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IN THE UNITED STATES DISTRICT COURT

FOR CENTRAL DISTRICT OF CALIFORNIA

Guzman and Albright, individually on behalf of themselves and all others similarly situated,

Plaintiffs,

v.

Polaris Industries Inc., *et al.*,

Defendants.

CASE NO. 8:19-cv-01543-FLA-KES

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Complaint Filed Date: August 8, 2019

Judge: Fernando L. Aenlle-Rocha
Hearing Date: April 9, 2021
Time: 1:30 PM
Courtroom: Courtroom 6B

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INTRODUCTION

Plaintiffs' complaint alleges that their Polaris off-road RZR vehicles do not comply with a label stating that the vehicles' rollover protective structures ("ROPS") meet the requirements of 29 C.F.R. § 1928.53, yet neither plaintiff knows what the regulation states, means, or requires, or how the label relates to the regulation. Plaintiff Guzman admits he did not read the label's language concerning the regulation before purchasing his Polaris vehicle. Plaintiff Albright testified he saw the language but did not know it referred to a regulation, instead thinking the number 1928.53 was the monetary price for the ROPS. Thus, both plaintiffs' sworn testimony establishes that they did not rely on the label's language regarding that regulation. Moreover, both plaintiffs testified their Polaris vehicles have met all their expectations, they have no problems with their vehicles or the ROPS, and they have never made any warranty claims or complaints regarding their vehicles. Accordingly, summary judgment should be granted in Polaris's favor against all of plaintiffs' claims for the following reasons:

First, plaintiffs must prove actual reliance for each of their claims, but the undisputed evidence demonstrates that plaintiffs did not rely on the label's language regarding 29 C.F.R. § 1928.53. Guzman never read the label's language regarding 29 C.F.R. § 1928.53 before buying his vehicle. Neither plaintiff has read 29 C.F.R. § 1928.53 or has any idea of what that regulation requires or means, and thus could not have relied on it. Plaintiffs also admitted that they could not identify any false or misleading language on the label.

Second, plaintiffs have received the benefit of their bargain. Both plaintiffs testified that the vehicles met their expectations, and that they like or "loved" them. Plaintiffs regularly had their young children ride in their RZRs, which they admitted they would not do if they believed the vehicles were unsafe. Both plaintiffs have continued to drive their RZRs long after filing this suit and have never experienced any problem with their vehicles or the ROPS.

Third, plaintiffs cannot establish the causation required for each of their claims. Causation cannot be proven if a purchaser would have bought a vehicle regardless of an alleged misrepresentation. While plaintiffs allege they would not have purchased the vehicles without the label, the record evidence proves otherwise. Plaintiffs did not understand the label and could not explain how the label was false or misleading; indeed, Guzman did not even read the language that forms the basis of plaintiffs' complaint. Moreover, plaintiffs have enjoyed riding the vehicles, had their young children ride in them, and continued to ride them even after filing this suit.

Fourth, plaintiffs' claims for equitable relief fail because plaintiffs have failed to allege they lack an adequate remedy at law. Plaintiffs seek the classic legal remedy of money damages, including under the complaint's Consumers Legal Remedies Act ("CLRA") claim. As plaintiffs' Unfair Competition Law ("UCL") and False Advertising Law ("FAL") claims provide only for equitable relief, judgment should be awarded against those claims in their entirety, and also against any injunctive or other equitable relief sought under the CLRA.

Fifth, plaintiffs cannot obtain their requested injunctive relief of preventing Polaris from advertising that the "class vehicles" comply with 29 C.F.R. § 1928.53. Under established precedent, a plaintiff who learns of an alleged misrepresentation regarding a product lacks standing to seek injunctive relief unless, at a minimum, the plaintiff intends to purchase that product again in the future. But plaintiffs do not claim they intend to purchase another RZR.[1]

Summary judgment should be entered against all of plaintiffs' claims.

BACKGROUND

Polaris sells various models of off-road vehicles that allow occupants to sit side by side. These side-by-side vehicles have a variety of different designs and features,

[1] Polaris disputes and vigorously contests plaintiffs' allegation that the vehicles did not comply with 29 C.F.R. § 1928.53. Nevertheless, that issue need not be decided because plaintiffs' own admissions establish that they lack any claims as a matter of law.

and are sold under the brand names "RZR," "Ranger" and "General." (Statement of Uncontroverted Facts (SUF) ¶¶ 1-3.) Each side-by-side vehicle is equipped with a roll cage, known as a rollover protective structure or "ROPS," with the shape, configuration, and design of the ROPS differing among Polaris side-by-side vehicle models. (*Id.* ¶¶ 4-5.) Polaris, like other side-by-side vehicle manufacturers, voluntarily complies with the American National Standards Institute / Recreational Off-Highway Vehicle Association standard providing that the ROPS shall comply with the performance requirements of either International Organization for Standardization ("ISO") standard 3471 or 29 C.F.R. § 1928.53. (SUF ¶ 6.) Based on testing that Custom Products of Litchfield, Inc., an independent third-party testing company, conducts for Polaris, and Custom Products' certification, the vehicles at issue in this case include a label stating that the ROPS meets the requirements of 29 C.F.R. § 1928.53. (SUF ¶ 7.)

A. Plaintiffs' Claims.

Plaintiff Jeremy Albright asserts claims related to his February 2016 purchase of a model year 2016 Polaris RZR 4 XP. (*Id.* ¶ 8.) Plaintiff Paul Guzman asserts claims in connection with his November 2018 purchase of a model year 2018 Polaris RZR XP. (*Id.* ¶ 9.)

Plaintiffs' complaint alleges that a label (which the complaint refers to as a "sticker") on the plaintiffs' RZRs misrepresented that the vehicles' ROPS meet the requirements of 29 C.F.R. § 1928.53, a regulation concerning protective enclosures for certain vehicles. (SUF ¶ 11.) Plaintiffs' complaint repeatedly makes clear that plaintiffs' claims are based on the label's statement regarding 29 C.F.R. § 1928.53:

- The labels inform consumers that Polaris ORVs "meet OSHA requirements of 29 C.F.R. § 1928.53, when in fact, they do not." (SUF ¶ 12.)
- "None of the Class Vehicles sold by Polaris meet the OSHA requirements of 29 C.F.R. § 1928.53." (SUF ¶ 13.)

