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similarly situated*

**THE UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF CALIFORNIA – SACRAMENTO DIVISION**

16 MICHAEL HELLMAN, individually
17 on behalf of himself and all others
18 similarly situated; FRANCISCO
19 BERLANGA, individually on behalf
20 of himself and all others similarly
21 situated; TIM ARTOFF, individually
22 on behalf of himself and all others
23 similarly situated; CY MITCHELL,
24 individually on behalf of himself and
25 all others similarly situated; and
26 JONATHAN LOLLAR, individually
27 on behalf of himself and all others
28 similarly situated,

Plaintiffs,

v.

POLARIS INDUSTRIES, INC., a
Delaware corporation; POLARIS

} Case No.: 2:21-cv-00949-JAM-DMC
} **CLASS ACTION**
} **FIRST AMENDED COMPLAINT**
} **FOR DAMAGES AND**
} **INJUNCTIVE RELIEF FOR:**
} (1) **Violation of the California**
} **Consumer Legal Remedies Act;**
} (2) **Violation of the California Unfair**
} **Competition Law;**
} (3) **Violation of California False**
} **Advertising Law;**
} (4) **Violation of the Oregon Unlawful**
} **Trade Practices Act;**
} (5) **Violation of the Nevada**
} **Deceptive Trade Practices Act;**
} **and**
} (6) **Violation of the Texas Deceptive**
} **Trade Practices Act.**

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SALES, INC., a Minnesota
corporation; POLARIS INDUSTRIES,
INC., a Minnesota corporation; and
DOES 1 through 10, inclusive,

Defendants.

DEMAND FOR JURY TRIAL

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FIRST CAUSE OF ACTION 25

VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT, CAL. CIV. CODE §§ 1750, ET SEQ. 25

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VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT, TEX. Bus. & Com. Code §§ 17.46, et seq. 43

PRAYER FOR RELIEF 47

1 Plaintiffs MICHAEL HELLMAN, FRANCISCO BERLANGA, TIM
2 ARTOFF, CY MITCHELL, and JONATHAN LOLLAR (collectively,
3 “Plaintiffs”), individually and on behalf of all others similarly situated, allege the
4 following upon information and belief, based upon investigation of counsel,
5 published reports, and personal knowledge:

6 **I. NATURE OF THE ACTION**

7 1. Plaintiffs bring this action against defendants POLARIS
8 INDUSTRIES, INC. (the Delaware corporation), POLARIS SALES, INC.,
9 POLARIS INDUSTRIES, INC. (the Minnesota corporation and parent corporation
10 of the other two Polaris defendants) (collectively, “Defendants” or “Polaris”) on
11 behalf of all persons who purchased in California in the four years preceding this
12 Complaint, in Oregon in the four years preceding this Complaint, in Nevada in the
13 four years preceding this Complaint, in Texas in the four years preceding this
14 Complaint, Polaris Utility Terrain Vehicles (“UTVs”) (they are also called side-by-
15 sides) that Polaris claimed/advertised/marked/certified that the vehicles’ rollover
16 protection system (“ROPS”) complied with the department of Occupational Safety
17 and Health Administration (“OSHA”) requirements/standards of 29 C.F.R. §
18 1928.53 (which is for agricultural tractors).

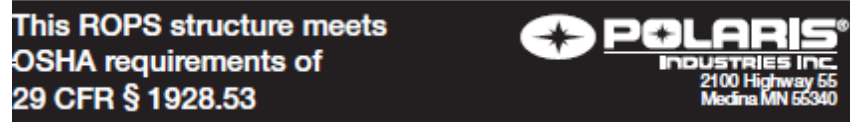
19 2. “Class Vehicles” is defined to include, but are not limited to the
20 following models: Polaris RZR XP 4 Turbo S; Polaris RZR XP 4 Turbo EPS,
21 Polaris RZR PRO XP Ultimate, Polaris RZR XP Turbo S; Polaris RZR XP Turbo
22 EPS; Polaris RZR XP 4 1000 High Lifter; Polaris RZR XP 4 Turbo S Velocity;
23 Polaris RZR PRO XP Premium; Polaris RZR XP 4 1000 Premium; Polaris RZR
24 XP 4 Turbo; Polaris RZR XP 4 Turbo Dynamix Edition; Polaris RZR XP 4 Turbo
25 Fox Edition; Polaris RZR XP 1000 Trails & Rocks; Polaris RZR PRO XP; Polaris
26 XP Turbo S Velocity; Polaris RZR XP 4 1000 Limited Edition; Polaris RZR XP 4
27 1000 EPS; Polaris RZR XP 4 1000 Ride Command; Polaris RZR XP 1000 EPS
28 High Lifter; Polaris RZR XP 1000 High Lifter; Polaris RZR XP 1000 EPS; Polaris

1 RZR XP 1000 EPS LE; Polaris RZR XP 1000 Ride Command; Polaris RZR XP 4
2 1000; Polaris RZR XP Turbo; Polaris RZR XP Turbo Fox Edition; Polaris RZR XP
3 Turbo Dynamix Edition; Polaris RZR XP Turbo S; Polaris RZR XP 1000 Premium;
4 Polaris RZR 4 1000; Polaris RZR XP 1000 Limited Edition; Polaris RZR XP 1000;
5 Polaris RZR S 1000; Polaris RZR S 1000 EPS; Polaris RZR S 900 Premium; Polaris
6 RZR 900 Fox Edition; Polaris RZR S 900; Polaris RZR S 900 EPS; Polaris RZR
7 S4 900 EPS; Polaris RZR 900 Premium; Polaris RZR RS1; Polaris RZR 900;
8 Polaris RZR 4 900 EPS LE; Polaris RZR 4 900 EPS; Polaris RZR 900 EPS Trail;
9 Polaris RZR 900 EPS; Polaris RZR 900 EPS XC Edition; Polaris RZR 900 Polaris;
10 Polaris RZR 4 800 EPS LE; Polaris RZR 4 800 EPS; Polaris RZR S 800 EPS;
11 Polaris RZR S 800 LE; Polaris RZR S 800; Polaris RZR 800 EPS LE; Polaris RZR
12 800 EPS XC Edition; Polaris RZR 800 Polaris Pursuit; Polaris RZR 800; Polaris
13 RZR 570 Premium; Polaris RZR 570 EPS Trail LE; Polaris RZR 570 EPS Trail;
14 Polaris RZR 570 EPS LE; Polaris RZR 570 EPS; Polaris RZR 570; Polaris RZR S
15 570 570 EPS; Polaris RZR 170 EFI; Polaris RZR Turbo EPS; Polaris Ranger Crew
16 XP 1000 EPS NorthStar Edition; Polaris Ranger XP 1000 NorthStar Edition;
17 Polaris Ranger Crew XP 1000 EPS NorthStar HVAC Edition; Polaris Ranger XP
18 1000 EPS NorthStar HVAC Edition ; Polaris Ranger XP 1000 EPS NorthStar
19 Edition; Polaris Ranger Crew XP 1000 High Lifter Edition; Polaris Ranger XP 1000
20 High Lifter Edition; Polaris Ranger Crew XP 1000 EPS High Lifter Edition; Polaris
21 Ranger XP 1000 EPS High Lifter Edition; Polaris Ranger Crew XP 1000 EPS Back
22 Country Edition; Polaris Ranger XP 1000 EPS Back Country Limited Edition;
23 Polaris Ranger Crew XP 1000 EPS 20th Anniversary Limited Edition; Polaris
24 Ranger XP 1000 EPS 20th Anniversary Limited Edition; Polaris Ranger Crew XP
25 1000 Texas Edition; Polaris Ranger XP 1000 Texas Edition; Polaris Ranger Crew
26 XP 1000 Premium; Polaris Ranger Crew XP 1000 EPS Premium; Polaris Ranger
27 XP 1000 Premium; Polaris Ranger Crew XP 1000 EPS; Polaris Ranger XP 1000
28 EPS; Polaris Ranger XP 1000 EPS Ranch Edition; Polaris Ranger XP 1000 EPS

1 Hunter Edition; Polaris Ranger XP 1000; Polaris Ranger Crew XP 900 EPS; Polaris
2 Ranger XP 900 EPS; Polaris Ranger XP 900 EPS Premium; Polaris Ranger Crew
3 XP 900; Polaris Ranger XP 900; Polaris Ranger Crew XP 900-6 EPS; Polaris
4 Ranger Crew XP 900-6; Polaris Ranger Crew XP 900-5 EPS; Polaris Ranger Crew
5 XO 900-5; Polaris Ranger XP 900; Polaris Ranger XP 900 EPS; Polaris Ranger XP
6 900 EPS High Lifter Edition; Polaris Ranger XP 900 EPS Hunter Deluxe Edition;
7 Polaris Ranger XP 900 EPS Hunter Edition; Polaris Ranger XP 900 EPS NorthStar
8 Edition; Polaris Ranger XP 900 EPS Trail Edition; Polaris Ranger XP 900 EPS LE;
9 Polaris Ranger XP 900 EPS Browning LE; Polaris Ranger XP 900 Deluxe; Polaris
10 Ranger XP 570 EPS; Polaris Ranger XP 570; Polaris Ranger Crew 1000 Premium;
11 Polaris Ranger 1000 Premium; Polaris Ranger Crew 1000; Polaris Ranger 1000
12 EPS; Polaris Ranger 1000; Polaris Ranger Crew 900 EPS; Polaris Ranger Crew 900
13 EPS LE; Polaris Ranger Crew 900; Polaris Ranger Crew 900-6 EPS; Polaris Ranger
14 Crew 900-6; Polaris Ranger 800 EFI; Polaris Ranger 800 Midsize; Polaris Ranger
15 800 EPS LE; Polaris Ranger Crew 800 EPS; Polaris Ranger Crew 800; Polaris
16 Ranger 800 EPS; Polaris Ranger Crew 570-6; Polaris Ranger Crew 570-4 Premium;
17 Polaris Ranger Crew 570-4 EPS; Polaris Ranger Crew 570-4; Polaris Ranger Crew
18 570 EPS; Polaris Ranger Crew 570 EPS LE; Polaris Ranger Crew EPS 570 Full-
19 Size; Polaris Ranger 570 EPS; Polaris Ranger 570 EPS Hunter Edition; Polaris
20 Ranger Crew 570 EFI; Polaris Ranger 570 EFI; Polaris Ranger Crew 570 Full-Size;
21 Polaris Ranger 570 Full-Size; Polaris Ranger Crew 570; Polaris Ranger 570; Polaris
22 Ranger 500; Polaris Ranger 400; Polaris Ranger 150 EFI; Polaris Ranger 6X6;
23 Polaris Ranger Diesel HST Deluxe; Polaris Ranger Diesel HST; Polaris Ranger
24 Crew Diesel; Polaris Ranger Diesel; Polaris Ranger EV; Polaris Ranger EV LI-
25 ION; Polaris Ranger ETX; Polaris General 4 1000 EPS Deluxe; Polaris General 4
26 1000; Polaris General 4 1000 EPS; Polaris General 4 1000 Ride Command Edition;
27 Polaris General 1000 Deluxe; Polaris General 1000 Premium; Polaris General
28 1000; Polaris General 1000 Ride Command Edition; Polaris General 1000 Hunter

1 Edition; Polaris General 1000 Limited Edition; Polaris General 1000 EPS; Polaris
2 General 1000 EPS Deluxe; Polaris General 1000 EPS Hunter Edition; and Polaris
3 General 1000 EPS Ride Command Edition.

