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24 *similarly situated*

25 **THE UNITED STATES DISTRICT COURT**
26 **CENTRAL DISTRICT OF CALIFORNIA – SOUTHERN DIVISION**

27 PAUL GUZMAN and JEREMY
28 ALBRIGHT, individually on behalf of
themselves and all others similarly
situated,

Plaintiffs,
v.

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

) Case No.: 8:19-cv-01543-FLA-KES
)
) **[REDACTED]**

) **PLAINTIFFS’ STATEMENT OF**
) **GENUINE DISPUTES AND**
) **CONCLUSIONS OF LAW IN**
) **SUPPORT OF OPPOSITION TO**
) **DEFENDANTS’ MOTION FOR**
) **SUMMARY JUDGMENT**

) Judge: Fernando L. Aenlle-Rocha
) Date: April 30, 2021
) Time: 1:30 p.m.
) Courtroom: Courtroom 6B
)
)

Pursuant to the Court’s Local Rules and the Court’s Standing Order Re Summary Judgment Motions [Dkt. 89], plaintiffs Paul Guzman and Jeremy Albright (“Plaintiffs”) submit this Statement of Genuine Disputes and Conclusions of Law in Support of their Opposition to defendants Polaris Industries Inc., Polaris Sales Inc., and Polaris Inc.’s (f/k/a Polaris Industries Inc.) (collectively, “Polaris” or “Defendants”) Motion for Summary Judgment.

I. PLAINTIFF’S RESPONSE TO DEFENDANTS’ STATEMENT OF UNCONTROVERTED FACTS

Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
1. Polaris sells various models of off-road vehicles that allow occupants to sit side by side. <i>Evidence:</i> Ex. 1, Keller Dep. at 21:24-22:6.¶	1. Undisputed.
2. Def Polaris’s side-by-side vehicles have a variety of different designs and features. <i>Evidence:</i> Ex. 1, Keller Dep. at 21:24-22:6.	2. Undisputed.
3. Def Polaris’s side-by-side vehicles are sold under the brand names “RZR,” “Ranger” and “General.” <i>Evidence:</i> Ex. 1, Keller Dep. at 21:24-22:6.	3. Undisputed.
4. Each side-by-side vehicle is equipped with a roll cage, known as a rollover protective structure or “ROPS.” <i>Evidence:</i> Ex. 2, Deckard Dep. at 69:15-70:7; 71:2-10.	4. Undisputed.

PLAINTIFFS’ STATEMENT OF GENUINE DISPUTES AND CONCLUSIONS OF LAW IN SUPPORT OF OPPOSITION TO DEFENDANTS’ MOTION FOR SUMMARY JUDGMENT





Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p>5. The shape, configuration, and design of ROPS differ among Polaris side-by-side vehicle models.</p> <p><i>Evidence:</i> Ex. 2, Deckard Dep. at 69:15-70:7; 71:2-10.</p>	<p>5. Undisputed.</p>
<p>6. Polaris, like other side-by-side vehicle manufacturers, voluntarily complies with the American National Standards Institute / Recreational Off-Highway Vehicle Association standard providing that the ROPS shall comply with the performance requirements of either International Organization for Standardization ("ISO") standard 3471 or 29 C.F.R. § 1928.53.</p> <p><i>Evidence:</i> Ex. 1, Keller Dep. at 14:14-15:16, 57:3-58:5.</p>	<p>6. Disputed in Part. John Deere is not a member of ROHVA. Nevertheless, that point is not relevant for this motion.</p>
<p>7. Based on testing that Custom Products of Litchfield, Inc., an independent third-party testing company, conducts for Polaris, and Custom Products' certification, the vehicles at issue in this case include a label stating that the ROPS meets the requirements of 29 C.F.R. § 1928.53.</p> <p><i>Evidence:</i> Ex. 3, Wosick Dep. at 34:23-35:9; Ex. 2, Deckard Dep. at 18:12-18.</p>	<p>7. Undisputed.</p>
<p>8. Plaintiff Jeremy Albright asserts claims related to his February 2016 purchase of a model year 2016 Polaris RZR 4 XP</p>	<p>8. Undisputed.</p>



Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p><i>Evidence:</i> ECF No. 39, 2d Am. Compl. § V.E. ¶ 44; Ex. 4, Albright Dep. at 11:19-21.</p>	
<p>9. Plaintiff Paul Guzman asserts claims in connection with his November 2018 purchase of a model year 2018 Polaris RZR XP.</p> <p><i>Evidence:</i> ECF No. 39, 2d Am. Compl. § V.E. ¶ 48; Ex. 5, Guzman Dep. at 9:14-17.</p>	<p>9. Undisputed.</p>
<p>10. The RZRs plaintiffs purchased cost over \$19,000 each.</p> <p><i>Evidence:</i> Ex. 10, Guzman Resp. to Interrog. No. 2; Ex. 12, Albright Resp. to Interrog. No. 2.</p>	<p>10. Undisputed.</p>
<p>11. Plaintiffs' complaint alleges that a label or sticker on the plaintiffs' RZRs misrepresented that the vehicles' ROPS meet the requirements of 29 C.F.R. § 1928.53.</p> <p><i>Evidence:</i> ECF No. 39, 2d Am. Compl. § 1 ¶¶ 1, 4.</p>	<p>11. Undisputed.</p>
<p>12. Plaintiffs' complaint alleges the labels inform consumers that Polaris ORVs "meet OSHA requirements of 29 C.F.R. § 1928.53, when in fact, they do not."</p> <p><i>Evidence:</i> ECF No. 39, 2d Am. Compl. § 1 ¶¶ 1, 4.</p>	<p>12. Undisputed in part as that is a portion of Plaintiffs' Complaint.</p>
<p>13. Plaintiffs' complaint alleges: "None of the Class Vehicles sold by Polaris meet the OSHA requirements of 29 C.F.R. § 1928.53."."</p>	<p>13. Undisputed in part as that is a portion of Plaintiffs' Complaint.</p>

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Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p>1 <i>Evidence:</i> ECF No. 39, 2d Am. Compl. § 1 ¶¶ 1, 4.</p>	
<p>2</p> <p>3</p> <p>4 14. Plaintiffs' complaint alleges: "The failure to meet all applicable federal and state statutes ... including OSHA 29 C.F.R. § 1928.53 requirements is material information for consumers purchasing/leasing UTVs"</p> <p>5</p> <p>6</p> <p>7</p> <p>8 <i>Evidence:</i> ECF No. 39, 2d Am. Compl. § 1 ¶ 6</p>	<p>14. Undisputed in part as that is a portion of Plaintiffs' Complaint.</p>
<p>9</p> <p>10 15. The labels at issue appear as follows, with the "Vehicle Model" and "Test GVW" (gross vehicle weight) varying depending on the particular model:</p> <p>11</p> <p>12</p> <p>13</p> <div data-bbox="284 997 917 1176" data-label="Image"> </div> <p>14</p> <p>15</p> <p>16</p> <p>17 <i>Evidence:</i> Ex. 6, excerpt from POLGUZPROD000018. <i>See also</i> Ex. 7, excerpt from POLGUZPROD000030 (label for RZR XP 1000 4/RZR XP Turbo 4 showing Test GVW of 2760 pounds); Ex. 8, excerpt from POLGUZPROD000014 (label for Ranger 6x6 showing Test GVW of 3600 pounds)</p>	<p>15. Undisputed.</p>
<p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23 16. Plaintiffs assert claims against Polaris under California's (1) Consumer Legal Remedies Act (CLRA), Cal. Civ. Code § 1750 <i>et seq.</i>; (2) Unfair Competition Law (UCL), Cal. Bus. & Prof. Code § 17200 <i>et seq.</i>; and (3) False Advertising Law (FAL), Cal. Bus. & Prof. Code § 17500 <i>et seq.</i></p>	<p>16. Undisputed. However, Albright is bringing the UCL Claim and Guzman has the CLRA and FAL claims.</p>

