UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

MICHAEL HELLMAN, *et al.*,

Plaintiffs,

v.

POLARIS INDUSTRIES, INC., *et al.*,

Defendants.

Case No. 2:23-cv-07187-FLA (KESx)

ORDER GRANTING IN PART PLAINTIFF'S MOTION FOR CLASS CERTIFICATION [DKT. 86]

RULING

Before the court is Plaintiff Francisco Berlanga's ("Plaintiff" or "Berlanga") Motion for Class Certification ("Motion"), wherein Plaintiff requests the court certify his proposed class and appoint his attorneys as class counsel. Dkt. 86-1 ("Mot."). Defendants Polaris Industries, Inc., Polaris Sales, Inc., and Polaris Industries, Inc. (collectively, "Defendants" or "Polaris") oppose the Motion. Dkt. 90 ("Opp'n").

On August 11, 2023, Chief District Judge Kimberly J. Mueller of the Eastern District of California held a hearing on the Motion. *See* Dkt. 103. Prior to issuing an order on the Motion, Judge Mueller transferred the action to this court. *See* Dkts. 108, 111, 129. For the reasons stated herein, the court GRANTS IN PART the Motion.

BACKGROUND

Polaris sells Utility Terrain Vehicles ("UTVs"), which are motorized vehicles designed for off-road use. Dkt. 22 ("FAC") ¶¶ 1, 10. Polaris sells UTVs under the brand names "RZR," "Ranger," and "General." *Id.* ¶ 2. For example, below is a "Ranger" model:

Id. ¶ 12. Each vehicle comes equipped with a roll cage, also known as a rollover protective structure or "ROPS." *See* Mot. at 1–5. The ROPS serves to protect occupants in the event of a rollover of the vehicle. *See id.*

Polaris' ROPS follows standards set forth by the American National Standards Institute and the Recreational Off-Highway Vehicle Association, which require the ROPS to comply with the performance requirements of either the International Organization for Standardization standard 3471, or Occupational Safety and Health Administration ("OSHA") regulation 29 C.F.R. § 1928.53 ("§ 1928.53"). Mot. at 3–5. Polaris adopted the OSHA regulations for the ROPS on its RZR, Ranger, and General UTVs. *Id.* at 4. Thus, certain Polaris vehicles have a sticker containing the language: "This ROPS structure meets OSHA requirements of 29 C.F.R. § 1928.53," along with the vehicle model and test gross vehicle weight ("GVW"). Mot. at 6.

Plaintiff purchased a 2018 Polaris RZR 570 EPS in California in May 2019. Dkt. 86-3 ("Berlanga Decl.") ¶ 4. He purportedly read the ROPS sticker on his vehicle prior to his purchase and understood it to mean the ROPS met OSHA safety standards. *Id.* ¶ 5. He relied on the sticker's representations in making his purchase decision. *Id.* ¶ 7.

Plaintiff contends the ROPS sticker is false and misleading because the ROPS does not meet the requirements of § 1928.53. Berlanga Decl. ¶ 8; Mot. at 5–7. He alleges § 1923.53 requires testing based on maximum power take-off horsepower or 95% of the net engine flywheel, but, instead, Polaris tested every model of class vehicle based on GVW. Mot. at 5–8. He contends consumers were damaged by Polaris' failure to provide accurate and truthful information about the nature and characteristics of the class vehicles, since consumers must now retrofit purchased vehicles to ensure their safety. *Id.* at 10–12.

On May 25, 2021, Plaintiff and former plaintiffs[1] filed a complaint in the Eastern District of California. Dkt. 1. Plaintiff and former plaintiffs filed the First Amended Complaint ("FAC") on July 14, 2021, asserting six class action claims. *See*

[1] This action was originally filed by five plaintiffs: Berlanga, Michael Hellman, Tim Artoff, Cy Mitchell, and Jonathan Lollar. Dkt. 1. Only Berlanga remains. *See* Dkts. 36, 52.

FAC. As a result of Polaris' motion to dismiss, Plaintiff's only remaining claims are for violations of the California Consumer Legal Remedies Act ("CLRA"), California Unfair Competition Law ("UCL"), and California False Advertising Law ("FAL"). *See* Dkt. 36.

