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Attorneys for Plaintiffs and all others similarly situated

THE UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

PAUL GUZMAN and JEREMY 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

REPLY IN SUPPORT OF PLAINTIFFS' MOTION FOR CLASS CERTIFICATION PURSUANT TO FED. R. CIV. P. 23(B)(2) AND (B)(3) AND TO BE APPOINTED CLASS COUNSEL

Hon. Fernando L. Aenlle-Rocha
Date: April 30, 2020
Time: 1:30 p.m.
Place: Courtroom 6B

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I. INTRODUCTION

Polaris's Opposition inappropriately invites the Court to ignore binding authority. The Unfair Competition Law ("UCL"), False Advertising Law ("FAL"), and Consumer Legal Remedies Act ("CLRA") are not based on individual issues of reliance but instead impart classwide reliance based on an objective standard - whether a misrepresentation would be misleading to a reasonable consumer and assess damages based on whether that misrepresentation is material to a reasonable consumer. The Rule 23 analysis requires only that Plaintiffs viewed the misrepresentation and relied on them, to satisfy Article III standing, which they did. Given that the case arises out of a uniform, inaccurate misrepresentation on the face of Polaris's vehicles, Polaris's only legitimate arguments come down to trying to create individualized predominance issues between different Class Members and different vehicle models, i.e. an attempt to narrow the scope of the class definition.[1] Ultimately, all Polaris succeeds in doing is presenting a potential argument for why the class definition should be narrowed to the RZR vehicle models sold with stock ROPS.

It is uncontested that Polaris misrepresented the features of Class Vehicles via an identical standard label present at the point of sale for every Class Member to view when they purchased their vehicle. It is uncontested that this misrepresentation concerned a mandatory safety feature which the US Consumer Product Safety Commission ("CPSC") required be present in every single Class Vehicle pursuant to 15 U.S.C.A. §§ 2056 and 2068. It is uncontested that Polaris did not follow the requirements of 29 C.F.R. §§ 1928.53 but instead ignored the "whichever is greater" language present therein and used only gross vehicle weight to calculate the strength of the ROPS. Moreover, costs-based economic modeling satisfies predominance.

To side in full with Polaris on class certification would be to eviscerate all class action litigation under any UCL, FAL, or CLRA theory. Obviously, some

[1] There is no serious contention that Plaintiffs have failed to satisfy adequacy, commonality, numerosity, typicality, and ascertainability.

people value certain attributes of products differently than others and some people read labels more carefully than others. This is not important to whether the Class should be certified. If it was, then no class action could ever be certified under the UCL, FAL and CLRA. Yet hundreds of class actions have been certified under these laws. Were these Courts all wrong where Polaris is right? Clearly not. This is hardly a case where the egregious conduct —lying to regulators and consumers about a serious safety related feature that saves lives—should be given a free pass.

In an attempt to sidestep binding authority on reliance,[2] damages methodologies,[3] and other predominance issues,[4] Polaris presents consumer declarations, declarations from dealerships, and expert reports. Such evidence is unreliable, unfounded, and, more importantly, based on an incorrect counterfactual[5] of treating the mandatory CPSC safety standard as an unimportant voluntary footnote to a consumer's purchase of Class Vehicles. Illustrative of the flaws with the Class Member declarations is the fact that the Class Members who were subsequently deposed testified that they relied on Polaris meeting federal safety guidelines when they purchased their vehicles and either would have paid less or not purchased them at all if they had known the truth. These are the same people who Polaris argued did not care about the OSHA representations and did not place value on this feature of the product. Apparently, Polaris's lawyers were not asking the right questions when drafting the declarations for them.

Polaris's expert reports fare no better. Despite hiring an economist whose work focuses on economic modeling and a marketing expert whose work focuses on conjoin analysis, neither expert actually ran a sound study on the value of Class Vehicles meeting a mandatory CPSC regulation. Rather, they ran facially-

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[2] *Stearns v. Ticketmaster Corp*., 655 F.3d 1013 (9th Cir. 2011) (citing *In re Tobacco II Cases*, 46 Cal.4th 298, 312, (Cal. 2009)).

[3] *Nguyen v. Nissan North America, Inc*., 932 F.3d 811 (9th Cir. 2019).

[4] *Briseno v. ConAgra Foods, Inc*., 844 F.3d 1121, 1131 (9th Cir. 2017); *Mazza v. Am. Honda Motor Co., Inc*., 666 F.3d 581, 595 (9th Cir. 2012).

[5] A counterfactual is "a conditional statement in which the first clause is a past tense subjunctive statement expressing something contrary to fact." *Collins English Dictionary – Complete and Unabridged, 12th Edition* (2014).

questionable google searches, looked at certain marketing materials provided by Polaris, and talked with a handful of Polaris representatives and assumed, without any legitimate basis, that consumers place zero value on preventing their heads from caving in from a defective ROPS that did not come close to meeting mandatory government safety standards.[6]

Dr. Langer testified that giving Class Members the benefit of the bargain, i.e. having Polaris pay to upgrade the vehicles to meet the advertised mandatory safety regulations, would "overcompensate" the Class Members. She testified that the cost of compliance was virtually zero, as Polaris could replace the existing sticker with one that says the vehicle complied with OSHA's GVW requirements (which is what it already says, is still misleading, and fixes nothing).[7]

Dr. Hanssens believed the OSHA regulations were voluntary and conducted his analysis against the ISO standard (the wrong counterfactual), which is a pointless endeavor. When asked why he did not compare OSHA compliance to no compliance, his response was that Polaris didn't ask him to do that. In other words, Polaris asked him to set up a strawman argument, and he didn't ask questions despite generating over $100,000 in expert fees. These obvious flaws and others reveal Polaris's position to be a fallacy-riddled strawman argument.[8]

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[6] Polaris's experts did not actually conduct a demand-based damages survey. Instead, Polaris simply told them to engage in a pointless exercise of comparing the OSHA label to the ISO label (the wrong counterfactual), to bias the results and make it look like UTV consumers don't value safety. Polaris's experts were shackled by Polaris, and their analysis is regrettably meaningless as a result.

[7] See Friedman Decl. Ex 6 ("Langer Dep.") at 84:1-85:6. Dr. Langer was asked why she did not analyze whether people would pay less for a vehicle that had a sticker on it that says "this ROPS does not meet federal safety standards" and her response was REDACTED PURSUANT TO PROTECTIVE ORDER [redacted]. *Id*. at 75:18-78:19, 231:19-239:22. And yet, that would have been the proper analysis to determine whether people care about the label and the satisfaction of the CPSC standards. Dr. Langer also said REDACTED PURSUANT TO PROTECTIVE ORDER [redacted] *Id*. at 30:10-47:20.