- "The failure to meet all applicable federal and state statutes … including OSHA 29 C.F.R. § 1928.53 requirements is material information for consumers purchasing/leasing UTVs … ." (SUF ¶ 14.)

The labels at issue appear as follows, with the "Vehicle Model" and "Test GVW" (gross vehicle weight) varying depending on the particular model:

(*Id.* ¶ 15.)

Based on these allegations, plaintiffs brought claims against Polaris under California's (1) Consumer Legal Remedies Act (CLRA), Cal. Civ. Code § 1750 *et seq.*; (2) Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200 *et seq.*; and (3) False Advertising Law (FAL), Cal. Bus. & Prof. Code § 17500 *et. seq*. (SUF ¶ 16.)

B. The Court Dismissed Plaintiffs' Original Claims.

The Court (Judge Staton) dismissed plaintiffs' First Amended Complaint because plaintiffs failed to plead actual reliance, as required under the UCL, FAL, and CLRA. (ECF No. 38, MTD Order § III.A at 5.) As Judge Staton explained, "Plaintiffs allege that they were deceived because, contrary to Defendants' representation on stickers affixed to class vehicles at the point of sale, the vehicles do not comply with 29 C.F.R. § 1928.53." (ECF No. 38, MTD Order § I at 3 n.2.) However, "Plaintiffs never allege that *they* read and relied upon the sticker." (*Id.* § III.A at 5.) Because plaintiffs "have failed to allege facts sufficient to show that 'the misrepresentation was an immediate cause of [Plaintiffs'] injury-producing conduct,'" their claims were legally insufficient and subject to dismissal. (*Id.*) (collecting cases).

The Court also dismissed Albright's CLRA and FAL claims as time-barred. (*Id.* § III.B at 6.) In plaintiffs' Second Amended Complaint, Albright's only claim is under the UCL. (ECF No. 39, 2d Am. Compl. § VII ¶¶ 85-136.)

The Court dismissed the non-time-barred claims based on "a lack of factual development," allowing plaintiffs to amend "so long as they can do so in a manner consistent with Rule 11 of the Federal Rules of Civil Procedure and the factual allegations they have already pleaded." (ECF No. 38, MTD Order § III.C at 7.)

Plaintiffs filed a Second Amended Complaint, which is the operative pleading. Each plaintiff alleged in identical language that he "read the sticker on the [2016/2018] Polaris RZR XP and understood the language to mean that the vehicle's ROPS structure met federal standards for safety and that the vehicle was safe for use by him, his family, and friends." (ECF No. 39, 2d Am. Compl. ¶¶ 95, 103, 107, 129.) Polaris deposed the two named plaintiffs to test this allegation and the rest of their complaint against the facts.

C. Paul Guzman's Admissions.

At the time of his deposition on August 1, 2020, Guzman had driven his 2018 Polaris RZR XP for 1,410 miles and 74 hours. (SUF ¶ 26.) Guzman had most recently driven his RZR in July 2020, and also drove his vehicle from October 2019 to March 2020, long after filing the complaint. (*Id.* ¶ 27.) Guzman drove his vehicle the weekend before his deposition, and planned to continue using it. (*Id.* ¶¶ 28-29.)

Guzman has two young children who have ridden in his Polaris RZR approximately 40 times. (*Id.* ¶¶ 30-31.) His wife also has been a passenger in his RZR. (*Id.* ¶ 32.) Guzman would not take his children or wife for rides in his RZR if he thought it was unsafe:

> Q. Would you take your children out for a ride in a RZR vehicle if you thought it was unsafe to do so, Mr. Guzman?
>
> A. No.
>
> ...
>
> Q. Would you allow your wife to drive or be a passenger in your RZR vehicle if you thought it were unsafe for her to do so?

THE WITNESS: No.

(*Id.* ¶ 33. (objection omitted).)

Guzman testified that he likes his RZR and the vehicle has met his expectations. (*Id.* ¶¶ 34-35.) Guzman has not had any problems or malfunctions with the ROPS on his RZR. (*Id.* ¶ 36.) Guzman has never complained, or filed any warranty claims, about his RZR. (*Id.* ¶¶ 37-38.)

When Guzman purchased his RZR, he did not actually read the label that is the basis of his complaint.[2] (*Id.* ¶¶ 39-40.) Instead, he "just saw that it said 'OSHA' on it. So I said, 'Okay, it's good.'" (*Id.* ¶ 39.) When he purchased his RZR, he did not read any other words on the label besides "OSHA" and "Polaris." (*Id.* ¶ 41; *see also id.* ¶ 42.)

Guzman testified that "all I saw that I recognized" on the label was "OSHA-approved" (*id.* ¶ 44), even though the term "OSHA-approved" or the word "approved" does not appear on the label (*id.* ¶ 15). Guzman later explained that he thought the term "OSHA" meant "OSHA-approved." (*Id.* ¶ 45.) Besides believing the label meant "OSHA-approved," he could not remember anything else the label said. (*Id.* ¶¶ 44, 47.)

Guzman thought the non-existent term "OSHA-approved" meant that the ROPS are "safe, that the cage is good. … Like any tool that you buy. It's OSHA-approved, that it's okay to use, and nothing is going to happen to it." (*Id.* ¶ 45; *see also id.* ¶ 46 (Guzman believed that "OSHA-approved" meant "[p]retty much everything that is inside the Polaris that they made is secure and safe. … Just like tools and stuff like that, they all got OSHA stickers in them.").) Guzman also thought "OSHA-approved" applied to the entire vehicle, not just the ROPS. (*Id.* ¶ 48.)

Since Guzman only saw the words "OSHA" and "Polaris" on the label, he did not read the label's language referring to 29 C.F.R. § 1928.53. (SUF ¶ 49.) Guzman has never read or reviewed 29 C.F.R. § 1928.53, and did not know what that regulation

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[2] Guzman also did not see any Polaris advertisements, brochures, or other marketing materials before buying his RZR. (SUF ¶ 43.)

related to or required. (SUF ¶¶ 50-51.) Moreover, while plaintiffs' complaint alleges that Guzman understood the label to mean that the vehicle's ROPS structure met federal standards for safety, Guzman admitted that he does not know what federal standards the complaint is referring to. (*Id.* ¶ 52.)

