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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' REPLY IN SUPPORT OF MOTION FOR SUMMARY JUDGMENT

Complaint Filed Date: August 8, 2019

Judge: Fernando L. Aenlle-Rocha
Hearing Date: April 30, 2021
Time: 1:30 PM
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INTRODUCTION

Plaintiffs' Opposition confirms they cannot establish the elements of reliance, injury, and causation necessary to support their claims, or any basis for equitable or injunctive relief. Unable to avoid their deposition admissions, plaintiffs rely on irrelevant assertions that ignore the undisputed record and cite to inapplicable cases that often have been superseded by more recent, controlling precedent. Plaintiffs' own testimony dooms their claims, and summary judgment should be granted against their complaint in its entirety.

First, plaintiffs cannot show reliance for several independent reasons. Plaintiffs do not dispute that Guzman saw only two words on the label and never read—much less relied on—the language regarding 29 C.F.R. § 1928.53 that forms the basis of plaintiffs' claims. Moreover, the Opposition repeatedly asserts that plaintiffs bought their RZRs because they mistakenly believed the label said "OSHA approved"—despite that language never appearing on the label. As for the label's actual language, plaintiffs' Opposition confirms they have no idea what the label's language means, and cannot identify how or why it is false or misleading. Nor do plaintiffs cite any case law suggesting—much less holding—that reliance can be based on language plaintiffs never read, do not understand, mistakenly believed said something else, or where plaintiffs cannot identify any false or misleading statement.

Second, plaintiffs have received the benefit of their bargains and cannot show causation. Plaintiffs cannot avoid their admissions that they love or like their RZRs, their RZRs have met their expectations, they continued to use their RZRs after filing suit, they have had their children ride with them, and they have never had any problem with their RZRs. Plaintiffs argue they expected the ROPS would be safe and could withstand a rollover (despite that language not appearing anywhere on the label), but they have not produced one iota of evidence that their ROPS are unsafe or cannot withstand a rollover. Indeed, Albright admitted he did not consider his RZR to be less safe than other off road vehicles. Plaintiffs' expectations have been satisfied.

Third, Guzman does not respond to Polaris's argument that judgment should be granted against all his claims for equitable relief because he has an adequate remedy at law. For Albright, Polaris' opening memorandum cited the Ninth Circuit's controlling precedent in *Sonner v. Premier Nutrition Corp.*, which holds that if plaintiffs have an adequate remedy at law, their equitable claims under the UCL and other California consumer protection statutes are barred. 971 F.3d 834, 844 (9th Cir. 2020). Albright relies on a handful of inapplicable cases that either pre-date *Sonner* or are state cases that *Sonner* holds are inapplicable in federal court. Plaintiffs do not cite—much less attempt to distinguish—*Sonner* or the several other decisions cited by Polaris demonstrating that both plaintiffs have an adequate remedy at law and thus cannot have any equitable claims.

Fourth, plaintiffs do not argue—or provide evidence—that they intend to buy another Polaris vehicle, and thus they cannot obtain injunctive relief regarding the labels on their RZRs. Plaintiffs' argument to the contrary primarily relies on a single decade-old district court decision that has been superseded by subsequent Ninth Circuit precedent. Once again, plaintiffs fail to mention, much less distinguish, the many cases Polaris cites establishing that plaintiffs' admissions preclude any injunctive relief.

ARGUMENT

I. PLAINTIFFS' UNDISPUTED TESTIMONY ESTABLISHES THEY DID NOT RELY ON THE LABEL'S LANGUAGE.

Polaris makes four independent arguments—any one of which is sufficient for summary judgment—for why on the undisputed facts plaintiffs cannot establish reliance. (Polaris Memo. § I.) Plaintiffs' Opposition confirms they cannot show reliance for each of these reasons.