[8] As the Class Member declarants testified, consumers' default assumptions about safety features in products they buy are that respectable manufacturers follow government safety standards. If in fact, the manufacturer is lying about meeting such standards, as Polaris has done, this defies reasonable consumer expectations.

Polaris lied to regulators and customers about Class Vehicles meeting mandatory standards for ROPS. Plaintiffs merely asks Polaris to live up to what was promised and to protect Class Members in the way that Polaris told the CPSC it would be doing to avoid recalls and involuntary regulation in the first place. Class Vehicles are all defective and unfit to have been sold into the marketplace. This case is much bigger than a simple mislabeling case or a product defect case with sporadic manifestation. Polaris's flippant response to this litigation warrants a strong class certification order in favor of Plaintiffs and the Class.

II. FACTUAL BACKGROUND

A. Class Vehicles Do Not Meet Mandatory CPSC Regulations

Plaintiffs must dispel a twofold myth Polaris has propagated: 1) that it meets the OSHA requirements for ROPS on Class Vehicles; and 2) that the choice to satisfy this standard is entirely voluntary and not a federal mandate. Both are false.

1. Polaris Does Not Test To OSHA Guidelines

Class Vehicles do not meet the OSHA requirements for ROPS. Plaintiffs point to the opening class certification brief, and the facts set forth in Plaintiffs' Opposition to Motion for Summary Judgment and incorporate the evidence cited therein by reference. Tractor weight testing requires a ROPS manufacturer to test to either the GVW, or 95% of the net engine flywheel horsepower, "whichever is greater." 29 C.F.R. §§ 1928.51(a)(4). Because Class Vehicles range from 67 to 180 horsepower and must be REDACTED PURSUANT TO PROTECTIVE ORDER [redacted]. Even Polaris's testing company admits that REDACTED PURSUANT TO PROTECTIVE ORDER. Declaration of John Kristensen, Dkt. 117-18 ("Kristensen Decl.") Ex. 23, Transcript of the Deposition of James Schmitt ("Schmitt Depo.") 63:14-64:10; Dkt. No. 79-10.

In direct contravention of OSHA requirements, Polaris REDACTED PURSUANT TO PROTECTIVE ORD [redacted]

REDACTED PURSUANT TO PROTECTIVE ORDER. *See* Kristensen Decl. Ex. 18 at p. 24 & Ex. 25; Ex. 10, Transcript of the Deposition of Aaron Deckard ("Deckard Dep."), 85:14-20; Ex. 2, Transcript of the Deposition of Lawrence Keller ("Keller Dep."), 17:9-20:20. Polaris acknowledges that REDACTED PURSUANT TO PROTECTIVE ORDER Kristensen Decl. Exs. 5-6, 14-16, 22, 24-34; Ex. 1, Deposition Transcript of Steve Wosick ("Wosick Dep."), 17:17-24; Ex. 3, Deposition Transcript of Gus Morison ("Morison Dep."), 34:19-35:1, 39-42:9; Deckard Dep. 27:21-35:13, 43:9-45:17; Keller Dep. 22:11-24:14. These facts are not in dispute.

Jim Schmitt, who was in charge of running OSHA certifications for Polaris, admitted that REDACTED PURSUANT TO PROTECTIVE ORDER .[9] For Polaris to now argue that Custom Products correctly certified the ROPS comply with 29 C.F.R. § 1928.53 is incorrect. Polaris REDACTED PURSUANT TO PROTECTIVE ORDER . This is a classic case of the fox guarding the hen house and then crying foul after being caught eating the hens.

2. The ROHVA Proposed Test Is A Mandatory CPSC Regulation, Not A Standard Polaris Can Elect To Ignore

Polaris's position throughout its brief and most notably in its expert reports suffers from a rather egregious false premise – the notion that because OSHA compliance was a voluntary standard proposed by ROHVA, it is completely voluntary for Polaris to sell vehicles that comply with this standard. This is

[9] Kristensen Decl. Ex. 10, 15; Deckard Dep. 43:2-44:14; Dkt. No. 79-10. Mr. Schmitt admitted REDACTED PURSUANT TO PROTECTIVE ORDER Schmitt Dep. 40:19-45:24.

demonstrably incorrect.[10] Polaris made a pact with the CPSC whereby it would follow these important safety regulations in lieu of involuntary regulations and recalls being implemented by the CPSC. In other words, just because the standards were voluntary in the regulatory sense does not mean that it is voluntary that Polaris follow them. Polaris must follow them. A voluntary standard is simply one that industry members assist a regulatory agency in developing before being required to adhere to it. Thus, the standards ROHVA adopted and Polaris agreed to are the regulatory minimum safety standards adopted by the federal government. Without meeting these standards, Polaris is not allowed to even legally sell UTVs.

In 2009, the CPSC initiated a Notice of Rulemaking. 74 Fed. Reg. 55495 (Oct. 28, 2009). The OSHA regulations at issue (29 C.F.R. §§ 1928.51-53) were one of two alternative tests ROHVA (Polaris) proposed to the CPSC pursuant to 15 U.S.C. § 2056(b). 15 U.S.C. § 2056(a) sets forth the CPSC's authority to implement involuntary standards that the CPSC determines are "reasonably necessary to prevent or reduce an unreasonable risk of injury associated with such product." *Id*. The CPSC can also permit the industry to adopt "voluntary standards," which also must be followed under the same regulatory framework, pursuant to 15 U.S.C. § 2056(b). Typically, the CPSC will initiate corrective actions such as recalls or involuntary standards only after having first attempted to negotiate voluntary standards. That being said, 15 U.S.C. § 2068 makes it unlawful to "sell, offer for sale, manufacture for sale, distribute in commerce, or import into the United States any consumer product . . . that is . . . subject to voluntary [i.e., negotiated] corrective action taken by the manufacturer, in

[10] The fact that it is incorrect affects not only the merits position taken by Polaris in the case, but indeed, its entire misguided predominance defense, as well as the analysis and conclusions reached by its certification experts. After all, California and Ninth Circuit precedent hold that Plaintiffs' claims revolve around an objective reasonable consumer standard. Polaris's experts ask the Court to conclude that a vehicle manufacturer failing to adhere to mandatory federal government safety standards is not material to a reasonable consumer. This error is not the fault of the experts. Their deposition testimony reveals that Polaris set them up to fail by giving them incorrect information and sending them on a fool's errand.

consultation with the Commission, of which action the Commission has notified the public or if the seller, distributor, or manufacturer knew or should have known of such voluntary corrective action." 15 U.S.C. § 2068(a)(2); RJN Ex D.

