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12  
13 UNITED STATES DISTRICT COURT  
14 CENTRAL DISTRICT OF CALIFORNIA  
15

16 PAUL GUZMAN, et al.,

17 Plaintiffs,

18 v.

19 POLARIS INDUSTRIES INC., et al.,

20 Defendants.

21 \_\_\_\_\_  
22 MICHAEL HELLMAN, et al.,

23 Plaintiffs,

24 v.

25 POLARIS INDUSTRIES INC., et al.,

26 Defendants.  
27 \_\_\_\_\_  
28

) Case Nos.  
) 8:19-cv-01543-FLA (KESx) (lead  
) case)  
) 2:23-cv-07187-FLA (KESx)

) **DEFENDANTS' MEMORANDUM**  
) **OF POINTS AND AUTHORITIES**  
) **IN SUPPORT OF MOTION FOR**  
) **PARTIAL RECONSIDERATION**  
) **AND FOR CLARIFICATION OF**  
) **ORDER GRANTING CLASS**  
) **CERTIFICATION IN PART**

) Hon. Fernando L. Aenlle-Rocha  
) Date: August 30, 2024  
) Time: 1:30 p.m.  
) Place: Courtroom 6B

1 **INTRODUCTION**

2 Polaris respectfully requests that the Court reconsider and clarify two narrow  
3 issues in its order granting plaintiff’s class certification motion in part in *Hellman v.*  
4 *Polaris Industries Inc.* (“*Berlanga*”) to bring the class certified in *Berlanga* within the  
5 scope of the class asserted in plaintiff’s complaint, class certification papers, and  
6 numerous other filings, as well as to align it with the scope of the class certified in  
7 *Guzman v. Polaris Industries Inc.*<sup>1</sup>

8 Specifically, Polaris requests that the Court (1) grant partial reconsideration and  
9 narrow the scope of the *Berlanga* class to include only purchasers of RZR-branded  
10 vehicles, as plaintiff requested, and (2) clarify the end date of the *Berlanga* class period,  
11 which should be the date plaintiff filed his operative complaint, *i.e.*, July 14, 2021.

12 **BACKGROUND**

13 The *Guzman* case was filed in 2019 on behalf of a putative class of individuals  
14 who purchased certain General-, Ranger-, and RZR-branded Polaris vehicles “in the four  
15 years preceding the filing of this Complaint.” *Guzman* Dkt. 1 ¶¶ 2, 51. The *Guzman*  
16 plaintiffs amended twice, each time limiting the putative class vehicles to Generals,  
17 Rangers, and RZRs and the class period end date to the date the operative complaint was  
18 filed. *Guzman* Dkt. 26 ¶¶ 2, 51; *Guzman* Dkt. 39 ¶¶ 2, 57. The plaintiffs then sought  
19 certification of a class of General, Ranger, and RZR purchasers and a subclass of only  
20 RZR purchasers; both classes were defined to end on December 31, 2019, or shortly prior  
21 to the date the operative complaint was filed. *Guzman* Dkt. 67 at 2.<sup>2</sup> During class  
22 certification briefing, the plaintiffs voluntarily narrowed the class they sought to RZR  
23  
24

25 \_\_\_\_\_  
26 <sup>1</sup> Polaris reserves its rights with respect to its position that no class should have been  
27 certified and no class can be maintained in either *Guzman* or *Berlanga*.

28 <sup>2</sup> Citations to page numbers are to those added by the CM/ECF system.

1 purchasers only.<sup>3</sup> *Guzman* Dkt. 119 at 19-21. The Court granted their motion, in part, and  
2 certified a class limited to individuals who had purchased RZR's prior to December 31,  
3 2019. *Guzman* Dkt. 184 at 18-19. The Court "ch[ose] to consider the amended class  
4 definition [which was limited to only RZR buyers], as the new scope [wa]s 'narrower and  
5 encompassed within the complaint's broader definition.'" *Id.* at 5 n.4 (quoting *Andrews v.*  
6 *Plains All Am. Pipeline, L.P.*, 2019 WL 6647928, at \*7 (C.D. Cal. Nov. 22, 2019)).