A. Guzman Did Not Read The Language That Forms The Basis Of His Claims.

Plaintiffs do not dispute that Guzman testified he saw only two words on the label—"OSHA" and "Polaris"—and that he did not read the label's language regarding

29 C.F.R. § 1928.53. (Polaris's Response To Plaintiffs' Statement Of Genuine Disputes Of Material Fact And Additional Material Facts ("Polaris Fact Resp.") ¶¶ 41-42.) Nor can plaintiffs dispute that their complaint is based on the label stating the ROPS meets the requirements of 29 C.F.R. § 1928.53—the very language Guzman did not read. (Polaris Fact Resp. ¶¶ 11-14; ECF No. 38, MTD Order § I at 3 n.2.)

Plaintiffs respond that Guzman had talked with Albright, and Albright told him the ROPS was "OSHA approved" (Polaris Fact Resp. ¶¶ 41-42), but this cannot overcome Guzman's admission that he did not read the language at issue. The label does not say "OSHA approved," and thus Albright's statement has nothing to do with Polaris. (*See also* Polaris Memo. § I.D.; *infra* § I.D.) Under the law, plaintiffs' claims must be based on representations that *Polaris* actually made, not *Albright's* mistaken and erroneous beliefs about the label. *See Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 793-94 (9th Cir. 2012); *Resnick v. Hyundai Motor Am., Inc.*, 2017 WL 1531192, at *19 (C.D. Cal. Apr. 13, 2017).[1] In addition, plaintiffs do not claim that Albright ever mentioned 29 C.F.R. § 1928.53 to Guzman or that Guzman was ever aware of any reference to that regulation on the label. (Polaris Fact Resp. ¶¶ 41-42)

Nor do plaintiffs distinguish Polaris's cited case law or the application of that law to Guzman's admissions. Polaris cited multiple cases holding that plaintiffs cannot rely on representations they did not read. (Polaris Memo. at 10-11.) In particular, Polaris relied on the Ninth Circuit decision in *Maple v. Costco Wholesale Corp.*, holding that where, like Guzman here, a plaintiff reads only a portion of the label, his claims based on portions of the label he did not read fail. 649 F. App'x 570, 572 (9th Cir. 2016). Plaintiffs do not dispute that they cannot rely on a label they did not read, and do not distinguish *Maple* at all. Nor do they cite a single case holding that a plaintiff can rely on a portion of a label he did not read.

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[1] Keller's testimony concerning why or where Polaris placed the label is irrelevant. (Pls. Opp. at 7.) Regardless of the label's location, Guzman admits he did not read the relevant language and thus he could not have relied on it.

Accordingly, because Guzman did not read the label language that forms the basis of his claims, he cannot establish reliance as a matter of law.

B. Plaintiffs Did Not Understand 29 C.F.R. § 1928.53, And Thus Could Not Have Relied On The Label's Statement About That Regulation.

The basis of plaintiffs' claims is that the ROPS label allegedly misrepresents compliance with 29 C.F.R. § 1928.53. Yet plaintiffs do not dispute they had no understanding whatsoever of 29 C.F.R. § 1928.53. (Polaris Fact Resp. ¶¶ 50-51, 75-77.) Nor do they dispute specific examples of this lack of understanding, such as that Albright thought "1928.53" referred to the price of the ROPS rather than any kind of regulation. (*Id.* ¶ 76.) The question here is not whether plaintiffs' have "intimate knowledge" of 29 C.F.R. § 1928.53 (Pls. Opp. at 1, 16), but whether plaintiffs have any understanding of the statement that forms the basis of their claims. They admittedly do not.

Nor do plaintiffs distinguish Polaris's cases holding that plaintiffs have no claim where they do not understand the label. (Polaris Memo. § I.B.) And plaintiffs do not cite a single case suggesting, much less holding, that a misrepresentation claim can be based on a representation plaintiffs do not understand and cannot explain.[2] Plaintiffs' argument that Judge Staton rejected a "similar argument" is incorrect. (Pls. Opp. at 1, 14.) Plaintiffs cite a footnote in the Court's order granting Polaris's motion to dismiss that addresses an entirely different issue: whether the label's disclosure of Gross Vehicle Weight ("GVW") meant that no reasonable consumer could be misled, and thus required dismissal of plaintiffs' claims under Rule 12(b)(6) where plaintiffs' allegations were assumed to be true. (ECF No. 38, MTD Order § I at 3 n.2.) Nothing in the footnote discusses reliance (which, in the body of the order, the Court held plaintiffs had failed to allege), the evidentiary record, or suggests—much less holds—plaintiffs could show