4 3. Polaris includes stickers like the following to suggest that their
5 vehicles meet these OSHA requirements:



8 4. The stickers are placed on Class Vehicles and are visible at the point
9 of sale where consumers are also informed that Class Vehicles meet all applicable
10 standards and regulations, including self-adopted regulations, and meet OSHA
11 requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

12 5. None of the Class Vehicles sold by Polaris meet the OSHA
13 requirements of 29 C.F.R. § 1928.53. Polaris tells all of their customers that their
14 ROPS are safe because they meet this standard. They do not. Polaris has also staved
15 off federal regulations by the U.S. Consumer Product Safety Commission
16 (“CPSC”) in part by causing the adoption of newly created industry standards as
17 part of the self-regulation revolution. Even after adopting farm tractor standards
18 issued for worker safety on farms in the early 1970s, Polaris cheats and does not
19 even meet those standards.

20 6. Roof strength is a vital safety concern to consumers given the strong
21 likelihood of UTVs rolling over. The failure to meet all applicable federal and state
22 statutes, standards, regulations, and self-adopted regulations, including OSHA 29
23 C.F.R. § 1928.53 requirements is material information for consumers
24 purchasing/leasing UTVs, such as the Class Vehicles.

25 7. While many violations are described below with specificity, this
26 Complaint alleges violations of the statutes cited in their entirety.

27 8. Unless otherwise stated, Plaintiffs allege that any violations by Polaris
28 were knowing and intentional, and that Polaris did not maintain procedures

1 reasonably adapted to avoid any such violation.

2 9. Unless otherwise indicated, the use of any defendant’s name in this
3 Complaint includes all agents, employees, officers, members, directors, heirs,
4 successors, assigns, principals, trustees, sureties, subrogees, representatives, and
5 insurers of that defendant’s name.

6 **II. UTVS SOLD BY POLARIS**

7 10. A UTV is a motorized vehicle with four or more low pressure tires
8 designed for off-road use and intended by the manufacturer primarily for
9 recreational use by one or more persons. UTVs are a relatively new product in the
10 motorized off-road category, and their speed and design make them unique from
11 all-terrain vehicles (“ATVs”). The main distinction is that an ATV is defined by
12 federal law, in part as: any motorized, off-highway vehicle designed to travel on 3
13 or 4 wheels, having a seat designed to be straddled by the operator and handlebars
14 for steering control. 15 U.S.C. § 2089(e)(1)(A).

15 11. A UTV, unlike an ATV, has traditional seating like an automobile with
16 bench or bucket seats, a restraint system, and is equipped with a steering wheel.
17 UTVs are similar in design to golf carts with throttle and brake pedals. While golf
18 carts travel approximately 15 miles per hour or less, UTVs such as the Polaris
19 Rangers and Razors have top speeds well in excess of 60 miles per hour. Polaris
20 UTVs are powered by strong engines with up to 181 horsepower.

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1 12. The images depicted below are from Polaris' most recent earnings
2 report and website. They show the Rangers and Razors, which do not look like slow
3 1970s farm tractors:



23 13. UTVs were introduced into the United States market in the late 1990s.
24 In 1998, only 2,000 UTVs were sold, all by one manufacturer. Polaris entered the
25 market in 2000. By 2003, 20,000 UTVs were sold in the United States. That number
26 then grew dramatically. There was a 19% growth from calendar year 2006 over
27 2005 levels with approximately 255,000 UTVs sold worldwide. In its most recent
28 second quarter of 2019 earnings report, Polaris estimated nearly 1 billion in gross

1 sales in the quarter. Polaris possesses the top spot in the North American market
2 share ranks and has a three -fold lead on its nearest competitor.

3 14. Polaris UTVs are sold at retail with an approximate median base price
4 of around \$12,999.99 and sell at prices exceeding \$20,000.00. The price is similar
5 to entry and midsize automobiles.

6 **III. JURISDICTION AND VENUE**

7 15. Jurisdiction is proper under 28 U.S.C. § 1332(d)(2) because plaintiff
8 Michael Hellman purchased his 2018 Polaris RZR in Tehama County in the State
9 of California, and Plaintiffs seek relief on behalf of a California Class, an Oregon
10 Class, a Nevada Class and a Texas Class. Defendants' principal place of business
11 is located in Minnesota. In addition, the matter in controversy exceeds \$5,000,000
12 exclusive of interest and costs. Therefore, both diversity jurisdiction and the
13 damages threshold under the Class Action Fairness Act of 2005 ("CAFA") are
14 present, and this Court has jurisdiction.

15 16. Venue is proper pursuant to 28 U.S.C. § 1391 for the following
16 reasons: (i) the conduct complained of herein occurred within this judicial district;
17 and (ii) Defendants conducted business within this judicial district at all times
18 relevant.

19 17. Because Defendants conducted business within the State of California
20 at all time relevant, personal jurisdiction is established.

21 **IV. PARTIES**

22 18. Plaintiff Michael Hellman ("Hellman") is an individual who resides in
23 the State of California. Plaintiff is a member of the putative California Class defined
24 herein.

25 19. Plaintiff Francisco Berlanga ("Berlanga") is an individual who resides
26 in the State of California. Plaintiff is a member of the putative California Class
27 defined herein.

28 20. Plaintiff Tim Artoff ("Artoff") is an individual who resides in the State

1 of Oregon. Plaintiff is a member of the putative Oregon Class defined herein.

2 21. Plaintiff Cy Mitchell (“Mitchell”) is an individual who resides in the
3 State of Nevada. Plaintiff is a member of the putative Nevada Class defined herein.

4 22. Plaintiff Jonathan Lollar (“Lollar”) is an individual who resides in the
5 State of Texas. Plaintiff is a member of the putative Texas Class defined herein.

6 23. Plaintiffs are informed and believe, and upon such information and
7 belief allege thereon, that defendant Polaris Industries, Inc. is a Delaware
8 Corporation with its principal place of business at 2100 Highway 55, Medina,
9 Minnesota 55340-9770. Its agent for service of process is The Corporation Trust
10 Company, 1209 Orange Street, Wilmington, Delaware 19801.

11 24. Plaintiffs are informed and believe, and upon such information and
12 belief allege thereon, that defendant Polaris Sales, Inc. is a Minnesota Corporation
13 with its principal place of business at 2100 Highway 55, Medina, Minnesota 55340-
14 9770. Its agent for service of process in California is CT Corporation System
15 located at 818 West 7th Street, Suite 930, Los Angeles, California 90017.

16 25. Plaintiffs are informed and believe, and upon such information and
17 belief allege thereon, that defendant Polaris Industries, Inc. is a Minnesota
18 Corporation with its principal place of business at 2100 Highway 55, Medina,
19 Minnesota 55340-9770. It is the parent company of both defendant Polaris
20 Industries, Inc. the Delaware Corporation and Polaris Sales, Inc. Its agent for
21 service of process is CT Corporation System Inc., 101 Date Street N., St. Paul,
22 Minnesota 55117-5603.

23 26. Polaris maintains their largest and distribution center facility in
24 California. Polaris at all relevant times herein sold vehicles to members of the
25 general public as well as designing, testing, manufacturing, inspecting, distributing,
26 recalling them, and warning and instructing users on the safe use of the motor
27 vehicles, including the subject vehicles, in exchange for valuable consideration in
28 Tehama County.

1 27. The above-named Defendants, and their subsidiaries and agents, are
2 collectively referred to as “Defendants.” The true names and capacities of the
3 Defendants sued herein as Doe Defendants 1 through 10, inclusive, are currently
4 unknown to Plaintiffs, who therefore sue such Defendants by fictitious names. Each
5 of the Defendants designated herein as a Doe is legally responsible for the unlawful
6 acts alleged herein. Plaintiffs will seek leave of Court to amend the Complaint to
7 reflect the true names and capacities of the Doe Defendants when such identities
8 become known.

9 28. Plaintiffs are informed and believe, and thereon allege, that at all
10 relevant times, each and every Defendant was acting as an agent and/or employee
11 of each of the other Defendants, and was the owner, agent, servant, joint venturer
12 and employee, each of the other and each was acting within the course and scope
13 of its ownership, agency, service, joint venture and employment with the full
14 knowledge and consent of each of the other Defendants. Plaintiffs are informed and
15 believe, and based thereon allege, that each of the acts and/or omissions complained
16 of herein was made known to, and ratified by, each of the other Defendants.

17 29. At all times mentioned herein, each and every Defendant was the
18 successor of the other and each assumes the responsibility for each other’s acts and
19 omissions.

20 **V. FACTUAL ALLEGATIONS**

21 ***A. The Government Considers Regulations for UTVs***

22 30. Polaris UTVs are subject to product safety standards administered by
23 the CPSC, not the National Highway Traffic Safety Administration (“NHTSA”).
24 UTVs are “consumer products” that can be regulated by the CPSC via the Consumer
25 Product Safety Act. 15 U.S.C. § 2052(a).

26 31. On December 12, 2008, the CPSC met with representatives of the
27 Recreational Off-Highway Vehicle Association (“ROVHA”) to discuss the
28 development of a standard to be certified by the American National Standards

1 Institute (“ANSI”). The standards discussed, at this time, involved stability
2 standards. In June 2009, ROHVA sent over proposed voluntary standards, including
3 one for the ROPS. Ken D’Entremont and Mary McConnell attended the meeting
4 for Polaris. Paul Vitrano attended for ROHVA.

5 32. In 2009, the CPSC began the process of considering regulatory action
6 of UTVs. (In CPSC nomenclature they are ROVs.) It issued a Notice of Proposed
7 Rulemaking. The CPSC noted that farm vehicles have maximum speeds of 25 mph
8 or less, while UTVs at the time could exceed 30 mph. The CPSC identified its
9 databases of Injury and Potential Injury Incidents (IPII) and In-Depth Investigation
10 (INDP) for incidents between January 2003 and August 2009 involving 181
11 incidents, including 116 fatalities and 152 other injuries. The injuries included
12 degloving, fractures and crushing injuries to victims’ legs, feet, arms and hands,
13 resulting in amputations at times. 69% of the injuries occurred in rollover incidents.

14 33. By April 2013, the CPSC was aware of 428 incidents resulting in 231
15 fatalities and 388 other injuries. 150 of the 231 deaths were in rollover accidents.