Guzman also admitted he did not know whether anything on the label was false or misleading, and could not point to anything on the label that is false or misleading:

> Q. Okay. Sitting here today, is there anything on the sticker that you claim is false or misleading?
>
> A. I don't know.
>
> Q. And is there anything that you could point us to on the sticker, sitting here today, that you claim is false or misleading?
>
> A. No. I would have to look at it.
>
> ...
>
> Q. Okay. Is there anything on this sticker that, sitting here today, you claim is false or misleading?
>
> A. No.
>
> ...
>
> Q. Okay. Sitting here today, do you know—can you explain what is false about—what you claim is false about the sticker?
>
> A. No. I couldn't tell you.
>
> ...
>
> Q. Mr. Guzman, sitting here today, can you explain to us how or why you believe the sticker is false?
>
> A. I don't know. I don't know.
>
> Q. You personally have no understanding of how the sticker is allegedly false; is that correct?
>
> A. Yes.

(*Id.* ¶¶ 53-54.) According to Guzman, the only reason he believes the label is false is because his attorney told him it was. (*Id.* ¶ 55 (when asked if he could explain how or why the label is false, Guzman responded: "That's—yeah, that's what I—that's what I—my attorney has told me about.").)

D. Jeremy Albright's Admissions.

Albright has driven his 2016 Polaris RZR 4 XP for over 5,500 miles and 2,000 hours. (SUF ¶ 56.) He has continued to drive his RZR long after filing this suit. (*Id.* ¶ 57 (describing driving his RZR in May 2020).)

Albright "loved" his RZR, testifying that "I just love spending time with my kids in it." (*Id.* ¶¶ 58-59.) Albright rides with his young children in the vehicle every couple months. (*Id.* ¶ 59.)

Albright admitted his RZR has met his expectations since purchasing it. (*Id.* ¶ 60.) Albright describes his RZR as being in "[g]reat" condition as well as reliable. (*Id.* ¶¶ 61-62.) He has not had any problems or malfunctions with the ROPS on his RZR. (*Id.* ¶ 63.) Nor has he ever made any complaints or warranty claims regarding his RZR. (*Id.* ¶ 64.)

Albright does not consider Polaris off-road vehicles to be less safe than other vehicles. (*Id.* ¶ 65.) He considers his RZR to be safe. (*Id.* ¶ 66.) He has never had any sort of injury from driving his RZR and does not know anyone who has. (*Id.* ¶ 67.)

When Albright purchased his vehicle, he did not read the entire label, but instead only a portion of it. (*Id.* ¶ 68.) He testified he only read that "the ROPS structure meets OSHA requirements of … 29 CFR § 1928.53." (*Id.*) He thought that language meant "OSHA approved," and that it did not mean anything else. (*Id.* ¶ 69.) Indeed, all Albright remembered regarding the label's language was that it said "OSHA approved" and "Polaris." (*Id.* ¶¶ 70-71.) He testified he was "pretty sure" the label uses the word "approved" (*id.* ¶ 70), even though that word never appears on the label.

Albright testified that his belief was that if the ROPS was "'OSHA approved,' it was built better. … You know, there are certain standards that OSHA carries that's

normally better than others." (*Id.* ¶ 72.) When asked how that applied to the ROPS specifically, he said "[t]hat it can handle the weight, maybe … I think it could handle the weight so it wouldn't crush you." (*Id.* ¶ 73.) He further testified that he thought what was being approved about the ROPS was that "it could handle the weight of a rollover" and did not mean anything else. (*Id.* ¶ 74.)

Albright did not know what 29 C.F.R. § 1928.53 is and has never read that regulation. (SUF ¶ 75.) When he read the regulation's citation on the label, "I actually thought that is how much the roll bar cost. … I had no clue it was a code of the OSHA." (*Id.* ¶ 76) That is, he thought the citation to the regulation on which his case is based meant that the ROPS cost $1,928.53. (*Id.*)

Albright does not know whether the ROPS on his vehicle meets the OSHA requirements of 29 C.F.R. § 1928.53. (*Id.* ¶ 77.) In fact, Albright testified that he did not know what the label means:

> Q. … You have an understanding of what the sticker means; right?
>
> A. An understanding? I just thought—you know, what I thought. I don't understand it, I guess, now that I look at it.

(*Id.* ¶ 78.)

ARGUMENT

A district court "shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a). Rule 56 mandates summary judgment "against a party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which that party will bear the burden of proof at trial." *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A "mere 'scintilla' of evidence will be insufficient to defeat a properly supported motion for summary judgment; instead, the nonmoving party must introduce some 'significant probative evidence tending to support the complaint.'" *Fazio v. City & Cnty. of San Francisco*,

125 F.3d 1328, 1331 (9th Cir. 1997) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

I. THE EVIDENCE DEMONSTRATES THAT GUZMAN AND ALBRIGHT CANNOT ESTABLISH THEIR RELIANCE ON THE LABEL.

As Judge Staton held, the "'UCL, FAL, and CLRA have independent requirements for standing, which mandate allegations of actual reliance'" on the allegedly false or misleading representation at issue.[3] (ECF No. 38, MTD Order § III.A at 6 (quoting *Stewart v. Electrolux Home Prod., Inc.*, 2018 WL 1784273, at *4 (E.D. Cal. Apr. 13, 2018)); *see also, e.g., Block v. eBay, Inc.*, 747 F. 3d 1135, 1140 (9th Cir. 2014) (affirming dismissal of UCL and FAL claims where plaintiff failed to plead "actual reliance"); *Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 793-94 (9th Cir. 2012) (holding that claims under the UCL sounding in fraud and those under the CLRA require plaintiffs to prove "actual reliance on the allegedly deceptive or misleading statements"); *Durell v. Sharp Healthcare*, 183 Cal. App. 4th 1350, 1363 (2010); *Resnick v. Hyundai Motor Am., Inc.*, 2017 WL 1531192, at *19 (C.D. Cal. Apr. 13, 2017); *Sloma v. Mercedes-Benz USA, LLC*, 2009 WL 10675023, at *3 (C.D. Cal. July 14, 2009); *Sud v. Costco Wholesale Corp.*, 229 F. Supp. 3d 1075, 1082-83 (N.D. Cal. 2017). Guzman and Albright cannot establish reliance under the undisputed facts—including their deposition admissions—for several independent reasons.

