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20 Attorneys for Defendants Polaris Industries Inc.,  
21 Polaris Sales Inc., and Polaris Inc. (f/k/a Polaris  
22 Industries Inc.)

23 **IN THE UNITED STATES DISTRICT COURT**  
24 **FOR CENTRAL DISTRICT OF CALIFORNIA**

25 Guzman and Albright,  
26 individually on behalf of themselves  
27 and all others similarly situated,

28 Plaintiffs,

v.

Polaris Industries Inc., *et al.*,

Defendants.

CASE NO. 8:19-cv-01543-FLA-KES

**STATEMENT OF  
UNCONTROVERTED FACTS  
AND CONCLUSIONS OF LAW IN  
SUPPORT OF POLARIS'S  
MOTION FOR SUMMARY  
JUDGMENT**

Complaint Filed Date: August 8, 2019

Judge: Fernando L. Aenlle-  
Rocha

Hearing Date: April 9, 2021

Time: 1:30 PM

Courtroom: Courtroom 6B

1 Pursuant to L.R. 56-1, Defendants Polaris Industries Inc., Polaris Sales Inc., and  
2 Polaris Inc. (f/k/a Polaris Industries Inc.) (collectively, “Polaris” or “Defendants”)  
3 submit the following Statement of Uncontroverted Facts and Conclusions of Law. All  
4 exhibits cited in this Statement are attached to the Declaration of David A. Klein in  
5 Support of Defendants’ Motion for Summary Judgment. Undisputed Facts 1 through 7  
6 are included for context only, and are not material to Polaris’s Motion for Summary  
7 Judgment.

8 **I. UNCONTROVERTED FACTS**

9 **A. Background.**

<b>Undisputed Fact</b>	<b>Evidence</b>
10 1. Polaris sells various models of off-road 11 vehicles that allow occupants to sit side by side.	Ex. 1, Keller Dep. at 21:24-22:6.
12 2. Polaris’s side-by-side vehicles have a variety 13 of different designs and features.	<i>Id.</i>
14 3. Polaris’s side-by-side vehicles are sold under 15 the brand names “RZR,” “Ranger” and “General.”	<i>Id.</i>
16 4. Each side-by-side vehicle is equipped with a 17 roll cage, known as a rollover protective structure or 18 “ROPS.”	Ex. 2, Deckard Dep. at 69:15-70:7; 71:2-10.
19 20 5. The shape, configuration, and design of 21 ROPS differ among Polaris side-by-side vehicle models.	<i>Id.</i>


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<b>Undisputed Fact</b>	<b>Evidence</b>
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.	Ex. 1, Keller Dep. at 14:14-15:16, 57:3-58:5.
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.	Ex. 3, Wosick Dep. at 34:23-35:9; Ex. 2, Deckard Dep. at 18:12-18.

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**B. Plaintiffs' Claims.**

<b>Undisputed Fact</b>	<b>Evidence</b>
8. Plaintiff Jeremy Albright asserts claims related to his February 2016 purchase of a model year 2016 Polaris RZR 4 XP.	ECF No. 39, 2d Am. Compl. § V.E. ¶ 44; Ex. 4, Albright Dep. at 11:19-21.
9. Plaintiff Paul Guzman asserts claims in connection with his November 2018 purchase of a model year 2018 Polaris RZR XP.	ECF No. 39, 2d Am. Compl. § V.E. ¶ 48; Ex. 5, Guzman Dep. at 9:14-17.
10. The RZR's plaintiffs purchased cost over \$19,000 each.	Ex. 10, Guzman Resp. to Interrog. No. 2; Ex. 12, Albright Resp. to Interrog. No. 2.
11. Plaintiffs' complaint alleges that a label or sticker on the plaintiffs' RZR's misrepresented that the vehicles' ROPS meet the requirements of 29 C.F.R. § 1928.53.	ECF No. 39, 2d Am. Compl. § 1 ¶¶ 1, 4.
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."	<i>Id.</i> ¶ 4.
13. Plaintiffs' complaint alleges: "None of the Class Vehicles sold by Polaris meet the OSHA requirements of 29 C.F.R. § 1928.53."	<i>Id.</i> ¶ 5.

Undisputed Fact	Evidence
<p>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><i>Id.</i> ¶ 6.</p>
<p>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>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>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. &amp; Prof. Code § 17200 <i>et. seq.</i>; and (3) False Advertising Law (FAL), Cal. Bus. &amp; Prof. Code § 17500 <i>et. seq.</i></p>	<p>ECF No. 39, 2d Am. Compl. § VII ¶¶ 85-136; ECF No. 26, 1st Am. Compl. § VII ¶¶ 79-115.</p>

<b>Undisputed Fact</b>	<b>Evidence</b>
17. The title of plaintiffs’ Second Amended Complaint is “Second Amended Complaint for Damages and Injunctive Relief.”	ECF No. 39, 2d Am. Compl., Cover Page.
18. Plaintiffs “seek damages” as part of their CLRA claim.	<i>Id.</i> § VII ¶ 99; ECF No. 26, 1st Am. Compl. § VII ¶ 89.
19. Plaintiffs request certification of a Rule 23(b)(3) class “for monetary damages.”	ECF No. 39, 2d Am. Compl. § VI ¶ 75.
20. Plaintiffs’ complaint alleges that “[c]lass-wide damages are essential to induce Defendants to comply with the federal and state laws alleged in the Complaint.”	<i>Id.</i> ¶ 66.
21. Plaintiffs’ complaint alleges that “both diversity jurisdiction and the damages threshold under the Class Action Fairness Act of 2005 (‘CAFA’) are present.”	<i>Id.</i> § III ¶ 15.
22. Plaintiffs’ complaint alleges that “consumers are damaged based on the benefit of the bargain.”	<i>Id.</i> § V.D. ¶ 42, § V.E. ¶ 56, § VII ¶¶ 98, 117, 134.
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.”	<i>Id.</i> § VI ¶ 67.
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.”	Ex. 13, Plaintiffs’ Initial Disclosures at 8-9.