16 **B. *The 1970s OSHA Regulation for ROPS on Farm Tractors***

17 34. In 1972, the U.S. Department of Labor concerned that “[t]ractor roll-
18 overs have been a major cause of employee injury and death on the farm” appointed
19 the Standards Advisory Committee on Agriculture to make a ROPS standard a
20 priority.

21 35. After the notice of proposed rulemaking notice period, the Department
22 of Labor, via OSHA promulgated 29 C.F.R. §§ 1928.51 (definitions), 1928.52 and
23 1928.53 (ROPS strength test).

24 36. The test for the ROPS strength involves forces applied to the ROPS
25 and it measures the deflection caused by the force. If there is too much deflection
26 the ROPS fails the tests. How much force is applied, according to the regulation
27 depends on the tractor weight.

28 37. Tractor weight is defined pursuant to 29 C.F.R. §§ 1928.51(a)(4) as:

1 “Tractor weight” includes the protective frame or enclosure, all fuels,
2 and other components required for normal use of the tractor. Ballast
3 shall be added as necessary to achieve **a minimum total weight** of 110
4 lb. (50.0 kg.) per maximum power take-off horse power at the rated
5 engine speed or the maximum, gross vehicle weight specified by the
6 manufacturer, **whichever is the greatest**. From end weight shall be at
7 least 25 percent of the tractor test weight. **In case power take-off
horsepower is not available, 95 percent of net engine flywheel
horsepower shall be used.**

8 38. Thus, the weight to be tested is either the gross vehicle weight (about
9 2,000 to 2,400 pounds, or the 110 pounds multiplied by the maximum power take
10 off horse power. The statute specifically indicates if the tractor is not one where you
11 can measure the “power take off” horsepower, or PTO, then 95 percent of net engine
12 flywheel horsepower is used.

13 ***C. ROHVA, a Polaris-Controlled Entity, Adopts the 29 C.F.R. §***
14 ***1928.53 Test***

15 39. In order to avoid CPSC promulgating actual regulations, Polaris and
16 the industry set up new standards with which they would comport. One of these was
17 for the strength of the ROPS. This was done via ROHVA, which is controlled, in
18 part by Polaris. ROHVA adopted the tractor ROPS test of 29 C.F.R. §§ 1928.51, *et*
19 *seq.*, This was then made into an ANSI standard.

20 ***D. Polaris Cheats and None of the Class Vehicles Passes the 29 C.F.R.***
21 ***§ 1928.53 Test***

22 40. The Class Vehicles consisting of 2015 to 2019 Polaris UTVs are
23 believed to have horsepower ranging from approximately 168 horsepower to 68
24 horsepower for the smaller 2-door Rangers.

25 41. For every model of Class Vehicles, Polaris tested the vehicles by the
26 gross vehicle weight. Polaris intentionally refused to test at 110 pounds times either
27 the maximum power take off horsepower or 95% of the net engine flywheel
28 horsepower. For example, the 2019 RZR XP 4 Turbo is tested at 2750 pounds (the

1 gross vehicle weight is 2713 pounds). It has 168 horsepower. 95% of 168
2 horsepower is 159.6. Rounding down, would be 159. So, 110 pounds multiplied by
3 159 is 17,490. The correct “W” or tractor weight in the test, should be 17,490
4 pounds. Polaris intentionally refused to use the correct tractor weight of
5 approximately 17,490 pounds. Instead, it used 2,750 pounds. Polaris did not comply
6 with the test. Polaris misled all Class members.

7 42. The Polaris vehicles are lighter and have much stronger engines than
8 farm tractors. Hence, their gross vehicle weights are comparatively lower, and 110
9 pounds times their PTO horsepower (or 95% of the net fly wheel horsepower) is
10 going to be larger than that of the farm tractors.

11 43. In fact, the gross vehicle weight, due the specifications of the Class
12 Vehicles should never be used for the OSHA tests. 110 pounds times the PTO
13 horsepower (or 95% of the net fly wheel horsepower) of each Class Vehicle is
14 substantially greater than the gross vehicle weights.

15 44. Not a single Class Vehicle has been tested using the proper Tractor
16 Weight pursuant to 29 C.F.R. §§ 1928.51, *et seq.*, Polaris advertised and told the
17 public that each and every Class Vehicle passed the OSHA 29 C.F.R. § 1928.53
18 test. None did.

19 45. In failing to provide consumers accurate and truthful information about
20 the true nature and characteristics of the Class Vehicles pertaining to compliance
21 with all applicable federal and state statutes, standards, and regulations, including
22 self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53,
23 consumers are damaged based on the benefit of the bargain, that they have to retrofit
24 the Class Vehicles for adequate safety, and are faced with a strong likelihood of
25 serious injury or death.

26 46. Polaris is believed to have digital computer models of the ROPS
27 system that can be inputted into commercially available computer aided engineering
28 programs. They test the ROPS system via an outside entity and using the computer

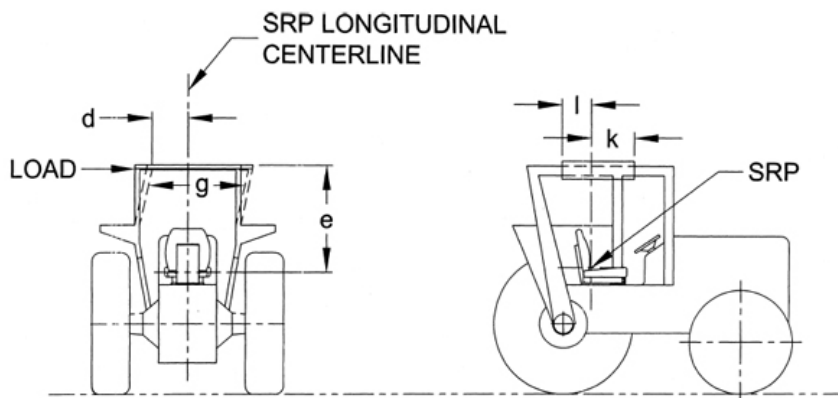
1 aided engineering systems. It would be easy to ascertain whether the ROPS system
 2 meet the tests by inputting the correct Tractor Weight instead of the lower gross
 3 vehicle weight.

4 **E. *Polaris Cheats by Improperly Distributing the Load and None of the***
 5 ***Class Vehicles Pass the 29 C.F.R. 1928.53 Side Load Test***

6 47. The Class Vehicles’ ROPS, being an integral part of each vehicle’s
 7 enclosure, are required to conform with the “side load” test as described in 29
 8 C.F.R. § 1928.53(d)(2)(iii)(F). In essence, the integrity of the structure is tested by
 9 applying force to one side of the vehicle. Specifically, the test requires that:

10 When the protective-frame structures are an integral part
 11 of the enclosure, apply the side load according to Figure
 12 C-13, and record *L* and *D* simultaneously. Static side-load
 13 application shall be distributed uniformly on the frame
 14 over an area perpendicular to the direction of load
 15 application [...] **This side load shall be applied to the**
longitudinal side farthest from the point of rear-load
application.

16 29 C.F.R. § 1928.53(d)(2)(iii)(F).



24 FIGURE C-13 - SIDE LOAD APPLICATION.

26 48. Polaris cheats when it performs the side load test. Instead of following
 27 OSHA guidelines and applying force to a single side, Polaris uses a tool commonly
 28 known as a “load distributor” during the test to distribute the load parallel across

1 the top of the enclosure to the other side of the vehicle. The “load distributor” does
2 as the name suggests and spreads out the applied force. By doing so, force is applied
3 to ***both*** sides of the enclosure and not the one side as required by the OSHA
4 standard.

5 49. Polaris purposefully uses the load distributor for every side load test to
6 ensure that every Class Vehicle “passes” the test.

7 50. In failing to provide consumers accurate and truthful information about
8 the true nature and characteristics of the Class Vehicles pertaining to compliance
9 with all applicable federal and state statutes, standards, and regulations, including
10 self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53,
11 consumers are damaged based on the benefit of the bargain, that they have to retrofit
12 the Class Vehicles for adequate safety, and are faced with a strong likelihood of
13 serious injury or death.

14 **F. *Plaintiffs’ Transactions***

15 51. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR
16 Turbo S in Tehama County, California.

17 52. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP
18 similar to the picture listed below:



24 53. Based on Hellman’s employment experience in the HVAC industry,
25 he understood that OSHA requirements were federal regulations pertaining to
26 safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood
27 the language to mean that the vehicle’s ROPS structure met federal standards for
28 safety and that the vehicle was safe for use by him, his family, and friends.

1 54. Hellman, in seeing and reading the sticker, relied on the language
2 contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said that
3 the ROPS structure failed to meet OSHA requirements, he would not have
4 purchased the 2018 Polaris RZR Turbo S.

5 55. Hellman bought a Cage WRX aftermarket ROPS after Polaris recalled
6 certain ROPS. Hellman became aware of how weak Polaris' cages were and did not
7 feel it provided the safety necessary to protect himself and his passengers.

8 56. Hellman intends to shop for and buy UTVs in the future, including
9 those manufactured by Polaris, but is concerned that he will be unable to determine
10 whether Polaris UTVs he shops for in the future properly comply with OSHA
11 requirements based on the stickers and representations made on the UTVs.
12 Accordingly, Hellman will suffer an actual and imminent harm unless Polaris is
13 enjoined to prevent its false representations in the future.

14 57. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
15 570 EPS in California.

16 58. Berlanga saw and read the label/stickers on the 2018 Polaris RZR 570
17 EPS as depicted below:



26 59. Berlanga was originally going to purchase an ATV, not a UTV.
27 However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS
28 structure and being informed that the ROPS met OSHA standards, Berlanga read

1 the sticker on the 2018 Polaris RZR 570 EPS and understood the language to mean
2 that the vehicle's ROPS structure met federal standards for safety and that the
3 vehicle was safe for use by him, his family, and friends.

4 60. Berlanga, in seeing and reading the sticker, relied on the language
5 contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that the
6 ROPS structure failed to meet OSHA requirements, he would not have purchased
7 the 2018 Polaris RZR 570 EPS.

8 61. Berlanga intends to shop for and buy UTVs in the future, including
9 those manufactured by Polaris, but is concerned that he will be unable to determine
10 whether Polaris UTVs he shops for in the future properly comply with OSHA
11 requirements regardless of the stickers and representations made on the UTVs.
12 Accordingly, Berlanga will suffer an actual and imminent harm unless Polaris is
13 enjoined to prevent its false representations in the future.

14 62. In 2021, Artoff purchased a 2021 RZR Turbo S Velocity in Oregon.

15 63. Artoff saw and read the label/sticker on the 2021 RZR Turbo S
16 Velocity pictured below:



24 64. Based on Artoff's employment experience as a peace officer, he
25 understood that OSHA requirements were federal regulations pertaining to safety.
26 Artoff read the sticker on the 2021 RZR Turbo S Velocity and understood the
27 language to mean that the vehicle's ROPS structure met federal standards for safety
28 and that the vehicle was safe for use by him, his family, and friends.