[2] Plaintiffs' argument that they believed the label meant something different from what it actually said are addressed *infra* § I.D.

reliance if their own testimony proved they had no understanding of the label's representation.[3] (*Id.*)

The Opposition also claims that plaintiffs saw the label stating "that OSHA's requirements were met" (Pls. Opp. at 14-15), but this argument fails for multiple reasons. *First*, during their depositions, plaintiffs did not claim they understood the label as stating that OSHA's requirements were met. (Polaris Memo § I.D.; *infra* § I.D.) Instead, plaintiffs testified they believed the label stated "OSHA-approved," which does not appear on the label and demonstrates plaintiffs cannot prove reliance. (*Id.*) *Second*, plaintiffs' claims and the label's language are not based on some free-floating statement about OSHA requirements, but instead the specific regulation 29 C.F.R. § 1928.53. As plaintiffs admit they have no understanding of that regulation, they could not have relied on the label's language. *Third*, Guzman did not even read the word "requirements," but simply saw "OSHA" and "Polaris." (Polaris Memo § I.A.; *supra* § I.A.)

In sum, plaintiffs' admissions establish they had no understanding of the label's language regarding 29 C.F.R. § 1928.53, and the authorities hold as a matter of law that given such facts plaintiffs have no claim.

C. Plaintiffs Do Not Know How The Label Is Allegedly False Or Misleading.

Plaintiffs cannot avoid Guzman's admissions that he did not know, and could not identify, whether anything on the label was false or misleading. (Polaris Fact Resp. ¶¶ 53-55.) Nor can they dispute Albright's admissions that he did not understand the label

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[3] Moreover, the parties have now moved beyond the pleadings to the evidence and, while not relevant to this argument, the record establishes that use of GVW for testing is the industry standard and consistent with the language and intent of 29 C.F.R. § 1928.53. (ECF No. 105-1, Polaris Opp. to Class Cert. at 4-6.) Plaintiffs have not identified a single off-road vehicle manufacturer, or aftermarket ROPS builder, that tests ROPS using plaintiffs' interpretation of 29 C.F.R. § 1928.53. (ECF No. 105-1, Polaris Opp. to Class Cert. at 4-6.)

and did not know whether the ROPS on his RZR satisfies the requirements of 29 C.F.R. § 1928.53.[4] (Polaris Fact Resp. ¶¶ 77-78.)

Nor do plaintiffs attempt to distinguish the authorities Polaris cites holding that where plaintiffs cannot identify a misrepresentation, they cannot show reliance and have no claim. (Polaris Memo. at 13-14.) And plaintiffs do not cite a single holding that a plaintiff can establish reliance on an alleged misrepresentation where he cannot identify how the representation is false or misleading.

Plaintiffs' only response is to speculate without any evidence about what a "reasonable consumer would simply see." (Pls. Opp. at 16.) What plaintiffs argue a "reasonable consumer" would see—"that the vehicles are safe based on federal standards and certifications" (*id.*)—does not appear on the label and is not what plaintiffs themselves claim they saw or read. Moreover, the question is not what plaintiff counsel's hypothetical "reasonable consumer" would believe, but instead whether these two named plaintiffs could identify a misrepresentation on the ROPS label that they relied on. They admittedly could not, and therefore summary judgment should be granted against their claims.

D. Plaintiffs Did Not Consider The Label's Actual Language, But Instead Their Own Mistaken, Idiosyncratic Beliefs.

Plaintiffs cannot establish reliance on the ROPS label because they did not consider the label's actual language, but instead their own mistaken beliefs that the label said "OSHA approved." (Polaris Memo. § I.D.) As courts in this district have held, "a reasonable consumer would not assume things about a product other than what the statement actually says." *Weiss v. Trader Joe's Co.*, 2018 WL 6340758, at *5 (C.D.