7 After *Guzman* was filed but before the class was certified, the same counsel filed  
8 the *Berlanga* action, again alleging a class of purchasers of Generals, Rangers, and RZR's  
9 running through the "filing of this Complaint." *Berlanga* Dkt. 1 ¶ 2, 78. Plaintiff  
10 amended the complaint once, keeping the end date as the date of "filing of this  
11 Complaint." *Berlanga* Dkt. 22 ¶ 83. Plaintiff, however, moved for certification of a class  
12 that ran through the "Present," which was not defined. *Berlanga* Dkt. 86 at 2. As in  
13 *Guzman*, the *Berlanga* plaintiff moved to certify a class of General, Ranger, and RZR  
14 purchasers as well as a subclass of RZR purchasers. *Id.* Also as in *Guzman*, the *Berlanga*  
15 plaintiff voluntarily narrowed the requested class to RZR purchasers only. *Berlanga* Dkt.  
16 94 at 17 ("Plaintiff voluntarily agrees to narrow the proposed class definition to only  
17 encompass RZR vehicles, i.e., the proposed Subclass"); *Berlanga* Dkt. 96 at 11  
18 ("Plaintiff voluntarily agrees to narrow the proposed class definition to the proposed  
19 Subclass"). Plaintiff asserted that "[a] narrow tailing of the class definition in such a  
20 manner to address arguments raised by a defendant [*i.e.*, Polaris] in an opposition brief is  
21 appropriate." *Berlanga* Dkt. 94 at 17 n.16 (citing cases).

22 After *Berlanga* was transferred to this Court, the *Berlanga* plaintiff filed a renewed  
23 notice of motion, again seeking certification of a class of purchasers of RZR's only.  
24 *Berlanga* Dkt. 143 at 2. On the same day, the *Berlanga* plaintiff's counsel filed in  
25 *Guzman* a motion to consolidate the two matters. *Guzman* Dkt. 198. That motion stated,

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26  
27 <sup>3</sup> It is undisputed that Generals were not certified to the OSHA standard. *Guzman* Dkt.  
28 105-1 at 36; *Berlanga* Dkt. 90 at 12 n.1.

1 “[i]n the *Berlanga* Action, Mr. *Berlanga* seeks to certify the following class: ‘All  
2 California residents, who, between in or about May 25, 2018 and Present, purchased one  
3 or more models of Polaris RZR UTVs ....’” *Id.* at 3. Counsel further represented that  
4 “[t]he cases are identical—same facts, same laws, same company, *same vehicle models*  
5 (with the mere addition of newer model years), same evidence, same counsel, same  
6 everything.” *Id.* at 5 (emphasis added). In opposing the motion to consolidate, Polaris did  
7 not take issue with the limitation of the *Berlanga* class to RZR purchasers, but argued  
8 that *Berlanga* could not “expand the [class] period through a class certification motion”  
9 (such that the class would run through “Present” rather than the date of filing of the  
10 complaint, as he had pled). *Guzman* Dkt. 199 at 9 n.4.

11 On July 16, 2024, the Court granted the *Berlanga* plaintiff’s motion for class  
12 certification in part. *Berlanga* Dkt. 150. The class certification order did not address that  
13 plaintiff had expressly “narrow[ed] the proposed class definition to only encompass RZR  
14 vehicles.” *Berlanga* Dkt. 94 at 17; *see also Berlanga* Dkt. 96 at 11 (similar). The order  
15 certified a class of General, Ranger, and RZR purchasers as well as a subclass of RZR  
16 purchasers. *Berlanga* Dkt. 150 at 16. Both the certified class and subclass covered  
17 California residents who purchased their vehicles “between in or about May 25, 2018 and  
18 Present,” which the order did not define. *Id.*

19 Plaintiff’s counsel and Polaris’s counsel subsequently conferred regarding  
20 (1) whether the *Berlanga* class definition should be amended to remove General and  
21 Ranger purchasers and (2) whether the end date of the *Berlanga* class period should be  
22 fixed. Ex. 1, Pixton Decl. ¶¶ 3-4. Plaintiff’s counsel did not agree the class should be  
23 limited to RZR purchasers, despite the *Berlanga* plaintiff having expressly abandoned his  
24 request to represent General and Ranger purchasers. *Id.* ¶ 3. Plaintiff’s counsel did agree  
25 that the class period should have a fixed end date, but took the position that it should be  
26 the date of the class certification order, rather than the date on which the complaint was  
27 filed. *Id.* ¶ 4.