<b>Undisputed Fact</b>	<b>Evidence</b>
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)."	ECF No. 39, 2d Am. Compl. § VI ¶ 68.

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**C. Paul Guzman's Testimony.**

<b>Undisputed Fact</b>	<b>Evidence</b>
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.	Ex. 5, Guzman Dep. at 45:14-24.
27. Guzman had most recently driven his RZR in July 2020, and also drove his vehicle from October 2019 to March 2020.	Ex. 9, Guzman Supp. Resp. to Interrog. No. 12; Ex. 5, Guzman Dep. at 46:10-16.
28. Guzman drove his vehicle the weekend before his deposition.	Ex. 5, Guzman Dep. at 53:19-54:1.
29. Guzman planned to continue driving his RZR.	<i>Id.</i>
30. Guzman has two children who have ridden in his Polaris RZR approximately 40 times.	<i>Id.</i> at 22:13-23.
31. Guzman's children were 4 and 6 years old at the time of his deposition.	<i>Id.</i> at 22:13-17.
32. Guzman's wife also has been a passenger in his RZR.	<i>Id.</i> at 32:13-18



<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           33. Guzman testified regarding his children and</p> <p>2 wife being passengers in his RZR:</p> <p>3</p> <p>4           Q. Would you take your children out for a ride</p> <p>5 in a RZR vehicle if you thought it was unsafe</p> <p>6 to do so, Mr. Guzman?</p> <p>7           A. No.</p> <p>8           ...</p> <p>9           Q. Would you allow your wife to drive or be</p> <p>10 a passenger in your RZR vehicle if you</p> <p>11 thought it were unsafe for her to do so?</p> <p>12           THE WITNESS: No.</p>	<p><i>Id.</i> at 23:21-24; 33:16-20 (objection omitted).</p>
<p>13           34. Guzman testified about his experience</p> <p>14 owning his RZR vehicle:</p> <p>15           Q. And do you like your Polaris RZR vehicle?</p> <p>16           A. Yes.</p> <p>17           Q. What are some of the things that you like</p> <p>18 or love about your Polaris vehicle?</p> <p>19           A. Just cruising around in the desert with</p> <p>20 family. You know, taking little trails; going</p> <p>21 around.</p>	<p><i>Id.</i> at 12:7-13.</p>
<p>22           35. Guzman testified regarding his RZR vehicle</p> <p>23 meeting his expectations:</p> <p>24           Q. Has your vehicle met your expectations?</p> <p>25           A. Yes.</p> <p>26</p> <p>27</p> <p>28</p>	<p><i>Id.</i> at 12:7-15.</p>

<b>Undisputed Fact</b>	<b>Evidence</b>
36. Guzman has not had “any incident involving [the] rollover protective structure on [his] RZR vehicle.”	Ex. 10, Guzman Resp. to Interrog. No. 10; Ex. 5, Guzman Dep. at 13:5-12, 70:21-71:11.
37. Guzman testified regarding any complaints about his RZR vehicle:  Q. Have you ever complained to anyone about your RZR vehicle?  A. No.  ...  Q. Did you ever send a complaint or an e-mail or other communication to Polaris about your vehicle?  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.	Ex. 5, Guzman Dep. at 61:17-62:1; 69:1-10

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           38. Guzman testified regarding any warranty</p> <p>2 claim for his RZR vehicle:</p> <p>3</p> <p>4           Q. Have you ever made any claim under your</p> <p>5 service contract for your Polaris RZR</p> <p>6 vehicle?</p> <p>7           A. I haven't.</p> <p>8           Q. How about have you ever made any</p> <p>9 warranty claim to Polaris under your vehicle</p> <p>10 — for your vehicle?</p> <p>11           A. No.</p> <p>12           Q. And when I asked about the warranty</p> <p>13 claim, I meant under the Polaris warranty.</p> <p>14           A. Yeah. I've never taken it to anybody.</p>	<p><i>Id.</i> at 96:13-22.</p>
<p>15           39. Guzman testified regarding the purchase of</p> <p>16 his RZR vehicle and the ROPS label:</p> <p>17           Q. And when you walked to the back [of the</p> <p>18 vehicle], did you actually read the sticker?</p> <p>19           A. No. I just saw that it said "OSHA" on it.</p> <p>20 So I said, "Okay, it's good."</p>	<p><i>Id.</i> at 141:7-10</p>
<p>21           40. Guzman further testified regarding the</p> <p>22 purchase of his RZR vehicle and the ROPS label:</p> <p>23           Q. Did you read the entire sticker?</p> <p>24           A. No. Like I said, I don't remember when I</p> <p>25 bought it, but I noticed that it had an OSHA</p> <p>26 sticker on it.</p>	<p><i>Id.</i> at 28:1-4.</p>