Polaris proposed (through ROHVA) to the CPSC a mandatory standard whereby UTVs ROPS must comply with one of two tests: OSHA or ISO. Kristensen Decl. Ex. 34; Schmitt Dep. 59:19-63:6. This action by ROHVA was taken after the CPSC initiated a rulemaking due to a determination that the UTVs were unsafe because they were killing or maiming hundreds of people in rollovers.[11] Polaris thereby warded off CPSC regulation and recalls through an adoption of industry standards. 15 U.S.C. § 2056(b). OSHA/ISO became the very voluntary standards for ROPS that cannot be violated without running afoul of 15 U.S.C. § 2068(a)(2); RJN Ex D.[12]

Polaris's position in this case that the OSHA standards are voluntary, which means that they need not be followed (a position under which both of Polaris's experts were under the mistaken impression) is demonstrably incorrect. It is unlawful for Polaris to sell a UTV in the marketplace if the ROPS does not comply with either OSHA or ISO. Class Vehicles comply with neither. Any vehicles sold in such a condition, are defective and unfit for the United States marketplace. Thus, Polaris's certification defense assumes an impermissible and unlawful counterfactual whereby consumer preferences between Class Members are relevant. They are not, except insofar as Plaintiffs' testimony that they relied on the OSHA standards being met on their vehicle ROPS is determined to be material and reasonable under the objective test, which is substantially informed by the irrefutable position of Plaintiffs that any federally-mandated safety feature

[11] 16 CFR 1422, Oct. 27, 2009 available here: https://www.regulations.gov/document/CPSC-2009-0087-0001; and 16 CFR 1422, October 28, 2009, Available here: https://www.federalregister.gov/documents/2009/10/28/E9-25959/standard-for-recreational-off-highway-vehicles.

[12] Polaris made the determination that [redacted] REDACTED PURSUANT TO PROTECTIVE ORDER [redacted] Kristensen Decl. Exs. 5, 6, 18; Deckard Dep. 55:5-18, 58:7-60:16.

of a product must by definition be material.[13] The mislabeling claims in this case go deeper than your average mislabeling issue. Every Class Vehicle is unfit to have been sold into the marketplace. Class Members must be made whole—not only because safety is of material importance to an objective reasonable consumer, but because the CPSC made a pact with Polaris and because consumers reasonably depend on manufacturers to follow minimum safety standards when they purchase products. To hold otherwise, as Polaris urges, would be to undermine the entire federal regulatory system.

Polaris misrepresented to its own experts, to the Class Members from whom it procured declarations, and to the Court what it means to have adopted a voluntary standard by using the word voluntary in the colloquial sense and not the legal sense. A voluntary standard still must be followed. This is the proper lens through which this case must be viewed. This is akin to an automobile being sold with faulty seatbelts[14] or counterfeit airbags. It is for this reason that Plaintiffs' merits theory, as well as its recall damages model, are the appropriate, and indeed the only reasonable method of adjudicating this case, because all Class Vehicles are unfit to have been sold to consumers (and therefore defective).

B. Plaintiffs Were Damaged Relying On Polaris's False Statements

As described below, Polaris's certification position requires the Court find that Plaintiffs did not reasonably rely on a material feature of their Class Vehicles when they purchased their vehicles. The individualized issues raised by Polaris are irrelevant under Ninth Circuit class certification standards, except insofar as they inform the materiality analysis, which inherently intersects with and involves only the named Plaintiffs in two respects: 1) Did Plaintiffs rely on the

[13] If Polaris honestly believed otherwise, it would have argued materiality as a position in its summary judgment Motion. Polaris did not do so because no Court in the country would rule that a mandatory safety standard that prevents loss of life and limb and implemented pursuant to a federal regulatory body was immaterial to an objective reasonable consumer. It would be a facially ridiculous position to take.

[14] Following regulations issued in 1971, every passenger vehicle has been required to have airbags (S4.1.5.3) and seat belts (S4.1.5.5.1) since September 1, 1997. 49 CFR § 571.208.

OSHA sticker; and 2) was the reliance material under the objective reasonable consumer standard? Plaintiffs incorporate the facts section of their Opposition to the Motion for Summary Judgment (Dkt. No. 100) by reference and offer the following abridged summary for the Court's consideration.

Plaintiffs purchased Class Vehicles. Declaration of Jeremy Albirhgt ("Albright Decl."), Dkt. 67-5 ¶ 4; Declaration of Paul Guzman ("Guzman Decl."), Dkt. 67-4 ¶ 4. Plaintiffs observed the OSHA sticker at the point of sale. Friedman Reply Decl. Ex 5 ("Albright Dep.") at 148:2-23; and Ex 4 ("Guzman Dep.") at 139:6-3. Plaintiffs are familiar with OSHA and understand that it relates to safety and that the presence of the OSHA label meant that Polaris met government safety standards for the ROPS. Albright Dep. 12:15-17, 57:18-60:2, 67:3-12; Guzman Dep. at 25:8-18, 160:3-20. Plaintiffs placed value on this representation because they value the safety of themselves and members of their family. Albright Dep. at 163:24-164:21, 165:14-17; Guzman Dep. at 12:16-13:4; 53:22-54:1, 121:13-21. Plaintiffs would have either paid substantially less, or not even purchased Class Vehicles if Polaris accurately informed that the vehicles did not meet government standards. Albright Dep. at 13:25-15:11, 18:4-19:23, 22:23-23:2, 158:3-12, 241:4-243:5, 249:17-250:11; Guzman Dep. at 25:8-18, 84:7-25, 197:3-24.

C. Class Members Testified That The OSHA Label Was Material And Relevant To Their Purchase

Polaris trots out a handful of declarations of consumers that it prepared[15] in an attempt to support its position that consumers do not care about ROPS safety and that even if its ROPS fail to meet OSHA standards, this would not have impacted consumer decisions to purchase Class Vehicles. Upon examination,

[15] Transcript of the Deposition of Rio Score, Friedman Decl. Ex. 1 ("Score Depo.") 3:3-5, Transcript of the Deposition of Samuel Carnibucci, Friedman Decl. Ex. 2 ("Carnibucci Depo.") 8:24-9:6, Transcript of the Deposition of Rene Turincio, Friedman Decl. Ex. 3 ("Turincio Depo.") 9:1-9.

these consumers told a different story that revealed ROPS safety was an important consideration in their decision to purchase Class Vehicles.

