class’s claims are barred in whole or in part by the applicable statute of limitations as plaintiffs’ proposed class definition goes back to August 8, 2015, which exceeds the statute of limitations for some of plaintiffs’ claims.

Third Affirmative Defense

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

Fourth Affirmative Defense

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

Fifth Affirmative Defense

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

Sixth Affirmative Defense

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

Seventh Affirmative Defense

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

1 **Eighth Affirmative Defense**

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

5 **Ninth Affirmative Defense**

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

9 **Tenth Affirmative Defense**

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

13 **Eleventh Affirmative Defense**

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

21 **Twelfth Affirmative Defense**

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

26 **Thirteenth Affirmative Defense**

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

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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.

Fifteenth Affirmative Defense

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

Sixteenth Affirmative Defense

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

Seventeenth Affirmative Defense

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

Eighteenth Affirmative Defense

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

Nineteenth Affirmative Defense

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

Twentieth Affirmative Defense

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

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Twenty-first Affirmative Defense

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

Twenty-second Affirmative Defense

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

Twenty-third Affirmative Defense

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

Twenty-fourth Affirmative Defense

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

Twenty-fifth Affirmative Defense

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

Twenty-sixth Affirmative Defense

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

Twenty-seventh Affirmative Defense

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

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

WHEREFORE, Polaris respectfully requests:

- (1) That plaintiffs and the members of the proposed class take nothing;
- (2) Entry of judgment in Polaris' favor;

- (3) That the proposed certification of any class be denied; and
- (4) The costs of suit and such further relief as the Court deems proper.

DATED: March 31, 2020

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CERTIFICATE OF SERVICE

I hereby certify that on March 31, 2020, I caused the foregoing document to be served on the following counsel for plaintiffs via the Court's electronic filing system:

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DATED: March 31, 2020

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