In the instant Motion, Berlanga seeks certification of the following class:

> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR, Ranger, or General UTVs, in California, which were advertised with a sticker on the ROPS system as 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.

Id. at 1. Berlanga also seeks certification of the following subclass:

> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR UTVs, in California, which were advertised with a sticker on the ROPS system as 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.

Id.

Additionally, in a case nearly identical to this one, the court certified the following class:

> All California residents who between August 8, 2016 and December 31, 2019 purchased one or more models of Polaris RZR UTVs in California which were advertised with a sticker on the ROPS system as 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 (i.e. a Polaris RZR sold with a stock ROPS installed).

Paul Guzman, et al. v. Polaris Industries, Inc., et al., Case No. 8:19-cv-01543-FLA (KESx), Dkt. 184 at 18–19.

LEGAL STANDARD

Under Fed. R. Civ. P. ("Rule") 23, district courts have broad discretion to determine whether a class should be certified. *Armstrong v. Davis*, 275 F.3d 849, 871 n. 28 (9th Cir. 2001). Rule 23 is the "exception to the usual rule that litigation is conducted by and on behalf of the individual named parties only." *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338, 348 (2011) (citation omitted). To justify departure from the rule, a class representative must be part of the class and possess the same interest and suffer the same injury as fellow class members. *Id.* (citation omitted); *accord Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 979 (9th Cir. 2011).

Accordingly, "before certifying a class, the trial court must conduct a rigorous analysis to determine whether the party seeking certification has met the prerequisites of Rule 23." *Mazza v. Am. Honda Motor Co, Inc.*, 666 F.3d 581, 588 (9th Cir. 2012), *overruled in part on other grounds by Olean Wholesale Grocery Coop., Inc. v. Bumble Bee Foods LLC*, 31 F.4th 651, 682 n. 31 (9th Cir. 2022) (internal quotation marks and citation omitted). This "rigorous" analysis may "entail some overlap with the merits" of the underlying claims. *Amgen Inc. v. Conn. Ret. Plans & Tr. Funds*, 568 U.S. 455, 465–66 (2013) (citing *Wal-Mart*, 564 U.S. at 351). Rule 23, however, "grants no license to engage in free-ranging merits inquiries at the certification stage." *Id.* at 466. The court may consider the merits "to the extent—but only to the extent—that they are relevant in determining whether Rule 23 prerequisites for class certification are satisfied." *Id.*

Rule 23 "does not set forth a mere pleading standard." *Comcast Corp. v. Behrend*, 569 U.S. 27, 33 (2013) (internal quotation marks and citation omitted). Rather, the party seeking certification must affirmatively demonstrate compliance with the requirements of both Rule 23(a) and (b). *Wal-Mart*, 564 U.S. at 349. Rule 23(a) permits a plaintiff to sue as a representative of a class only if: (1) "the class is so numerous that joinder of all members is impracticable" ("numerosity" requirement); (2) "there are questions of law or fact common to the class" ("commonality"

requirement); (3) "the claims or defenses of the representative parties are typical of the claims or defenses of the class" ("typicality" requirement); and (4) "the representative parties will fairly and adequately protect the interests of the class" ("adequacy" requirement). Fed. R. Civ. P. 23(a). The purpose of Rule 23(a)'s requirements is largely to "ensure that the named plaintiffs are appropriate representatives of the class whose claims they wish to litigate," and "effectively limit the class claims to those fairly encompassed by the named plaintiff's claims." *Wal-Mart*, 564 U.S. at 349 (internal quotation marks and brackets omitted).

"If each of the Rule 23(a) requirements are satisfied, the purported class must also satisfy one of the three prongs of Rule 23(b)." *Id.* Rule 23(b) defines three different types of classes. *Leyva v. Medline Indus. Inc.*, 716 F.3d 510, 512 (9th Cir. 2012). Here, Plaintiff seeks hybrid certification under Rules 23(b)(2) and (b)(3). Mot. at 20. Rule 23(b)(2), which concerns equitable relief, requires the court to find that "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Rule 23(b)(3), which concerns monetary relief, requires the court to find that "questions of law or fact common to class members predominate over any questions affecting only individual members" ("predominance" requirement), and "that a class action is superior to other available methods for fairly and efficiently adjudicating the controversy" ("superiority" requirement).