For Mr. Score, Polaris's attorneys specifically told him that the ROPS exceeded the standard on the sticker—and thus the lawsuit was meritless—while obtaining his declaration. Score Depo. at 5:4-15. Mr. Score chose Polaris because it was represented as a sturdier and stronger option than its competitors. *Id.* at 8:1-22, 10:14-17, 12:10-17. Had Polaris properly represented that its UTVs did not comply with OSHA standards, it would have been a consideration and would have impacted the price he was willing to pay. *Id.* at 18:16-19:7. This is because the safety of the ROPS is important for UTV purchase by consumers because they don't want to get crushed when the vehicle rolls over. *Id.* at 20:3-8.

For Mr. Turincio, safety was a consideration when shopping for UTVs. Turincio Depo. at 14:24-15:12. He expected that manufacturers of UTVs would comply with the relevant governmental regulations and agreed it was important that vehicles were tested correctly to ensure that the rider does not get crushed in case of a rollover. *Id.* at 21:15-18; 25:10-19; 28:22-29:3. He considered the gross weight represented on the sticker of the vehicle in deciding that it had been adequately tested. *Id.* at 34:20-35:24. Because the sticker indicated the testing weight and that it complied with OSHA standards, he did not feel that he needed to make a further inquiry. *Id.* at 35:25-36:3. Mr. Turincio additionally agreed that he paid a premium for premium components as represented. *Id.* at 39:15-40:2.

For Mr. Carnibucci, he was relying on manufacturers such as Polaris to comply with government standards and did not inquire otherwise because Polaris gave him no reason to inquire otherwise. Carnibucci Depo. at 22:22-23:25; 26:14-18. If the sticker had properly indicated that the RZR did not comply with OSHA standards, it would have impacted his decision and potentially made him go with a different manufacturer or pay a lower price. *Id.* at 28:1-11; 29:25-30:13. He noted that any consumer would want to know that a vehicle is not complying with government safety regulations. *Id.* at 28:12-15.

Polaris used these consumers to argue safety was not a concern nor was the strength of the roll cage a consideration. Obviously, Polaris's lawyers did not ask the right questions. Had they done so, their declarations would have said that safety *was* a concern, the representations regarding safety of the ROPS and compliance with government regulations were taken into account as a factor in purchase, and the truth (that Class Vehicle ROPS do not comply with OSHA standards) would have informed their purchase. This is shamefully the opposite of what Polaris presented to the Court of what Class Members believe.

D. Polaris's Experts Present Strawman Positions

Polaris's certification experts present strawman arguments which ignore binding law regarding reliance, damages, and predominance standards set forth in similar UCL and CLRA class actions in an attempt to distract the Court.

1. Dr. Langer

Dr Langer is an economist who specializes in econometrics and economic modeling and has never acted as an expert witness in a case before. Langer Dep. at 25:11-20, 50:14-16, 61:1-62:13. Despite her academic focus, she [redacted] *Id.* at 172:11-190:25. Her work focusses extensively on regulatory standards, and yet [redacted] *Id.* at 78:20-85:20; 237:10-22. Dr. Langer's opinion can best be summarized as follows: [redacted].

Dr. Langer erroneously opined that [redacted]

[redacted] Langer Report ¶ 13.[16] However, [redacted] Langer Dep. 90:20-99:23; 107:16-110:10.

Dr. Langer's cost of compliance analysis was facially ridiculous. Rather that [redacted]. *Id*. t 88:2-90:19. When presented with a real world example of a consumer who had been denied the benefit of the bargain, Dr. Langer testified that [redacted]. *Id*. at 30:10-47:20. When asked [redacted]

[16] Dr. Langer's analysis was essentially [redacted] (*Id*. at 138:12- 160:2), [redacted] (*Id*. at 209:10-213:4)—and [redacted] (*Id*. at 231:19-239:22). Despite this obviously being a strawman comparison, she [redacted]. *Id*. This methodology is highly questionable for reasons discussed in Dr. Kneuper's reports. Friedman Decl. Ex 8 and 11.

REDACTED PURSUANT TO PROTECTIVE ORDER an obvious cop out to the glaring problem with her analysis. 204:6-208:25.

2. Dr. Hanssens

Dr. Hanssens is a marketing professor who specializes in conjoin surveys, and modeling. Friedman Decl. Ex 7 ("Hanssens Depo.") at 37:13-40:10. Despite this, REDACTED PURSUANT TO PROTECTIVE ORDER [redacted]. *Id.* at 74:5-75:18, 146:13-147:14, 156:13-164:11. [redacted] *Id.* at 74:5-75:18, 146:13-147:14, 156:13-164:11. REDACTED PURSUANT TO PROTECTIVE ORDER [redacted] *Id.* at 139:16-143:19. REDACTED PURSUANT TO PROTECTIVE ORDER [redacted] *Id.* at 94:5-116:7; 129:7-133:11). REDACTED PURSUANT TO PROTECTIVE ORDER [redacted] *Id.* at 74:10-76:1; 88:7-90:3; 120:13-121:21; 146:13-147:14. Dr. Hanssens is a highly qualified expert, who was misused and misled by Polaris, and whose report ultimately does not inform the call of the legal questions in this case.

E. Plaintiffs' Experts Reports Since January 15th Further Support Class Certification

[17] See Dkt. No. 70-10 and 70-11 at 27149-150; Kristensen Decl. Ex. 43 – Boone Dep. 54:10-56:13, 63:23-65:12, 73:22-76:8. (discussed in detail in Plaintiffs' Opposition to Motion for Summary Judgment (Dkt. No. 100) at Pg 10.