<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           41. Guzman testified about his purchasing</p> <p>2 experience:</p> <p>3</p> <p>4           Q. Okay. When you purchased your vehicle,</p> <p>5 did you notice anything on this sticker or read</p> <p>6 anything on this sticker other than “Polaris”</p> <p>7 and “OSHA”?</p> <p>8           A. Yeah. That was pretty much it. That is all</p> <p>9 I was looking for. Because there is really</p> <p>10 nothing else to look at. As long as it’s OSHA-</p> <p>11 approved, everything on that sticker is legit.</p>	<p><i>Id.</i> at 148:14-20</p>
<p>12           42. Guzman also testified about his purchasing</p> <p>13 experience:</p> <p>14           Q. . . . Did you notice any other words on the</p> <p>15 OSHA sticker besides “OSHA” when —</p> <p>16 before you purchased the vehicle?</p> <p>17           A. Oh. Oh, I noticed in the top of it, it said</p> <p>18 “Polaris.”</p> <p>19           Q. Okay. So it said “OSHA,” and it said</p> <p>20 “Polaris”?</p> <p>21           A. Right.</p> <p>22           Q. Do you recall any other words?</p> <p>23           A. No, I don’t.</p>	<p><i>Id.</i> at 141:13-142:3.</p>
<p>24           43. When asked whether, “[p]rior to purchasing</p> <p>25 your vehicle, did you see any advertising brochures or</p> <p>26 marketing materials that discussed the rollover protective</p> <p>27 structure?,” Guzman answered: “No.”</p> <p>28</p>	<p><i>Id.</i> at 117:10-118:6.</p>

<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1                   44. Guzman testified further about his</p> <p>2 purchasing experience:</p> <p>3</p> <p>4                   Q. What did the sticker say that you saw on</p> <p>5 the off-road vehicle?</p> <p>6                   A. It said that — all I saw that I recognized</p> <p>7 was “OSHA” on — like “OSHA-approved.”</p> <p>8                   Q. Okay. It’s your testimony that the sticker</p> <p>9 used the term — or the words “OSHA-</p> <p>10 approved.”</p> <p>11                   A. Right.</p> <p>12                   Q. And what else — did the sticker say</p> <p>13 anything else?</p> <p>14                   A. Not that I remember.</p>	<p><i>Id.</i> at 26:6-15.</p>
<p>15                   45. Guzman testified as to his understanding of</p> <p>16 the terms “OSHA” and “OSHA-approved”:</p> <p>17                   Q. And when you saw “OSHA,” what did you</p> <p>18 understand that to mean?</p> <p>19                   A. That it’s pretty much safe; that it’s OSHA-</p> <p>20 approved; that it’s safe for — to use.</p> <p>21                   Q. And when you say “it’s OSHA-approved,”</p> <p>22 what does that mean?</p> <p>23                   A. That it’s safe, that the cage is good, you</p> <p>24 know. Just like anything else. Like any tool</p> <p>25 that you buy. It’s OSHA-approved, that it’s</p> <p>26 okay to use, and nothing is going to happen to</p> <p>27 it.</p> <p>28</p>	<p><i>Id.</i> at 142:4-13.</p>

<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           46. Guzman further testified as to his</p> <p>2 understanding of the term “OSHA-approved”:</p> <p>3</p> <p>4           Q. Okay. And when it said “OSHA-</p> <p>5 approved,” what did you understand that to</p> <p>6 mean?</p> <p>7</p> <p>8           A. Pretty much everything that is inside the</p> <p>9 Polaris that they made is secure and safe. Or,</p> <p>10 you know, I wouldn't have gotten it if — if my</p> <p>11 kids were going to be in it, I wouldn't have</p> <p>12 bought it if it didn't have OSHA stickers. Just</p> <p>13 like tools and stuff like that, they all got</p> <p>14 OSHA stickers in them.</p>	<p><i>Id.</i> at 26:16-23; <i>see also</i></p> <p><i>id.</i> at 148:25-149:7.</p>
<p>15           47. When asked “[a]nd other than the words</p> <p>16 ‘OSHA-approved,’ were there any other words on the</p> <p>17 sticker that you recall?”, Guzman answered “[n]o.”</p>	<p><i>Id.</i> at 27:22-25.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1</p> <p>2 48. Guzman further testified about his</p> <p>3 understanding of “OSHA-approved”:</p> <p>4 Q. And was it your understanding of the</p> <p>5 sticker that when it said “OSHA-approved,”</p> <p>6 that that applied to the entire vehicle or just</p> <p>7 some part of the vehicle?</p> <p>8 A. I would assume it would be the whole</p> <p>9 vehicle.</p> <p>10 Q. Was that your understanding when you</p> <p>11 saw the sticker?</p> <p>12 A. Yes.</p> <p>13 Q. Okay. Your understanding was that OSHA</p> <p>14 had approved the entire vehicle?</p> <p>15 A. Right.</p>	<p><i>Id.</i> at 27:10-21.</p>
<p>16 49. Since Guzman only read the words “OSHA”</p> <p>17 and “Polaris” on the label, he did not read the label’s</p> <p>18 language referring to 29 C.F.R. § 1928.53.</p> <p>19</p>	<p><i>Id.</i> at 26:8-15, 27:22-25,</p> <p>141:13-142:3, 148:14-</p> <p>20 20.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           50. Guzman testified as to his knowledge of 29</p> <p>2 C.F.R. § 1928.51-.53:</p> <p>3</p> <p>4           Q. Mr. Guzman, there is a — there is an</p> <p>5 OSHA regulation that has a certain number,</p> <p>6 and that number is 29 CFR Section 1928.53.</p> <p>7 Have you ever read or reviewed that</p> <p>8 regulation?</p> <p>9           A. No.</p> <p>10           Q. How about 29 CFR Section 1928.52.</p> <p>11           A. No.</p> <p>12           Q. And how about just one more, OSHA</p> <p>13 regulation 29 CFR Section 1928.51?</p> <p>14           A. No.</p> <p>15           Q. Do you know what those regulations relate</p> <p>16 to?</p> <p>17           A. I don't.</p>	<p><i>Id.</i> at 29:12-30:6.</p>
<p>18           51. When Guzman was asked “do you know</p> <p>19 what the OSHA requirements of 29 CFR 1928.53 are?”,</p> <p>20 he testified “[n]o.”</p>	<p><i>Id.</i> at 145:19-21.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1</p> <p>2           52. When asked about the allegation in his</p> <p>3 complaint that he understood the language to mean the</p> <p>4 vehicle's ROPS structure met federal safety standards,</p> <p>5 Guzman testified:</p> <p>6           Q. What specific federal standards for safety</p> <p>7 are you referring to?</p> <p>8           A. I don't remember. I looked it up at one time</p> <p>9 as to what it meant, and I don't remember.</p> <p>10          Q. Okay. Can you — do you remember what</p> <p>11 you looked at?</p> <p>12          A. What the ROPS meant on an OSHA</p> <p>13 sticker.</p> <p>14          Q. But sitting here today, is there any specific</p> <p>15 federal standard for safety that you're</p> <p>16 referring to in paragraph 50 [of the Second</p> <p>17 Amended Complaint]?</p> <p>18          A. Yes. I'm assuming that it would be the</p> <p>19 cage that is strong enough to hold itself if</p> <p>20 anything did happen to it.</p> <p>21          Q. Anything else?</p> <p>22          A. No.</p> <p>23</p> <p>24</p> <p>25</p> <p>26</p> <p>27</p> <p>28</p>	<p><i>Id.</i> at 160:3-22.</p>