1 65. Artoff, in seeing and reading the sticker, relied on the language
2 contained therein to purchase the 2021 RZR Turbo S Velocity. If the sticker said
3 that the ROPS structure failed to meet OSHA requirements, he would not have
4 purchased the 2021 RZR Turbo S Velocity.

5 66. Artoff intends to shop for and buy UTVs in the future, including those
6 manufactured by Polaris, but is concerned that he will be unable to determine
7 whether Polaris UTVs he shops for in the future properly comply with OSHA
8 requirements regardless of the stickers and representations made on the UTVs.
9 Accordingly, Artoff will suffer an actual and imminent harm unless Polaris is
10 enjoined to prevent its false representations in the future.

11 67. In 2019, Mitchell purchased a new 2019 RZR XP Turbo in Nevada.

12 68. Mitchell saw and read the label/sticker on the 2019 RZR XP Turbo
13 similar to the picture listed below:



19 69. Mitchell understood that OSHA requirements were federal regulations
20 pertaining to safety. Mitchell read the sticker on the 2019 RZR XP Turbo and
21 understood the language to mean that the vehicle's ROPS structure met federal
22 standards for safety and that the vehicle was safe for use by him, his family, and
23 friends.

24 70. Mitchell, in seeing and reading the sticker, relied on the language
25 contained therein to purchase the 2019 RZR XP Turbo. If the sticker said that the
26 ROPS structure failed to meet OSHA requirements, he would not have purchased
27 the 2019 RZR XP Turbo.

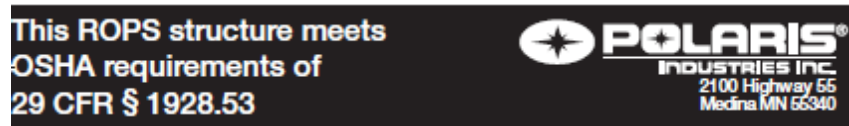
28 71. Mitchell had a roll over and the ROPS collapsed due to it being weak

1 and unsafe for consumers.

2 72. Mitchell intends to shop for and buy UTVs in the future, including
3 those manufactured by Polaris, but is concerned that he will be unable to determine
4 whether Polaris UTVs he shops for in the future properly comply with OSHA
5 requirements regardless of the stickers and representations made on the UTVs.
6 Accordingly, Mitchell will suffer an actual and imminent harm unless Polaris is
7 enjoined to prevent its false representations in the future.

8 73. On or around December 19, 2021, Lollar purchased a 2021 Polaris
9 RZR XP 4 Turbo in Texas.

10 74. Lollar saw and read the label/sticker on the 2021 Polaris RZR XP 4
11 Turbo which contained the sticker at the time of sale as depicted below, suggesting
12 that Polaris vehicles meet these OSHA requirements:



13
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15 75. Lollar read the sticker on the 2021 Polaris RZR XP 4 Turbo and
16 understood the language to mean that the vehicle's ROPS structure met federal
17 standards for safety and that the vehicle was safe for use by him, his family, and
18 friends.

19 76. Lollar, in seeing and reading the sticker, relied on the language
20 contained therein to purchase the 2021 Polaris RZR XP 4 Turbo. If the sticker said
21 that the ROPS structure failed to meet OSHA requirements, he would not have
22 purchased the 2021 Polaris RZR XP 4 Turbo.

23 77. Lollar intends to shop for and buy UTVs in the future, including those
24 manufactured by Polaris, but is concerned that he will be unable to determine
25 whether Polaris UTVs he shops for in the future properly comply with OSHA
26 requirements regardless of the stickers and representations made on the UTVs.
27 Accordingly, Lollar will suffer an actual and imminent harm unless Polaris is
28 enjoined to prevent its false representations in the future.

1 78. The stickers placed on Plaintiffs' Polaris vehicles as well as Class
2 Vehicles and are visible at the point of sale where consumers are also informed that
3 Class Vehicles meet all applicable standards and regulations, including self-adopted
4 regulations, and meet OSHA requirements of 29 C.F.R. § 1928.53, when in fact,
5 they do not.

6 79. None of the Class Vehicles sold by Polaris meet the OSHA
7 requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their
8 ROPS systems are safe because they meet this standard. They do not. **They do not**
9 **test the with the proper engine power in determining the vehicle weight.**

10 80. But for Defendants' misrepresentations, misleading and fraudulent
11 statements, Plaintiffs would not have purchased the vehicles or would have paid
12 substantially less for the vehicles than the purchase price of upwards of \$20,000.00
13 each. Plaintiffs did not receive the benefit of the bargain.

14 81. In failing to provide consumers accurate and truthful information about
15 the true nature and characteristics of the Class Vehicles pertaining to compliance
16 with all applicable federal and state statutes, standards, and regulations, including
17 self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53,
18 consumers are damaged based on the benefit of the bargain, that they have to retrofit
19 the Class Vehicles for adequate safety, and are faced with a strong likelihood of
20 serious injury or death.

21 **VI. CLASS ALLEGATIONS**

22 82. Plaintiffs bring this action pursuant to Rule 23 of the Federal Rules of
23 Civil Procedure and/or other applicable law, on behalf of themselves and all others
24 similarly situated, as members of the proposed classes, per their state defined as
25 follows.

26 83. California Class (Hellman and Berlanga): All persons in California
27 that purchased a Class Vehicle in the four years preceding the filing of this
28 Complaint.

1 84. Oregon Class (Artoff): All persons in Oregon that purchased a Class
2 Vehicle in the four years preceding the filing of this Complaint.

3 85. Nevada Class (Mitchell): All persons in Nevada that purchased a Class
4 Vehicle in the four years preceding the filing of this Complaint.

5 86. Texas Class (Lollar): All persons in Texas that purchased a Class
6 Vehicle in the four years preceding the filing of this Complaint.

7 87. Excluded from the Classes are governmental entities, Defendants, any
8 entity in which Defendants have a controlling interest, and Defendants' officers,
9 directors, affiliates, legal representatives, employees, co-conspirators, successors,
10 subsidiaries, and assigns. Also excluded from the Classes are any judges, justices
11 or judicial officers presiding over this matter and the members of their immediate
12 families and judicial staff.

13 88. Plaintiffs do not know the exact number of persons in the Classes, but
14 believe them to be in the several hundreds, if not thousands, making joinder of all
15 these actions impracticable.

16 89. The identity of the individual members is ascertainable through
17 Defendants' and/or Defendants' agents' records or by public notice.

18 90. There is a well-defined community of interest in the questions of law
19 and fact involved affecting the members of the Classes.

20 91. Plaintiffs will fairly and adequately protect the interest of the Classes.

21 92. Plaintiffs retained counsel experienced in consumer class action
22 litigation.

23 93. Plaintiffs' claims are typical of the claims of the Classes, which all
24 arise from the same operative facts involving Defendants' practices.

25 94. A class action is a superior method for the fair and efficient
26 adjudication of this controversy.

27 95. Class-wide damages are essential to induce Defendants to comply with
28 the federal and state laws alleged in the Complaint.

1 96. Class members are unlikely to prosecute such claims on an individual
2 basis since the individual damages are small. Management of these claims is likely
3 to present significantly fewer difficulties than those presented in many class claims,
4 e.g., securities fraud.

5 97. Plaintiffs and the Classes seek injunctive relief against Defendants to
6 preclude Defendants from advertising that the Class Vehicles comply with OSHA
7 29 C.F.R. § 1928.53 until they meet the tests using the correct Tractor Weight as
8 defined in 29 C.F.R. § 1928.51(a)(4).

9 98. On April 6, 2017 in *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017), the
10 California Supreme Court ruled that any contract that waives the statutory remedy
11 of public injunctive relief under the Unfair Competition Law, False Advertising
12 Law, and Consumers Legal Remedies Act is contrary to California public policy
13 and this unenforceable under California law. Plaintiffs and the Classes seek
14 injunctive relief under the Unfair Competition Law, Cal. *Bus. & Prof. Code* §§
15 17200, *et seq.* due to Defendants' violation of the False Advertising Law, Consumer
16 Legal Remedies Act, Breach of Express Warranty, and Breach of Implied Warranty
17 based on Defendants' unlawful, unfair, and fraudulent business practices and
18 misleading advertisements that the Class Vehicles meet all applicable federal and
19 state statutes, standards, regulations, including OSHA requirements of 29 C.F.R §
20 1928.53. Plaintiffs and the Classes seek to enjoin Defendants' illegal business
21 practices of advertising and informing consumers that the Class Vehicles meet all
22 applicable federal and state statutes, standards, regulations, including OSHA
23 requirements of 29 C.F.R § 1928.53, when they in fact, do not.

24 99. As such, Plaintiffs and the Classes seek public injunctive relief to
25 prevent Defendants from continuing with their unlawful business acts and practices
26 as alleged herein to ensure that Defendants do not continue to harm the general
27 public by continuing to engage in the unlawful business acts and practices as alleged
28 herein.

1 100. Plaintiffs, individually, and on behalf of all California, Oregon,
2 Nevada and Texas consumers, seek individual, representative, and public injunctive
3 relief and any necessary order or judgments that will prevent Defendants from
4 continuing with their unlawful business acts and practices as alleged herein.

5 101. Defendants acted on grounds generally applicable to the Classes
6 thereby making appropriate final declaratory relief with respect to the Classes as a
7 whole.

8 102. Members of the Classes are likely to be unaware of their rights.

9 103. Plaintiffs contemplate providing notice to the putative class members
10 by direct mail in the form of a postcard and via publication.

11 104. Plaintiffs request certification of a hybrid class combining the elements
12 of Fed. R. Civ. P. 23(b)(3) for monetary damages and Fed. R. Civ. P. 23(b)(2) for
13 equitable relief.

14 105. This action is properly maintainable as a class action. This action
15 satisfies the numerosity, typicality, adequacy, predominance and superiority
16 requirements for a class action.

17 106. **Numerosity:** The proposed Classes are so numerous that individual
18 joinder of all members is impracticable. Due to the nature of the trade and
19 commerce involved, Plaintiffs do not know the number of members in the Classes,
20 but believe the Class members number in the thousands, if not more. Plaintiffs
21 allege that the Classes may be ascertained by the records maintained by Defendants.

22 107. Plaintiffs and members of the Classes were harmed by the acts of
23 Defendants in at least the following ways: violation of California's Consumers
24 Legal Remedies Act, Cal. *Civ. Code* §§ 1770(a)(5), (a)(7), (a)(9), (a)(13), (a)(14)
25 and (a)(19); violations of California's Unfair Competition Law and False
26 Advertising Law; violations of the Oregon Unlawful Trade Practices Act,
27 violations of the Nevada Deceptive Trade Practices Act; and violations of the
28 Texas Deceptive Trade Practices Act.