[4] Plaintiffs purported to "dispute" some of these fact statements based on the "Doctrine of Completeness," but that is an admission the cited testimony is accurate. Moreover, plaintiffs' additional citations to supposedly "complete" the issue provide no evidence that plaintiffs could identify anything on the label that was false or misleading. (Polaris Fact Resp. ¶¶ 53-55, 77-78.)

Cal. Nov. 20, 2018) (quotation marks and brackets omitted); *see also Red v. Kraft Foods, Inc.*, 2012 WL 5504011, at *3 (C.D. Cal. Oct. 25, 2012).

Plaintiffs do not dispute this rule, and their attempt to justify their consideration of something other than the label's actual language is meritless. In each of the cases they cite, the plaintiffs in fact relied on the label's actual representation. (Pls. Opp. at 14-15.) For example, in *Williams v. Gerber Products Co.*, the plaintiff believed the defendant's fruit juice contained oranges, peaches, and strawberries because those fruits were represented and shown on the box's front packaging.[5] 552 F.3d 934, 936, 939, 941 (9th Cir. 2008); *see also Chowning v. Kohl's Department Stores, Inc.*, 2016 WL 1072129, at *1 (C.D. Cal. Mar. 15, 2016) (the defendant's labels represented items' "regular" or "original" prices, and the plaintiff believed those labels meant exactly what they said); *Miller v. Peter Thomas Roth, LLC*, 2020 WL 363045, at *2 (N.D. Cal. Jan. 22, 2020) (based on defendant's representations that product "rejuvenates," "regenerates," and would "bio repair" her skin, plaintiff purchased product to help appearance of scar on her skin); *Rahman v. Mott's LLP*, 2014 WL 5282106, at *7 (N.D. Cal. Oct. 15, 2014) (plaintiff believed the defendant's "No Sugar Added" representation meant that the product had less sugar than other products).

By contrast, where plaintiffs' beliefs do not match what is on the package's label—even if those beliefs could be considered similar or related to the label's representations—courts hold that plaintiffs have no claims. *See*, *e.g.*, *Thomas v. Costco Wholesale Corp.*, 2021 WL 948801, at *3 (S.D. Cal. Mar. 12, 2021) (holding that "a plaintiff cannot establish a claim merely by pointing to plausible misunderstandings of a product description"). For example, one might believe that a "diet" drink would "assist in weight loss" or at least "not cause weight gain"—after all, those are reasons

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[5] Plaintiffs also cite *Williams*' discussion that the plaintiff did not need to look at the ingredient list in small print on the side of the box (Pls. Opp. at 15), but this is irrelevant to any issue here. The question is whether plaintiffs' relied on the ROPS label's language that is the basis for their claims, and their testimony makes clear they did not, but instead considered their mistaken beliefs about what that language meant.

why a person would select a diet drink. But the Ninth Circuit rejected precisely this claim, holding that a plaintiff's argument that "diet" on a drink's label was misleading because the drink could cause weight gain failed to state a claim. *Becerra v. Dr Pepper/Seven Up, Inc.*, 945 F.3d 1225, 1227, 1231 (9th Cir. 2019). Numerous other cases are in accord.[6] Notably, Polaris cited many of these cases in its opening brief (Polaris Memo. § I.D.), yet plaintiffs do not distinguish any of them.

Plaintiffs' Opposition confirms that plaintiffs did not rely on the ROPS label's actual language, but instead considered their own mistaken beliefs about what the label meant—none of which appears on the label itself. Indeed, the Opposition repeatedly admits that plaintiffs believed and considered that the label said "OSHA approved," even though it does not, confirming their inability to establish reliance on the representation at issue in this case. (Pls. Opp. at 1, 8-9, 12-13, 20.) Stating that a ROPS meets the requirements of a particular regulation is fundamentally different from saying that a government agency approved the ROPS or (as Guzman believed) the entire vehicle (Polaris Fact Resp. ¶ 47). That difference is at least as great as believing "diet" means does "not cause weight gain"; "no artificial flavors" means "no artificial ingredients"; or "white chips" means "chips made with white chocolate"—all of which courts have held cannot establish a consumer protection claim.