PLAINTIFFS' STATEMENT OF GENUINE DISPUTES AND CONCLUSIONS OF LAW IN SUPPORT OF OPPOSITION TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT



Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p><i>Evidence:</i> ECF No. 39, 2d Am. Compl. § VII ¶¶ 85-136; ECF No. 26, 1st Am. Compl. § VII ¶¶ 79-115.</p>	
<p>17. The title of plaintiffs' Second Amended Complaint is "Second Amended Complaint for Damages and Injunctive Relief."</p> <p><i>Evidence:</i> ECF No. 39, 2d Am. Compl., Cover Page.</p>	<p>17. Undisputed.</p>
<p>18. Plaintiffs "seek damages" as part of their CLRA claim.</p> <p><i>Evidence:</i> <i>Id.</i> § VII ¶ 99; ECF No. 26, 1st Am. Compl. § VII ¶ 89.</p>	<p>18. Undisputed.</p>
<p>19. Plaintiffs request certification of a Rule 23(b)(3) class "for monetary damages."</p> <p><i>Evidence:</i> ECF No. 39, 2d Am. Compl. § VI ¶ 75.</p>	<p>19. Undisputed, but the class certification request is not address in a motion for summary judgment of plaintiffs' individual claims.</p>
<p>20. Plaintiffs' complaint alleges that "[c]lasswide damages are essential to induce Defendants to comply with the federal and state laws alleged in the Complaint."</p> <p><i>Evidence:</i> <i>Id.</i> ¶ 66.</p>	<p>20. Undisputed.</p>
<p>21. Plaintiffs' complaint alleges that "both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 ('CAFA') are present."</p> <p><i>Evidence:</i> <i>Id.</i> § III ¶ 15.</p>	<p>21. Undisputed.</p>
<p>22. Plaintiffs' complaint alleges that "consumers are damaged based on the</p>	<p>22. Undisputed.</p>

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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>benefit of the bargain.”</p> <p><i>Evidence: Id. § V.D. ¶ 42, § V.E. ¶¶56, § VII ¶¶ 98, 117, 134.</i></p>	
<p>23. Plaintiffs’ complaint alleges that putative “[c]lass members are unlikely to prosecute such claims on an individual basis since the individual damages are small.”</p> <p><i>Evidence: Id. §VI ¶ 67.</i></p>	<p>23. Undisputed.</p>
<p>24. Plaintiffs’ initial disclosures state that “Plaintiffs and the Class are entitled to any and all actual damages incurred as a result of Defendant’s conduct.”</p> <p><i>Evidence: Ex. 13, Plaintiffs’ Initial Disclosures at 8-9.</i></p>	<p>24. Undisputed. However, Albright is not, and has not ever been seeking legal damages</p>
<p>25. Plaintiffs’ complaint alleges that “[p]laintiffs and the Class seek injunctive relief against Defendants to preclude Defendants from advertising that the Class Vehicles comply with OSHA 29 C.F.R. § 1928.53 until they meet the tests using the correct Tractor Weight as defined in 29 C.F.R. § 1928.51(a)(4).”</p> <p><i>Evidence: ECF No. 39, 2d Am. Compl. § VI ¶ 68.</i></p>	<p>25. Undisputed.</p>

A. Paul Guzman’s Testimony

Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>26. As of August 1, 2020, when he was deposed, Guzman had driven his 2018 Polaris RZR XP for 1,410 miles and 74 hours.</p>	<p>26. Undisputed.</p>



Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p>1 <i>Evidence:</i> Ex. 5, Guzman Dep. at 45:14-24.</p>	
<p>2 27. Guzman had most recently driven</p> <p>3 his RZR in July 2020, and also drove his</p> <p>4 vehicle from October 2019 to March</p> <p>5 2020.</p> <p>6 <i>Evidence:</i> Ex. 9, Guzman Supp. Resp. to</p> <p>7 Interrog. No. 12; Ex. 5, Guzman Dep. at</p> <p>8 46:10-16.</p>	<p>27. Undisputed.</p>
<p>9 28. Guzman drove his vehicle the</p> <p>10 weekend before his deposition</p> <p>11 <i>Evidence:</i> Ex. 5, Guzman Dep. at 53:19-</p> <p>12 54:1.</p>	<p>28. Undisputed.</p>
<p>13 29. Guzman planned to continue</p> <p>14 driving his RZR.</p> <p>15 <i>Evidence: Id.</i></p>	<p>29. Disputed in part. Doctrine of</p> <p>Completeness.</p> <p>While Guzman still operates his</p> <p>expensive vehicle in a slower and</p> <p>safer manner, he testified that he</p> <p>does not consider his Polaris</p> <p>vehicle to be safe because of the</p> <p>cage because it was not OSHA</p> <p>approved. Guzman explained the</p> <p>vehicle met his expectations, except</p> <p>for the cage, because it was “not</p> <p>strong enough if it would flip over.”</p> <p><i>See</i> Kristensen Decl. Ex. 41 -</p> <p>Guzman Dep. 12:16-13:4; 53:22-</p> <p>54:1; 62:7-14.</p>
<p>25 30. Guzman has two children who</p> <p>26 have ridden in his Polaris RZR</p> <p>27 approximately 40 times.</p> <p>28 <i>Evidence: Id.</i> at 22:13-23.</p>	<p>30. Undisputed.</p>



Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p>31. Guzman's children were 4 and 6 years old at the time of his deposition.</p> <p><i>Evidence: Id. at 22:13-17.</i></p>	<p>31. Undisputed.</p>
<p>32. Guzman's wife also has been a passenger in his RZR.</p> <p><i>Evidence: Id. at 32:13-18</i></p>	<p>32. Undisputed.</p>
<p>33. Guzman testified regarding his children and wife being passengers in his RZR:</p> <p>Q. Would you take your children out for a ride in a RZR vehicle if you thought it was unsafe to do so, Mr. Guzman?</p> <p>A. No.</p> <p>...</p> <p>Q. Would you allow your wife to drive or be a passenger in your RZR vehicle if you thought it were unsafe for her to do so?</p> <p>THE WITNESS: No.</p> <p><i>Evidence: Id. at 23:21-24; 33:16-20 (objection omitted).</i></p>	<p>33. Undisputed.</p>
<p>34. Guzman testified about his experience owning his RZR vehicle:</p> <p>Q. And do you like your Polaris RZR vehicle?</p> <p>A. Yes.</p> <p>Q. What are some of the things that you like or love about your Polaris vehicle?</p> <p>A. Just cruising around in the desert with family. You know, taking little trails; going around.</p> <p><i>Evidence: Id. at 12:7-13.</i></p>	<p>34. Disputed. Doctrine of Completeness.</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p>