A. Guzman Admitted He Did Not Even Read The Label.

If plaintiffs have not read the label, they cannot have relied on it. Judge Staton dismissed plaintiffs' First Amended Complaint precisely on the grounds that "Plaintiffs never allege that *they* read and relied upon the sticker." (ECF No. 38, MTD Order § III.A at 5-6 (collecting cases)); *see also Graham v. VCA Antech, Inc.*, 2016 WL

[3] Before November 2, 2004, UCL and FAL claims did not require individualized proof of reliance, injury, or damages. *Hall v. Time Inc.*, 158 Cal. App. 4th 847, 852 (2008). On that date, Proposition 64 changed the UCL and FAL to require plaintiffs to prove they have "suffered injury in fact" and "lost money or property as a result of such unfair competition." *Id.* Earlier case law that did not require reliance, and decisions that mistakenly continue to rely on such case law, have been superseded by Proposition 64.

5958252, at *5 (C.D. Cal. Sept. 12, 2016) (It "is not enough to 'receive' a misrepresentation in a document; a plaintiff must see, read, or hear the alleged misrepresentation and rely on it."); *In re iPhone Application Litig.*, 6 F. Supp. 3d 1004, 1022-23 (N.D. Cal. 2013) (rejecting plaintiffs' argument that receiving an alleged misrepresentation is sufficient to state a claim where plaintiffs did not read or rely on it); *Doe v. SuccessfulMatch.com*, 70 F. Supp. 3d 1066, 1082 (N.D. Cal. 2014) (if "Plaintiffs did not see the specified representations before they purchased Defendant's services, then Plaintiffs did not rely on these representations and suffered no injury").

Contrary to the complaint's allegation that Guzman "read the sticker on the 2018 Polaris RZR XP" (ECF No. 39, 2d Am. Compl. § VII ¶¶ 95, 107, 129), Guzman admitted at his deposition that he did not actually read the label. (SUF ¶¶ 39-42, 49) Instead, the only words he claims to have seen were "OSHA" and "Polaris." (*Id.*) Thus, common sense, Judge Staton's prior order, and the previously cited authorities all support finding that Guzman could not have relied on the label.

Nor can plaintiffs argue that Guzman relied on the label merely by seeing the words "OSHA" and "Polaris." The foundation of plaintiffs' claims is that Polaris allegedly misrepresented that the "ROPS" meets the "requirements of 29 CFR § 1928.53." (SUF ¶¶ 11-14; ECF No. 38, MTD Order § I at 3 n.2.) But Guzman admitted he did not read any of this language. He did not even comprehend the label as applying only to the "ROPS," incorrectly believing it applied to the entire vehicle. (SUF ¶ 48.) As the undisputed facts demonstrate, Guzman did not read the label language that forms the basis of his claims, and he thus cannot establish the reliance necessary for those claims as a matter of law. *E.g.*, *Maple v. Costco Wholesale Corp.*, 649 F. App'x 570, 572 (9th Cir. 2016) (holding under the Washington Consumer Protection Act that to "the extent that Plaintiff's claim challenges the labeling" of certain ingredients as "'natural' or 'all natural' … the claim fails because Plaintiff has not alleged that he read those parts of the label. Accordingly, he cannot establish causation.").

B. Plaintiffs Have Neither Read Nor Have Any Understanding Of 29 C.F.R. § 1928.53, And Thus Could Not Have Relied On The Label's Statement About That Regulation.

The entire basis of plaintiffs' claims is the label stating that the vehicles' ROPS meet the "requirements of 29 CFR § 1928.53" "when in fact, they do not." (ECF No. 39, 2d Am Compl. ¶¶ 1, 4-6; *see also* ECF No. 38, MTD Order § I at 3 n.2.) Yet plaintiffs have never read 29 C.F.R. § 1928.53, have no knowledge of that provision, what it says, what it applies to, or how it should be interpreted. They are completely ignorant of the "requirements of 29 CFR § 1928.53"—despite it being their complaint's foundation. Thus, Guzman and Albright cannot establish reliance on the alleged misrepresentation that forms the basis of their claims. *See, e.g.*, *Shanks v. Jarrow Formulas, Inc.*, 2019 WL 4398506, at *5 (C.D. Cal. Aug. 27, 2019) (holding that "scientific terms" on advertising "are unlikely to be understood by an average consumer," and thus are unlikely to induce reliance or be material); *Johnson v. Mitsubishi Digital Elecs. Am., Inc.*, 578 F. Supp. 2d 1229, 1238 (C.D. Cal. 2008) (holding in context of warranty claim that "the abstract designation 1080p does not convey a specific claim that is recognizable to the targeted consumer" and rejecting UCL claim because "1080p label" did not promise the capability of accepting 1080p signals), *aff'd*, 365 F. App'x 830 (9th Cir. 2010).

Specifically, Guzman admitted that he did not even read the "requirements of 29 CFR § 1928.53" language on the label. (SUF ¶¶ 39-42, 49.) Moreover, Guzman has never read or reviewed 29 C.F.R. § 1928.53, and did not know what that regulation relates to or requires. (SUF ¶¶ 50-51.) As Guzman has no knowledge of 29 C.F.R. § 1928.53, he could not have relied on the label's language about that regulation in buying his RZR.

Similarly, Albright did not know what 29 C.F.R. § 1928.53 is, has never read it, and does not know whether the ROPS on his vehicle meets the requirements of § 1928.53. (SUF ¶ 75.) When Albright allegedly read that regulation citation on the

label, he "actually thought that is how much money the roll bar cost. … [he] had no clue it was a code of the OSHA." (*Id.* ¶ 76; *see also id.* (testifying he thought the language meant the ROPS cost $1,928.53).) Thus, Albright did not read the full label, and as to the portion he did read, he did not understand it but believed the language meant something entirely different from what his complaint alleges. As Albright has no knowledge or understanding of 29 C.F.R. § 1928.53 and did not even know the label referred to a federal regulation, he could not have relied on the label's language concerning 29 C.F.R. § 1928.53 in buying his RZR.