DISCUSSION

I. Rule 23(a) Requirements

A. Numerosity

Rule 23(a)(1) requires a class be "so numerous that joinder of all members is impracticable." Fed. R. Civ. P. 23(a)(1). There is no set number required to satisfy the numerosity requirement; the court must examine the specific facts of each case. *Gen. Tel. Co. v. EEOC*, 446 U.S. 318, 330 (1980). Broadly, however, "courts find the

numerosity requirement satisfied when a class includes at least 40 members." *Rannis v. Recchia*, 380 F. App'x 646, 651 (9th Cir. 2010) (citation omitted).

Plaintiff argues "Polaris identified over 30,000 consumers who purchased a Class Vehicle in California during the Class Period." Mot. at 15. Polaris does not respond to Plaintiff's arguments regarding numerosity and appears to concede the proposed class is sufficiently numerous. *See* Opp'n.

Plaintiff has demonstrated the proposed class is sufficiently numerous.

B. Commonality

Courts construe the commonality requirement liberally, requiring a showing of "questions of law or fact common to putative class members." Fed. R. Civ. P. 23(a)(2); *Mazza*, 666 F.3d at 589. Commonality requires the plaintiff to demonstrate the claims depend upon a common contention that is "of such a nature that it is capable of classwide resolution—which means that determination of its truth or falsity will resolve an issue that is central to the validity of each one of the claims in one stroke." *Wal-Mart*, 564 U.S. at 350; *accord Willis v. City of Seattle*, 943 F.3d 882, 885 (9th Cir. 2019) ("The commonality element may be fulfilled if the court can determine 'in one stroke' whether a single policy or practice which the proposed class members are all subject to 'expose[d] them to a substantial risk of harm.'").

To assert a claim under either the UCL, FAL, or CLRA, "it is necessary only to show that members of the public are likely to be deceived." *In re Tobacco II Cases*, 46 Cal. 4th 298, 312 (2009) (citation and internal quotations omitted); *see also Bradach v. Pharmavite, LLC*, 735 Fed. App'x 251, 254 (9th Cir. 2018) ("[T]he standard in actions under both the CLRA and UCL is whether 'members of the public are likely to be deceived.'"). Thus, claims of this type are ideal for class certification because they do not require "the court to investigate class members' individual interaction with the product." *Bradach*, 735 F. App'x at 254–55.

Plaintiff argues commonality is satisfied because this action presents common questions of whether: (i) Polaris engaged in any unlawful practice by representing the

ROPS system complied with OSHA requirements; and (ii) the sticker on the Class Vehicles' ROPS system would deceive a reasonable consumer. Mot. at 16–17. The court agrees.

Under Plaintiff's proposed class definition, every putative class member would have purchased a Class Vehicle with a sticker stating the ROPS complied with § 1928.53. Dkt. 86 at 1; Mot. at 16. All putative class members, therefore, would necessarily have "suffer[ed] the same injury," as required. *See Wal-Mart*, 564 U.S. at 348; *see also Clevenger v. Welch Foods Inc.*, 342 F.R.D. 446 (2022) (finding commonality satisfied in case involving UCL and FAL claims because all putative class members who purchased the product with allegedly misleading representations suffered the same injury); *Prescott v. Reckitt Benckiser LLC*, Case No. 2:20-cv-02101-BLF, 2022 WL 3018145, at *6 (N.D. Cal. July 29, 2022) (same).

Questions of fact and law, thus, are common to the class.

C. Predominance[2]

"The Rule 23(b)(3) predominance inquiry tests whether proposed classes are sufficiently cohesive to warrant adjudication by representation." *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 624 (1997). While similar to commonality, the inquiry requires a heightened showing that facts and issues common to the class predominate over any individual issues that may be present. Fed. R. Civ. P. 23(b)(3); *Amchem Prods.*, 521 U.S. at 624.