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Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
	<p>Guzman testified that he would like to make his vehicle safer with a cage, but he did not have the funds to pay for the cages he saw quoted at Bert's Mega Mall. Guzman wants a structure with thicker piping, so that it would be stronger than the stock Polaris cage.</p> <p>Guzman feels cheated because he would not have purchased the vehicle if he knew the label/sticker was false and he does not have the money to purchase an aftermarket cage.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 54:9-14; 81:1-24; 97:9-16; 94:9-14; 84:7-25; 121:13-21; 139:6-13; 160:3-20; and 197:3-24.</p>
<p>35. Guzman testified regarding his RZR vehicle meeting his expectations: Q. Has your vehicle met your expectations? A. Yes.</p> <p><i>Evidence: Id. at 12:7-15.</i></p>	<p>35. Disputed. Doctrine of Completeness.</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Guzman testified that he would like</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
	<p>to make his vehicle safer with a cage, but he did not have the funds to pay for the cages he saw quoted at Bert’s Mega Mall. Guzman wants a structure with thicker piping, so that it would be stronger than the stock Polaris cage.</p> <p>Guzman feels cheated because he would not have purchased the vehicle if he knew the label/sticker was false and he does not have the money to purchase an aftermarket cage.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 54:9-14; 81:1-24; 97:9-16; 94:9-14; 84:7-25; 121:13-21; 139:6-13; 160:3-20; and 197:3-24.</p>
<p>36. Guzman has not had “any incident involving [the] rollover protective structure on [his] RZR vehicle.”</p> <p><i>Evidence:</i> Ex. 10, Guzman Resp. to Interrog. No. 10; Ex. 5, Guzman Dep. at 13:5-12, 70:21-71:11.</p>	<p>36. Undisputed.</p>
<p>37. Guzman testified regarding any complaints about his RZR vehicle:</p> <p>Q. Have you ever complained to anyone about your RZR vehicle?</p> <p>A. No.</p> <p>...</p> <p>Q. Did you ever send a complaint or an e-mail or other communication to Polaris about your vehicle?</p>	<p>37. Undisputed.</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>A. I haven’t. Q. How about any other — have you ever sent anything like that to a dealer about your vehicle? A. No. Q. Have you ever sent anything to a government agency like the Consumer Safety Product Commission? A. No, not that I remember.</p> <p><i>Evidence:</i> Ex. 5, Guzman Dep. at 61:17-62:1; 69:1-10</p>	
<p>38. Guzman testified regarding any warranty claim for his RZR vehicle: Q. Have you ever made any claim under your service contract for your Polaris RZR vehicle? A. I haven’t. Q. How about have you ever made any warranty claim to Polaris under your vehicle— for your vehicle? A. No. Q. And when I asked about the warranty claim, I meant under the Polaris warranty. A. Yeah. I’ve never taken it to anybody.</p> <p><i>Evidence:</i> <i>Id.</i> at 96:13-22.</p>	<p>38. Undisputed.</p>
<p>39. Guzman testified regarding the purchase of his RZR vehicle and the ROPS label: Q. And when you walked to the back [of the vehicle], did you actually read the sticker? A. No. I just saw that it said “OSHA” on it. So I said, “Okay, it’s good.”</p>	<p>39. Disputed. Doctrine of Completeness.</p> <p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that “it’s safe, that the cage is</p>



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Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p><i>Evidence: Id.</i> at 141:7-10</p>	<p>good” and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it’s legit.”</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 139:6-13; 142:4-19; and 160:3-20.</p>
<p>40. Guzman further testified regarding the purchase of his RZR vehicle and the ROPS label: Q. Did you read the entire sticker? A. No. Like I said, I don’t remember when I bought it, but I noticed that it had an OSHA sticker on it.</p> <p><i>Evidence: Id.</i> at 28:1-4.</p>	<p>40. Disputed. Doctrine of Completeness.</p> <p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that “it’s safe, that the cage is good” and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it’s legit.”</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
	<p>the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 139:6-13; 142:4-19; and 160:3-20.</p>
<p>41. Guzman testified about his purchasing experience: Q. Okay. When you purchased your vehicle, did you notice anything on this sticker or read anything on this sticker other than “Polaris” and “OSHA”? A. Yeah. That was pretty much it. That is all I was looking for. Because there is really nothing else to look at. As long as it’s OSHA approved, everything on that sticker is legit.</p> <p><i>Evidence: Id.</i> at 148:14-20</p>	<p>41. Disputed. Doctrine of Completeness.</p> <p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that “it’s safe, that the cage is good” and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it’s legit.”</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 139:6-13; 142:4-19; and 160:3-20.</p>

Kristensen^{LLP}
ATTORNEYS FOR PLAINTIFFS

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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>42. Guzman also testified about his purchasing experience: Q. . . . Did you notice any other words on the OSHA sticker besides “OSHA” when —before you purchased the vehicle? A. Oh. Oh, I noticed in the top of it, it said “Polaris.” Q. Okay. So it said “OSHA,” and it said “Polaris”? A. Right. Q. Do you recall any other words? A. No, I don’t.</p> <p><i>Evidence: Id.</i> at 141:13-142:3.</p>	<p>42. Disputed. Doctrine of Completeness.</p> <p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that “it’s safe, that the cage is good” and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it’s legit.”</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 139:6-13; 142:4-19; and 160:3-20.</p>
<p>43. When asked whether, “[p]rior to purchasing your vehicle, did you see any advertising brochures or marketing materials that discussed the rollover protective structure?,” Guzman answered: “No.”</p> <p><i>Evidence: Id.</i> at 117:10-118:6.</p>	<p>43. Undisputed</p>
<p>44. Guzman testified further about his purchasing experience:</p>	<p>44. Disputed. Doctrine of Completeness.</p>



Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p>1 Q. What did the sticker say that 2 you saw on the off-road vehicle? 3 A. It said that — all I saw that I 4 recognized was “OSHA” on — like 5 “OSHA-approved.” 6 Q. Okay. It’s your testimony that 7 the sticker used the term — or the 8 words “OSHA-approved.” 9 A. Right. 10 Q. And what else — did the sticker 11 say anything else? 12 A. Not that I remember.</p> <p>13 14 15 16 17 18 19 <i>Evidence: Id. at 26:6-15.</i></p>	<p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that “it’s safe, that the cage is good” and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it’s legit.”</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 139:6-13; 142:4-19; and 160:3-20.</p>
<p>20 45. Guzman testified as to his 21 understanding of the terms “OSHA” and 22 “OSHA-approved”: 23 Q. And when you saw “OSHA,” 24 what did you understand that to 25 mean? 26 A. That it’s pretty much safe; that 27 it’s OSHA approved; that it’s safe 28 for — to use. Q. And when you say “it’s OSHA-approved,” what does that mean? A. That it’s safe, that the cage is good, you know. Just like anything</p>	<p>45. Disputed. Doctrine of Completeness.</p> <p>Guzman also explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 139:6-13; and 160:3-20.</p>



Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>1 else. Like any tool that you buy. 2 It’s OSHA-approved, that it’s okay 3 to use, and nothing is going to 4 happen to it.</p> <p>5 <i>Evidence: Id. at 142:4-13.</i></p>	
<p>6 46. Guzman further testified as to his 7 understanding of the term “OSHA- 8 approved”: 9 Q. Okay. And when it said “OSHA 10 approved,” what did you 11 understand that to mean? 12 A. Pretty much everything that is 13 inside the Polaris that they made is 14 secure and safe. Or, you know, I 15 wouldn’t have gotten it if — if my 16 kids were going to be in it, I 17 wouldn’t have bought it if it didn’t 18 have OSHA stickers. Just like tools 19 and stuff like that, they all got 20 OSHA stickers in them.</p> <p>21 <i>Evidence: Id. at 26:16-23; see also</i> 22 <i>id. at 148:25-149:7.</i></p>	<p>46. Undisputed.</p>
<p>23 47. When asked “[a]nd other than the 24 words ‘OSHA-approved,’ were there any 25 other words on the sticker that you 26 recall?”, Guzman answered “[n]o.”</p> <p>27 <i>Evidence: Id. at 27:22-25.</i></p>	<p>47. Disputed. Doctrine of Completeness.</p> <p>In another part of his transcript, Guzman acknowledge that he saw the word Polaris on the sticker.</p> <p><i>Id. at 148:14-20</i></p>
<p>28 48. Guzman further testified about his understanding of “OSHA-approved”: Q. And was it your understanding of the sticker that when it said “OSHA-approved,” that that applied to the entire vehicle or just</p>	<p>48. Disputed. Doctrine of Completeness and the questions are vague and ambiguous. There was no explanation of the distinction between the cage/ROPS and the vehicle in the question. Guzman</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>some part of the vehicle? A. I would assume it would be the whole vehicle. Q. Was that your understanding when you saw the sticker? A. Yes. Q. Okay. Your understanding was that OSHA had approved the entire vehicle? A. Right.</p> <p><i>Evidence: Id. at 27:10-21.</i></p>	<p>testified that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 160:3-20.</p>
<p>49. Since Guzman only read the words “OSHA” and “Polaris” on the label, he did not read the label’s language referring to 29 C.F.R. § 1928.53.</p> <p><i>Evidence: Id. at 26:8-15, 27:22-25, 141:13-142:3, 148:14-20.</i></p>	<p>49. Disputed. Doctrine of Completeness and the questions are vague and ambiguous. Guzman testified that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 160:3-20.</p>
<p>50. Guzman testified as to his knowledge of 29 C.F.R. § 1928.51-.53: Q. Mr. Guzman, there is a — there is an OSHA regulation that has a certain number, and that number is 29 CFR Section 1928.53. Have you ever read or reviewed that regulation? A. No. Q. How about 29 CFR Section 1928.52. A. No. Q. And how about just one more, OSHA regulation 29 CFR Section 1928.51? A. No.</p>	<p>50. Disputed. Doctrine of Completeness and the questions are vague and ambiguous. Guzman testified that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 160:3-20.</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>Q. Do you know what those regulations relate to? A. I don’t.</p> <p><i>Evidence: Id. at 29:12-30:6.</i></p>	
<p>51. When Guzman was asked “do you know what the OSHA requirements of 29 CFR 1928.53 are?”, he testified “[n]o.”</p> <p><i>Evidence: Id. at 145:19-21.</i></p>	<p>51. Disputed. Doctrine of Completeness and the questions are vague and ambiguous. Guzman testified that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 160:3-20.</p>
<p>52. When asked about the allegation in his complaint that he understood the language to mean the vehicle’s ROPS structure met federal safety standards, Guzman testified:</p> <p>Q. What specific federal standards for safety are you referring to? A. I don’t remember. I looked it up at one time as to what it meant, and I don’t remember.</p> <p>Q. Okay. Can you — do you remember what you looked at? A. What the ROPS meant on an OSHA sticker.</p> <p>Q. But sitting here today, is there any specific federal standard for safety that you’re referring to in paragraph 50 [of the Second Amended Complaint]? A. Yes. I’m assuming that it would be the cage that is strong enough to</p>	<p>52. Undisputed.</p>

Kristensen^{LLP}
ATTORNEYS FOR PLAINTIFFS

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Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p>hold itself if anything did happen to it. Q. Anything else? A. No.</p> <p><i>Evidence: Id. at 160:3-22.</i></p>	
<p>53. When asked about the allegation in his complaint that the label at issue was false and misleading, Guzman testified: Q. Okay. Sitting here today, is there anything on the sticker that you claim is false or misleading? A. I don't know. Q. And is there anything that you could point us to on the sticker, sitting here today, that you claim is false or misleading? A. No. I would have to look at it. ... Q. Okay. And I will give you a chance to read that sticker. A. Okay. "This ROPS," which is R-O-P-S, "structure meets OSHA requirements of 29 CRF (sic) 1928.53." Q. Okay. And do you know what the OSHA requirements of 29 CFR 1928.53 are? A. No. Q. Okay. Is there anything on this sticker that, sitting here today, you claim is false or misleading? A. No.</p> <p><i>Evidence: Id. at 143:12-19, 145:14-25.</i></p>	<p>53. Disputed. Doctrine of Completeness.</p> <p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that "it's safe, that the cage is good" and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it's legit."</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Guzman testified that he would like to make his vehicle safer with a cage, but he did not have the funds to pay for the cages he saw quoted at Bert's Mega Mall. Guzman wants a structure with thicker piping, so that it would be stronger than the</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
	<p>stock Polaris cage.</p> <p>Guzman feels cheated because he would not have purchased the vehicle if he knew the label/sticker was false and he does not have the money to purchase an aftermarket cage.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 54:9-14; 81:1-24; 97:9-16; 94:9-14; 84:7-25; 121:13-21; 139:6-13; 142:4-19; 160:3-20; and 197:3-24.</p>
<p>54. Guzman further testified as to his allegation that the sticker was false:</p> <p>Q. Okay. Sitting here today, do you know — can you explain what is false about — what you claim is false about the sticker?</p> <p>A. No. I couldn’t tell you.</p> <p>...</p> <p>Q. Mr. Guzman, sitting here today, can you explain to us how or why you believe the sticker is false?</p> <p>A. I don’t know. I don’t know.</p> <p>Q. You personally have no understanding of how the sticker is allegedly false; is that correct?</p> <p>A. Yes.</p> <p><i>Evidence: Id. at 193:20-23, 199:7-13</i></p>	<p>54. Disputed. Doctrine of Completeness.</p> <p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that “it’s safe, that the cage is good” and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it’s legit.”</p> <p>Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
	<p>if anything did happen.</p> <p>Guzman testified that he would like to make his vehicle safer with a cage, but he did not have the funds to pay for the cages he saw quoted at Bert’s Mega Mall. Guzman wants a structure with thicker piping, so that it would be stronger than the stock Polaris cage.</p> <p>Guzman feels cheated because he would not have purchased the vehicle if he knew the label/sticker was false and he does not have the money to purchase an aftermarket cage.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 54:9-14; 81:1-24; 97:9-16; 94:9-14; 84:7-25; 121:13-21; 139:6-13; 142:4-19; 160:3-20; and 197:3-24.</p>
<p>55. Guzman further testified as follows:</p> <p>Q. . . . But sitting here today, you cannot tell us how or why you believe the sticker is false; correct?</p> <p>A. That’s — yeah, that’s what I — that’s what I — my attorney has told me about.</p> <p><i>Evidence: Id.</i> at 198:12-16</p>	<p>55. Disputed. Doctrine of Completeness.</p> <p>Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood OSHA approved to mean that “it’s safe, that the cage is good” and like any tool that is OSHA approved it is okay to use. The OSHA sticker, it’s legit.”</p> <p>Guzman made it clear under cross-examination that he would not have</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
	<p>purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p> <p>Guzman testified that he would like to make his vehicle safer with a cage, but he did not have the funds to pay for the cages he saw quoted at Bert’s Mega Mall. Guzman wants a structure with thicker piping, so that it would be stronger than the stock Polaris cage.</p> <p>Guzman feels cheated because he would not have purchased the vehicle if he knew the label/sticker was false and he does not have the money to purchase an aftermarket cage.</p> <p>Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 36:19-25; 54:9-14; 81:1-24; 97:9-16; 94:9-14; 84:7-25; 121:13-21; 139:6-13; 142:4-19; 160:3-20; and 197:3-24.</p>

B. Jeremy Albright’s Testimony

Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
56. Plaintiff Jeremy Albright has driven his 2016 Polaris RZR 4 XP for over 5,500 miles and 2,000 hours.	56. Undisputed.