C. Plaintiffs Could Not Have Relied On Any Alleged Misrepresentations On The Label Because They Do Not Know To This Day How The Label Is Allegedly False Or Misleading.

Plaintiffs must prove "actual reliance on the allegedly deceptive or misleading statements." *Sateriale*, 697 F.3d at 793-94; *see also Resnick*, 2017 WL 1531192, at *19 ("Plaintiffs must adequately plead facts establishing Plaintiffs' relied on these alleged misrepresentations."). Here, plaintiffs did not know and could not explain whether anything on the label was deceptive or misleading, and thus could not have relied on any supposed misrepresentations.

Guzman repeatedly admitted that he did not know whether anything on the label was false or misleading, and could not point to anything on the label that is false or misleading. (SUF ¶ 53.) Nor could he explain what is allegedly false or misleading about the label. (*Id.* ¶ 54.) Similarly, when asked what he understood the label to mean, Albright testified that "I don't understand it, I guess, now that I look at it." (*Id.* ¶ 78.) Moreover, Albright does not know whether the ROPS on his vehicle satisfies the requirements of 29 C.F.R. § 1928.53, despite that being the basis of his complaint. (SUF ¶ 77.)

Guzman and Albright could not have relied on any purported misrepresentations where they cannot even identify a misrepresentation and admittedly do not understand the label at all. Given their undisputed admissions, plaintiffs cannot prove the required

element of reliance and their claims fail as a matter of law. *E.g.*, *Jones v. ConAgra Foods, Inc.*, 2014 WL 2702726, at *4 (N.D. Cal. June 13, 2014) (holding plaintiff lacked standing where she said she did not know what was misleading about the statement and eventually admitted it was not a misleading statement); *Gaines v. Home Loan Ctr., Inc.*, 2011 WL 13182970, at *4 (C.D. Cal. Dec. 22, 2011) (granting summary judgment where "Plaintiff cannot explain why the misrepresentation mattered to her, or even why it would be material to a reasonable consumer"); *see also Townsend v. Monster Beverage Corp.*, 303 F. Supp. 3d 1010, 1046 (C.D. Cal. 2018) (holding in the context of class certification that plaintiffs could not establish materiality or reliance where representation at issue did not have a common meaning or controlling definition); *In re 5-Hour Energy Mktg. & Sales Pracs. Litig.*, 2017 WL 2559615, at *8 (C.D. Cal. June 7, 2017) ("Where plaintiffs fail to establish a controlling definition for a key term in an alleged misstatement, courts have found that materiality is not susceptible to common proof.") (collecting cases).

D. Plaintiffs Did Not Consider The Label's Actual Language, But Instead Their Own Mistaken Belief That The Label Said "OSHA Approved."

Courts regularly reject UCL, FAL, and CLRA claims where the plaintiffs do not rely on the representation's actual language but instead their own beliefs about what the label says or means. *E.g.*, *Becerra v. Dr Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1231 (9th Cir. 2019) ("Becerra has failed to sufficiently allege that reasonable consumers understand the word 'diet' in Diet Dr Pepper's brand name to promise weight loss, healthy weight management, or other health benefits."); *Clark v. Hershey Co.*, 2019 WL 6050763, at *2 (N.D. Cal. Nov. 15, 2019) (granting summary judgment where plaintiff's alleged "injury was not caused by the alleged mislabeling of the product, but rather his misunderstanding" of what the label meant); *Weiss v. Trader Joe's Co.*, 2018 WL 6340758, at *5 (C.D. Cal. Nov. 20, 2018) ("a reasonable consumer would not assume things about a product other than what the statement actually says") (internal quotation marks and brackets omitted); *Major v. Ocean Spray Cranberries, Inc.*, 2015

WL 859491, at *4 (N.D. Cal. Feb. 26, 2015) (granting summary judgment against claims that plaintiff was misled into believing that products were "better" or "healthier" when the products' label simply stated they had "No Sugar Added" and "100% Juice); *Carrea v. Dreyer's Grand Ice Cream, Inc.*, 2011 WL 159380, at *6 (N.D. Cal. Jan. 10, 2011) (dismissing claims that plaintiff was misled into believing products were "more wholesome or healthful" based on products being advertised as "Original" and "Classic").

Here, Guzman testified that all he saw on the label was "OSHA-approved," (SUF ¶¶ 41, 44-45)—even though that phrase never appears on the label (*id.* ¶ 15). He could not remember anything else the label said. (*Id.* ¶¶ 44, 47.) Later in the deposition, Guzman testified that he thought "OSHA" meant "OSHA-approved." (*Id.* ¶ 45.)

Similarly, when Albright saw the label, he only remembered it saying "OSHA approved" and "Polaris." (*Id.* ¶¶ 70-71.) He testified he was "pretty sure" the label uses the word "approved" (*id.* ¶ 70), even though it does not (*id.* ¶ 15). Moreover, he did not even know that the cited regulation was part of OSHA, but instead thought it was the price of the ROPS. (*Id.* ¶ 76.)

Their own deposition testimony establishes Guzman and Albright did not rely on the actual language of the label. Instead, they were under the mistaken belief the label said "OSHA-approved," even though that term and the word "approved" do not appear on the label, nor does the label suggest that OSHA has approved the ROPS. There is a clear difference between (1) a representation that the ROPS is OSHA-approved, which means that OSHA itself approved it, and (2) a statement by Polaris on the label that the ROPS meets the requirements of a particular OSHA regulation. As plaintiffs incorrectly believed the label contained language stating "OSHA-approved" and supposedly considered that term—not the language about 29 C.F.R. § 1928.53 alleged in the complaint—in purchasing their RZRs, they cannot prove reliance on the label's actual language as is necessary for their claims.