Rule 23(b)(3) requires a showing that "questions common to the class predominate, not that those questions will be answered, on the merits, in favor of the class." *Amgen*, 568 U.S. at 459. In assessing predominance, the court "is limited to resolving whether the evidence establishes that a common question is *capable* of class-wide resolution, not whether the evidence in fact establishes that plaintiffs would

[2] For clarity and efficiency, the court addresses predominance prior to the remaining Rule 23 considerations.

win at trial." *Olean*, 31 F.4th at 666–67 (cleaned up) (emphasis in original). A court does not have "license to engage in free-ranging merits inquiries at the certification stage" and, therefore, "cannot decline certification merely because it considers plaintiffs' evidence relating to the common question to be unpersuasive and unlikely to succeed in carrying the plaintiffs' burden of proof on that issue." *Id.* at 667.

1. Polaris' Objections

Polaris argues predominance is lacking because reliance, materiality, and causation are predominant individual issues. *See* Opp'n at 14–23. However, at the class certification stage, Plaintiff need not prove "individualized proof of deception, reliance, and injury." *Tobacco II*, 46 Cal. 4th at 320. "[A] presumption, or at least an inference, of reliance arises wherever there is a showing that a misrepresentation was material." *Id.* at 327. A misrepresentation is material if "a reasonable man would attach importance to its existence or nonexistence in determining his choice of action in the transaction." *Id.* "Because materiality is judged according to an objective standard"—the reasonable consumer—it may generally be established by common proof. *Amgen*, 568 U.S. at 459.

The relevant inquiry here, then, is not whether each individual putative class member read and believed the ROPS sticker's representations, but whether the sticker would be likely to cause a reasonable consumer to believe the ROPS system complies with relevant safety standards. Plaintiff alleges the existence of safety defects in the ROPS of the Class Vehicles. If such defects exist, putative class members would be forced either to subject themselves to greater risk to their wellbeing than that for which they bargained or to undertake costs to replace the ROPS themselves. A reasonable consumer would likely attach importance to either scenario.

2. Damages

To satisfy the predominance requirement, Plaintiff must also "propose a damages model that is consistent with [his] theory of liability and capable of measuring damages on a classwide basis." *Comcast*, 569 U.S. at 27, 34–35. "[A]

district court is not precluded from certifying a class even if plaintiffs may have to prove individualized damages at trial" because "such individualized issues do not predominate over common ones." *Olean*, 31 F.4th at 669. The potential for "more than a *de minimis* number of uninjured class members" does not stand in the way of certification. *Id.* While "[r]easonable minds may differ" as to whether a plaintiff's damages model "is probative as to all purchasers in the class ... that is a question of persuasiveness for the jury once the evidence is sufficient to satisfy Rule 23." *Id.* at 681.

At this stage of the action, the court is satisfied Plaintiff's damages methodology is consistent with his theory of liability. Plaintiff alleges the ROPS on each Class Vehicle does not comply with § 1928.53, despite the ROPS sticker's representation to the contrary. FAC ¶ 5. Plaintiff's expert intends to employ a benefit of the bargain damages model. Mot. at 10–12. Specifically, he would calculate the cost of retrofitting the ROPS structure to be OSHA-compliant and multiply that figure by the number of Class Vehicles sold. *Id.* at 11–12.

Polaris urges the cost of retrofitting the ROPS system is an improper basis to calculate damages because Plaintiff has "presented no evidence of a ROPS retrofit that complies with plaintiff's interpretation of []§ 1928.53 for any vehicle, let alone all vehicles in the alleged class." Opp'n at 21. However, "[i]n this circuit ... damage calculations alone cannot defeat certification." *Yokoyama v. Midland Nat. Life Ins. Co.*, 594 F.3d 1087, 1094 (9th Cir. 2010). At the class certification stage, Plaintiff's burden is simply to propose a damages model "measur[ing] only those damages attributable" to his theory of liability. *See Comcast*, 569 U.S. at 35. Plaintiff's proposed damages theory is sufficient to satisfy his burden.