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p><i>Evidence:</i> Ex. 11, Albright Supp. Resp. to Interrog. No. 1; <i>see also</i> Ex. 4, Albright Dep. at 36:1-3.</p>	
<p>57. Albright has continued to drive his RZR after filing this lawsuit.</p> <p><i>Evidence:</i> Ex. 11, Albright Supp. Resp. to Interrog. No. 12 (describing driving his RZR in May 2020); <i>see also</i> Ex. 4, Albright Dep. at 35:5-11.</p>	<p>57. Disputed. Doctrine of Completeness.</p> <p>Albright explained that he has enjoyed the vehicle, but he no longer thinks it’s safe for his children.</p> <p>Albright indicated he no longer rides and vehicle and has made a decision to stop doing so. Kristensen Decl. Ex. 40 - Albright Dep. 13:25-15:11; 18:4-19:23; 22:23-23:2.</p>
<p>58. Albright testified about his experience owning his RZR vehicle: Q. How have you enjoyed owning your Polaris vehicle? Have you liked it? A. I loved it. Q. Has it been a good vehicle? A. Yes. Q. Have you had any accidents or incidents in the vehicle? A. No. Q. And have you had any incidents involving the roll bar or the rollover protection system? A. No.</p> <p><i>Evidence:</i> Ex. 4, Albright Dep. at 13:25-14:10.</p>	<p>58. Disputed. Doctrine of Completeness.</p> <p>Albright explained that he has enjoyed the vehicle, but he no longer thinks it’s safe for his children.</p> <p>Albright indicated he no longer rides and vehicle and has made a decision to stop doing so. Kristensen Decl. Ex. 40 - Albright Dep. 13:25-15:11; 18:4-19:23; 22:23-23:2.</p>
<p>59. Albright testified about using the RZR vehicle with his family: Q. And when you say you love</p>	<p>59. Undisputed.</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>your Polaris vehicle, what have you loved about it? A. I just love spending time with my kids in it. We have a good time in it. Q. And how old are your children, sir? A. One turned 7 yesterday. And one turns 12. So 11 right now. Q. Okay. And I take it you ride with your children in your Polaris vehicle? A. Yes, sir. Q. How often do you do that? A. Every couple months or so.</p> <p><i>Evidence: Id. at 14:11-22.</i></p>	
<p>60. When asked “[i]n general, would you say that your Polaris RZR has met your expectations since you purchased it,” Albright testified “[y]es.”</p> <p><i>Evidence: Id. at 191:25-192:3.</i></p>	60. Undisputed.
<p>61. Albright describes his RZR as being in “[g]reat” condition.</p> <p><i>Evidence: Id. at 47:21-23.</i></p>	61. Undisputed.
<p>62. Albright agreed that his RZR has “been reliable.”</p> <p><i>Evidence: Id. at 133:6-8.</i></p>	62. Undisputed.
<p>63. Albright has not had any problems or malfunctions with, or injuries from, his RZR or its ROPS.</p> <p><i>Evidence: Ex. 12, Albright Resp. to Interrog. No. 10; Ex. 4, Albright Dep. at 93:8-12, 95:3-12.</i></p>	63. Undisputed.
<p>64. Albright testified regarding any</p>	64. Undisputed.



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>complaints about his RZR vehicle: Q. Have you ever made any complaints or filed any claims relating to an off-road vehicle you’ve owned? A. No. Q. Have you ever contacted Polaris about your RZR vehicle? A. No. Q. Or made a complaint to Polaris? A. No. Q. How about a dealer? Ever complain to a dealer about your Polaris vehicle? A. No. Q. How about an organization like the Better Business Bureau? A. No. Q. Or the Consumer Product Safety Commission? A. No. Q. Okay. Any complaints, issues, concerns that you have ever made to any organization or entity about your Polaris vehicle? A. No.</p> <p><i>Evidence:</i> Ex. 4, Albright Dep. at 75:5-25.</p>	
<p>65. When asked “[d]o you consider Polaris offroad vehicles to be less safe than other vehicles,” Albright testified “[n]o.”</p> <p><i>Evidence:</i> <i>Id.</i> at 94:25-95:2.</p>	<p>65. Undisputed. Other vehicles are not at issue here.</p>
<p>66. When asked, “[d]o you consider the vehicle to be safe?”, Albright testified “I do.”</p>	<p>66. Disputed. Doctrine of Completeness.</p> <p>Albright explained that he has</p>