<b>Undisputed Fact</b>	<b>Evidence</b>
<p>53. When asked about the allegation in his complaint that the label at issue was false and misleading, Guzman testified:</p> <p>Q. Okay. Sitting here today, is there anything on the sticker that you claim is false or misleading?</p> <p>A. I don't know.</p> <p>Q. And is there anything that you could point us to on the sticker, sitting here today, that you claim is false or misleading?</p> <p>A. No. I would have to look at it.</p> <p>...</p> <p>Q. Okay. And I will give you a chance to read that sticker.</p> <p>A. Okay. "This ROPS," which is R-O-P-S, "structure meets OSHA requirements of 29 CRF (sic) 1928.53."</p> <p>Q. Okay. And do you know what the OSHA requirements of 29 CFR 1928.53 are?</p> <p>A. No.</p> <p>Q. Okay. Is there anything on this sticker that, sitting here today, you claim is false or misleading?</p> <p>A. No.</p>	<p><i>Id.</i> at 143:12-19, 145:14-25.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           54. Guzman further testified as to his allegation</p> <p>2 that the sticker was false:</p> <p>3</p> <p>4           Q. Okay. Sitting here today, do you know —</p> <p>5 can you explain what is false about — what</p> <p>6 you claim is false about the sticker?</p> <p>7</p> <p>8           A. No. I couldn't tell you.</p> <p>9</p> <p>10           ...</p> <p>11           Q. Mr. Guzman, sitting here today, can you</p> <p>12 explain to us how or why you believe the</p> <p>13 sticker is false?</p> <p>14           A. I don't know. I don't know.</p> <p>15           Q. You personally have no understanding of</p> <p>16 how the sticker is allegedly false; is that</p> <p>17 correct?</p> <p>18           A. Yes.</p>	<p><i>Id.</i> at 193:20-23, 199:7-13</p>
<p>19           55. Guzman further testified as follows:</p> <p>20           Q. . . . But sitting here today, you cannot tell</p> <p>21 us how or why you believe the sticker is false;</p> <p>22 correct?</p> <p>23           A. That's — yeah, that's what I — that's what</p> <p>24 I — my attorney has told me about.</p>	<p><i>Id.</i> at 198:12-16</p>

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**D. Jeremy Albright's Testimony.**

<b>Undisputed Fact</b>	<b>Evidence</b>
56. Plaintiff Jeremy Albright has driven his 2016 Polaris RZR 4 XP for over 5,500 miles and 2,000 hours.	Ex. 11, Albright Supp. Resp. to Interrog. No. 1; <i>see also</i> Ex. 4, Albright Dep. at 36:1-3.
57. Albright has continued to drive his RZR after filing this lawsuit.	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.
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.	Ex. 4, Albright Dep. at 13:25-14:10.