28 This motion for partial reconsideration and for clarification follows.

1 **LEGAL STANDARD**

2 Reconsideration may be granted on grounds that includes “a manifest showing of a  
3 failure to consider material facts presented to the Court before the Order was entered.”  
4 L.R. 7-18. This includes instances where the court “failed to consider [an opposing  
5 party’s] admission.” *Turner v. Thyssenkrupp Materials NA, Inc.*, 2021 WL 3202436, at  
6 \*1 (C.D. Cal. Jan. 14, 2021). In addition, courts in this district grant reconsideration “in  
7 the interest of justice.” *Bloch v. Prudential Ins. Co. of Am.*, 2005 WL 6141292, at \*4  
8 (C.D. Cal. Aug. 9, 2005); *Everest Nat’l Ins. Co. v. Farukhi*, 2009 WL 10675354, at \*2  
9 (C.D. Cal. Apr. 20, 2009) (same); *see also In re Westwood Plaza N.*, 2016 WL 11697858,  
10 at \*7 (C.D. Cal. Jan. 13, 2016) (reconsideration appropriate where court has “patently  
11 misunderstood a party,” “made a decision outside the adversarial issues presented ... by  
12 the parties,” or “made an error not of reasoning but of apprehension”) (ellipsis in original;  
13 quotation omitted). “Whether to grant a motion for reconsideration under Local Rule 7-  
14 18 is a matter within the court’s discretion.” *Flores v. Callahan*, 2020 WL 4875465, at \*2  
15 (C.D. Cal. May 15, 2020) (quotation omitted). “An order that grants or denies class  
16 certification may be altered or amended before final judgment.” Fed. R. Civ. P.  
17 23(c)(1)(C).

18 **ARGUMENT**

19 **A. The Court Should Narrow The *Berlanga* Class Definition To Purchasers**  
20 **Of RZR’s Only, As Plaintiff Requested.**

21 Polaris respectfully requests that the Court grant partial reconsideration and narrow  
22 the definition of the *Berlanga* class to include only purchasers of RZR’s, thereby aligning  
23 the relief granted to plaintiff with that requested by him.

24 By certifying a class including purchasers of Generals and Rangers, the Court  
25 failed to consider the material fact that the *Berlanga* plaintiff no longer sought to  
26 represent such individuals. Plaintiff made this clear by eliminating General and Ranger  
27 purchasers from the scope of his proposed class. *Berlanga* Dkt. 94 at 17; *Berlanga* Dkt.  
28 96 at 11. The Court appears to have inadvertently failed to consider this admission. *See*

1 *Thyssenkrupp*, 2021 WL 3202436, at \*1 (reconsideration granted in relevant part because  
2 court failed to consider admission made in briefing).

3 Adopting plaintiff’s narrowed definition as the outer limit of the class also ensures  
4 that the Court does not “ma[ke] a decision outside of the adversarial issues ... presented  
5 by the parties.” *Westwood Plaza*, 2016 WL 11697858, at \*7 (ellipsis in original;  
6 quotation omitted); see *Miller v. Midland Funding LLC*, 2008 WL 5003042, at \*1 (C.D.  
7 Cal. Nov. 20, 2008) (reconsideration granted regarding damages because “both parties  
8 agree[d]” as to limit on plaintiff’s potential recovery). And although the court’s discretion  
9 to certify a class is broad, a “district court may only exercise that discretion once it is  
10 asked to do so.” *State Farm Mut. Auto. Ins. Co. v. Elegant Massage, LLC*, 2021 WL  
11 4202678, at \*1 (4th Cir. Sept. 2, 2021) (reversing certification order). As described  
12 above, after Polaris challenged the propriety of certifying a class that included Generals  
13 and Rangers, plaintiff expressly narrowed the scope of relief he sought. *Berlanga* Dkt. 94  
14 at 17 (“Plaintiff voluntarily agrees to narrow the proposed class definition to only  
15 encompass RZR vehicles”); *Berlanga* Dkt. 96 at 11 (“Plaintiff voluntarily agrees to  
16 narrow the proposed class definition to the proposed Subclass [*i.e.*, purchasers of  
17 RZRs]”); see also *Berlanga* Dkt. 143 at 2 (stating that Berlanga sought to certify a class  
18 of only RZR purchasers); *Guzman* Dkt. 198 at 3-5 (same). An order granting certification  
19 of a class including Generals and Rangers would amount to a decision outside of the  
20 adversarial issues presented by the parties, and beyond what the Court was asked to do,  
21 as through the course of briefing the issues were narrowed such that ultimately neither  
22 party asked the Court to analyze whether a class involving all three vehicle brands should  
23 be certified.