D. Typicality

Rule 23(a)(3) requires "the claims or defenses of the representative parties [to be] typical of the claims or defenses of the class." Fed. R. Civ. P. 23(a)(3). "The test of typicality is whether other members have the same or similar injury, whether the

action is based on conduct which is not unique to the named plaintiffs, and whether other class members have been injured by the same source of conduct." *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (quotation marks omitted). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; they need not be substantially identical." *Castillo v. Bank of Am., N.A.*, 980 F.3d 723, 729 (9th Cir. 2020).

Berlanga argues both he and the putative class members have the same or similar injury (*i.e.*, they did not receive the benefit of the bargain for the Class Vehicles), and they were injured from the same conduct (*i.e.*, Polaris' purported misrepresentation on each ROPS sticker). Mot. at 18. Polaris responds Plaintiff's claim is atypical because most buyers purportedly did not see or rely on the sticker when purchasing Class Vehicles. Opp'n at 22–23. The court agrees with Plaintiff.

Plaintiff's claims are "reasonably co-extensive" with the putative class members. *Castillo*, 980 F.3d at 729. Plaintiff and each putative class member suffered the same or similar harm arising from Polaris' purportedly fraudulent representation vis-à-vis its OSHA sticker. *Hanon*, 976 F.2d at 508. Plaintiff's interest, thus, "aligns with the interests of the class." *Id.* Whether each putative class member read or believed the ROPS sticker is irrelevant to the court's inquiry and does not predominate over questions common to the class. *See supra* § C.1.

The typicality requirement is satisfied.

E. Adequacy

Rule 23(a)(4) requires class representatives to "fairly and adequately protect the interests of the class." Fed. R. Civ. P. 23(a)(4). The adequacy test is satisfied if a plaintiff has no conflict of interest with other class members and will prosecute the action vigorously on behalf of the class. *Ellis v. Costco Wholesale Corp.*, 657 F.3d 970, 985 (9th Cir. 2011).

Plaintiff argues he shares the same interest as the putative class members, who all suffered the same harm. Mot. at 19. Plaintiff attests he will fairly represent the interests of the class. Berlanga Decl. ¶ 13. Polaris does not contest Plaintiff's adequacy. *See* Opp'n.

Based on Plaintiff's representations, the court is satisfied he is an adequate representative for the class.

II. Rule 23(b)

In addition to the Rule 23(a) requirements, Plaintiff must also establish one or more grounds for maintaining a class action under Rule 23(b). Here, Plaintiff "seeks hybrid certification pursuant to Rule 23(b)(2) and (b)(3)." Mot. at 20; *see also Dukes v. Wal-Mart Stores, Inc.*, 603 F.3d 571, 622 (9th Cir. 2010), *rev'd on other grounds*, 564 U.S. 338 (2011) ("We and a number of other courts of appeals have endorsed [] 'hybrid certification' of Rule 23(b)(2) and Rule 23(b)(3) classes in one action … Under this hybrid approach, the highly cohesive Rule 23(b)(2) phase of the proceedings, including liability, can be adjudicated without the costly class notice and opt-out process required under Rule 23(b)(3). … Hybrid certification effectively grants (b)(3) protections at the monetary relief stage.") (cleaned up).

As detailed below, the court finds hybrid certification is not appropriate; however, it finds certification under Rule 23(b)(3) is.

A. Rule 23(b)(2)

Under Rule 23(b)(2), class certification may be maintained where "the party opposing the class has acted or refused to act on grounds that apply generally to the class, so that final injunctive relief or corresponding declaratory relief is appropriate respecting the class as a whole." Fed. R. Civ. P. 23(b)(2). Class certification under Rule 23(b)(2), thus, is appropriate "only where the primary relief sought is declaratory or injunctive." *Zinser v. Accufix Rsch. Inst, Inc.*, 253 F.3d 1180, 1195 (9th Cir. 2000), *amended by*, 273 F.3d 1266 (9th Cir. 2001) (citation omitted). A class seeking both monetary and injunctive relief "may be certified pursuant to Rule 23(b)(2) where

[monetary] relief is merely incidental to the primary claim for injunctive relief." *Id.* (cleaned up).