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[6] *E.g.*, *Thomas*, 2021 WL 948801 at *4, 6 (rejecting plaintiffs' claims based on headphones being unable to charge wirelessly despite representations that headphones were "Wireless to the fullest" and frequent use of the word "wireless"); *Cheslow v. Ghirardelli Chocolate Co.*, 472 F. Supp. 3d 686, 694-95 (N.D. Cal. 2020) (dismissing plaintiffs' claim that the word "white" in defendant's representation of its product as "white chips" meant that the chips were made from white chocolate); *Clark v. Hershey Co.*, 2019 WL 6050763, at *2 (N.D. Cal. Nov. 15, 2019) (granting summary judgment against plaintiff who believed the defendant's "'No Artificial Flavors' statement meant there were no artificial ingredients whatsoever in the products"); *Weiss*, 2018 WL 6340758, at *5 (defendant's representation that its water was "ionized to achieve the perfect balance" could not mislead plaintiff into thinking that by drinking the water she would achieve a perfect pH balance and be more healthy); *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 stated they had "No Sugar Added" and "100% Juice).

Plaintiffs also claim they believed the label meant that the ROPS "could handle the weight of a rollover," that the ROPS was "safe," or similar concepts. (Pls. Opp. at 12-13.) But once again, the ROPS label's actual language does not contain any such statement or reference, or anything like them. Moreover, plaintiffs have not introduced any such evidence regarding their ROPS; that is, there is zero evidence that plaintiffs' ROPS are unsafe, cannot handle the weight of a rollover, and so forth. Indeed, plaintiffs specifically disclaimed alleging any design defect. (ECF No. 70-35, Pls. Mot for Class Cert at 1 n.2.) Moreover, plaintiffs do not dispute they have never had any problems with their RZRs in general or the ROPS specifically. (Polaris Fact Resp. ¶¶ 36, 61-63.) In fact, Albright admitted that he considers his Polaris RZR to be safe, and that it is not less safe than other off-road vehicles. (Polaris Fact Resp. ¶¶ 65-66.) Thus, the only record evidence is that plaintiffs' RZRs and their ROPS are safe and they have never had any issues with them. (*See also* Polaris Memo. at 17-18.)

As plaintiffs repeatedly admit they did not rely on the ROPS label's actual language but instead considered their own mistaken beliefs, they cannot show reliance.

II. PLAINTIFFS HAVE RECEIVED THE BENEFIT OF THEIR BARGAINS AND CANNOT SHOW CAUSATION.

Plaintiffs cannot dispute their own deposition admissions establishing that they received the benefit of their bargains and would have purchased their RZRs regardless of any alleged misrepresentation. (Polaris Memo. at 17-18.) Specifically, plaintiffs testified that their RZRs met their expectations, they love or like their RZRs, they continued to drive their RZRs after filing suit, they had their children ride in their vehicles, have never had any problems or issues with their RZRs, and never filed any warranty claims or complained to Polaris about their RZRs. (Polaris Fact Reply ¶¶ 27-35, 37-38, 57-61, 64-66.) Plaintiffs have no evidence to the contrary.

Plaintiffs cite *Kwikset Corp v. Superior Court*, 246 P.3d 877 (Cal. 2011) and *Hinojos v. Kohl's Corp.*, 718 F.3d 1098 (9th Cir. 2013), but both of those cases are easily distinguishable. *First*, both were decided on a motion to dismiss or demurrer and