1 108. **Commonality:** There are questions of law and fact common to
2 Plaintiffs and the Classes that predominate over any questions affecting only
3 individual members of the Classes. These common questions of law and fact
4 include, without limitation:

- 5 i. Whether Defendants failed to test the Class Vehicles using the correct
6 Tractor Weight as defined by 29 C.F.R. § 1928.51(a)(4);
- 7 ii. Whether Defendants violated Cal. Civ. Code §§ 1770, *et seq.*;
- 8 iii. Whether Defendants’ practices are “unfair” as defined by Cal. *Bus. &*
9 *Prof. Code* §§ 17200, *et seq.*;
- 10 iv. Whether Defendants’ practices are “illegal” as defined by Cal. *Bus. &*
11 *Prof. Code* §§ 17200, *et seq.*;
- 12 v. Whether Defendants’ practices are “fraudulent” as defined by Cal.
13 *Bus. & Prof. Code* §§ 17200, *et seq.*;
- 14 vi. Whether such practices violate Cal. *Bus. & Prof. Code* §§ 17200, *et*
15 *seq.*;
- 16 vii. Whether Defendants violated Cal. *Bus. & Prof. Code* §§ 17500, *et*
17 *seq.*;
- 18 viii. Whether Plaintiffs and Class Members are entitled to restitution under
19 Cal. *Bus. & Prof. Code* § 17200-17203;
- 20 ix. Whether Plaintiffs and Class Members are entitled to
21 declaratory/injunctive relief under Cal. *Bus. & Prof. Code* § 17535;
- 22 x. Whether Plaintiffs and Class Members are entitled to attorneys’ fees
23 and costs under Cal. *Code Civ. Proc.* § 1021.5, Nevada, Oregon and/or
24 Texas law; and
- 25 xi. Whether Defendants violated the Oregon Unlawful Trade Practices
26 Act;
- 27 xii. Whether Defendants violated the Nevada Deceptive Trade Practices
28 Act;

1 xiii. Whether Defendants violated the Texas Deceptive Trade Practices
2 Act;

3 xiv. Whether Plaintiffs and Class Members are entitled to statutory
4 damages.

5 109. **Typicality:** Plaintiffs' claims are typical of the claims of members of
6 the Classes, as Plaintiffs were subject to the same common course of conduct by
7 Defendants as all Class members. The injuries to each member of the Classes were
8 caused directly by Defendants' wrongful conduct as alleged herein.

9 110. **Adequacy of Representation:** Plaintiffs will fairly and adequately
10 represent and protect the interests of the Classes. Plaintiffs retained counsel with
11 substantial experience in handling complex class action litigation and litigation
12 against product manufacturers. Plaintiffs and their counsel are committed to
13 prosecuting this action vigorously on behalf of the Classes, and have financial
14 resources to do so.

15 111. **Superiority of Class Action:** A class action is superior to other
16 available methods for the fair and efficient adjudication of the present controversy.
17 Class members have little interest in individually controlling the prosecution of
18 separate actions because the individual damage claims of each Class member are
19 not substantial enough to warrant individual filings. In sum, for many if not most
20 Class members, a class action is the only feasible mechanism that will allow them
21 an opportunity for legal redress and justice. The conduct of this action as a class
22 action in this forum, with respect to some or all of the issues presented herein,
23 presents fewer management difficulties, conserves the resources of the parties and
24 of the court system, and protects the rights of each Class member.

25 112. Moreover, individualized litigation would also present the potential for
26 varying, inconsistent, or incompatible standards of conduct for Defendants, and
27 would magnify the delay and expense to all parties and to the court system resulting
28 from multiple trials of the same factual issues. The adjudication of individual Class

1 members' claims would also, as a practical matter, be dispositive of the interests of
2 other members not parties to the adjudication, and could substantially impair or
3 impede the ability of other Class members to protect their interests.

4 113. Plaintiffs and Class members have suffered and will continue to suffer
5 harm as a result of Defendants' unlawful and wrongful conduct. Defendants have
6 acted, or refused to act, on grounds generally applicable to the Classes, thereby
7 making appropriate final and injunctive relief with regard to the Class members as
8 a whole.

9 **VII. CAUSES OF ACTION**

10 **FIRST CAUSE OF ACTION**

11 **VIOLATION OF THE CALIFORNIA CONSUMER LEGAL REMEDIES ACT,**

12 ***CAL. CIV. CODE §§ 1750, ET SEQ.***

13 **(Against All Defendants on Behalf of Plaintiffs Michael Hellman, Francisco**
14 **Berlanga, and the California Class)**

15 114. Plaintiffs hereby incorporate by reference and re-allege each and every
16 allegation set forth in each and every preceding paragraph of this Complaint, as
17 though fully set forth herein.

18 115. Hellman and Berlanga bring this cause of action on behalf of
19 themselves and the California Class against all Defendants.

20 116. The California Consumers Legal Remedies Act (the "CLRA"),
21 *Cal. Civ. Code* §§ 1770, *et seq.*, was enacted to protect consumers against unfair
22 and deceptive business practices. It creates a non-exclusive statutory remedy
23 for unfair methods of competition and unfair or deceptive acts or business
24 practices. Its self-declared purpose is to protect consumers against these unfair and
25 deceptive business practices, and to provide efficient and economical procedures to
26 secure such protection. *Cal. Civ. Code* § 1760. The CLRA was designed to be
27 liberally construed and applied in favor of consumers to promote its underlying
28 purposes. *Id.* The CLRA applies to Defendants' acts and practices described

1 herein because it extends to transactions that are intended to result, or which have
2 resulted, in the sale or lease of goods or services to Plaintiffs and others similarly
3 situated.

4 117. The Class Vehicles are a “good” within the meaning of Cal. *Civ. Code*
5 § 1761(a), and the transactions/agreements are “transactions” within the meaning
6 of Cal. *Civ. Code* § 1761(e).

7 118. Plaintiffs and California Class Members are “consumers” within the
8 meaning of Cal. *Civ. Code* § 1761(d). Plaintiff and Class Members and Defendants
9 are “persons” within the meaning of Cal. *Civ. Code* § 1761(c).

10 119. The CLRA prohibits “unfair methods of competition and unfair or
11 deceptive acts or practices,” including but not limited to:

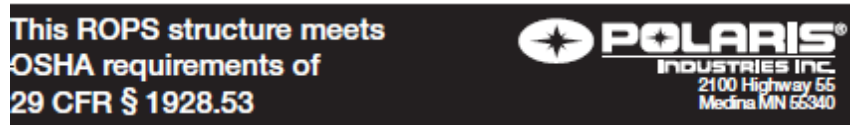
- 12 (a) Cal. *Civ. Code* § 1770(a)(5) “Representing that goods or services have
13 sponsorship, approval, characteristics, ingredients, uses, benefits, or
14 quantities which they do not have or that a person has a sponsorship,
15 approval, status, affiliation, or connection which he or she does not
16 have”;
- 17 (b) Cal. *Civ. Code* § 1770(a)(7) “Representing that goods or services are
18 of a particular standard, quality, or grade, or that goods are of a
19 particular style or model, if they are of another”;
- 20 (c) Cal. *Civ. Code* § 1770(a)(9) “Advertising goods or service with intent
21 not to sell them as advertised”;
- 22 (d) Cal. *Civ. Code* § 1770(a)(13) “Making false or misleading statements
23 of fact concerning reasons for, existence of, or amounts of price
24 reductions”;
- 25 (e) Cal. *Civ. Code* § 1770(a)(14) “Represent that a transaction confers or
26 involves rights, remedies, or obligations which it does not have or
27 involve, or which are prohibited by law”;
- 28 (f) Cal. *Civ. Code* § 1770(a)(16) “Represent that the subject of a

1 transaction has been supplied in accordance with a previous
2 representation when it has not”; and

3 (g) Cal. *Civ. Code* § 1770(a)(19) “Inserting an unconscionable provision
4 in the contract.

5 120. Any waiver by Plaintiffs and the California Class members of the
6 provisions of the CLRA is contrary to public policy and is unenforceable and void
7 under Cal. *Civ. Code* § 1751.

8 121. Polaris includes stickers like the following to suggest that their
9 vehicles meet these OSHA requirements:



10
11
12 122. The stickers are placed on Class Vehicles and are visible at the point
13 of sale where consumers are also informed that Class Vehicles meet all applicable
14 standards and regulations, including self-adopted regulations, and meet OSHA
15 requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

16 123. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR
17 Turbo S in Tehama County, California.

18 124. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP
19 similar to the picture listed below:



20
21
22
23
24 125. Based on Hellman’s employment experience in the HVAC industry,
25 he understood that OSHA requirements were federal regulations pertaining to
26 safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood
27 the language to mean that the vehicle’s ROPS structure met federal standards for
28 safety and that the vehicle was safe for use by him, his family, and friends.

1 126. Hellman, in seeing and reading the sticker, relied on the language
2 contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said that
3 the ROPS structure failed to meet OSHA requirements, he would not have
4 purchased the 2018 Polaris RZR Turbo S.

5 127. Hellman bought a Cage WRX aftermarket ROPS after Polaris recalled
6 certain ROPS. Hellman became aware of how weak Polaris' cages were and did not
7 feel it provided the safety necessary to protect himself and his passengers.

8 128. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
9 570 EPS in California.

10 129. Berlanga saw and read the label/stickers on the 2018 Polaris RZR 570
11 EPS as depicted below:



20 130. Berlanga was originally going to purchase an ATV, not a UTV.
21 However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS
22 and being informed that it met OSHA standards for safety, Berlanga read the sticker
23 on the 2018 Polaris RZR 570 EPS and understood the language to mean that the
24 vehicle's ROPS structure met federal standards for safety and that the vehicle was
25 safe for use by him, his family, and friends.

26 131. Berlanga, in seeing and reading the sticker, relied on the language
27 contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that the
28 ROPS structure failed to meet OSHA requirements, he would not have purchased

1 the 2018 Polaris RZR 570 EPS.

2 132. None of the Class Vehicles sold by Polaris meet the OSHA
3 requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their
4 ROPS are safe because they meet this standard. They do not.

5 133. In failing to provide consumers accurate and truthful information about
6 the true nature and characteristics of the Class Vehicles pertaining to compliance
7 with all applicable federal and state statutes, standards, and regulations, including
8 self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53,
9 consumers are damaged based on the benefit of the bargain, that they have to retrofit
10 the Class Vehicles for adequate safety, and are faced with a strong likelihood of
11 serious injury or death.

12 134. On or about May 27, 2021, Plaintiffs provided Defendants with written
13 notice of the claims, via U.S. certified mail, return receipt requested, and demanded
14 that, within 30 days, Defendants correct, repair, replace or other rectify the acts and
15 practices complained of herein pursuant to Section 1770 of the CLRA. Defendants
16 failed to do so or agree to do so and expressly stated they would not change their
17 illegal practices within 30 days of May 27, 2021. Therefore, Plaintiffs now seeks
18 damages for such deceptive practices pursuant to Cal. *Civ. Code* § 1782.