Plaintiffs' experts have provided additional reports since the filing of the Class Certification brief, which are filed herewith. Dr. Kneuper's Class Certification Reply report reemphasizes that a straightforward cost of compliance damages model is the appropriate remedy for Class Members and can be accomplished using a methodology adopted by the Ninth Circuit in *Nguyen*. Friedman Reply Decl. Ex 8 and 11. Dr. Stevick's merits report explains how he will create a model for how to manufacture an OSHA compliant ROPS on Class Vehicles either by retrofitting existing ROPS systems with additional cross members, or by manufacturing a preplacement ROPS which was built with such triangularization in mind. It would not be difficult or infeasible to significantly increase the strength of the existing ROPS on Class vehicles. *Id*. Ex 9 at 9:17-21. Determining the expense of such an undertaking is relatively straightforward. It would be a function of three criteria: 1) how much material is needed, 2) how much it would cost to manufacture such material into the necessary shape and size of the redesign, and 3) how much labor would be required in order to install the redesigned ROPS. *Id*. at 10:10-12:2.[18] Polaris's expert Mr. Breen testified that REDACTED PURSUANT TO PROTECTI [redacted]

Id. Ex 10 at 122:21-124:20.

III. LEGAL ARGUMENT

A. Plaintiffs Have Met All Standards Under Rule 23

1. Plaintiffs Voluntarily Tailor Their Certification Position To The Narrower Proposed Class Definition

Polaris makes a number of arguments relating to individualized use of Class Vehicles, with the primary argument highlighting differences in consumer use and preference regarding Ranger vehicles. Polaris generally argues that Ranger vehicles, unlike RZRs, are used largely for work on ranches, farms, and other non-

[18] REDACTED PURSUANT TO PROTECTIVE ORDER [redacted]

recreational use. The implication is that consumers using the vehicles for farming, ranching, or other similar use do not care about the ROPS to the degree as those using them for recreation. This is a bizarre argument, given that ROPS OSHA standards derive from agricultural tractors. Polaris also argues consumer demand for strong ROPS is greater amongst RZR users than Ranger users, because RZR users are more likely to experience a rollover. This is irrelevant as in both Ranger and RZRs, Polaris misled customers and regulators about ROPS meeting OSHA requirements, denying consumers the benefit of the bargain.

Regardless of Plaintiffs' qualms regarding these issues, in an effort to streamline and avoid what Plaintiffs ultimately view to be a distraction, Plaintiffs voluntarily agree to narrow the proposed class definition to only encompass RZR vehicles, i.e. the Subclass definition presented in Plaintiffs' opening brief.[19]

Polaris separately argues that the class definition is overbroad because it includes vehicles sold without a stock ROPS. This is inaccurate, as the class definition expressly includes only vehicles "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." Indeed, the only ROPS bearing such a label are stock ROPS. Polaris presents no evidence to the contrary. Plaintiffs clarify that the Subclass definition only encompasses vehicles sold with a Polaris stock ROPS installed, and does not include models of RZRs that were not certified under 29 C.F.R. 1928.53.[20] Accordingly, Plaintiffs hereby request certification as to the following Class:

[19] A narrow tailoring of the class definition in such a manner to address arguments raised by a defendant in an opposition brief is appropriate. *See Abdeljalil v. General Elec. Capital Corp.*, 306 F.R.D. 303, 306 (S.D. Cal. 2015); *Wolf v. Hewlett Packard Company*, 2016 WL 7743692 *8 fn. 4 (C.D. Cal. Sept. 1, 2016); *Raffin v. Medicredit, Inc.*, 2017 WL 131745 *7 (C.D. Cal. Jan. 3, 2017) (potential predominance "problem can be cured by narrowing the class definition"); *Zaklit v. Nationstar Mortgage LLC*, 2017 WL 3174901 *8 (C.D. Cal. July 24, 2017) (same, citing *Wolf*, *Abdeljalil*, and *Raffin*); *McCurley v. Royal Seas Cruises, Inc.*, 331 F.R.D. 142, 161-64 (S.D. Cal. 2019)).

[20] Polaris advises that the models of RZRs that were not certified to OSHA standards include: RZR XP Turbo S (2 seat variant), RZR Pro XP Turbo S, and RZR RS1. These models are not part of the proposed class certification definition.

> All California residents who between August 8, 2015 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).

To the extent that the Court grants summary judgment as to the UCL claim, and permits only the CLRA claim to proceed, Plaintiffs would request certification as to the same Class, but with the word "consumers" replacing "residents."[21]

B. Plaintiffs Are Typical and Adequate

Polaris's sole basis for arguing Plaintiffs' atypicality and inadequacy is premised on an incorrect legal standard.[22] Given that the test under California law for the misrepresentation claims is an objective reasonable standard, all Plaintiffs need to do in order to be typical of the Class is be members of the class definition with Article III standing to bring the claims. *Briseno v. ConAgra Foods, Inc.*, 844 F.3d 1121, 1131 (9th Cir. 2017); *Mazza v. Am. Honda Motor Co., Inc.*, 666 F.3d 581, 595 (9th Cir. 2012) (class representatives who paid more for or purchased a product due to a defendant's deceptive conduct have suffered an "injury in fact" that establishes Article III standing); *Bates v. United Parcel Serv., Inc.*, 511 F.3d

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[21] *Wolf v. Hewlett Packard Company*, 2016 WL 7743692 (C.D. Cal. Sept. 1, 2016) narrowed the class definition to only consumers after a similar issue arose.

[22] "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 course of conduct.'" *Hanon v. Dataproducts Corp.*, 976 F.2d 497, 508 (9th Cir. 1992) (citation omitted). "Under the rule's permissive standards, representative claims are 'typical' if they are reasonably co-extensive with those of absent class members; [but] they need not be substantially identical." *Flo & Eddie, Inc. v. Sirius XM Radio, Inc.*, No. 13-5693 PSG (RZX), 2015 WL 4776932, at *9 (C.D. Cal. May 27, 2015) (citing *Hanlon v. Chrysler Corp.*, 150 F.3d 1011, 1020 (9th Cir. 1998)). California has an objective test for consumer protection statutes, rather than one turning on the "claimant's particular state of mind." *Ries v. Arizona Beverages USA LLC*, 287 F.R.D. 523, 539 (N.D. Cal. 2012). Thus, the fact that consumers may have been affected by the alleged misrepresentation in unique or different ways is not central to the typicality analysis. *Astiana v. Kashi Co.*, 291 F.R.D. 493, 502–03 (S.D. Cal. 2013); *Wolf*, 2016 WL 7743692, at *11-12.

974, 985 (9th Cir. 2007) ("[t]he plaintiff class bears the burden of showing" that "at least one named plaintiff" meets the Article III standing requirements).