"Where a plaintiff seeks to certify a class under Rule 23(b)(2), such plaintiff must have standing to seek the declaratory and/or injunctive relief sought on behalf of the class." *Friend v. Hertz Corp.*, Case No. 3:07-cv-05222-MMC, 2011 WL 750741, at *4 (N.D. Cal. Feb. 24, 2011) (citing *Bates v. United Parcel Serv.*, 511 F.3d 974, 983–85 (9th Cir. 2007). In certain circumstances, "a previously deceived consumer may have standing to seek an injunction against false advertising or labeling, even though the consumer now knows or suspects that the advertising was false at the time of the original purchase[.]" *Davidson v. Kimberly-Clark Corp.*, 889 F.3d 956, 969 (9th Cir. 2018).

Plaintiff argues class certification pursuant to Rule 23(b)(2) is appropriate because injunctive relief in the form of "requiring Polaris to remove or revise its OSHA stickers to reflect accurate information" is the primary relief sought. Mot. at 20–21. Polaris responds the class should not be certified under Rule 23(b)(2) because injunctive relief "will provide no benefit to putative class members" and Plaintiff lacks standing. Opp'n at 25. Polaris urges a buyer alleging misrepresentation lacks standing for injunctive relief "unless, at a minimum, the buyer intends to purchase the product again in the future." *Id.*

In *Kimberly-Clark*, the Ninth Circuit held that a plaintiff plausibly alleged standing because she still "desire[d] to purchase" the at-issue product and would purchase the product in the future if it worked as-advertised. *Kimberly-Clark*, 889 F.3d at 970–71. In *In re Coca-Cola Products Marketing and Sales Practices Litigation*, Case No. 20-15742, 2021 WL 3878654 (9th Cir. Aug. 31, 2021), the court clarified its prior ruling:

> [*Kimberly-Clark*] offered two non-exclusive examples of threatened future harm a consumer complaining of assertedly false labeling might plausibly allege: "she will be unable to rely on the product's advertising or labeling in the future, and so will not purchase the

> product although she would like to" and "she might purchase the product in the future, despite the fact that it was once marred by false advertising or labeling, as she may reasonably, but incorrectly, assume the product was improved."

Id., at *1 (citing *Kimberly-Clark*, 889 F.3d at 969–70).

Here, Plaintiff does not allege he desires to purchase a Class Vehicle in the future and that he would do so if he could rely on Polaris' advertising practices regarding the ROPS. *See* Mot. In his reply, however, Plaintiff argues "[t]here is no testimony in the record to suggest that [he] would be unwilling to buy a Polaris UTV in the future if Polaris stopped falsely advertising that the OSHA standers [sic] were met," and that "Class Members will benefit from injunctive relief insofar as they may wish to purchase Polaris UTVs in the future and would likely strongly desire that those vehicles" are compliant. Dkt. 94 at 20. However, in light of *Kimberly-Clark*, Plaintiff's contentions are too speculative. *See Kimberly-Clark*, 889 F.3d at 970–91 (plaintiff stated she would purchase the at-issue product if properly advertised); *Stewart v. Kodiak Cakes, LLC*, 537 F. Supp. 3d 1103, 1126 (S.D. Cal. 2021) (same); *Broomfield*, 2018 WL 4952519, at *8 (same); *In re Coca-Cola*, 2021 WL 3878654, at *2 (finding plaintiffs lacked standing where they claimed they would not consider purchasing product even if properly labeled).

Accordingly, Plaintiff has not met the requirements to certify a class under Rule 23(b)(2).

B. Rule 23(b)(3)

To certify a class under Rule 23(b)(3), Plaintiff must show (1) common questions predominate over individual issues, and (2) a class action is superior to other means of resolution. *See Vinole v. Countrywide Home Loans, Inc.*, 571 F.3d 935, 944 (9th Cir. 2009). As described, common questions predominate over individual issues. *See supra* § I.C.