19 **SECOND CAUSE OF ACTION**

20 **VIOLATION OF THE CALIFORNIA UNFAIR COMPETITION LAW,**

21 **CAL. BUS. & PROF. CODE §§ 17200, ET SEQ.)**

22 **(Against All Defendants on Behalf of Plaintiffs Michael Hellman, Francisco**
23 **Berlanga, and the California Class)**

24 135. Plaintiffs hereby incorporate by reference and re-allege each and every
25 allegation set forth in each and every preceding paragraph of this Complaint, as
26 though fully set forth herein.

27 136. Hellman and Berlanga bring this cause of action on behalf of
28 themselves and the California Class against all Defendants.

1 137. The California Unfair Competition Law, *Cal. Bus. & Prof. Code* §§
2 17200, *et seq.*, (“UCL”) prohibits any unlawful, unfair or fraudulent business act or
3 practice.

4 138. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR
5 Turbo S in Tehama County, California.

6 139. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP
7 similar to the picture listed below:



15 140. Based on Hellman’s employment experience in the HVAC industry,
16 he understood that OSHA requirements were federal regulations pertaining to
17 safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood
18 the language to mean that the vehicle’s ROPS structure met federal standards for
19 safety and that the vehicle was safe for use by him, his family, and friends.

20 141. Hellman, in seeing and reading the sticker, relied on the language
21 contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said that
22 the ROPS structure failed to meet OSHA requirements, he would not have
23 purchased the 2018 Polaris RZR Turbo S.

24 142. Hellman bought a Cage WRX aftermarket ROPS after Polaris recalled
25 certain ROPS. Hellman became aware of how weak Polaris’ cages were and did not
26 feel it provided the safety necessary to protect himself and his passengers.

27 143. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
28 570 EPS in California.

1 144. Berlanga saw and read the label/stickers on the 2018 Polaris RZR 570
2 EPS as depicted below:



10 145. Berlanga was originally going to purchase an ATV, not a UTV.
11 However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS
12 and being informed that it met OSHA standards for safety, Berlanga read the sticker
13 on the 2018 Polaris RZR 570 EPS and understood the language to mean that the
14 vehicle's ROPS structure met federal standards for safety and that the vehicle was
15 safe for use by him, his family, and friends.

16 146. Berlanga, in seeing and reading the sticker, relied on the language
17 contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that the
18 ROPS structure failed to meet OSHA requirements, he would not have purchased
19 the 2018 Polaris RZR 570 EPS.

20 UNLAWFUL

21 147. Defendants committed "unlawful" business acts and practices by
22 engaging in conduct that violates the CLRA, Cal. Civ. Code §§ 1770(a)(5), (a)(7),
23 (a)(9), (a)(13), (a)(14) and (a)(19) as well as California's False Advertising Law.

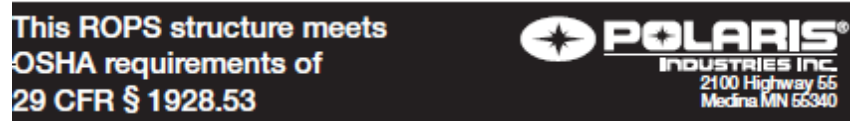
24 148. Such conduct is ongoing and continues to this date and violates the
25 unlawful prong of the UCL.

26 FRAUDULENT

27 149. In order to prevail under the "fraudulent" prong of the UCL, a
28 consumer must allege that the fraudulent business practice was likely to deceive.

1 150. The test for “fraud” as contemplated by *Cal. Bus. & Prof. Code* §§
2 17200, *et seq.* is whether the public is likely to be deceived. Unlike common law
3 fraud, a UCL violation can be established even if no one was actually deceived,
4 relied upon the fraudulent practice, or sustained any damage.

5 151. Polaris includes nice stickers like the following to suggest that their
6 vehicles meet these OSHA requirements:



9 152. The stickers are placed on Class Vehicles and are visible at the point
10 of sale where consumers are also informed that Class Vehicles meet all applicable
11 standards and regulations, including self-adopted regulations, and meet OSHA
12 requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

13 153. None of the Class Vehicles sold by Polaris meet the OSHA
14 requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their
15 ROPS systems are safe because they meet this standard. They do not.

16 154. Defendants fraudulently informed Plaintiffs and the California Class
17 that the Class Vehicles passed the OSHA 29 C.F.R. § 1928.53 test when Polaris
18 used the inappropriate gross vehicle weight instead of 110 pounds multiplied by
19 either the maximum power take off horsepower of 95% of the net flywheel
20 horsepower, which would be between four and nearly seven times a greater force
21 for the test. This induced Plaintiffs and other class members to purchase the Class
22 Vehicles at inflated prices based on those misrepresentations.

23 155. In failing to provide consumers accurate and truthful information about
24 the true nature and characteristics of the Class Vehicles pertaining to compliance
25 with all applicable federal and state statutes, standards, and regulations, including
26 self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53,
27 consumers are damaged based on the benefit of the bargain, that they have to retrofit
28 the Class Vehicles for adequate safety, and are faced with a strong likelihood of

1 serious injury or death.

2 156. Thus, Defendants' conduct has violated the "fraudulent" prong of Cal.
3 *Bus. & Prof. Code* § 17200.

4 157. Such conduct is ongoing and continues to this date and violates the
5 fraudulent prong of the UCL.

6 158. On April 6, 2017 in *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017), the
7 California Supreme Court ruled that any contract that waives the statutory remedy
8 of public injunctive relief under the Unfair Competition Law, False Advertising
9 Law, and Consumers Legal Remedies Act is contrary to California public policy
10 and this unenforceable under California law. Plaintiffs and the Class seek injunctive
11 relief under the Unfair Competition Law, *Cal. Bus. & Prof. Code* §§ 17200, *et seq.*
12 due to Defendants' violation of the False Advertising Law, Consumer Legal
13 Remedies Act, Breach of Express Warranty, and Breach of Implied Warranty based
14 on Defendants' unlawful, unfair, and fraudulent business practices and misleading
15 advertisements that the Class Vehicles meet all applicable federal and state statutes,
16 standards, regulations, including OSHA requirements of 29 C.F.R § 1928.53.
17 Plaintiffs and the California Class seek to enjoin Defendants' illegal business
18 practices of advertising and informing consumers that the Class Vehicles meet all
19 applicable federal and state statutes, standards, regulations, including OSHA
20 requirements of 29 C.F.R § 1928.53, when they in fact, do not.

21 159. As such, Plaintiffs and the California Class seek public injunctive
22 relief to prevent Defendants from continuing with their unlawful business acts and
23 practices as alleged herein to ensure that Defendants do not continue to harm the
24 general public by continuing to engage in the unlawful business acts and practices
25 as alleged herein.

26 160. Plaintiffs, individually, and on behalf of all California consumers, seek
27 individual, representative, and public injunctive relief and any necessary order or
28 judgments that will prevent Defendants from continuing with their unlawful

1 business acts and practices as alleged herein.

2 161. Plaintiffs seek declaratory relief, restitution and disgorgement of all
3 profits obtained, and public injunctive relief as previously described.

4 **THIRD CAUSE OF ACTION**

5 **VIOLATION OF THE CALIFORNIA FALSE ADVERTISING LAW,**

6 ***CAL. BUS. & PROF. CODE §§ 17500, ET SEQ.***

7 **(Against All Defendants on Behalf of Plaintiffs Michael Hellman, Francisco**
8 **Berlanga, and the California Class)**

9 162. Plaintiffs hereby incorporate by reference and re-allege each and every
10 allegation set forth in each and every preceding paragraph of this Complaint, as
11 though fully set forth herein.

12 163. Hellman and Berlanga bring this cause of action on behalf of
13 themselves and the California Class against all Defendants.

14 164. Pursuant to the California False Advertising Law, *Cal. Bus. & Prof.*
15 *Code §§ 17500, et seq.*, (“FAL”) it is unlawful to engage in advertising “which is
16 untrue or misleading, and which is known, or which by the exercise of reasonable
17 care should be known, to be untrue or misleading.”

18 165. Defendants caused to be made or disseminated through California and
19 the United States, through advertising, marketing and other publications, statements
20 that were untrue or misleading, including statements on the stickers on Class
21 Vehicles and in nationally distributed print and video advertisements that the Class
22 Vehicles were passed the OSHA 29 C.F.R. § 1928.53 test. These statements were
23 known, or which by the exercise of reasonable care should have been known, to
24 Defendants to be untrue and misleading to consumers, including Plaintiffs and the
25 other Class Members.

26 166. On or around May 26, 2018, Hellman purchased a 2018 Polaris RZR
27 Turbo S in Tehama County, California.

28 167. Hellman saw and read the label/sticker on the 2018 Polaris RZR XP

1 similar to the picture listed below:



9 168. Based on Hellman's employment experience in the HVAC industry,
10 he understood that OSHA requirements were federal regulations pertaining to
11 safety. Hellman read the sticker on the 2018 Polaris RZR Turbo S and understood
12 the language to mean that the vehicle's ROPS structure met federal standards for
13 safety and that the vehicle was safe for use by him, his family, and friends.

14 169. Hellman, in seeing and reading the sticker, relied on the language
15 contained therein to purchase the 2018 Polaris RZR Turbo S. If the sticker said that
16 the ROPS structure failed to meet OSHA requirements, he would not have
17 purchased the 2018 Polaris RZR Turbo S.

18 170. Hellman bought a Cage WRX aftermarket ROPS after Polaris recalled
19 certain ROPS. Hellman became aware of how weak Polaris' cages were and did not
20 feel it provided the safety necessary to protect himself and his passengers.

21 171. In or around May 18, 2019, Berlanga purchased a 2018 Polaris RZR
22 570 EPS in California.

23 172. Berlanga saw and read the label/stickers on the 2018 Polaris RZR 570
24 EPS as depicted below:

25 ///

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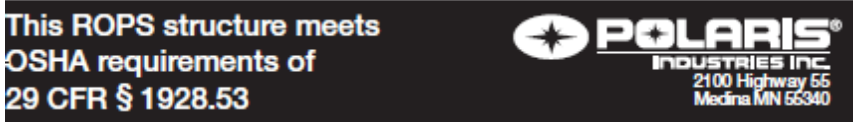
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173. Berlanga was originally going to purchase an ATV, not a UTV. However, based on the fact the 2018 Polaris RZR 570 EPS had a roll cage/ROPS and being informed that it met OSHA standards for safety, Berlanga read the sticker on the 2018 Polaris RZR 570 EPS 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.

174. Berlanga, in seeing and reading the sticker, relied on the language contained therein to purchase 2018 Polaris RZR 570 EPS. If the sticker said that the ROPS structure failed to meet OSHA requirements, he would not have purchased the 2018 Polaris RZR 570 EPS.

175. Polaris includes nice stickers like the following to suggest that their vehicles meet these OSHA requirements:



176. The stickers are placed on Class Vehicles and are visible at the point of sale where consumers are also informed that Class Vehicles meet all applicable standards and regulations, including self-adopted regulations, and meet OSHA requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

177. None of the Class Vehicles sold by Polaris meet the OSHA requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their ROPS systems are safe because they meet this standard. They do not.