Plaintiffs purchased RZR UTVs that 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." Plaintiffs testified that they relied on the OSHA sticker and were injured by the purchase of class vehicles and the deception of Polaris towards consumers and federal regulators regarding the ROPS meeting federal safety standards under OSHA. Polaris's typicality arguments are in fact veiled attempts to argue a lack of predominance (on erroneous grounds addressed below). Plaintiffs are typical.

Regarding adequacy, Plaintiffs are aware of their responsibilities as class representatives. Albright testified "I'm the voice for a bunch of other people, for their safety, and somebody needs to speak up against these bigger corporations that are already taking advantage of little guys." Friedman Decl. Ex. 5 at 222:15-24. Guzman testified his role to be "someone that is speaking for everybody…like a captain of a football team that is going to take control and be a leader and be someone that is going to protect the other people of the class." He understands his responsibility to be a "team leader" as "the main one that is responsible for everybody that doesn't know that this is a false sticker." Friedman Decl. Ex. 4 at 192:11-193:2. "[A] court must be wary of a defendant's efforts to defeat representation of a class on grounds of inadequacy when the effect may be to eliminate any class representation." *Kline v. Wolf*, 702 F.2d 400 (2d Cir.1983).[23] Adequacy focuses on conflicts of interest and zeal and competence. Competency of counsel[24] and absence of antagonistic interests are usually considered determinative. *Lerwill v. Inflight Motion Pictures, Inc.*, 582 F.2d 507, 512 (9th Cir. 1978).

[23] Courts are rightfully skeptical of unsubstantiated character attacks on a class representative. *Polanco v. Schneider Nat. Carriers, Inc.,* 2012 WL 10717265, at *5 (C.D. Cal. Apr. 25, 2012) ("We do not look with sympathy upon these types of unsubstantiated character attacks by Defendant in opposing class certification, given that they are made for the purpose of defeating class certification, not out of any genuine concern for the interests of the class.").

[24] Polaris concedes that Plaintiffs' counsel is adequate to represent the Class.

"Resolution of two questions determines legal adequacy: (1) do the named plaintiffs and their counsel have any conflicts of interest with other class members and (2) will the named plaintiffs and their counsel prosecute the action vigorously on behalf of the class?" *Hanlon*, 150 F.3d at 1020.

Plaintiffs participated in discovery, sat for depositions, presented their vehicles to Plaintiffs' experts for inspection, and have vigorously and zealously protected the Class, all the hallmarks of ideal representatives. Polaris's heightened focus on Plaintiffs as adequate representatives is a desperate attempt to evade liability for widespread and egregious conduct.

C. The Class Is Numerous[25]

Polaris sold approximately [redacted] UTVs in California during the class period. [redacted] Dkt. No 79-4 at pg. 6; Request for Judicial Notice Ex A-C. [redacted] Dkt. No. 79-16 pg 4. Courts have held that classes of forty or more are numerous. Over [redacted] is clearly sufficient.

D. Plaintiffs Present Common Issues Of Fact And Law

As described above, this Class is brought on behalf of purchasers of Class Vehicles – i.e. Polaris RZR UTVs with stock ROPS that were advertised on the face of the product, and represented to the CPSC to meet the OSHA standards when in fact [redacted]. Every Class Vehicle was advertised to satisfy the OSHA standards in a uniform manner on the face of the product. [redacted] Sales records at dealerships can easily be used to identify and contact Class Members. This will generate common answers, which will be determinative of class inclusion. Other common questions in this case include but are not limited to: (a) whether an

[25] Polaris does not challenge numerosity.

objective reasonable consumer would find the mislabeling of OSHA compliance material to their purchase (*Stearns v. Ticketmaster Corp*., 655 F.3d 1013 (9th Cir. 2011));[26] (b) how much a "reasonable consumer" suffered in restitution and damages as a result of the purchase; and (c) whether the labeling at issue in this case was false, deceptive, or otherwise violative of the UCL, FAL and CLRA.

If Polaris's position on predominance were correct, individualized issues would predominate in every case involving product mislabeling. But no Court has ever held that to be the standard,[27] and in fact, as described herein, the Ninth Circuit, California Supreme Court and majority of district courts have held otherwise. This Court should respectfully not venture into uncharted territory as suggested by Polaris.

1. Individualized Issues of Reliance, Standing, Materiality, and Damages Do Not Predominate

The Ninth Circuit has held that individual issues of reliance and standing are not a legitimate basis to deny class certification in a CLRA/UCL case, as reliance is determined via an objective reasonable consumer standard.[28] Prevailing district court authority, supports this holding as well.[29] As one court put it:

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[26] Defendant spends a great deal of effort trying to argue the merits of the materiality issue and asking the Court to assume the results of a consumer survey, but this is wholly improper at the certification stage. Basic logic suggests the advertisement of OSHA compliance (a federally-mandated safety standard) on the face of the ROPS was material. After all, why would Polaris spend millions lobbying the federal government and working with regulators and ROHVA to develop a standard, only to claim it is immaterial. Polaris' position is nonsensical.

[27] "Since there is no need for individualized inquiries into contract interpretation, reliance, consumer status, damages, or restitution, the court concludes that the proposed class is sufficiently cohesive to warrant adjudication by representation…the court finds that the predominance requirement has been satisfied." *Ewert v. eBay, Inc*., 2010 WL 4269259 *12 (N.D. Cal. Oct. 25, 2010).

[28] *Stearns v. Ticketmaster Corp*., 655 F.3d 1013 (9th Cir. 2011) (citing *In re Vioxx Class Cases*, 180 Cal. App. 4th 116, 129 (2009)); *Morales v. Kraft Foods Group, Inc*., 2015 WL 10786035 at *5-10 (C.D. Cal. June 23, 2015); *Waller v. Hewlett-Packard Co.*, 295 F.R.D. 472, 485-90 (S.D. Cal. 2013); *Davis v. HSBC Bank Nevada, N.A.*, 691 F.3d. 1152 (9th Cir. 2012); *Johnson v. Gen Mills, Inc*., 275 F.R.D. 282, 288-89 (C.D. Cal. 2011); *Forcellati v. Hyland's, Inc*., 2014 WL 1410264 at *9 (C.D. Cal. April 9, 2014); *In re NJOY, Inc. Consumer Class Action Litigation*, 120 F.Supp.3d 1050, 1105 (C.D. Cal., 2015).