<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           59. Mr. Albright testified about using the RZR</p> <p>2 vehicle with his family:</p> <p>3</p> <p>4           Q. And when you say you love your Polaris</p> <p>5 vehicle, what have you loved about it?</p> <p>6           A. I just love spending time with my kids in</p> <p>7 it. We have a good time in it.</p> <p>8           Q. And how old are your children, sir?</p> <p>9           A. One turned 7 yesterday. And one turns 12.</p> <p>10 So 11 right now.</p> <p>11           Q. Okay. And I take it you ride with your</p> <p>12 children in your Polaris vehicle?</p> <p>13           A. Yes, sir.</p> <p>14           Q. How often do you do that?</p> <p>15           A. Every couple months or so.</p>	<p><i>Id.</i> at 14:11-22.</p>
<p>16           60. When asked “[i]n general, would you say</p> <p>17 that your Polaris RZR has met your expectations since</p> <p>18 you purchased it,” Albright testified “[y]es.”</p>	<p><i>Id.</i> at 191:25-192:3.</p>
<p>19           61. Albright describes his RZR as being in</p> <p>20 “[g]reat” condition.</p>	<p><i>Id.</i> at 47:21-23.</p>
<p>21           62. Albright agreed that his RZR has “been</p> <p>22 reliable.”</p>	<p><i>Id.</i> at 133:6-8.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
63. Albright has not had any problems or malfunctions with, or injuries from, his RZR or its ROPS.	Ex. 12, Albright Resp. to Interrog. No. 10; Ex. 4, Albright Dep. at 93:8-12, 95:3-12.

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>64. Albright testified regarding any complaints about his RZR vehicle:</p> <p>Q. Have you ever made any complaints or filed any claims relating to an off-road vehicle you've owned?</p> <p>A. No.</p> <p>Q. Have you ever contacted Polaris about your RZR vehicle?</p> <p>A. No.</p> <p>Q. Or made a complaint to Polaris?</p> <p>A. No.</p> <p>Q. How about a dealer? Ever complain to a dealer about your Polaris vehicle?</p> <p>A. No.</p> <p>Q. How about an organization like the Better Business Bureau?</p> <p>A. No.</p> <p>Q. Or the Consumer Product Safety Commission?</p> <p>A. No.</p> <p>Q. Okay. Any complaints, issues, concerns that you have ever made to any organization or entity about your Polaris vehicle?</p> <p>A. No.</p>	<p>Ex. 4, Albright Dep. at 75:5-25.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
65. When asked “[d]o you consider Polaris off-road vehicles to be less safe than other vehicles,” Albright testified “[n]o.”	<i>Id.</i> at 94:25-95:2.
66. When asked, “[d]o you consider the vehicle to be safe?”, Albright testified “I do.”	<i>Id.</i> at 15:5-6.
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.	<i>Id.</i> at 95:3-12.

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Undisputed Fact	Evidence
<p>68. Albright testified that when we purchased his vehicle, he read a “portion” of the ROPS label:</p> <p>Q. Okay. When you were at Bert’s Mega Mall to purchase your vehicle, did you read the entire sticker or just a portion of it?</p> <p>A. A portion.</p> <p>...</p> <p>Q. Mr. Albright, you said that before you purchased your vehicle, you only read a portion of the sticker; is that correct?</p> <p>A. Yes.</p> <p>Q. All right. What is the portion that you read?</p> <p>A. The top left, the ROP structure meets OSHA requirements of C9 CFR [sic].</p> <p>Q. Of 29 CFR Section 1928.53?</p> <p>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.</p> <p>Q. Okay. So you didn’t read anything about the vehicle model or the testing weight or anything like that?</p> <p>A. I did not.</p>	<p><i>Id.</i> at 167:9-13, 171:2-172:16.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           69. Albright testified as to his understanding of</p> <p>2 the language he read on the label:</p> <p>3</p> <p>4           Q. Okay. And then the portion that you read</p> <p>5 in the upper left-hand corner, beginning with</p> <p>6 “This ROPS structure meets,” that’s the</p> <p>7 portion that your testimony — your testimony</p> <p>8 is that you understood that to mean OSHA-</p> <p>9 approved?</p> <p>10           A. Correct.</p> <p>11           Q. Okay. Did you think it meant anything</p> <p>12 else?</p> <p>13           A. No.</p>	<p><i>Id.</i> at 172:25-173:8.</p>
<p>14           70. Albright testified as to his recollection of the</p> <p>15 content of the label:</p> <p>16           Q. When was the first time that you saw that</p> <p>17 label?</p> <p>18           A. I saw it at the dealer.</p> <p>19           ...</p> <p>20           Q. Okay. And do you recall what the label</p> <p>21 said specifically?</p> <p>22           A. I just remember “OSHA approved,” black</p> <p>23 and white, and it had “Polaris” on it.</p> <p>24           Q. Okay. Do you know whether it used the</p> <p>25 term “approved”?</p> <p>26           A. I am pretty sure it did.</p>	<p><i>Id.</i> at 148:8-23.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           71. Albright further testified as to his</p> <p>2 recollection of the content of the label:</p> <p>3</p> <p>4           Q. Okay. And the sticker on the roll bar, what</p> <p>5 — to the best of your memory, what did it</p> <p>6 say?</p> <p>7           A. “OSHA approved” and “Polaris.”</p>	<p><i>Id.</i> at 149:11-13.</p>
<p>8           72. Albright testified as to his understanding of</p> <p>9 “OSHA approved”:</p> <p>10           Q. Do you have any knowledge of OSHA</p> <p>11 regulations based on purchasing your Polaris</p> <p>12 RZR?</p> <p>13           A. I just knew it was a good standard.</p> <p>14           Q. And what do you mean by that?</p> <p>15           A. I just know to have “OSHA approved,” it</p> <p>16 was built better. Because like some ladders</p> <p>17 you can buy, they are not OSHA-approved</p> <p>18 because they are aluminum. You know, there</p> <p>19 are certain standards that OSHA carries that’s</p> <p>20 normally better than others.</p>	<p><i>Id.</i> at 67:3-12.</p>
<p>21           73. When asked “when you read the rollover —</p> <p>22 the rollover bar sticker and you thought it meant OSHA-</p> <p>23 approved, what specifically did you think it was OSHA</p> <p>24 was approving or had approved,” Albright answered:</p> <p>25 “That it can handle the weight, maybe. I don’t know.</p> <p>26 You know, what do you say? I think it could handle the</p> <p>27 weight so it wouldn’t crush you.”</p>	<p><i>Id.</i> at 164:12-18.</p>