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Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
<p><i>Evidence: Id.</i> at 15:5-6.</p>	<p>enjoyed the vehicle, but he no longer thinks it's safe for his children.</p> <p>Albright indicated he no longer rides and vehicle and has made a decision to stop doing so.</p> <p>Albright testified that he wanted to completely replace the roll bar (ROPS) that came with the vehicle and he had decided to stop operating the vehicle.</p> <p>Kristensen Decl. Ex. 40 - Albright Dep. 13:25-15:11; 18:4-19:23; 22:23-23:2; 241:4-243:5; 249:17-250:12.</p>
<p>67. Albright testified regarding whether he knew anyone who had been injured riding a Polaris vehicle: Q. . . . Do you know of any purchaser of a Polaris off-road vehicle that has been injured riding or driving their vehicle? A. No. Q. Have you ever spoken with anyone who told you that they were concerned that riding their Polaris vehicle would result in serious injury or death? A. No.</p> <p><i>Evidence: Id.</i> at 95:3-12.</p>	<p>67. Undisputed.</p>
<p>68. Albright testified that when we purchased his vehicle, he read a "portion" of the ROPS label: Q. Okay. When you were at Bert's</p>	<p>68. Disputed. Doctrine of Completeness.</p> <p>Albright testified that he saw the</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>Mega Mall to purchase your vehicle, did you read the entire sticker or just a portion of it? A. A portion. ... Q. Mr. Albright, you said that before you purchased your vehicle, you only read a portion of the sticker; is that correct? A. Yes. Q. All right. What is the portion that you read? A. The top left, the ROP structure meets OSHA requirements of C9 CFR [sic]. Q. Of 29 CFR Section 1928.53? A. Yeah. I pretty much didn’t read anything below that. And then I just read the “Polaris” — I knew it said “Polaris.” I knew that. Q. Okay. So you didn’t read anything about the vehicle model or the testing weight or anything like that? A. I did not.</p> <p><i>Evidence: Id.</i> at 167:9-13, 171:2-172:16.</p>	<p>OSHA label (sticker) on the Polaris at the time of purchase. He knew OSHA was a good standard. He believed it met OSHA standards, which meant above standard that “mostly goes out and beyond” and that it could handle the weight “so it wouldn’t crush you” and that “if you were upside down, it wouldn’t squish you.” Albright specifically explained that he understood that the approval for the ROPS was “[t]hat it could handle the weight of a rollover. Albright testified that he purchased the vehicle because of the sticker.</p> <p>Kristensen Decl. Ex. 40 - Albright Dep. 148:2-23; 67:3-12; 163:24-164:21; 165:14-17; 158:3-12.</p>
<p>69. Albright testified as to his understanding of the language he read on the label: Q. Okay. And then the portion that you read in the upper left-hand corner, beginning with “This ROPS structure meets,” that’s the portion that your testimony — your testimony is that you understood that to mean OSHA approved? A. Correct. Q. Okay. Did you think it meant</p>	<p>69. Disputed. Plaintiff ...</p> <p><i>Evidence: Citation.</i></p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>anything else? A. No.</p> <p><i>Evidence: Id.</i> at 172:25-173:8.</p>	
<p>70. Albright testified as to his recollection of the content of the label: Q. When was the first time that you saw that label? A. I saw it at the dealer. ... Q. Okay. And do you recall what the label said specifically? A. I just remember “OSHA approved,” black and white, and it had “Polaris” on it. Q. Okay. Do you know whether it used the term “approved”? A. I am pretty sure it did.</p> <p><i>Evidence: Id.</i> at 148:8-23.</p>	70. Undisputed.
<p>71. Albright further testified as to his recollection of the content of the label: Q. Okay. And the sticker on the roll bar, what — to the best of your memory, what did it say? A. “OSHA approved” and “Polaris.”</p> <p><i>Evidence: Id.</i> at 149:11-13.</p>	71. Undisputed.
<p>72. Albright testified as to his understanding of “OSHA approved”: Q. Do you have any knowledge of OSHA regulations based on purchasing your Polaris RZR? A. I just knew it was a good standard. Q. And what do you mean by that? A. I just know to have “OSHA approved,” it was built better.</p>	<p>72. Disputed. Doctrine of Completeness.</p> <p>Albright testified that he saw the OSHA label (sticker) on the Polaris at the time of purchase. He knew OSHA was a good standard. He believed it met OSHA standards, which meant above standard that “mostly goes out and beyond” and</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>Because like some ladders you can buy, they are not OSHA-approved because they are aluminum. You know, there are certain standards that OSHA carries that’s normally better than others.</p> <p><i>Evidence: Id. at 67:3-12.</i></p>	<p>that it could handle the weight “so it wouldn’t crush you” and that “if you were upside down, it wouldn’t squish you.” Albright specifically explained that he understood that the approval for the ROPS was “[t]hat it could handle the weight of a rollover. Albright testified that he purchased the vehicle because of the sticker.</p> <p>Kristensen Decl. Ex. 40 - Albright Dep. 148:2-23; 67:3-12; 163:24-164:21; 165:14-17; 158:3-12.</p>
<p>73. When asked “when you read the rollover — the rollover bar sticker and you thought it meant OSHA approved, what specifically did you think it was OSHA was approving or had approved,” Albright answered: “That it can handle the weight, maybe. I don’t know. You know, what do you say? I think it could handle the weight so it wouldn’t crush you.”</p> <p><i>Evidence: Id. at 164:12-18.</i></p>	<p>73. Disputed. Doctrine of Completeness.</p> <p>Albright testified that he saw the OSHA label (sticker) on the Polaris at the time of purchase. He knew OSHA was a good standard. He believed it met OSHA standards, which meant above standard that “mostly goes out and beyond” and that it could handle the weight “so it wouldn’t crush you” and that “if you were upside down, it wouldn’t squish you.” Albright specifically explained that he understood that the approval for the ROPS was “[t]hat it could handle the weight of a rollover. Albright testified that he purchased the vehicle because of the sticker.</p> <p>Kristensen Decl. Ex. 40 - Albright Dep. 148:2-23; 67:3-12; 163:24-164:21; 165:14-17; 158:3-12.</p>
<p>74. Albright further testified that he</p>	<p>74. Disputed. Doctrine of</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>thought what was being approved about the ROPS was “[t]hat it could handle the weight of a rollover” and did not mean anything else.</p> <p><i>Evidence: Id. at 165:14-24.</i></p>	<p>Completeness.</p> <p>Albright testified that he saw the OSHA label (sticker) on the Polaris at the time of purchase. He knew OSHA was a good standard. He believed it met OSHA standards, which meant above standard that “mostly goes out and beyond” and that it could handle the weight “so it wouldn’t crush you” and that “if you were upside down, it wouldn’t squish you.” Albright specifically explained that he understood that the approval for the ROPS was “[t]hat it could handle the weight of a rollover. Albright testified that he purchased the vehicle because of the sticker.</p> <p>Kristensen Decl. Ex. 40 - Albright Dep. 148:2-23; 67:3-12; 163:24-164:21; 165:14-17; 158:3-12.</p>
<p>75. Albright testified as to his knowledge and understanding of 29 C.F.R. §1928.53:</p> <p>Q. Okay. Do you know what regulation that is?</p> <p>A. The one that is on my roll bar?</p> <p>Q. Yes, sir.</p> <p>A. No. I just know it says “OSHA approved.”</p> <p>Q. Okay. You don’t know what — what specific section or regulation it is?</p> <p>A. No, sir.</p> <p>Q. Okay. And I take it you have never read that regulation; is that correct?</p>	<p>75. Undisputed.</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>A. I have not. Q. Have you ever read any OSHA regulation relating to rollover protection systems? A. No. Q. Or the testing of rollover protection systems? A. I have not. ... Q. Okay. And there is a reference to the OSHA requirements of 29 CFR Section 1928.53. Do you see that? A. Yes. Q. Okay. Have you ever read Section 29 CFR — I mean — sorry. Have you ever read Regulation 29 CFR Section 1928.53? A. No. Q. Do you know what that regulation addresses or concerns? A. No. ... Q. And I take it you’ve never seen a copy of that regulation. Is that fair? A. I have not.</p> <p><i>Evidence: Id. at 65:25-66:15, 163:5-16, 163:20-23.</i></p>	
<p>76. When he read the regulation’s citation—29 C.F.R. § 1928.53—on the label, Albright testified: “I actually thought that is how much the roll bar cost. I thought that was the money sign, actually, CFR. . . . I had no clue it was a code of the OSHA.” He testified that when he purchased his RZR, he “thought</p>	<p>76. Undisputed.</p>



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Defendants’ Uncontroverted Facts and Supporting Evidence	Plaintiffs’ Response to Cited Fact and Supporting Evidence
<p>that the sticker gave the price of 1,928 dollars and 53 cents for the roll bar.”</p> <p><i>Evidence: Id. at 173:9-174:5.</i></p>	
<p>77. Albright further testified as to whether he knew if his RZR vehicle satisfied the requirements of 29 C.F.R. § 1928.53:</p> <p style="padding-left: 40px;">Q. Do you personally know whether the rollover protective system on your vehicle meets the OSHA requirements of 29 CFR Section 1928.53?</p> <p style="padding-left: 40px;">A. I don’t.</p> <p style="padding-left: 40px;">Q. Okay. Do you know whether the rollover protective system structure on any Polaris vehicle — RZR vehicle meets the OSHA requirements of Section 1928.53?</p> <p style="padding-left: 40px;">A. I do not.</p> <p><i>Evidence: Id. at 176:13-21</i></p>	<p>77. Undisputed.</p>
<p>78. When Albright was asked if he had an understanding as to what the label means, he testified as follows:</p> <p style="padding-left: 40px;">Q. . . . You have an understanding of what the sticker means; right?</p> <p style="padding-left: 40px;">A. An understanding? I just thought — you know, what I thought. I don’t understand it, I guess, now that I look at it.</p> <p><i>Evidence: Id. at 179:19-24.</i></p>	<p>78. Disputed. Doctrine of Completeness.</p> <p>Albright testified that he saw the OSHA label (sticker) on the Polaris at the time of purchase. He knew OSHA was a good standard. He believed it met OSHA standards, which meant above standard that “mostly goes out and beyond” and that it could handle the weight “so it wouldn’t crush you” and that “if you were upside down, it wouldn’t squish you.” Albright specifically explained that he understood that the approval for the ROPS was “[t]hat it could handle the weight of</p>



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Defendants' Uncontroverted Facts and Supporting Evidence	Plaintiffs' Response to Cited Fact and Supporting Evidence
	<p>a rollover. Albright testified that he purchased the vehicle because of the sticker.</p> <p>Kristensen Decl. Ex. 40 - Albright Dep. 148:2-23; 67:3-12; 163:24-164:21; 165:14-17; 158:3-12.</p>