II. PLAINTIFFS RECEIVED THE BENEFIT OF THEIR BARGAIN, AND THUS LACK STANDING TO BRING THEIR CLAIMS.

"If one gets the benefit of his bargain, he has no standing under the UCL." *Johnson*, 365 F. App'x at 832 (collecting cases); *see*, *e.g.*, *Baker v. Yamaha Motor Corp.*, 2021 WL 388451, at *4 (Cal. Ct. App. Feb. 4, 2021) ("When a plaintiff gets the benefit of his bargain, he has no standing under the UCL and FAL.") (collecting cases); *Lee v. Toyota Motor Sales, U.S.A., Inc.*, 992 F. Supp. 2d 962, 972 (C.D. Cal. 2014) ("There can be no serious dispute that a purchaser of a product who receives the benefit of his bargain has not suffered Article III injury-in-fact traceable to the defendant's conduct."); *Waller v. Hewlett-Packard Co.*, 295 F.R.D. 472, 487-88 (S.D. Cal. 2013) (plaintiffs who received "just what they paid for" had no benefit-of-the-bargain damages claims); *In re Toyota Motor Corp. Hybrid Brake Mktg., Sales Pracs. & Prods. Liab. Litig.*, 915 F. Supp. 2d 1151, 1159 (C.D. Cal. 2013) ("The undisputed evidence before the Court establishes that Mr. Choi received precisely what he bargained for with Toyota. Consequently, he has no claim against the company."). That holding applies equally to claims under the FAL and CLRA. *See Baker*, 2021 WL 388451, at *4; *Lee*, 992 F. Supp. 2d at 972-73; *Gaines*, 2011 WL 13182970, at *5 n.4.

For example, in *Johnson*, the plaintiff sought to buy a "1080p" television set, ultimately choosing one made by Mitsubishi after visiting the company's website to confirm the set was 1080p. *Johnson*, 578 F. Supp. 2d at 1233-34. Plaintiff filed a complaint alleging UCL claims because Mitsubishi "sold Mr. Johnson a television promoted as 1080p that could not receive a 1080p signal through its HDMI ports." *Id.* at 1234. Despite his lawsuit, the plaintiff admitted that it was a "'great TV,'" he did not know of a better TV on the market, he did not attempt to return his TV, and he did not contact Mitsubishi to complain. *Id.* Based on these admissions, indistinguishable from those made by plaintiffs here, the district court granted summary judgment against the plaintiff's UCL claims, and the Ninth Circuit affirmed. *Johnson*, 365 F. App'x at 832.

As in *Johnson*, plaintiffs' admissions establish that, regardless of their complaint's allegations, they received the benefit of the bargain in buying their RZRs. Both plaintiffs admit their RZRs have met their expectations. (SUF ¶¶ 35, 60.) Guzman believes the vehicle is safe enough for his children to be passengers approximately 40 times. (*Id.* ¶ 30-33.) He admitted he would not take his children in his RZR if he thought the vehicle was unsafe. (*Id.* ¶ 33.) Even after filing this lawsuit, Guzman has continued to regularly drive his RZR. (*Id.* ¶¶ 27-29.)

Similarly, Albright admitted he does not consider Polaris off-road vehicles to be less safe than other vehicles, and specifically considers his own vehicle to be safe. (*Id.* ¶¶ 65-66) Like Guzman, Albright has repeatedly taken his young children with him to ride in his RZR. (*Id.* ¶ 59.) Albright also has continued to drive his RZR long after filing this suit. (*Id.* ¶ 57 (describing driving his RZR in May 2020).)

Plaintiffs' other admissions further confirm they received the benefit of their bargain. Plaintiffs like or "loved" their RZRs. (*Id.* ¶¶ 34, 58.) According to Albright, he "love[s] spending time with my kids in it." (*Id.* ¶ 59.) Albright's RZR is in "[g]reat" condition and is reliable. (*Id.* ¶ 61.) Neither plaintiff ever complained or filed any warranty claims about his RZR. (*Id.* ¶¶ 37-38, 64.) Both plaintiffs have continued to drive their vehicles. (*Id.* ¶¶ 27-29, 57); *see generally Browe v. Evenflo Co., Inc.*, 2015 WL 3915868, at *4 (D. Minn. June 25, 2015) ("It is a difficult proposition to accept that the lead plaintiff in a products liability lawsuit seeking class action status can credibly pursue liability while continuing to use the very same product the lawsuit claims is dangerously defective and warrants a pecuniary remedy.").

Moreover, even though plaintiffs' subjective beliefs about what the label means are divorced from the label's actual language, the RZRs have met each plaintiff's mistaken beliefs about what the label means. Guzman testified that he believed the label to mean that the vehicle was "secure and safe" and "nothing is going to happen to it." (SUF ¶¶ 45-46.) After driving it over 1400 miles (*id.* ¶ 26), Guzman has never had

any incident suggesting that his vehicle's ROPs was not "secure and safe" or that something "is going to happen to it," (*id.* ¶ 36).

Albright testified he believed the label meant the ROPS could handle the weight of a rollover, and did not mean anything else. (*Id.* ¶¶ 73-74.) After driving it over 5,500 miles and 2,000 hours (*id.* ¶ 56), Albright has never had any injury, problems, or issues with his ROPS in particular or his RZR in general. (*Id.* ¶ 63.) In short, like the *Johnson* plaintiff, both Guzman's and Albright's under-oath testimony establishes they received the benefit of their bargain.

Finally, plaintiffs' admissions demonstrate that the supposed misrepresentation alleged in the complaint could not have affected their bargain. The facts here are not that consumers identified a misrepresentation and explained how it was false and affected their purchases, but instead that plaintiffs did not rely on the label, never identified a misrepresentation on it, did not understand the label at all, and that their vehicles have met their expectations. Given this summary judgment record, plaintiffs cannot establish that they did not receive the benefit of their bargain or that the label's reference to 29 C.F.R. § 1928.53 was part of any bargain they made for their vehicles. *See McGee v. S-L Snacks Nat'l*, 982 F.3d 700, 706 (9th Cir. 2020) (dismissing claims because plaintiff could not "show that she did not receive a benefit for which she actually *bargained*") (emphasis in original).