<b>Undisputed Fact</b>	<b>Evidence</b>
74. Albright further testified that he 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.	<i>Id.</i> at 165:14-24.

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1           75. Albright testified as to his knowledge and  
2 understanding of 29 C.F.R. §1928.53:

*Id.* at 65:25-66:15,  
163:5-16, 163:20-23.

3           Q. Okay. Do you know what regulation that  
4 is?

5           A. The one that is on my roll bar?

6           Q. Yes, sir.

7           A. No. I just know it says “OSHA approved.”

8           Q. Okay. You don’t know what — what  
9 specific section or regulation it is?

10          A. No, sir.

11          Q. Okay. And I take it you have never read  
12 that regulation; is that correct?

13          A. I have not.

14          Q. Have you ever read any OSHA regulation  
15 relating to rollover protection systems?

16          A. No.

17          Q. Or the testing of rollover protection  
18 systems?

19          A. I have not.

20          ...

21          Q. Okay. And there is a reference to the  
22 OSHA requirements of 29 CFR Section  
23 1928.53. Do you see that?

24          A. Yes.

25          Q. Okay. Have you ever read Section 29 CFR  
26 — I mean — sorry. Have you ever read  
27 Regulation 29 CFR Section 1928.53?  
28

<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1           A. No.</p> <p>2           Q. Do you know what that regulation</p> <p>3           addresses or concerns?</p> <p>4           A. No.</p> <p>5           ...</p> <p>6           Q. And I take it you've never seen a copy of</p> <p>7           that regulation. Is that fair?</p> <p>8           A. I have not.</p>	
<p>9</p> <p>10           76. When he read the regulation's citation—29</p> <p>11           C.F.R. § 1928.53—on the label, Albright testified: “I</p> <p>12           actually thought that is how much the roll bar cost. I</p> <p>13           thought that was the money sign, actually, CFR. . . . I had</p> <p>14           no clue it was a code of the OSHA.” He testified that</p> <p>15           when he purchased his RZR, he “thought that the sticker</p> <p>16           gave the price of 1,928 dollars and 53 cents for the roll</p> <p>17           bar.”</p>	<p>18           <i>Id.</i> at 173:9-174:5.</p>

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<b>Undisputed Fact</b>	<b>Evidence</b>
<p>1</p> <p>2 77. Albright further testified as to whether he</p> <p>3 knew if his RZR vehicle satisfied the requirements of 29</p> <p>4 C.F.R. § 1928.53:</p> <p>5 Q. Do you personally know whether the</p> <p>6 rollover protective system on your vehicle</p> <p>7 meets the OSHA requirements of 29 CFR</p> <p>8 Section 1928.53?</p> <p>9 A. I don't.</p> <p>10 Q. Okay. Do you know whether the rollover</p> <p>11 protective system structure on any Polaris</p> <p>12 vehicle — RZR vehicle meets the OSHA</p> <p>13 requirements of Section 1928.53?</p> <p>14 A. I do not.</p>	<p><i>Id.</i> at 176:13-21</p>
<p>15 78. When Albright was asked if he had an</p> <p>16 understanding as to what the label means, he testified as</p> <p>17 follows:</p> <p>18 Q. . . . You have an understanding of what the</p> <p>19 sticker means; right?</p> <p>20 A. An understanding? I just thought — you</p> <p>21 know, what I thought. I don't understand it, I</p> <p>22 guess, now that I look at it.</p>	<p><i>Id.</i> at 179:19-24.</p>

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1           79. Asked about his allegation in the complaint  
2 that he would not have purchased the RZR vehicle,  
3 Albright testified:

4           Q. And I guess what I'm asking, Mr. Albright,  
5 is: In this case, is one of your claims that —  
6 that you would have — that you would not  
7 have purchased your vehicle?

8           A. I probably wouldn't have.

9           Q. Okay. And why?

10          A. For safety and life changes.

11          Q. And when you say "life changes," what  
12 does that mean?

13          A. Just different times of life when you're  
14 buying things, you know. I bought it for a  
15 family vehicle and — I don't know, you  
16 know. I would rather have my boys ride dirt  
17 bikes nowadays. It's safer.

18          Q. Okay. Any other reasons besides safety  
19 and life changes?

20          A. Not really.

21          Q. Do you know whether you're making a  
22 claim in this case that you would not have  
23 purchased your vehicle?

24          A. I probably wouldn't have. I mean, it's just  
25 — you're saying that I — if I go back four  
26 years, would I still buy it? I don't know.  
27 Maybe, yeah. Maybe, I wouldn't. I don't —  
28

*Id.* at 221:11-222:14.



