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11 *Additional counsel listed below*

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

16 PAUL GUZMAN, et al.,

17 Plaintiffs,

18 v.

19 POLARIS INDUSTRIES INC., et al.,

20 Defendants.

21 _____
22 MICHAEL HELLMAN, et al.,

23 Plaintiffs,

24 v.

25 POLARIS INDUSTRIES INC., et al.,

26 Defendants.
27
28

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

DEFENDANTS' REPLY IN SUPPORT OF MOTION FOR PARTIAL RECONSIDERATION AND FOR CLARIFICATION OF ORDER GRANTING CLASS CERTIFICATION IN PART

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

1 Polaris’s Motion makes two narrow requests for relief: (1) partial reconsideration
2 to limit the *Berlanga* class to RZR buyers, as plaintiff conceded and requested in his class
3 certification briefing, and (2) clarification of the end date of the *Berlanga* class period,
4 which currently is “Present.” *Guzman* Dkt. 220-1 (“Motion” or “Mot.”). Both requests
5 are fully supported by the law and the record, and should be granted so as to eliminate
6 issues that otherwise would be subject to further litigation in this Court and on appeal.

7 **I. The *Berlanga* Class Should Be Partially Reconsidered And Limited To RZRs.**

8 The *Berlanga* plaintiff repeatedly and unequivocally eliminated Ranger and
9 General¹ vehicles from his proposed class.

10 In his July 26, 2023 Reply and July 31, 2023 Amended Reply in Support of Motion
11 for Class Certification, under sections entitled “**Plaintiff Voluntarily Tailors the**
12 **Certification Position To The Narrower Proposed Class Definition**” and “**Plaintiff**
13 **Voluntarily Tailors The Certification Position To The Subclass,**” respectively, the
14 *Berlanga* “Plaintiff voluntarily agree[d] to narrow the proposed class definition to ... the
15 proposed Subclass [defined as RZR purchasers, *see Berlanga* Dkt. 86 at 2].” *Berlanga*
16 Dkt. 94 at 16-17; *id.* Dkt. 96 at 11. In his February 16, 2024 Notice of Motion for Class
17 Certification, plaintiff requested “class certification ... of the following class (the
18 ‘Class’): ‘All California residents, who, between in or about May 25, 2018 and Present,
19 purchased one or more models of Polaris RZR UTVs, in California, which were
20 advertised with [the sticker in question].’” *Berlanga* Dkt. 143 at 2.

21 Finally, the *Guzman* plaintiff’s February 16, 2024 Motion to Consolidate, filed by
22 the same counsel who are “attorney[s] of record for Plaintiff Francisco Berlanga,” states:
23 “Mr. Berlanga seeks to certify the following class: ‘All California residents, who,

24 _____
25 ¹ Plaintiff incorrectly states that Generals “already are” excluded. *Guzman* Dkt. 222
26 (“Opp’n”) at 6 n.4. They are not, but are expressly included in the certified class
27 definition. *Berlanga* Dkt. 150 at 16. As plaintiff concedes, there are no Generals that
28 include the sticker in question. Opp’n at 6 n.4. Including Generals that by definition do
not have the OSHA label will cause unnecessary confusion when notice is sent out.

1 between in or about May 25, 2018 and Present, purchased one or more models of Polaris
2 RZR UTVs, in California, which were advertised with [the sticker in question].”
3 *Guzman* Dkt. 198 at 3; *id.* Dkt. 198-1 at 2.

4 Polaris’s requested relief is not based only “on a single line in [p]laintiff’s optional
5 Reply Brief” (Opp’n at 17), but on plaintiff’s multiple filings addressing this very issue.
6 In none of these filings did plaintiff or his counsel present his RZR-only class “as an
7 alternative” (*id.* at 18), nor did plaintiff reserve any rights as to General or Ranger
8 purchasers. Instead, he “voluntarily agree[d] to narrow the proposed class definition.”
9 *Berlanga* Dkt. 94 at 17; *id.* Dkt. 96 at 11.²

10 Plaintiff’s assertion that Polaris’s motion “is based on facts that are not in the
11 record” (Opp’n at 10) is incorrect. Mr. Berlanga’s original Reply (Dkt. 94), Amended
12 Reply (Dkt. 96), and Notice of Motion for Class Certification (Dkt. 143), and Mr.
13 Guzman’s Motion for Consolidation (Dkt. 198)—including Mr. Berlanga’s RZR-only
14 proposed class definition—are all in the record. Indeed, this Court cited and relied on
15 Mr. Berlanga’s original Reply in its class certification order. *Berlanga* Dkt. 150 at 14.

16 Because the Court failed to consider a material fact, namely, that the *Berlanga*
17 plaintiff repeatedly stated he was not seeking to certify a class that included General and
18 Ranger buyers, there are proper grounds for reconsideration under L.R. 7-18. *See* L.R. 7-
19 18(c) (“manifest showing of a failure to consider material facts presented to the Court
20 before the Order was entered”); Mot. at 5.

21 Finally, plaintiff does not and cannot dispute that reconsideration is warranted
22 where a Court “made a decision outside the adversarial issues presented ... by the
23 parties.” Mot. at 5 (quoting *In re Westwood Plaza N.*, 2016 WL 11697858, at *7 (C.D.
24 Cal. Jan. 13, 2016)) (ellipsis in original; quotation omitted); *see also id.* at 5-6 (citing

25
26 ² Plaintiff’s contention that his removal of Rangers and Generals was “merely a
27 conciliatory illustrative point of emphasis” (Opp’n at 7) is correct only to the extent it
28 ended the parties’ dispute over the vehicles’ inclusion in the class by dropping them.