24 While plaintiff has not consented to the instant motion, he also has not taken the  
25 position that it would be improper for the Court to conform the class definition to that put  
26 forward in his reply briefs—nor could he. As plaintiff stated in his class certification  
27 reply brief, “[a] narrow tailoring of the class definition ... to address arguments raised by  
28 a defendant in an opposition brief is appropriate.” *Berlanga* Dkt. 94 at 17 n.16.

1 Courts in this Circuit adopt a plaintiff’s narrowed class as the operative class for  
2 certification analysis. *See Abdeljalil v. Gen. Elec. Cap. Corp.*, 306 F.R.D. 303, 306 (S.D.  
3 Cal. 2015); *Knutson v. Schwan’s Home Serv., Inc.*, 2013 WL 4774763, at \*4-5 (S.D. Cal.  
4 Sept. 5, 2013); *Wolf v. Hewlett Packard Co.*, 2016 WL 7743692, at \*8 & n.4 (C.D. Cal.  
5 Sept. 1, 2016). “A plaintiff may properly narrow the class for which it seeks class  
6 certification even in a reply brief.” *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142,  
7 162 (S.D. Cal. 2019); *see also Zaklit v. Nationstar Mortg. LLC*, 2017 WL 3174901, at \*8  
8 (C.D. Cal. July 24, 2017) (analyzing certification using class definition as narrowed in  
9 reply). As the Court recognized in granting class certification in part in *Guzman*, it would  
10 be appropriate to “consider the amended class definition,” which omitted Generals and  
11 Rangers, “as the new scope is ‘narrower and encompassed within the complaint’s broader  
12 definition.’” *Guzman* Dkt. 184 at 5 n.4 (quoting *Andrews*, 2019 WL 6647928, at \*7).

13 As such, the Court should narrow the class definition to purchasers of RZR’s only.

14 **B. The Court Should Clarify That The *Berlanga* Class Period Ends At The**  
15 **Date Of Filing Of The Operative Complaint.**

16 Polaris also respectfully requests that the Court clarify the end date of the *Berlanga*  
17 class period which runs to “Present,” which is undefined. *Berlanga* Dkt. 150 at 16.

18 Modification of a class definition is appropriate when the definition does not  
19 provide a definite end date. *See Bafus v. Aspen Realty, Inc.*, 2007 WL 793633, at \*2 (D.  
20 Idaho Mar. 14, 2007) (granting motion to clarify class certification decision due to lack of  
21 “temporal limitations”). Courts hold that “it is necessary to set a clear end-date to the  
22 class period,” as an “open-ended end-date is untenable.” *Hart v. Rick’s Cabaret Int’l,*  
23 *Inc.*, 967 F. Supp. 2d 901, 949 (S.D.N.Y. 2013). This is because an “unspecified end  
24 date ... creates a moving target and presents potential case management problems,” while  
25 a “specified end date ... promotes the interests of clarity and finality,” *Kang v. Credit*  
26 *Bureau Connection, Inc.*, 2022 WL 658105, at \*3 (E.D. Cal. Mar. 4, 2022) (quotation  
27 omitted); because a “[l]ack of clarity as to the end date of the class period ... has the  
28 potential to confuse putative class members as to whether their interests will, or will not,

1 be represented in the pending lawsuit,” *Hart*, 967 F. Supp. 2d at 949; because an open-  
2 ended date “denies the parties, after the close of fact discovery, a practical vehicle for  
3 exploring whether there have been material factual changes,” *id.*; and because “[w]ithout  
4 an end date, the class could potentially continue to grow exponentially as time passe[s],  
5 which would result in a never ending line of notices,” *In re FedEx Ground Package Sys.,*  
6 *Inc. Emp. Pracs. Litig.*, 2008 WL 927654, at \*4 (N.D. Ind. Apr. 4, 2008).