Undisputed Fact	Evidence
<p>last time of life, you know. I don't want to buy anything during the corona. I mean, that's — you know, the time of life. It's just when you would buy it. I don't — I can't give you a direct answer on that.</p>	

**II. CONCLUSIONS OF LAW**

1. A district court “shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). Rule 56 mandates summary judgment “against a party who fails to make a showing sufficient to establish the existence of an element essential to that party’s case, and on which that party will bear the burden of proof at trial.” *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A “mere ‘scintilla’ of evidence will be insufficient to defeat a properly supported motion for summary judgment; instead, the nonmoving party must introduce some ‘significant probative evidence tending to support the complaint.’” *Fazio v. City & Cnty. of San Francisco*, 125 F.3d 1328, 1331 (9th Cir. 1997) (quoting *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986)).

2. Polaris is entitled to summary judgment on all of plaintiffs’ claims.

**A. Guzman And Albright Cannot Establish Reliance Under The Undisputed Facts For Several Independent Reasons.**

3. The “‘UCL, FAL, and CLRA have independent requirements for standing, which mandate allegations of actual reliance’” on the allegedly false or misleading representation at issue. (ECF No. 38, MTD Order § III.A at 5.) *See also Stewart v. Electrolux Home Prod., Inc.*, 2018 WL 1784273, at \*4 (E.D. Cal. Apr. 13, 2018); *see also, e.g., Block v. eBay, Inc.*, 747 F. 3d 1135, 1140 (9th Cir. 2014); *Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 793-94 (9th Cir. 2012); *Durell v. Sharp*

1 *Healthcare*, 183 Cal. App. 4th 1350, 1363 (2010); *Resnick v. Hyundai Motor Am., Inc.*,  
2 2017 WL 1531192, at \*19 (C.D. Cal. Apr. 13, 2017); *Sloma v. Mercedes-Benz USA,*  
3 *LLC*, 2009 WL 10675023, at \*3 (C.D. Cal. July 14, 2009); *Sud v. Costco Wholesale*  
4 *Corp.*, 229 F. Supp. 3d 1075, 1082-83 (N.D. Cal. 2017).

5 **1. Guzman Cannot Show Reliance Because He Did Not Read The**  
6 **Label.**

7 4. A plaintiff must read the representation at issue to satisfy the reliance  
8 element of CLRA, UCL, and FAL claims. (ECF No. 38, MTD Order § III.A at 5-6  
9 (dismissing plaintiffs' first amended complaint because they "never allege that *they* read  
10 and relied upon the sticker") (emphasis in original).) *See also Graham v. VCA Antech,*  
11 *Inc.*, 2016 WL 5958252, at \*5 (C.D. Cal. Sept. 12, 2016); *In re iPhone Application*  
12 *Litig.*, 6 F. Supp. 3d 1004, 1022-23 (N.D. Cal. Nov. 25, 2013); *Doe v.*  
13 *SuccessfulMatch.com*, 70 F. Supp. 3d 1066, 1082 (N.D. Cal. 2014).

14 5. Because Guzman admitted he did not read the label, and specifically did  
15 not read the reference to the regulation that is the basis for his claims, he cannot satisfy  
16 the actual reliance element for all of his claims. His claims therefore fail as a matter of  
17 law.

18 **2. Plaintiffs Cannot Show Reliance Because They Did Not Read**  
19 **And Have No Understanding of 29 C.F.R. § 1928.53.**

20 6. Both plaintiffs admit they have never read and do not have any  
21 understanding of the requirements of 29 CFR §1928.53, and so could not have actually  
22 relied on the representation regarding that regulation in purchasing their vehicles. Thus,  
23 all their claims fail as a matter of law.

24 7. Where a representation uses terms that are unlikely to be understood by  
25 the average consumer, it is unlikely to induce reliance or be material to a reasonable  
26 consumer. *Shanks v. Jarrow Formulas, Inc.*, 2019 WL 4398506, at \*5 (C.D. Cal. Aug.  
27 27, 2019); *Johnson v. Mitsubishi Digital Elecs. Am., Inc.*, 578 F. Supp. 2d 1229, 1238  
28 (C.D. Cal. 2008), *aff'd*, 365 F. App'x 830 (9th Cir. 2010).

1                   **3. Plaintiffs Cannot Demonstrate Reliance Because They Do Not**  
2                   **Know How The Label Is Allegedly False Or Misleading.**

3           8. A plaintiff cannot establish actual reliance where he admits he has no  
4 understanding or knowledge as to what is misleading or false about the representation  
5 at issue. *Jones v. ConAgra Foods, Inc.*, 2014 WL 2702726, at \*4 (N.D. Cal. June 13,  
6 2014); *Gaines v. Home Loan Ctr., Inc.*, 2011 WL 13182970, at \*4 (C.D. Cal. Dec. 22,  
7 2011); *see also Townsend v. Monster Beverage Corp.*, 303 F. Supp. 3d 1010, 1046 (C.D.  
8 Cal. 2018); *In re 5-Hour Energy Mktg. & Sales Pracs. Litig.*, 2017 WL 2559615, at \*8  
9 (C.D. Cal. June 7, 2017).

10           9. Guzman and Albright cannot establish reliance because they cannot  
11 identify a misrepresentation and do not understand the label at all. Given their  
12 undisputed admissions, plaintiffs cannot prove the required element of reliance and their  
13 claims fail as a matter of law.