178. In failing to provide consumers accurate and truthful information about the true nature and characteristics of the Class Vehicles pertaining to compliance

1 with all applicable federal and state statutes, standards, and regulations, including
2 self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53,
3 consumers are damaged based on the benefit of the bargain, that they have to retrofit
4 the Class Vehicles for adequate safety, and are faced with a strong likelihood of
5 serious injury or death.

6 179. As a direct and proximate result of Defendants' misleading and false
7 advertising, Plaintiffs and the other California Class Members have suffered injury
8 in fact and have lost money or property. Plaintiffs reasonably relied upon
9 Defendants' representations regarding the Class Vehicles. In reasonable reliance on
10 Defendants' false advertisements, Plaintiffs and other California Class Members
11 purchased, owned or leased Class Vehicles. In turn, Plaintiffs and other California
12 Class Members were have suffered injury in fact.

13 180. The misleading and false advertising described herein presents a
14 continuing threat to Plaintiffs and the California Class Members in that Defendants
15 persist and continue to engage in these practices, and will not cease doing so unless
16 and until forced to do so by this Court. Defendants' conduct will continue to cause
17 irreparable injury to consumers unless enjoined or restrained. Plaintiffs are entitled
18 to preliminary and permanent injunctive relief ordering Defendants to cease their
19 false advertising, as well as disgorgement and restitution to Plaintiffs and all
20 California Class Members, Defendants' revenues associated with their false
21 advertising, or such portion of those revenues as the Court may find equitable.

22 **FOURTH CAUSE OF ACTION**

23 **VIOLATION OF THE OREGON UNLAWFUL TRADE PRACTICES ACT,**

24 **OR. REV. STAT. §§ 646.605, *ET SEQ.***

25 **(Against All Defendants on Behalf of Plaintiff Tim Artoff and**
26 **the Oregon Class)**

27 181. Plaintiffs hereby incorporate by reference and re-allege each and every
28 allegation set forth in each and every preceding paragraph of this Complaint, as

1 though fully set forth herein.

2 182. Artoff brings this cause of action on behalf of himself and the Oregon
3 Class against all Defendants.

4 183. Polaris, Artoff and the Oregon Class are “persons” within the meaning
5 of Or. Rev. Stat. § 646.605(4).

6 184. Polaris is engaged in “trade” or “commerce” within the meaning of Or.
7 Rev. Stat. § 646.605(8).

8 185. The Oregon Unfair Trade Practices Act (“Oregon UTPA”) prohibits
9 unfair or deceptive acts conducted in trade or commerce including but not limited
10 to:

- 11 • Or. Rev. Stat. § 646.608(1)(b) “Causes likelihood of confusion or of
12 misunderstandings as to the source, sponsorship, approval, or
13 certification of real estate, goods or services”;
- 14 • Or. Rev. Stat. § 646.608(1)(c) “Causes likelihood of confusion or of
15 misunderstandings as to affiliation, connection, or association with, or
16 certification by, another”;
- 17 • Or. Rev. Stat. § 646.608(1)(e) “Representing that real estate, goods or
18 services have sponsorship, approval, characteristics, ingredients, uses,
19 benefits, quantities or qualities that the real estate, goods or services
20 do not have...”;
- 21 • Or. Rev. Stat. § 646.608(1)(g) “Representing that real estate, goods or
22 services are of a particular standard, quality, or grade, or that real estate
23 or goods are of a particular style or model, if the real estate, goods or
24 services are of another. have sponsorship, approval, characteristics,
25 ingredients, uses, benefits, quantities or qualities that the real estate,
26 goods or services do not have...”;
- 27 • Or. Rev. Stat. § 646.608(1)(i) “Advertises real estate, good or services
28 with intent not to provide the real estate, goods or services as

1 advertised...” and

- 2 • Or. Rev. Stat. § 646.608(1)(u) “Engages in any other unfair or
3 deceptive conduct in trade or commerce”;

4 186. Polaris is engaged in “trade” or “commerce” within the meaning of Or.
5 Rev. Stat. § 646.605(8).

6 187. In 2021, Artoff purchased a 2021 RZR Turbo S Velocity in Oregon.

7 188. Artoff saw and read the label/sticker on the 2021 RZR Turbo S
8 Velocity pictured below:



16 189. Based on Artoff’s employment experience as a peace officer, he
17 understood that OSHA requirements were federal regulations pertaining to safety.
18 Artoff read the sticker on the 2021 RZR Turbo S Velocity and understood the
19 language to mean that the vehicle’s ROPS structure met federal standards for safety
20 and that the vehicle was safe for use by him, his family, and friends.

21 190. Artoff, in seeing and reading the sticker, relied on the language
22 contained therein to purchase the 2021 RZR Turbo S Velocity. If the sticker said
23 that the ROPS structure failed to meet OSHA requirements, he would not have
24 purchased the 2021 RZR Turbo S Velocity.

25 191. None of the Class Vehicles sold by Polaris meet the OSHA
26 requirements of 29 C.F.R. § 1928.53. Polaris tell all of their customers that their
27 ROPS systems are safe because they meet this standard. They do not.

28 192. In failing to provide consumers accurate and truthful information about

1 the true nature and characteristics of the Class Vehicles pertaining to compliance
2 with all applicable federal and state statutes, standards, and regulations, including
3 self-adopted regulations, specifically OSHA requirements of 29 C.F.R. § 1928.53,
4 consumers are damaged based on the benefit of the bargain, that they have to retrofit
5 the Class Vehicles for adequate safety, and are faced with a strong likelihood of
6 serious injury or death.

7 193. Defendants' unfair or deceptive acts or practices were likely to and did
8 in fact deceive regulators and reasonable consumers, including Artoff and Oregon
9 Class members, about the true characteristics of the strength of the ROPS meant to
10 protect passengers, as well as the true value of the Class Vehicles.

11 194. Plaintiffs and Oregon Class members suffered ascertainable loss and
12 actual damages as a direct and proximate result of Polaris' misrepresentations and
13 its concealment of and failure to disclose material information. Plaintiffs and the
14 Oregon Class members who purchased the Class Vehicles would not have
15 purchased them at all and/or—if the Vehicles' true nature had been disclosed and
16 mitigated, and would have paid significantly less for them. Plaintiffs also suffered
17 diminished value of their vehicles, as well as diminished loss. Plaintiff and the
18 Oregon Class members did not obtain the benefit of the bargain from Polaris.

19 195. Polaris had a duty to refrain from unfair and deceptive practices under
20 the Oregon UTPA in the course of business.

21 196. Polaris' violations present a continuing risk to Artoff, the Oregon Class
22 members and the general public. Polaris' unlawful acts and practices complained of
23 herein affect the public interest.

24 197. Pursuant to Or. Rev. Stat. § 646.638, Artoff and the Oregon Class
25 members seek an order enjoining Polaris' unfair and/or deceptive acts or practices,
26 damages, punitive damages, and attorneys' fees, costs, and any other just and proper
27 relief available under the Oregon UTPA.

28 //

1 **FIFTH CAUSE OF ACTION**

2 **VIOLATION OF THE NEVADA DECEPTIVE TRADE PRACTICES ACT,**
3 **NEV. REV STAT. §§ 598.0903, ET SEQ.**

4 **(Against All Defendants on Behalf of Plaintiff Cy Mitchell and**
5 **the Nevada Class)**

6 198. Plaintiffs hereby incorporate by reference and re-allege each and every
7 allegation set forth in each and every preceding paragraph of this Complaint, as
8 though fully set forth herein.

9 199. Mitchell brings this cause of action on behalf of himself and the
10 Nevada Class against all Defendants.

11 200. Nev. Rev. State (NRS) 41.600(1) states that an action may be brought
12 by any person who is a victim of consumer fraud.

13 201. NRS 41.600(2) defines “consumer fraud” as a “deceptive trade
14 practice” as defined in NRS 598.0915 to NRS 598.0925.

15 202. The Nevada Deceptive Trade Practices Act (“Nevada DTPA”). NRS §
16 598.0915 provides that a person engages in a “deceptive trade practice” if, in the
17 course of business or occupation, the person: “5. Knowingly makes a false
18 representation as to the characteristics, ingredients, uses, benefits, alterations or
19 quantities of goods or services for sale or lease or a false representation as to the
20 sponsorship, approval, status, affiliation or connection of a person therewith”; “7.
21 Represents that goods or services for sale or lease are of a particular standard,
22 quality or grade, or that such goods are of a particular style or model, if he or she
23 knows or should know that they are of another standard, quality, grade, style or
24 model”; “9. Advertises goods or services with intent not to sell or lease them as
25 advertised”; or “15. Knowingly makes any other false representation in a
26 transaction.

27 203. Polaris knowingly violated NRS 598.0915(13) by making false or
28 misleading statements regarding the safety of the Class Vehicles.

1 204. Polaris engaged in consumer fraud when it violated NRS 598.0915 by
2 knowingly making false representations by representing to consumers that their
3 manufactured and sold Class Vehicles complied with the OSHA requirements of 29
4 C.F.R. 1928.53, when in fact they did not.

5 205. In 2019, Mitchell purchased a 2019 RZR XP Turbo new in Nevada.

6 206. Mitchell saw and read the label/sticker on the 2019 RZR XP Turbo
7 similar to the picture listed below:



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12 207. Mitchell understood that OSHA requirements were federal regulations
13 pertaining to safety. Mitchell read the sticker on the 2019 RZR XP Turbo and
14 understood the language to mean that the vehicle's ROPS structure met federal
15 standards for safety and that the vehicle was safe for use by him, his family, and
16 friends.

17 208. Mitchell, in seeing and reading the sticker, relied on the language
18 contained therein to purchase the 2019 RZR XP Turbo. If the sticker said that the
19 ROPS structure failed to meet OSHA requirements, he would not have purchased
20 the 2019 RZR XP Turbo.

21 209. Mitchell had a roll over and the cage collapsed due to it being weak
22 and unsafe for consumers.

23 210. Polaris intentionally and knowingly misrepresented material facts
24 regarding the Class Vehicles with intent to mislead Mitchell and the Nevada Class.

25 211. Polaris knew or should have known its conduct violated the Nevada
26 DTPA.

27 212. In the course of their business, Polaris misrepresented, concealed and
28 suppressed material facts about the Class Vehicles and the actual strength of the

1 ROPS meant to protect consumers.

2 213. Defendants thus violated the Act by, at minimum: knowingly
3 representing that Class Vehicles have uses and benefits which they do not have;
4 representing that Class Vehicles are of a particular standard, quality, and grade
5 when they are not; advertising Class Vehicles with the intent not to sell or lease
6 them as advertised; and representing that the subject of a transaction involving Class
7 Vehicles has been supplied in accordance with a previous representation when it
8 has not; and knowingly making other false representations in a transaction.

9 214. Polaris' actions as set forth above occurred in the conduct of trade or
10 commerce.