III. PLAINTIFFS CANNOT SHOW CAUSATION BECAUSE THE RZRS HAVE MET THEIR EXPECTATIONS.

"To state a claim under [UCL] section 17200, a plaintiff must allege that a defendant's unlawful, unfair, or fraudulent business practices caused her an economic injury. That causal connection is broken when a complaining party would suffer the same harm whether or not a defendant complied with the law." *Williams v. Bank of Am., N.A.*, 701 F. App'x 626, 629 (9th Cir. 2017) (citation and internal quotation marks omitted); *see Hall v. SeaWorld Entm't, Inc.*, 747 F. App'x 449, 452 (9th Cir. 2018); *Saber v. JPMorgan Chase Bank, N.A.*, 2014 WL 2159395, at *3-4 (C.D. Cal. May 22,

2014); *see also Clark*, 2019 WL 6050763, at *2 (plaintiff "must demonstrate that he or she would not have bought the product but for the misrepresentation"). That is, if a plaintiff would have purchased a product regardless of the defendant's alleged misrepresentation, that plaintiff cannot prove causation. This logic applies to FAL and CLRA claims, which require causation, just as it does to UCL claims.

Plaintiffs cannot demonstrate causation for the same reasons that they received the benefit of their bargain. *See* Section II. While the complaint alleges plaintiffs would not have purchased the vehicles without the label (ECF No. 39, 2d Am. Compl. ¶¶ 47, 51), their admissions and the record evidence prove otherwise. Even after filing this lawsuit, both plaintiffs admit their RZRs have met their expectations; they like or love their RZRs; and they have continued to drive them. Their RZRs have satisfied their subjective beliefs about what the label means in terms of providing safety and withstanding a rollover. Plaintiffs have never experienced any malfunction or problem with their vehicles, and have never made any warranty claims or complaints regarding them. These admissions establish that plaintiffs would have purchased their RZRs regardless of the label, and thus they cannot prove causation and have no claims.

IV. PLAINTIFFS' EQUITABLE RELIEF CLAIMS FAIL BECAUSE THEY CANNOT SHOW THEY LACK AN ADEQUATE LEGAL REMEDY.

The Ninth Circuit recently confirmed that "traditional principles governing equitable remedies in federal courts, ***including the requisite inadequacy of legal remedies***, apply when a party requests restitution under the UCL and CLRA in a diversity action." *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th Cir. 2020) (emphasis added). *Sonner's* reasoning is not limited to those two statutes, but includes any equitable relief sought in federal court, *id.* at 840-41, including under the FAL. Moreover, while *Sonner* concerned only equitable restitution, decisions following *Sonner* have held that other equitable remedies—particularly injunctions—are not available unless the plaintiff lacks an adequate remedy at law. *E.g.*, *In re MacBook Keyboard Litig.*, 2020 WL 6047253, at *3 (N.D. Cal. Oct. 13, 2020) ("numerous courts

in this circuit have applied *Sonner* to injunctive relief claims") (collecting cases); *Huynh v. Quora, Inc.*, 2020 WL 7495097, at *19 (N.D. Cal. Dec. 21, 2020) ("Cases in this Circuit have held that *Sonner* extends to claims for injunctive relief.") (collecting cases).

Plaintiffs bear the burden of showing they lack an adequate remedy at law. *See Sonner*, 971 F.3d at 844 (affirming dismissal of equitable remedies where plaintiff "fails to make such a showing" of lacking an adequate legal remedy); *Gibson v. Jaguar Land Rover N. Am., LLC*, 2020 WL 5492990, at *3 (C.D. Cal. Sept. 9, 2020) ("courts generally require plaintiffs seeking equitable relief to allege some facts suggesting that damages are insufficient to make them whole"). Moreover, this "showing is required in the operative complaint." *Hanna v. Walmart Inc.*, 2020 WL 7345680, at *6 (C.D. Cal. Nov. 4, 2020); *see Williams v. Apple, Inc.*, 2020 WL 6743911, at *10 (N.D. Cal. Nov. 17, 2020); *MacBook*, 2020 WL 6047253, at *3.

Under this precedent, judgment should be granted against all of plaintiffs' equitable claims, including equitable restitution and injunctive relief, for failing to allege facts in the complaint showing plaintiffs lack an adequate remedy at law in their complaint. (ECF No. 39, 2d Am. Compl. ¶¶ 1-136.) The complaint is devoid of any allegation that plaintiffs lack an adequate remedy at law. (*Id.*) Thus, plaintiffs have completely failed to make the "showing … required in the operative complaint." *Hanna*, 2020 WL 7345680, at *6.

Independent of plaintiffs' failure to make any showing that they lack an adequate legal remedy, numerous decisions—including *Sonner* itself—hold that money damages can be awarded as a remedy for alleged mislabeling or misrepresentation of a product. *E.g.*, *Sonner*, 971 F.3d at 837-38 (remedy of damages precluded equitable claims alleged that defendant falsely advertised its beverage as having health benefits); *Williams*, 2020 WL 6743911, at *1-2, 9-10 (same for equitable claims that defendant misrepresented data storage services); *Gibson*, 2020 WL 5492990, at *2-4 (same for equitable claims that defendant misrepresented the warranty coverage on its vehicles);

Gomez v. Jelly Belly Candy Co., 2017 WL 8941167, at *1-2 (C.D. Cal, Aug. 18, 2017) (same for equitable claims that product's use of the word "juice" misled consumers).

Moreover, courts have rejected equitable remedies under the UCL and FAL when—as here—the complaint alleges claims under the CLRA[4] because the CLRA provides for the classic legal remedy of damages. *See Duttweiler v. Triumph Motorcycles (Am.) Ltd.*, 2015 WL 4941780, at *8-9 (N.D. Cal. Aug. 19, 2015) ("in order to demonstrate some entitlement to equitable relief, Duttweiler was required to allege facts suggesting that damages under the CLRA alone would not provide adequate relief"); *Nguyen v. Nissan N. Am., Inc.*, 2017 WL 1330602, at *4-5 (N.D. Cal. Apr. 11, 2017) (dismissing UCL claims and claims for injunctive relief where plaintiff sought damages under the CLRA and other statutes); *Bird v. First Alert, Inc.*, 2014 WL 7248734, at *6 (N.D. Cal. Dec. 19, 2014) ("plaintiff cannot seek restitution under the UCL because she has an adequate remedy at law in her claim for damages under the CLRA"); *see also Sonner*, 971 F.3d at 838, 844 (relying on the plaintiff having previously sought damages under the CLRA in affirming dismissal of equitable claims under the UCL and CLRA).