thus considered only plaintiffs' allegations, which were assumed to be true. 246 P.3d at 889 n.11; 718 F.3d at 1103. *Kwikset* acknowledges that plaintiffs would have to produce evidence to support and prove their allegations. 246 P.3d at 889 n.11. Here, the record evidence contradicts the allegations in plaintiffs' complaint and demonstrates plaintiffs received the benefit of the bargain and cannot show causation. *Second*, both cases involved plaintiffs who understood the representations at issue—that locks were "Made in U.S.A." (*Kwikset*) and the "original" prices of products (*Hinojos*)—and explained how they were false. 246 P.3d at 892; 718 F.3d at 1105. By contrast, plaintiffs here have no understanding of the representation and repeatedly admitted they could not identify any misleading or false representation in the label. (*Supra* § I.) Given those admissions, plaintiffs cannot show this representation became part of their bargains or caused them to purchase their RZRs. *Third*, *Kwikset* acknowledged the role that subjective considerations would play in determining whether a plaintiff received the benefit of the bargain. 246 P.3d at 890 n.14. The evidentiary record here establishes that the RZRs satisfied plaintiffs' subjective expectations. (Polaris Memo. at 17-18; *see infra* at pp. 11-12.)

Plaintiffs' attempt to distinguish *Johnson v. Mitsubishi Digital Elecs. Am., Inc.*, 365 F. App'x 830 (9th Cir. 2010) and the other cases Polaris cites is similarly meritless. (Pls. Opp. at 18-19.) To begin with, plaintiffs cannot contest *Johnson*'s legal holding that if one gets the benefit of the bargain, they have no claim. 365 F. App'x at 832. Plaintiffs' assertion that the *Johnson* plaintiff could cure the misrepresentation simply by attaching an antenna is incorrect. No broadcasters transmitted in 1080p and thus attaching an antenna would not allow the plaintiff to watch 1080p broadcasts as he wanted to do. *Id.* But even though he could not watch 1080p broadcasts, the Ninth Circuit held he received the benefit of his bargain. *Id.* As to *Browe v. Evenflo Co., Inc.*, 2015 WL 3915868 (D. Minn. June 25, 2015), plaintiffs provide no legal argument that California interprets its law more liberally than Minnesota with respect to benefit of the bargain and causation. (Pls. Opp. at 19.) Plaintiffs claim that the ROPS is more

expensive than the child car seat in *Browe* (*id.*), but do not explain how this has any legal relevance. Polaris is not aware of precedent holding that benefit-of-the-bargain or causation turn on the price of the product at issue. Nor do plaintiffs attempt to distinguish the several other cases Polaris cites—many of which post-date *Kwikset* and *Hinojos*—holding that a plaintiff has no standing when he receives the benefit of his bargain. (Polaris Memo. at 16.)

With the law and undisputed facts against them, plaintiffs resort to making assertions that have no record support whatsoever. *First*, plaintiffs claim they paid for vehicles that are "safe" but received vehicles that "are not safe" and "would crush them if there was a rollover." (Pls. Opp. at 18-19.) Plaintiffs' claim about vehicle "safety" does not appear on the ROPS label, and so could not have been part of their bargains. *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). Moreover, plaintiffs do not cite a single shred of evidence that their RZRs, or any part of them, are unsafe; the only record evidence is that plaintiffs have not had any issues with their RZRs and Albright believes his is safe. (*Supra* at p. 9.) Thus, plaintiffs have no evidence that the RZRs do not satisfy their subjective and mistaken beliefs about what the label meant. *Second*, plaintiffs once again contend they believed the vehicles were "OSHA approved" (Pls. Opp. at 20), but that term does not appear on the label and could not have been part of their bargains. *McGee*, 982 F.3d at 706. Nor could a Polaris representation regarding "OSHA approved" have caused plaintiffs to purchase their RZRs, since there was no such representation. *Third*, plaintiffs say they could have paid less for Polaris RZRs (Pls. Opp. at 18-19), but offer no evidence to support that any dealer would have sold them a RZR for less because of the ROPS label. Plaintiffs also assert they could have purchased an off-road vehicle from another manufacturer (*id.*), but they do not identify a single off-road vehicle manufacturer or aftermarket ROPS builder certifying compliance with 29 C.F.R. § 1928.53 using plaintiffs' interpretation of that regulation.