"The purpose of the superiority requirement is to assure that the class action is the most efficient and effective means of resolving the controversy." *Wolin v. Jaguar*

Land Rover N. Am., LLC, 617 F.3d 1168, 1175 (9th Cir. 2010) (citation omitted). The superiority analysis considers the views of the: (1) judicial system; (2) potential class members; (3) present plaintiff; (4) attorneys for the litigants; (5) public at large; and (6) defendant. *Batemen v. Am. Multi-Cinema, Inc.*, 623 F.3d 708, 713 (9th Cir. 2010).

Here, a class action is the superior method of adjudicating Plaintiff and the proposed class's claims. First, the class members' interest in bringing individual actions is minimal. Plaintiff alleges each class member will seek "only approximately $1,000 in damages." Mot. at 23; *see Zinser*, 253 F.3d at 1190 ("Where damages suffered by each putative class member are not large, this factor weighs in favor of certifying a class action."). The alternative to a class action is the likely abandonment of claims by most class members. *See Mazza*, 666 F.3d at 628 (finding superiority where damages amounted to $4,000 per class member).

Defendants argue proceeding as a class action would be unmanageable as "each buyer would have to litigate whether he or she read the ROPS label, relied on it, would have purchased the [Class Vehicle] regardless of the label, and other individual issues." Opp'n at 23. As stated, however, absent class members need not establish individualized proof of deception, reliance, and injury to recover here. *See Tobacco II*, 46 Cal. 4th at 320. Polaris' argument, therefore, fails.

Polaris' remaining concerns regarding management of the class action are unpersuasive, as they speak to general issues present in any consumer-product class action. *See* Opp'n at 23–24. The superiority requirement is met.

III. Class Counsel

"Unless a statute provides otherwise, a court that certifies a class must appoint class counsel." Fed. R. Civ. P 23(g)(1). In appointing class counsel, the court must consider: "(i) the work counsel has done in identifying or investigating potential claims in the action; (ii) counsel's experience in handling class actions, other complex litigation, and the types of claims asserted in the action; (iii) counsel's knowledge of the applicable law; and (iv) the resources that counsel will commit to representing the

class." Fed. R. Civ. P. 23(g)(1)(A). The court may also consider "any other matter pertinent to counsel's ability to fairly and adequately represent the interests of the class." Fed. R. Civ. P. 23(g)(1)(B). Questions regarding the competency of class counsel also implicate the adequacy-of-representation requirement of Rule 23(a)(4). *Wal-Mart*, 564 U.S. at 349 n. 5.

Plaintiff has retained capable counsel with extensive experience in successfully prosecuting consumer class actions. *See* Dkts. 86-4 ¶¶ 10–16, 86-5 ¶¶ 2–20, 86-6 ¶¶ 2–6. Defendants do not oppose the proposed class counsel. *See* Opp'n. Accordingly, the court finds CARPENTER & ZUCKERMAN, the LAW OFFICES OF TODD M. FRIEDMAN, P.C., and DREYER BABICH BUCCOLA WOOD COMPORA, LLP are adequate under Rule 23(g)(1) and (4).

CONCLUSION

For the foregoing reasons, the court GRANTS IN PART Plaintiff's Motion for Class Certification. The court CERTIFIES the following Rule 23(b)(3) class:

> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR, Ranger, or General UTVs, in California, which were advertised with a sticker on the ROPS system as 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.

The court also CERTIFIES the following Rule 23(b)(3) subclass:

> All California residents, who, between in or about May 25, 2018 and Present, purchased one or more models of Polaris RZR UTVs, in California, which were advertised with a sticker on the ROPS system as 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.

The court APPOINTS CARPENTER & ZUCKERMAN, The LAW OFFICES OF TODD M. FRIEDMAN, P.C., and DREYER BABICH BUCCOLA WOOD COMPORA, LLP to serve as class counsel for the certified classes.

The parties are ORDERED to meet and confer within fourteen (14) days of this Order regarding: (1) the contents and logistics of class notice; and (2) the status of the action. The parties are further ORDERED to submit a joint status report within twenty-eight (28) days of this Order regarding the same.

IT IS SO ORDERED.

Dated: July 16, 2024

FERNANDO L. AENLLE-ROCHA
United States District Judge