[29] *See Waller* at 477-78, citing *Bruno v. Quten Research Inst., LLC*, 280 F.R.D. 524, 532 (C.D. Cal. 2011). ("the majority of authority indicates that it is improper for

> The Ninth Circuit said [Polaris's certification defense] was wrong, chiefly because it found the district court got the underlying, substantive law wrong. Claims brought under the UCL are governed by the reasonable consumer test, whereby a plaintiff need only show that members of the public are likely to be deceived by the business practice at issue. *Id*. at 1020; see also *Williams v. Gerber Prods. Co*., 552 F.3d 934, 938 (9th Cir.2008). In other words, under California law there are no reliance and causation elements to a UCL claim in the first instance, and so "the district court's concerns about reliance and causation were not well taken." Id. (citing *In re Tobacco II Cases*, 46 Cal.4th 298, 312, 93 Cal.Rptr.3d 559, 207 P.3d 20 (Cal.2009)). (Tobacco II is a seminal case in which the California Supreme Court clarified that "relief under the UCL is available without individualized proof of deception, reliance, and injury." 46 Cal.4th at 320, 93 Cal.Rptr.3d 559, 207 P.3d 20 . . . .

Waller v. Hewlett-Packard Co., 295 F.R.D. 472, 476 (2013).[30] As the Ninth Circuit has clarified, *Mazza*'s dicta regarding reliance "taken in context signifies only that it must be possible that class members have suffered injury, not that they did suffer injury, or that they must prove such injury at the certification phase." *Torres v. Mercer Canyons Inc*., 835 F.3d 1125, 1137 n. 6 (9th Cir. 2016). Polaris's articulation of the law surrounding individualized damages issues, materiality, reliance, standing, and consumer preference is simply wrong as a matter of law and need not be given weight. The Ninth Circuit and California Supreme Court have spoken to this.

2. Plaintiffs Present A Feasible Damages Methodology

The simplicity of Plaintiffs' proposed damages methodology has clearly made Polaris squirm. REDACTED PURSUANT TO PROTECTIVE ORDER, plus an unknown but clearly large amount of attorneys' fees associated therewith in presenting the opinions of Dr. Langer and Dr. Hanssens, both of which fly in the face of binding California Supreme Court and Ninth Circuit precedent as well as federal regulatory law and, more importantly are based on a factually erroneous

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this Court to analyze unnamed class members' Article III standing."); *Aho v. AmeriCredit Fin. Servs., Inc*., 277 F.R.D. 609, 623 (S.D. Cal. 2011); and *In re Google AdWords Litig*., 2012 WL 28068 at *10 (N.D .Cal. Jan. 5, 2012).

[30] *See also Schramm v JPMorgan Chase Bank, N.A*., Case No. 09–09442 JAK (FFMx) 2011 WL 5034663 *5 (C.D. Cal. Oct. 19, 2011); *O'Shea v. Epson America, Inc*., Case No. 09–8063 PSG 2011 WL 4352458 *3-4 (C.D. Cal. Sept. 19, 2011).

"but for" aka "counterfactual" scenario that cannot legally exist in the market. The crux of the dispute can be boiled down to how a Court should determine damages in this case. Ninth Circuit precedent holds that damages are a post-certification issue in any respect, and this issue need not be addressed now. *Pulaski & Middleman, LLC v. Google, Inc.*, 802 F.3d 979, 987 (9th Cir. 2015); *Leyva v. Medline Industries, Inc.*, 716 F.3d 510, 513–14 (9th Cir. 2013). Differences in damage calculations do not defeat class certification after *Comcast*. *Jimenez v. Allstate Insurance Co*., 765 F.3d 1161, 1167 (9th Cir. 2014); *Wolf v. Hewlett Packard Company*, 2016 WL 7743692 *13-14 (C.D. Cal. Sept. 1, 2016) (certifying a class action under the CLRA for product mislabeling even after striking plaintiff's damages expert report).

To be clear, *Comcast Corp. v. Behrend*, 133 S. Ct. 1426 (2013) did not specify the level of detail required by Plaintiffs to satisfy their Rule 23 burden. The decision is most unhelpful in its ambiguities, presumably leaving a great deal of discretion with the District Courts. In the wake of this decision, Courts have grappled with the standards, imposing a wide degree of specificity ranging from little to none at all,[31] to a great deal of pre-certification workup.[32] Helpful to shaping the standard is *Leyva*, where the Ninth Circuit analyzed *Comcast* and held that plaintiffs must only show that "damages stemmed from the defendant's actions that created the legal liability" and that the amount of damages, even if it is an individual question, does not defeat certification. *Id*. at 514.[33] It should be stressed that the Court need not decide this dispute now and should certify the class regardless of which side is correct or whether each side is correct in their own way

[31] *See Ewert v. eBay, Inc*., 2010 WL 4269259 at *11-12 (N.D. Cal. Oct. 25, 2010); *Waller* at 489-90 (citing *Chavez v. Blue Sky Nat. Beverage Co.*, 268 F.R.D. 365, 379 (N.D. Cal. 2010) and *Leyva v. Medline Industries Inc*., 716 F.3d 510, 513–14 (9th Cir.2013)); *Forcellati v. Hyland's, Inc*., 2014 WL 1410264 at *9 (C.D. Cal. April 9, 2014); and *Morales*, at *7-10.

[32] *In re ConAgra Foods, Inc.*, 302 F.R.D. 537, 581 (C.D. Cal. 2014); *In re ConAgra Foods, Inc*., 90 F.Supp.3d 919 (C.D. Cal. 2015).

[33] "In this circuit, however, damage calculations alone cannot defeat certification." *Yokoyama v. Midland Nat'l Life Ins*. Co., 594 F.3d 1087, 1094 (9th Cir.2010).

leaving a jury to decide. Nonetheless, Plaintiffs feel compelled to address the onslaught of attacks levied by Polaris, particularly given how very wrong they are.

As discussed *infra*, Polaris is not permitted to legally sell or manufacture UTVs in the United States unless the ROPS comply with either OSHA or ISO standards. Accordingly, every Class Vehicle is defective insofar as it would need to be retrofitted with a replacement ROPS to meet the standard. Consumer demand for the mandatory safety regulation can be inferred by the existence of the federally mandated standard, given that the standard under *Stearns*, *In re Tobacco II Cases* and their progeny are those of an objective reasonable consumer. Polaris would have to convince this Court that it was objectively unreasonable and immaterial to a reasonable consumer to rely on manufacturers of vehicles to adhere to federal safety mandates. No Court in the country would hold that, but that is Polaris's actual task, because Polaris would have to prove that the OSHA sticker that Plaintiffs relied on was immaterial to consumers.