1 cases providing additional bases on which courts in this District grant reconsideration
2 beyond those in L.R. 7-18). Polaris respectfully submits that the Court overlooked
3 plaintiff's filings that voluntarily removed Ranger and General purchasers from the class
4 he sought to certify. As a result, the adversarial issues presented on class certification did
5 not include these purchasers and it was a mistake to certify a class including them.
6 Reconsideration is warranted. *In re Westwood*, 2016 WL 11697858.

7 **II. The End Date Of The *Berlanga* Class Should Be Clarified As The Date**
8 **Plaintiff Filed His Operative Complaint.**

9 Plaintiff agrees the *Berlanga* class should have a set end date; the parties differ
10 only as to what that date should be. Polaris asserts the date should be the date the
11 operative complaint (*Berlanga* Dkt. 22) was filed, whereas plaintiff asserts it should be
12 the date of the class certification order. *Compare* Mot. at 2, *with* Opp'n at 5.
13 Clarification of the class end date is clearly proper.

14 Courts in this Circuit "treat the definition of a class specifically alleged in a
15 complaint as limiting the class for which a plaintiff may seek Rule 23 certification"
16 (absent having requested leave to amend). *McCurley v. Royal Seas Cruises*, 331 F.R.D.
17 142, 161 (S.D. Cal. 2019); *see also* Mot. at 8-9 (collecting cases). In this case, that is
18 July 14, 2021, when the *Berlanga* plaintiff filed the operative complaint. *Berlanga* Dkt.
19 22. Plaintiff's assertion that his "Complaint is open ended and does not specify an end
20 date to the class period" (Opp'n at 13 n.8) is incorrect. His complaint alleged a class
21 period through "the filing of this Complaint." *Berlanga* Dkt. 22 ¶ 83 (defining the class
22 as: "All persons in California that purchased a Class Vehicle in the four years preceding
23 the filing of this Complaint"). A class through "Present" is beyond the scope of the class
24 plaintiff alleged. Plaintiff offers no reasoned basis as to why the date of the class
25 certification order is the proper end date. Using the date of the operative complaint
26 accords with the case law holding that a class cannot extend beyond what is set forth in
27 plaintiff's pleadings. *See* Mot. at 8-9 (collecting cases).

28 Courts routinely grant clarification, including as to the "temporal limitations" of a

1 class, *see Bafus v. Aspen Realty, Inc.*, 2007 WL 793633, at *1-2 (D. Idaho Mar. 14,
2 2007). *See also, e.g., Karinski v. Stamps.com, Inc.*, 472 F. Supp. 3d 747, 749 (C.D. Cal.
3 2020) (clarifying dismissal order); *Mayorga v. Ronaldo*, 2022 WL 741032, at *3-5 (D.
4 Nev. Mar. 11, 2022), *report and recommendation adopted*, 2022 WL 1015814 (Apr. 5,
5 2022) (clarifying scope of protective order); *U.S. v. Abarza*, 199 F. Supp. 3d 1270, 1271
6 (D. Or. 2016) (clarifying extent of suppression order).

7 Finally, plaintiff's contention that Polaris "waived" its request for clarification of
8 the class end date is not supported by the cases he cites. None of plaintiff's cases address
9 "waiving" the ability to request clarification of an ambiguous order, and some do not deal
10 with waiver at all. *See Selectron Indus. Co., Inc. v. Selectron Intern.*, 2007 WL 5193735
11 (C.D. Cal. Sept. 25, 2007) (discussing defendants' waiver of their rights to a certain piece
12 of property—not waiver of any legal argument); *McKinsty v. Swift Transp. Co., of Ariz.,*
13 *LLC*, 2017 WL 8943524 (C.D. Cal. Sept. 18, 2017) (not discussing waiver). Plaintiff's
14 only cited case arguably on point, *Kiewit Power Constructors Co. v. City of Los Angeles*,
15 contradicts his position. 2018 WL 5902591 (C.D. Cal. May 22, 2018). *Kiewit* does not
16 state that failing to put forward an argument prior to reconsideration constitutes waiver;
17 the case simply states that such a failure "weighs against" reconsideration. *Id.* at *3.
18 Here, clarification is necessary because the Court's certification order does not specify
19 when the *Berlanga* class ends. Providing a defined end date is called for, as it will
20 provide clarity to the parties and absent class members.³

21 Polaris respectfully requests that the Court (1) grant partial reconsideration and
22 narrow the scope of the class certified in *Berlanga* to include only purchasers of RZR's
23 and (2) clarify the end date of the *Berlanga* class period as the date the operative
24 complaint was filed (July 14, 2021).

25
26 ³ Plaintiff's Opposition includes a number of inaccurate assertions regarding Polaris's
27 counsel. Opp'n at 5 n.3, 8 n.6. Polaris and its counsel will not burden the Court by
28 responding to them except to say they categorically deny plaintiff's assertions.

1 DATED: August 16, 2024

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CERTIFICATE PURSUANT TO L.R. 11-6.2

The undersigned, counsel of record for Defendants Polaris Industries Inc., Polaris Sales Inc., and Polaris Inc. (f/k/a Polaris Industries Inc.), certifies that this brief contains 1,601 words, which complies with the word limit of L.R. 11-6.1.

Dated: August 16, 2024

/s/ Andrew B. Bloomer
Andrew B. Bloomer

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