Instead, these manufacturers calculate compliance with 29 C.F.R. § 1928.53 using GVW, same as Polaris, or (for aftermarket ROPS builders) make no certification whatsoever. (ECF No. 105-1, Polaris Opp. at Class Cert. at 4-6, 11.) That plaintiffs have no evidence they can purchase a ROPS complying with their interpretation of 29 C.F.R. § 1928.53 further confirms the reference to that regulation on the ROPS was not part of their bargains nor caused their purchases.

In short, plaintiffs cannot use unsupported assertions and inapplicable case law to overcome their own deposition admissions establishing they received the benefit of their bargains and that the alleged misrepresentation did not cause them any injury.

III. PLAINTIFFS CANNOT SHOW THEY LACK AN ADEQUATE LEGAL REMEDY, AND THUS THEIR EQUITABLE CLAIMS ARE BARRED.

Polaris cited the recent binding Ninth Circuit *Sonner* decision and several district court decisions following it. (Polaris Memo. § III.) All these cases hold that if a plaintiff does not plead and demonstrate the lack of an adequate legal remedy, then equitable claims under the UCL, FAL, and CLRA are barred. (*Id.*) Remarkably, plaintiffs do not mention—much less try to distinguish—*Sonner* or any of the other cases Polaris cites for this proposition. (Polaris Opp. § IV.D.) Nor do they cite any federal cases post-dating *Sonner*. (*Id.*)

Plaintiffs make no argument that Guzman lacks an adequate legal remedy. While plaintiffs concede this bars Guzman's UCL claim (Pls. Opp. at 2), it also bars Guzman's FAL claim (as the FAL offers only equitable remedies) and any equitable relief he seeks under the CLRA. (Polaris Memo. at 22; *see also* Pls. Opp. at 22 ("The FAL and UCL are both equitable statutes …")). As plaintiffs fail to make any argument that Guzman lacks an adequate legal remedy, summary judgment should be granted against all of Guzman's equitable claims under the UCL, FAL, and CLRA, meaning that judgment should be granted against his UCL and FAL claims in their entirety.

As for Albright, plaintiffs do not contend their complaint alleges facts showing that Albright lacks a legal remedy; do not explain why money damages damages would

not be a remedy for his allegations; and do not explain why (besides the time bar) he could not have brought a CLRA claim for damages. (Polaris Memo. at 20-21.) Indeed, plaintiffs' Opposition argues that "Plaintiffs paid more for UTVs than they should have" (Pls. Opp. at 19) further confirming that money damages—the typical remedy for alleged overpayment claims (Polaris Memo. at 20-21)—are an adequate remedy for both plaintiffs. Each of these failures is a sufficient, independent reason to grant summary judgment against Albright's sole remaining UCL claim. (*Id.*)

Plaintiffs' attempts to save Albright's UCL claim fail. Albright asserts he has not pled any remedy besides injunctive relief under the UCL (Pls. Opp. at 21), but plaintiffs' complaint and initial disclosures seek money damages for both plaintiffs (Polaris Memo. at 21-22). Moreover, Albright provides no support for his claim that one can escape the effect of an adequate legal remedy simply by not pleading it. Plaintiffs do not cite a single post-*Sonner* case suggesting that whether a plaintiff has an adequate legal remedy turns on mere pleading, as opposed to whether a plaintiff actually has a legal remedy. Instead, decisions following *Sonner* hold that an adequate legal remedy bars claims for injunctive relief even if no claims for damages (or other legal remedies) are alleged in the complaint. *E.g.*, *In re Macbook Keyboard Litig.*, 2020 WL 6047253, at *1, 3-4 (N.D. Cal. Oct. 13, 2020) (dismissing claims based on *Sonner* where plaintiffs sought only injunctive relief and restitution); *Hanna v. Walmart Inc.*, 2020 WL 7345680, at *6 (C.D. Cal. Nov. 4, 2020) (dismissing claim based on *Sonner* where plaintiff brought only a UCL claim, which is a purely equitable claim).