Rather than presenting this analysis genuinely – i.e. presenting it as a mandatory safety regulation, Polaris instead presents the issue as a "voluntary standard" which Polaris would have the option of not following. Both of its damages experts were under the mistaken impression that the OSHA standards were not mandatory. Therefore, both experts based their analysis on an erroneous counterfactual–that Polaris could simply remove the OSHA sticker or replace it with a different sticker and continue selling the vehicles as is—and accordingly their reports are red herrings. Dr. Langer acknowledged that [redacted] Langer Dep. 107:16-110:10 [redacted] I

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But replacing the ROPS sticker is not going to make them suddenly comply with OSHA.[34] The stickers will not increase the strength of the ROPS three-fold to bring the vehicles into compliance with regulations. What would in fact bring the vehicles into compliance would be replacing the ROPS with an OSHA-compliant structure, i.e. the very proposal made by Dr. Kneuper as to how to calculate classwide damages. Dr. Hanssens REDACTED PURSUANT TO PROTECTIVE ORDER Hanssens Depo 74:5-75:18, 146:13-147:14, 156:13-164:11 REDACTED PURSUANT TO PROTECTIVE ORDER

Determining consumer demand, for which the CPSC is effectively acting as a proxy to the objective reasonable consumer, is relatively easy to do so by simply looking at the regulatory history surrounding the 2009 rulemaking. 16 CFR 1422, Oct. 27, 2009; and 16 CFR 1422, October 28, 2009. Obviously the CPSC believed this to be very important, *so important that the agency does not even permit UTVs to be sold into the market without OSHA/ISO compliant ROPS installed by manufacturers*. It follows therefore that using Dr. Langer's and Dr. Hanssens' own proposed methodology, REDACTED PURSUANT TO PROTECTIVE ORDER.

[34] REDACTED PURSUANT TO PROTECTIVE ORDER. A jury should hear that this is Polaris' view towards its customers and decide Polaris' fate.

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[redacted] It also follows that cost of compliance methodology would require actually testing for, building and installing a compliant ROPS. Otherwise, the vehicles cannot be legally sold in the first place. This is the true cost of compliance. Once these disputes are accurately distilled using the correct legal framework and counterfactuals, both sides' experts appear to agree on a methodology in principle.

Finally, we circle back to *Nguyen v. Nissan North America, Inc.*, 932 F.3d 811 (9th Cir. 2019), the most recent binding authority on the appropriateness of a recall model approach to damages in a vehicle class action. Polaris takes the position in its brief that *Nguyen* does not set forth the correct methodology in this action because Class Vehicles are not defective. This is wrong. All Class Vehicles are defective, because they are unfit to be legally manufactured and released into the marketplace in their present state – i.e. without an OSHA/ISO compliant ROPS. Rather than imposing a draconian punishment of requiring a nationwide recall and retrofit of every vehicle (as the CPSC would no doubt impose), Plaintiffs are seeking something less cumbersome–give Class Members the money it would cost to pay for the retrofit, so they receive the benefit for which they bargained when they bought a Class Vehicle that should have come with an OSHA-compliant ROPS and let the market dictate what happens from there. This will be *less* costly to Polaris. It is sensible, manageable, and legally far more tenable than Polaris's position, which asks the Court to infer that consumers don't place any value on federal safety mandates for UTVs despite their documented propensity to kill occupants in rollovers.

Plaintiffs' damages methodology is feasible and supported by binding Ninth Circuit, federal regulatory, and California Supreme Court precedent. Polaris's position is based on an irrelevant and incorrect counterfactual that is not legally permissible. Plaintiffs easily satisfy the predominance standards.

E. Hybrid Certification is Warranted

Polaris's opposition to certification of a hybrid class action makes little sense. The FAL and UCL are both equitable statutes providing for recovery of

restitution, injunctive relief, attorneys' fees and costs of suit. *Mohebbi v. Khazen*, 50 F.Supp.3d 1234 (N.D. Cal. 2014); Cal. *Bus. & Prof. Code* §§ 17203 and 17535. Public injunctive relief is indeed a codified substantive right of California consumers under the UCL, a distinct remedy unavailable under the CLRA. *McGill v. Citibank, N.A.*, 2 Cal.5th 945 (2017). The Ninth Circuit recently held (in a decision which post-dates *Moheb*) that a previously deceived consumer has standing to seek an injunction. *Davidson v. Kimberly-Clark Corp*., 873 F.3d 1103, 1115 (9th Cir. 2017); *see also Henderson v. Gruma Corp.,* No. CV 10-04173 AHM (AJWx), 2011 WL 1362188, at *2-3, 7-8 (C.D. Cal. Apr. 11, 2011)

Injunctive relief is not only a procedural right set forth under Rule 23(b)(2), but also a substantive unwaivable right under the UCL. 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 complied with mandatory safety regulations imposed by the CPSC or at the very least didn't lie about such compliance. Hybrid certification will ensure that all aspects of Plaintiffs' substantive claims are given credence.[35] Moreover, it is especially warranted in this action, as Polaris has continued to misrepresent mandatory safety features to its customers and the CPSC despite what has happened throughout this litigation, and clearly will continue to do so until forced otherwise.

IV. CONCLUSION

Again, this case is exactly why class actions exist and are so important to protecting consumer rights. Denying class certification would be essentially to hold that it is impossible to certify any consumer class action based on product mislabeling, or failure to adhere to federal safety guidelines. The Ninth Circuit and California Supreme Court clearly believe otherwise. Polaris has given no legitimate reason to deny class certification, and clearly does not deserve a free pass for what it has done. Plaintiffs' Motion should be granted.

[35] *See Raffin v. Medicredit, Inc*., CV 15-4912-GHK (PJWx) 2017 WL 131745 (C.D. Cal. Jan. 3, 2017)

Dated: April 14, 2021

Law Offices of Todd M. Friedman, P.C.

/s/ Todd M. Friedman
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CERTIFICATE OF SERVICE

Filed electronically on this 14th Day of April, 2021, with:

United States District Court CM/ECF system

Notification sent electronically on this 14th Day of April, 2021, to:

Honorable Judge Fernando L. Aenlle-Rocha
United States District Court
Central District of California

And all Counsel of Record as recorded on the Electronic Service List.

s/Todd M. Friedman
Todd M. Friedman, Esq.