7 Plaintiff does not dispute that the Court should set a definite end date for the class.  
8 Ex. 1, Pixton Decl. ¶ 4. The parties disagree only on whether it should be the date the  
9 operative complaint was filed (Polaris’s position) or the date the class certification order  
10 was entered (plaintiff’s position). The proper end date is the date the operative complaint  
11 was filed. This is because plaintiff pled a class running only through “the filing of this  
12 Complaint,” *Berlanga* Dkt. 22 ¶ 83, and “[d]istrict courts in this Circuit treat the  
13 definition of a class specifically alleged in a complaint as limiting the class for which a  
14 plaintiff may seek Rule 23 certification absent a request for leave to amend,” *McCurley*,  
15 331 F.R.D. at 161; *see also Schoonover v. Iovate Health Scis. U.S.A. Inc.*, 2023 WL  
16 7107132, at \*3 (C.D. Cal. Aug. 21, 2023) (Aenlle-Rocha, J.) (rejecting revised class  
17 definition as it was “not encompassed by the proposed class in the Complaint”); *Bee,*  
18 *Denning, Inc. v. Cap. All. Grp.*, 310 F.R.D. 614, 621 (S.D. Cal. 2015) (declining to  
19 consider certification of class that would “impermissibly expand[] the ... class proposed  
20 in Plaintiffs’ First Amended Complaint”); *Reyes v. Educ. Credit Mgmt. Corp.*, 322 F.R.D.  
21 552, 559 (S.D. Cal. 2017), *vacated on other grounds*, 773 F. App’x 989 (9th Cir. 2019)  
22 (similar); *Giuliano v. Sandisk Corp.*, 2015 WL 10890654, at \*14 (N.D. Cal. May 14,  
23 2015) (“The Court rejects Plaintiffs’ attempt to dramatically expand the class period  
24 defined in the operative complaint by nearly nine years. Plaintiffs have not cited any  
25 authority demonstrating that it is proper for the Court [to do so].”); *Johnson v. Harley-*  
26 *Davidson Motor Co. Grp., LLC*, 285 F.R.D. 573, 577 n.2 (E.D. Cal. 2012) (rejecting  
27 attempt to expand class definition beyond that provided in complaint). Thus, the court in  
28 *McCurley* amended the class definition that plaintiffs put forward in their class



1 certification motion to end at “the date of the Complaint’s filing,” since that was end date  
2 alleged in the complaint and therefore “the outer limit of the class period.” 331 F.R.D. at  
3 162. The Court should find the same here, and clarify that the end date of the class period  
4 is the date of filing of the operative complaint. *See Jacks v. DirectSat USA, LLC*, 2012  
5 WL 2374444, at \*8 (N.D. Ill. June 19, 2012) (“... Plaintiffs do not provide a definite end  
6 date for the proposed class period. The court will therefore replace ‘to the present’ with  
7 the date the complaint was filed ....”); *Bafus*, 2007 WL 793633, at \*2 (clarifying that end  
8 date of class period was date on which operative complaint was filed).

9 Because courts recognize that having a class period without a fixed end date is  
10 untenable due to the wide variety of problems it would create, the Court should clarify its  
11 class certification order to set a definite end date for the class period—a request to which  
12 plaintiff does not object. And because a complaint sets the outer limit of the class that  
13 may be certified, the end date should be set at July 14, 2021, the date the *Berlanga*  
14 plaintiff filed the operative complaint (*Berlanga* Dkt. 22).<sup>4</sup>

### 15 CONCLUSION

16 For the reasons set forth above, Polaris respectfully requests that the Court  
17 (1) grant partial reconsideration and narrow the scope of the class certified in *Berlanga* to  
18 include only purchasers of RZR’s and (2) clarify the end date of the *Berlanga* class period  
19 as the date the operative complaint was filed, such that the class is defined as:

20 All California residents, who, between in or about May 25, 2018 and July  
21 14, 2021, purchased one or more models of Polaris RZR UTVs, in  
22 California, which were advertised with a sticker on the ROPS system as  
23 complying with OSHA requirements as set forth under 29 C.F.R. § 1928.53,  
and which were tested using Gross Vehicle Weight, not Tractor Weight.

24  
25 \_\_\_\_\_  
26 <sup>4</sup> At minimum, and in the alternative, the Court should clarify that the end date of the  
27 *Berlanga* class is July 16, 2024, the date on which the class certification order was  
28 entered, as the parties agree that it cannot be any later than that date. *See* Ex. 1, Pixton  
Decl. ¶ 4.

1 DATED: July 30, 2024

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