11 215. Mitchell and the Nevada Class members suffered ascertainable loss
12 and actual damages as a direct and proximate result of Polaris' misrepresentations
13 and its concealment of and failure to disclose material information. Plaintiffs and
14 the Oregon Class members who purchased the Class Vehicles would not have
15 purchased them at all and/or—if the Vehicles' true nature had been disclosed and
16 mitigated, and would have paid significantly less for them. Plaintiffs also suffered
17 diminished value of their vehicles, as well as diminished loss. Plaintiff and the
18 Oregon Class members did not obtain the benefit of the bargain from Polaris.

19 216. Accordingly, Mitchell and the Nevada Class seek their actual damages,
20 punitive damages, an order enjoining Polaris' deceptive acts or practices, costs of
21 Court, attorney's fees, and all other appropriate and available under the Nevada
22 DTPA.

23 **SIXTH CAUSE OF ACTION**

24 **VIOLATION OF THE TEXAS DECEPTIVE TRADE PRACTICES ACT,**

25 ***TEX. Bus. & Com. Code §§ 17.46, et seq.***

26 **(Against All Defendants on Behalf of Plaintiff Jonathan Lollar and**
27 **the Texas Class)**

28 217. Plaintiffs hereby incorporate by reference and re-allege each and every

1 allegation set forth in each and every preceding paragraph of this Complaint, as
2 though fully set forth herein.

3 218. Polaris' conduct concerning the testing of its ROPS systems and
4 labelling the vehicles which it intended to induce Plaintiff and Class Members with
5 false information prior to purchase is unconscionable under the DTPA.

6 219. The DTPA makes unlawful any "[f]alse, misleading, or deceptive acts
7 or practices in the conduct of any trade or commerce [...]" *Tex. Bus. & Com. Code*
8 § 17.46. A plaintiff may maintain an action under the DTPA where: (1) he is a
9 consumer; (2) the defendant engaged in a false, misleading, or deceptive act; and
10 (3) the act constituted a producing cause of the plaintiff's damages. *See id.* §
11 17.50(a); *see also Doe v. Boys Clubs of Greater Dallas, Inc.*, 907 S.W.2d 472, 478
12 (Tex. 1995).

13 220. Lollar and Class Members are "consumers" within the meaning of the
14 DTPA. Within the relevant period, Plaintiff and Class Members each purchased at
15 least one of Polaris' Class Vehicles.

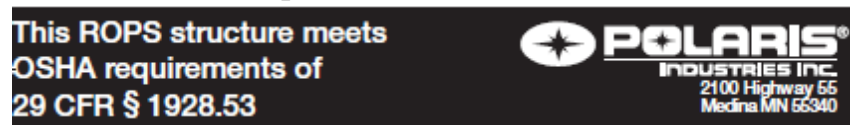
16 221. Polaris engaged in "false, misleading, or deceptive acts" within the
17 meaning of the DTPA.

18 222. The DTPA prohibits "unfair methods of competition and unfair or
19 deceptive acts or practices," including but not limited to:

- 20 • *Tex. Bus. & Com. Code* § 17.46(b)(2): "causing confusion or
21 misunderstanding as to the source, sponsorship, approval, or
22 certification of goods or services";
- 23 • *Tex. Bus. & Com. Code* § 17.46(b)(5): "representing that goods or
24 services have sponsorship, approval, characteristics, ingredients, uses,
25 benefits, or quantities which they do not have or that a person has a
26 sponsorship, approval, status, affiliation, or connection which the
27 person does not";
- 28

- 1 • *Tex. Bus. & Com. Code* § 17.46(b)(7): “representing that goods or
- 2 services are of a particular standard, quality, or grade, or that goods
- 3 are of a particular style or model, if they are of another”;
- 4 • *Tex. Bus. & Com. Code* § 17.46(b)(13): “knowingly making false or
- 5 misleading statements of fact concerning the need for parts,
- 6 replacement, or repair service”;
- 7 • *Tex. Bus. & Com. Code* § 17.46(b)(22): “representing that work or
- 8 services have been performed on, or parts replaced in, goods when the
- 9 work or services were not performed or the parts replaced”; and
- 10 • *Tex. Bus. & Com. Code* § 17.46(b)(24): “failing to disclose
- 11 information concerning goods or services which was known at the
- 12 time of the transaction if such failure to disclose such information was
- 13 intended to induce the consumer into a transaction into which the
- 14 consumer would not have entered had the information been
- 15 disclosed[.]”

16 223. Polaris includes nice stickers like the following to suggest that their
17 vehicles meet these OSHA requirements:

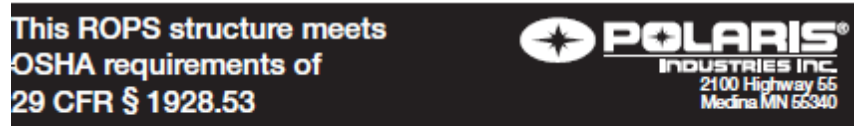


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20 224. The stickers are placed on Class Vehicles and are visible at the point
21 of sale where consumers are also informed that Class Vehicles meet all applicable
22 standards and regulations, including self-adopted regulations, and meet OSHA
23 requirements of 29 C.F.R. § 1928.53, when in fact, they do not.

24 225. Polaris’ false, misleading, and/or deceptive acts constituted a
25 producing cause of Lollar and the Class Members’ damages within the meaning of
26 the DTPA.

27 226. In or around December 19, 2020, Lollar purchased a 2021 Polaris RZR
28 XP 4 Turbo in Texas. Lollar saw and read the stickers on the 2021 Polaris RZR XP

1 4 Turbo which contained the sticker at the time of sale as depicted below,
2 suggesting that their vehicles meet these OSHA requirements:



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4
5 227. Lollar read the sticker on the 2021 Polaris RZR XP 4 Turbo and
6 understood the language to mean that the vehicle's ROPS structure met federal
7 standards for safety and that the vehicle was safe for use by him, his family, and
8 friends.

9 228. Lollar, in seeing and reading the sticker, relied on the language
10 contained therein to purchase the 2021 Polaris RZR XP 4 Turbo. If the sticker said
11 that the ROPS structure failed to meet OSHA requirements, he would not have
12 purchased the 2021 Polaris RZR XP 4 Turbo.

13 229. None of the Class Vehicles sold by Polaris meet the OSHA
14 requirements of 29 C.F.R. § 1928.53. Polaris tells all of their customers that their
15 ROPS are safe because they meet this standard. They do not.

16 230. Polaris also used a load distributor when conducting the tests at the
17 already artificially low "weight." This caused the load to not be applied directly to
18 the portion of the ROPS being measured, but to be spread across a greater
19 mass/area. As a result, even the Weight using the Gross Vehicle Weight" was not
20 applied correctly to the ROPS frame.

21 231. In failing to provide consumers accurate and truthful information
22 about the true nature and characteristics of the Class Vehicles pertaining to
23 compliance with all applicable federal and state statutes, standards, and regulations,
24 including self-adopted regulations, specifically OSHA requirements of 29 C.F.R. §
25 1928.53, consumers are damaged based on the benefit of the bargain, that they have
26 to retrofit the Class Vehicles for adequate safety, and are faced with a strong
27 likelihood of serious injury or death.

1 232. Polaris’ conduct concerning the testing of its ROPS and labelling the
2 vehicles which it intended to induce Lollar and Class Members with false
3 information prior to purchase is unconscionable under the DTPA.

4 233. Lollar and Texas Class Members have been damaged by Polaris’
5 violation of the DTPA and are entitled to relief.

6 234. On May 27, 2021, Plaintiff provided notice pursuant to the Texas Bus.
7 And Comm. Code §§ 17.41, *et seq.*, Texas Civ. Prac. & Remedies Code §§ 38.001,
8 *et seq.*, and Texas Finance Code § 304.104. The notice outlined the claims and
9 requesting that Polaris, remedy the violations of the DTPA. Polaris has rejected the
10 request.

11 235. Lollar brings this cause of action on behalf of himself and the Texas
12 Class against all Defendants.

13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiffs, individually and on behalf of the Class, pray for
15 relief and judgment as follows:

- 16 1. Certifying the Classes as requested herein;
- 17 2. Providing such further relief as may be just and proper.
- 18 3. Appointing Plaintiffs and their counsel to represent the Classes;

19 In addition, Plaintiffs, and the Class Members pray for further judgment as
20 follows:

- 21 4. Restitution of the funds improperly obtained by Defendants;
- 22 5. All compensatory or special damages;
- 23 6. Any and all statutory enhanced damages;
- 24 7. All reasonable and necessary attorneys’ fees and costs provided by
25 statute, common law or the Court’s inherent power;
- 26 8. For equitable and injunctive relief, including public injunctive relief;
- 27 and
- 28 9. Any and all other relief that this Court deems just and proper.

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Dated: July 14, 2021

Respectfully submitted,

By: *s/ Todd M. Friedman, Esq.*

Todd M. Friedman, Esq. (SBN 216752)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

John P. Kristensen (SBN 224132)
KRISTENSEN LLP

Christopher W. Wood (SBN 193955)
**DREYER BABICH BUCCOLA WOOD
CAMPORA, LLP**

*Attorneys for Plaintiffs and all others
similarly situated*

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DEMAND FOR JURY TRIAL

Plaintiffs hereby demand a trial by jury for all such triable claims.

Dated: July 14, 2021

Respectfully submitted,

By: /s/ Todd M. Friedman

Todd M. Friedman, Esq. (SBN 216752)
LAW OFFICES OF TODD M. FRIEDMAN, P.C.

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*Attorneys for Plaintiffs and all others
similarly situated*

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DECLARATION OF MICHAEL HELLMAN

I, Michael Hellman, declare that if called as a witness, I could and would competently testify to the following facts:

1. I submit this declaration pursuant to Section 1780(d) of the California Consumer Legal Remedies Act. I have personal knowledge of the matters set forth below and as a witness, I could and would be competent to testify thereto.

2. It is my understanding that defendants Polaris Industries, Inc, a Delaware Corporation, Polaris Sales, Inc., a Minnesota Corporation, and Polaris Industries, Inc., a Minnesota Corporation conduct regular and sustained business in Tehama County, California.

I declare under penalty of perjury under the laws of the State of California and the United States that the foregoing is true and correct and that this declaration was executed on 5/25/2021 in California.

DocuSigned by:
Michael Hellman
ACF5674F2AF8491...

Michael Hellman

CERTIFICATE OF SERVICE

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2 Filed electronically on July 14, 2021, with:

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4 United States District Court CM/ECF system.

5 Notification sent electronically via the Court's ECF system on July 14, 2021, to:

6
7 Honorable John A. Mendez, Judge of the United States District Court
8 United States District Court
9 Eastern District of California

10 And all Counsel of Record as Recorded on the Electronic Service
11 List.

12 This 14th day of July, 2021.

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14 s/ Todd M. Friedman
15 Todd M. Friedman
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