Furthermore, plaintiffs' complaint repeatedly makes clear that plaintiffs seek an adequate legal remedy through money damages. The title of the operative complaint, appearing on every page of the pleading, is "Second Amended Complaint ***for Damages*** and Injunctive Relief." (SUF ¶ 17 (emphasis added).) The complaint's CLRA claim expressly states that it "seeks damages." (*Id.* ¶ 18.) Plaintiffs request certification of a

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[4] Albright's equitable claims are precluded by the CLRA providing an adequate legal remedy regardless of this Court dismissing his CLRA claim as time-barred. *See Alvarado v. Wal-Mart Assocs., Inc.*, 2020 WL 6526372, at *4 (C.D. Cal. Aug. 7, 2020) ("Plaintiff cites no cases and provides no argument that a different statute of limitations is sufficient to demonstrate inadequacy of a legal remedy. And other courts in this circuit have held to the contrary."); *Kitazato v. Black Diamond Hospitality Invs., LLC*, 655 F. Supp. 2d 1139, 1147 (D. Haw. 2009) ("Plaintiffs[']' failure to file a proper claim within the statute of limitations does not make the remedy at law inadequate; it simply means Plaintiffs missed their opportunity to seek legal redress under those statutes."); *see also Sonner*, 971 F.3d at 838, 844 (holding that damages provided an adequate remedy at law even though plaintiff had dropped her damages claim and the district court refused to allow plaintiff to re-allege damages).

Rule 23(b)(3) class "for monetary damages." (*Id.* ¶ 19.) Plaintiffs also allege "[c]lass-wide damages" should be awarded; this Court has jurisdiction because the amount in controversy exceeds the "damages threshold under the Class Action Fairness Act"; Polaris's alleged conduct means that "consumers are damaged based on the benefit of the bargain"; and putative class members are unlikely to prosecute individual claims "since the individual damages are small." (*Id.* ¶¶ 20-23.) Plaintiffs' initial disclosures also confirm that they seek "actual damages." (*Id.* ¶ 24.)

In short, there can be no dispute that plaintiffs have failed to allege and explain how they lack an adequate legal remedy, and both the law and the record establish that money damages are an adequate legal remedy. Accordingly, judgment should be granted against all plaintiffs' equitable claims. As the UCL and FAL only provide for equitable remedies, judgment should be granted against both those claims (and Albright's case) in their entirety. *See, e.g.*, *Williams*, 2020 WL 6743911, at *9-10 ("a federal court cannot grant relief under the UCL or FAL if Plaintiffs have an adequate remedy at law"); *Gibson*, 2020 WL 5492990, at *3-4. This argument also precludes all equitable relief under the CLRA, such that only Guzman's CLRA claim for damages is not barred by plaintiffs having an adequate legal remedy. *See Gibson*, 2020 WL 5492990, at *4.

V. PLAINTIFFS CANNOT OBTAIN INJUNCTIVE RELIEF BECAUSE THEY DO NOT INTEND TO BUY POLARIS RZRS AGAIN.

A plaintiff who learns of an alleged misrepresentation regarding a product lacks standing to seek injunctive relief unless, at a minimum, the plaintiff intends to purchase that product again in the future. *E.g.*, *Lanovaz v. Twinings N. Am., Inc.*, 726 F. App'x 590 (9th Cir. 2018) (affirming dismissal of injunctive relief claims under the UCL, FAL, and CLRA where plaintiff "does not intend to purchase Twinings products in the future"); *Yu v. Dr Pepper Snapple Group, Inc.*, 2020 WL 5910071, at *8 (N.D. Cal. Oct. 6, 2020) (dismissing claims regarding injunctive relief because, "[g]iven what Plaintiff knows about Defendants' products and his preference for applesauce and apple

juice free of trace amounts of pesticides, the Court does not find it plausible that he would be misled into purchasing these Products in the future"); *Prescott v. Nestle USA, Inc.*, 2020 WL 3035798, at *6 (N.D. Cal. June 4, 2020) ("In the present case, Plaintiffs have not alleged that they would purchase the Product absent the alleged misleading labeling."); *Anthony v. Pharmavite*, 2019 WL 109446, at *6 (N.D. Cal. Jan. 4, 2019) (dismissing injunctive relief claim where plaintiffs did not allege they intended to purchase the product again and the product could not be altered to satisfy plaintiffs); *Tryan v. Ulthera, Inc.*, 2018 WL 3955980, at *10 (E.D. Cal. Aug. 17, 2018) ("Here, in the absence of any such plausible allegations that either Plaintiff would undergo Ultherapy again under any circumstances, the Court must find that standing to seek injunctive relief is absent."); *Lucas v. Breg, Inc.*, 212 F. Supp. 3d 950, 962-64 (S.D. Cal. 2016) (granting summary judgment against plaintiffs' claims for injunctive relief where there was no genuine dispute that plaintiffs would not purchase or rent the product again).

Here, plaintiffs seek injunctive relief to prevent Polaris from advertising that the "class vehicles" comply with 29 C.F.R. § 1928.53 unless the vehicles satisfy the complaint's interpretation of that regulation. (ECF No. 39, 2d Am. Compl. § VII ¶ 68.)

But neither plaintiff has even alleged—much less provided evidence to show—that they would purchase another Polaris RZR in the future if the label were removed from Polaris vehicles. (ECF No. 39, 2d Am. Compl. ¶¶ 47, 51.) Moreover, the RZRs plaintiffs purchased cost over $19,000 (SUF ¶ 10), and plaintiffs have provided no reason why they would make another such significant purchase when they currently own RZRs that satisfy their expectations and that they continue to drive.

Furthermore, Albright testified that if he could do it all over again, he "probably wouldn't" have bought his RZR. (SUF ¶ 79.) He identified "safety and life changes" as the reasons he would not purchase it again, explaining that he'd rather have his "boys ride dirt bikes" because he believed they were "safer" and that four years ago was the "time of life … when you would buy" a vehicle such as the RZR. (*Id.*) That is, Albright

believes that he and his boys are now too old for him to purchase a vehicle such as the RZR, establishing that he does not intend to purchase another RZR in the future regardless of the label.

CONCLUSION

Given plaintiffs' admissions, as well as the law, Polaris respectfully requests that the Court grant summary judgment in Polaris's favor against all claims of both plaintiffs.

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CERTIFICATE OF SERVICE

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