II. PLAINTIFFS' STATEMENT OF UNCONTROVERTED FACTS

Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>1. The vehicles at issue in this case are known as side by sides or UTVs. Confidential Plus</p> <p>[REDACTED]</p>	<p>1. Kristensen Decl. Ex. 1 ("Wosick Dep.") 37:19-25; Ex. 2 ("Keller Dep.") 28:1-31:8; ("Morrison Dep.") 45:18-46:11.</p>
<p>2. Confidential Pursuant to Protective Order</p> <p>[REDACTED]</p>	<p>2. Kristensen Decl. Ex. 4 ("Rintamaki Dep.") 18:3-22, 23:4-24:13, 28:8-18; Exs. 5-8.</p>
<p>3. Around the same time in May 2009, NHTSA was issuing a Final Rulemaking increasing the requirements for roof crush resistance for cars, passenger vehicles, trucks and buses with less than 6,000 pounds. Those vehicles' roof structures were now required to withstand a test involving three (3) times the vehicle's weight compared to the prior 1.5 multiplier. [74 Fed. Reg. 22348 (May 12, 2009)].</p>	<p>3. Kristensen Decl. Ex. 9 Final Rule</p>



Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>1 4. Confidential Pursuant to Protective Order</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p>	<p>4. Kristensen Decl. Ex. 1 Wosick Dep. 18:1-19:17; Ex. 3 Morrison Dep. 72:23-73:4; Ex 10 ("Deckard Dep.") 76:13-18; Ex. 4 Rintamaki Dep. 35:5-38:4; Exs. 5- 8, 11-17).</p>
<p>6 5. Confidential Pursuant to Protective Order</p> <p>7 [REDACTED]</p> <p>8 [REDACTED]</p> <p>9 [REDACTED]</p> <p>10 [REDACTED]</p> <p>11 [REDACTED]</p> <p>12 [REDACTED]</p> <p>13 [REDACTED]</p>	<p>5. Kristensen Decl. Ex. 4 Rintamaki Dep. 30:20-31:20, 45:20-46:7</p>
<p>14 6. Confidential Pursuant to Protective Order</p> <p>15 [REDACTED]</p> <p>16 [REDACTED]</p> <p>17 [REDACTED]</p> <p>18 [REDACTED]</p> <p>19 [REDACTED]</p>	<p>6. Kristensen Decl. Exs. 5, 6, 18; Ex. 10 Deckard Dep. 55:5-18, 58:7-60:16.</p>
<p>20 7. Confidential Pursuant to Protective Order</p> <p>21 [REDACTED]</p> <p>22 [REDACTED]</p> <p>23 [REDACTED]</p>	<p>7. Kristensen Decl. 1 Wosick Dep. 22:24-24:25; Ex. 2 Keller Dep. 15:12-22; Exs. 18 and 19.</p>
<p>24 8. Confidential Pursuant to Protective Order</p> <p>25 [REDACTED]</p> <p>26 [REDACTED]</p> <p>27 [REDACTED]</p> <p>28 [REDACTED]</p>	<p>8. Kristensen Decl., Ex. 3 Morrison Dep. 23:22-25:7; Exs. 20, 21, 22.</p>



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Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>Confidential Pursuant to Protective Order</p>	
<p>9. Tractor weight is defined pursuant to 29 C.F.R. §§ 1928.51(a)(4) as:</p> <p>“Tractor weight” includes the protective frame or enclosure, all fuels, and other components required for normal use of the tractor. Ballast shall be added as necessary to achieve a minimum total weight of 110 lb. (50.0 kg.) per maximum power take-off horse power at the rated engine speed or the maximum, gross vehicle weight specified by the manufacturer, <u>whichever is the greatest</u>. From end weight shall be at least 25 percent of the tractor test weight. <u>In case power take-off horsepower is not available, 95 percent of net engine flywheel horsepower shall be used.</u></p> <p>Thus, the weight to be tested is either gross vehicle weight, or 110 lbs. multiplied by the maximum power take off (“PTO”) horsepower. If the PTO is not available, 95% of the net engine flywheel horsepower is used.</p>	<p>9. Kristensen Decl. Ex. 15; Ex. 2 Keller Dep. 73:2-74:15.</p>
<p>10. Confidential Pursuant to Protective Order</p>	<p>10. Kristensen Decl. Ex. 23, Schmidt Dep. 63:14-64:10.</p>


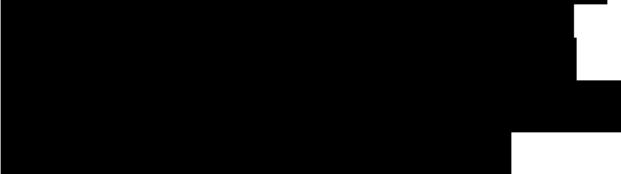
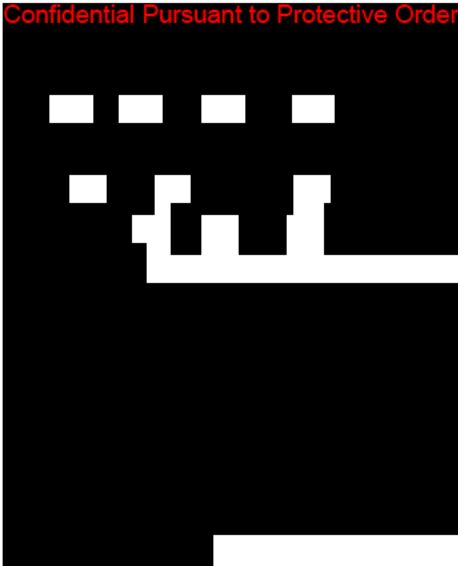


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Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>Confidential Pursuant to Protective Order</p>	
<p>11. Confidential Pursuant to Protective Order</p>	<p>11. Kristensen Decl. Exs. 18 and 25; Ex. 10 Deckard Dep. 85:14-20; Ex. 2 Keller Dep. 17:9-20:20.</p>
<p>12. Confidential Pursuant to Protective Order</p>	<p>12. Kristensen Decl. Exs. 5-6, 14-16, 22, 24-34); Ex. 1. Wosick Dep. 17:17-24; Ex 3 - Morrison Dep. 34:19-35:1, 3942:9; Ex. 10 Deckard Dep. 27:21-35:13, 43:9-45:17; Ex. 2 Keller Dep. 22:11-24:14.</p>
<p>13. Confidential Pursuant to Protective Order</p>	<p>13. Kristensen Decl. Ex. 15, Ex. 10 Deckard Dep. 43:2-44:14; Ex. 23 Schmitt Dep. 40:19-45:24.</p>
<p>14. Confidential Pursuant to Protective Order</p>	<p>14. Kristensen Decl. Ex. 34, Ex. 23 Schmitt Dep. 59:19-63:6.</p>
<p>15. Polaris represented on the Plaintiffs' vehicles the following: "This</p>	<p>15. Kristensen Decl. Ex. 2 Keller Dep. 22:11-24:14; Ex 1 Wosick</p>