Albright argues he can seek inconsistent remedies and plead in the alternative, but post-*Sonner* cases reject this exact argument. *E.g.*, *In re California Gasoline Spot Market Antitrust Litig.*, 2021 WL 1176645, at *8 (N.D. Cal. Mar. 29, 2021) ("Plaintiffs' citation to a pre-*Sonner* case for the proposition that they are permitted to plead alternative claims for relief is unavailing. Several courts have rejected this same argument.") (collecting cases); *Sharma v. Volkswagen AG*, 2021 WL 912271, at *8 (N.D. Cal. Mar. 9, 2021). "The question is not whether or when Plaintiffs are required

to choose between two available inconsistent remedies, it is whether equitable remedies are available to Plaintiffs at all." *MacBook Keyboard*, 2020 WL 6047253, at *2 (N.D. Cal. Oct. 13, 2020). If a plaintiff has legal remedies available—as Albright does—then he has no equitable claims.

Finally, Albright cites California state cases regarding injunctive relief, but what California state courts might allow is irrelevant. The entire holding and reasoning of *Sonner* is that in federal court a plaintiff must plead and prove that he lacks an adequate legal remedy, even if California state courts would not recognize this requirement. 971 F.3d at 839-44. *Sonner* requires federal court plaintiffs to both plead and demonstrate they lack an adequate remedy at law. As Albright has failed to do so, summary judgment should be granted against his UCL claim, and thus his case, in its entirety.

IV. PLAINTIFFS DO NOT INTEND TO PURCHASE POLARIS RZRS AGAIN, AND THUS THEY CANNOT OBTAIN INJUNCTIVE RELIEF.

Polaris cited a half-dozen cases, including from the Ninth Circuit, holding that a plaintiff who learns of an alleged misrepresentation regarding a product lacks standing to seek injunctive relief unless the plaintiff intends to purchase the product in the future. (Polaris Memo. at 22-23.) Once again, plaintiffs do not even attempt to distinguish any of these cases.

Polaris also explained that plaintiffs provide no evidence they would purchase RZRs (or any other Polaris vehicles) again, and the record shows they would not. (Polaris Memo. at 23-24.) Plaintiffs do not dispute these facts. (Pls. Opp. § IV.E.) Thus, under the controlling law and undisputed facts, plaintiffs fail to show they intend to purchase RZRs in the future and thus lack standing for injunctive relief.

Plaintiffs respond by citing *Davidson v. Kimberly-Clark Corp.*, but *Davidson* is the source of the rule that a plaintiff must allege he will purchase the product again to have standing for injunctive relief. 889 F.3d 956 (9th Cir. 2018). *Davidson* explained that, in some cases, a plaintiff might have a sufficient threat of future harm ***if she wanted to purchase the product***, but would not do so because she could not rely on the

product's labeling or might incorrectly assume the product was improved based on the label. *Id.* at 969-70. In evaluating whether the *Davidson* plaintiff had standing, the opinion repeatedly notes that "she would purchase truly flushable wipes manufactured by Kimberly-Clark," she "has alleged that she desires to purchase Kimberly-Clark's flushable wipes," and similar language. *Id.* at 970-72. Polaris's cited cases largely post-date *Davidson* and recognize that *Davidson* requires plaintiffs to allege they intend to purchase the product again. (Polaris Memo. at 22-23.) Far from supporting plaintiffs, *Davidson* confirms that because plaintiffs do not allege they will purchase Polaris RZRs again, they lack standing for injunctive relief.

Plaintiffs also rely heavily on a 2011 district court case (Pls. Opp. at 23-25), but that case has been superseded by *Davidson* and the cases Polaris cites. That lone, decade-old decision cannot overcome more recent precedent from the Ninth Circuit and district courts.

In sum, plaintiffs do not dispute they do not intend to purchase Polaris RZRs again, and thus summary judgment should be granted against all of their claims for injunctive relief.

CONCLUSION

Plaintiffs' Opposition confirms that their claims fail as a matter of undisputed fact and law. The Court should grant summary judgment in Polaris's favor against all claims of both plaintiffs.

DATED: April 16, 2021

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CERTIFICATE OF SERVICE

I hereby certify that on April 16, 2021, 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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