Kristensen LLP
ATTORNEYS FOR PLAINTIFFS

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Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>ROPS Structure meets OSHA requirements of 29 CFR § 1928.53.” Such representations are plastered with a sticker placed on the ROPS for every vehicle as follows:</p>  <p>The only deviations from this sticker are the model number and the gross vehicle weight. The crux of the representation, i.e. that the ROPS satisfies compliance with the OSHA regulation, is identical for all Class Members. This misrepresentation is also made in the owners' manual for Plaintiff's vehicles.</p>	<p>Dep. 31:2-33:2, 35:5-25, 85:2-86:18; Exs. 35 and 36 (portions of Owners Manuals. For Albright and Guzman vehicles</p>
<p>16. Confidential Pursuant to Protective Order</p>  <p>Confidential Pursuant to Protective Order</p> 	<p>16. Kristensen Decl. Ex 2 Keller Dep. 25:15-26:19.</p>



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Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>Confidential Pursuant to Protective Order</p> <p>[REDACTED]</p> <p>Confidential Pursuant to Protective Order</p> <p>[REDACTED]</p>	
<p>17. Confidential Pursuant to Protective Order</p> <p>[REDACTED]</p>	<p>17. Kristensen Decl. Ex. 2 – Keller Dep. 32:13-33:14, 34:25-38:22; Ex. 37 and Ex. 38 (ex. 2 to Keller Dep.).</p>



Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>1 Confidential Pursuant to Protective Order</p> <p>2 [REDACTED]</p> <p>3 [REDACTED]</p> <p>4 [REDACTED]</p> <p>5 [REDACTED]</p>	
<p>6 18. On or around February 29, 2016,</p> <p>7 Albright purchased a 2016 Polaris RZR</p> <p>8 XP.</p>	<p>18. Kristensen Decl. Ex. 39 -</p> <p>Albright Decl. ¶ 4.</p>
<p>9 19. Albright testified that what was</p> <p>10 important to him in purchasing the</p> <p>11 vehicle was safety, and in particular</p> <p>12 “[s]eat belts and the roll bar.” When</p> <p>13 asked what was important about the roll</p> <p>14 bar, Albright explained it was the OSHA-</p> <p>approved roll bars and “make sure it was</p> <p>strong enough to hold –withhold the</p> <p>weight of the vehicle.”</p>	<p>19. Kristensen Decl. Ex. 40 -</p> <p>Albright Dep. 12:15-13:7</p>
<p>15 20. Albright works in construction and</p> <p>16 is familiar with OSHA standards for items</p> <p>17 like ladders, electrical cords, boots and</p> <p>18 scaffolding. When he purchases electrical</p> <p>19 equipment or something else for</p> <p>20 construction, he attempts to make sure it</p> <p>is OSHA approved, which is synonymous</p> <p>with OSHA compliant.</p>	<p>20. Kristensen Decl. Ex. 40 -</p> <p>Albright Dep. 57:18-60:2.</p>
<p>21 21. Albright testified that he saw the</p> <p>22 OSHA label (sticker) on the Polaris at the</p> <p>23 time of purchase. He knew OSHA was a</p> <p>24 good standard. He believed it met OSHA</p> <p>25 standards, which meant above standard</p> <p>26 that “mostly goes out and beyond” and</p> <p>27 that it could handle the weight “so it</p> <p>28 wouldn’t crush you” and that “if you were</p> <p>upside down, it wouldn’t squish you.”</p> <p>Albright specifically explained that he</p> <p>understood that the approval for the</p>	<p>21. Kristensen Decl. Ex. 40 -</p> <p>Albright Dep. 148:2-23; 67:3-12;</p> <p>163:24-164:21; 165:14-17; 158:3-</p> <p>12.</p>



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Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>ROPS was “[t]hat it could handle the weight of a rollover. Albright testified that he purchased the vehicle because of the sticker.</p>	
<p>22. Albright explained that he has enjoyed the vehicle, but he no longer thinks it’s safe for his children and that he no longer operates it. Mr. Albright testified that he wanted to completely replace the roll bar (ROPS) that came with the vehicle and he had decided to stop operating the vehicle. Albright estimated that based on prices he saw, to replace the roll cage and roof, it would cost him \$4,500 and that he was overcharged for his Polaris.</p>	<p>22. Kristensen Decl. Ex. 40 - Albright Dep. 13:25-15:11; 18:4-19:23; 22:23-23:2; 241:4-243:5; 249:17-250:12.</p>
<p>23. Guzman has worked in the construction industry for 14 years.</p>	<p>23. Kristensen Decl. Ex. 41 - Guzman Dep. 17:19-24.</p>
<p>24. In or around September 2018, Guzman purchased a 2018 Polaris RZR XP in Orange County, California.</p>	<p>24. Kristensen Decl. Ex. 39 - Guzman Decl. ¶ 4.</p>
<p>25. Guzman made it clear under cross-examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it. Guzman further stated that the OSHA sticker/label was located on the cage. Guzman explained that he understood the reference to any OSHA standard to mean that the cage is strong enough to hold itself if anything did happen.</p>	<p>25. Kristensen Decl. Ex. 41 - Guzman Dep. 25:8-18; 139:6-13; and 160:3-20.</p>
<p>26. Guzman spoke with Albright before he purchased his Polaris, and they discussed that it was OSHA approved. Guzman explained that he understood</p>	<p>26. Kristensen Decl. Ex. 41 - Guzman Dep. 36:19-25; 142:4-19.</p>



Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>1 OSHA approved to mean that "it's safe, 2 that the cage is good" and like any tool 3 that is OSHA approved it is okay to use. 4 The OSHA sticker, it's legit."</p>	
<p>5 27. While Guzman still operates his 6 expensive vehicle in a slower and safer 7 manner, he testified that he does not 8 consider his Polaris vehicle to be safe 9 because of the cage because it was not 10 OSHA approved. Guzman explained the 11 vehicle met his expectations, except for 12 the cage, because it was "not strong 13 enough if it would flip over."</p>	<p>27. See Kristensen Decl. Ex. 41 - Guzman Dep. 12:16-13:4; 53:22- 54:1; 62:7-14.</p>
<p>12 28. Guzman was aware that some 13 UTVs are sold new with after market 14 rollover protection structures rather than 15 the stock cages, but he did not so because 16 it was too expensive. Guzman purchased 17 his Polaris with \$1,000 down and \$19,800 18 in financing. The total cash price was 19 \$20,741. He pays approximately \$400 a 20 month still for the vehicle. Guzman 21 testified that he would like to make his 22 vehicle safer with a cage, but he did not 23 have the funds to pay for the cages he saw 24 quoted at Bert's Mega Mall. Guzman 25 wanted a structure with thicker piping, so 26 that it would be stronger than the stock 27 Polaris cage.</p>	<p>28. See Kristensen Decl. Ex. 41 - Guzman Dep. 81:1-24; 97:9-16; 94:9-14; 54:9-14; 84:7-25; 121:13- 21.</p>
<p>23 29. Guzman feels cheated because he 24 would not have purchased the vehicle if 25 he knew the label/sticker was false and he 26 does not have the money to purchase an 27 aftermarket cage.</p>	<p>29. Kristensen Decl. Ex. 41 - Guzman Dep. 197:3-24.</p>
<p>27 30. Confidential Pursuant to Protective Order 28 [REDACTED]</p>	<p>30. Kristensen Decl. Ex. 43 - Boone Dep. 46:5-50:12; 54:10-</p>



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Plaintiff's Uncontroverted Facts	Plaintiffs' Supporting Evidence
<p>Confidential Pursuant to Protective Order</p>	<p>56:13, Ex. 44 - April 2018 RZR ROPS and Tire Survey. Ex. 44 at 27148-150</p>
<p>31. Confidential Pursuant to Protective Order</p> <p>Confidential Pursuant to Protective Order</p>	<p>31. Kristensen Decl. Ex. 43 – Boone Dep. 63:23-65:12, Ex. 44 at 27149.</p>