14                   **4. Plaintiffs Cannot Show Reliance Because They Did Not Rely On**  
15                   **The Label’s Actual Language.**

16           10. A plaintiff asserting claims under the UCL, FAL, and CLRA must rely on  
17 a representation’s actual language. *Becerra v. Dr Pepper/Seven Up, Inc.*, 945 F.3d  
18 1225, 1231 (9th Cir. 2019); *Clark v. Hershey Co.*, 2019 WL 6050763, at \*2 (N.D. Cal.  
19 Nov. 15, 2019); *Weiss v. Trader Joe’s Co.*, 2018 WL 6340758, at \*5 (C.D. Cal. Nov.  
20 20, 2018); *Major v. Ocean Spray Cranberries, Inc.*, 2015 WL 859491, at \*4 (N.D. Cal.  
21 Feb. 26, 2015); *Carrea v. Dreyer’s Grand Ice Cream, Inc.*, 2011 WL 159380, at \*6  
22 (N.D. Cal. Jan. 10, 2011); *see also Wilson v. Frito-Lay N. Am, Inc.*, 260 F. Supp. 3d  
23 1202, 1211-12 (N.D. Cal. 2017).

24           11. Both plaintiffs testified that they believed the label said the ROPS were  
25 “OSHA-approved”, a term that appears nowhere on the label. Thus, the undisputed  
26 evidence establishes that plaintiffs did not rely on the label’s actual language,  
27 precluding plaintiffs from satisfying the actual reliance requirement as a matter of law.

1           **B. Plaintiffs Cannot Establish Standing Because They Received The**  
2           **Benefit Of Their Bargain.**

3           12. A plaintiff lacks standing under the UCL if he receives the “benefit of his  
4 bargain.” *Johnson v. Mitsubishi Digital Elec. Am., Inc.*, 365 F. App’x 830, 832 (9th  
5 Cir. 2010); *see, e.g., Baker v. Yamaha Motor Corp.*, 2021 WL 388451, at \*4 (Cal. Ct.  
6 App. Feb. 4, 2021); *Lee v. Toyota Motor Sales, U.S.A., Inc.*, 992 F. Supp. 2d 962, 972  
7 (C.D. Cal. 2014); *Waller v. Hewlett-Packard Co.*, 295 F.R.D. 472, 487-88 (S.D. Cal.  
8 2013); *In re Toyota Motor Corp. Hybrid Brake Mktg., Sales Pracs. & Prods. Liab.*  
9 *Litig.*, 915 F. Supp. 2d 1151, 1159 (C.D. Cal. 2013). That holding applies equally to  
10 claims under the FAL and CLRA. *See Baker*, 2021 WL 388451, at \*4; *Lee*, 992 F.  
11 Supp. 2d at 972-73; *Gaines*, 2011 WL 13182790, at \*5 n.4.

12           13. According to the complaint, plaintiffs’ bargain is predicated on the  
13 representation that the vehicle’s ROPS structure meets OSHA requirements of 29  
14 C.F.R. § 1928.53, but plaintiffs have never read that regulation, do not know what it  
15 means, and could not explain how the label was false or misleading. Given this  
16 summary judgment record, plaintiffs cannot establish that the label’s reference to 29  
17 C.F.R. § 1928.53 was part of any bargain for their vehicles. *See McGee v. S-L Snacks*  
18 *Nat’l*, 982 F.3d 700, 706 (9th Cir. 2020).

19           14. Because both plaintiffs admit their RZR vehicles have met their  
20 expectations after many years of thorough use both before and after they filed suit, they  
21 have enjoyed the benefit of their bargains and cannot recover for any of their claims as  
22 a matter of law.

23           **C. Plaintiffs Cannot Show Causation Because The RZRs Have Met Their**  
24           **Expectations.**

25           15. “To state a claim under section 17200 [the UCL], a plaintiff must allege  
26 that a defendant’s unlawful, unfair, or fraudulent business practices caused her an  
27 economic injury. That causal connection is broken when a complaining party would  
28 suffer the same harm whether or not a defendant complied with the law.” *Williams v.*

1 *Bank of Am., N.A.*, 701 F. App'x 626, 629 (9th Cir. 2017) (citation and internal quotation  
2 marks omitted); *see Hall v. SeaWorld Entm't, Inc.*, 747 F. App'x 449, 452 (9th Cir.  
3 2018); *Saber v. JPMorgan Chase Bank, N.A.*, 2014 WL 2159395, at \*3-4 (C.D. Cal.  
4 May 22, 2014); *see also Clark*, 2019 WL 6050763, at \*2. That is, if a plaintiff would  
5 have purchased a product regardless of the defendant's alleged misrepresentation, that  
6 plaintiff cannot prove causation. This logic applies to FAL and CLRA claims, which  
7 require causation, just as it does to UCL claims.

8 16. Plaintiffs' testimony establishes they would have purchased their RZR's  
9 regardless of the label, and thus they cannot prove causation and have no claims as a  
10 matter of law.

11 **D. Summary Judgment Should Be Granted Against All Of Plaintiffs'**  
12 **Equitable Relief Claims Because They Do Not Plead And Cannot**  
13 **Show They Lack An Adequate Legal Remedy.**

14 17. A party cannot recover equitable relief—including equitable restitution or  
15 injunctive relief—under the CLRA, UCL, and/or FAL in federal court unless they lack  
16 an adequate remedy at law. *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 844 (9th  
17 Cir. 2020); *In re MacBook Keyboard Litig.*, 2020 WL 6047253, at \*3 (N.D. Cal. Oct.  
18 13, 2020); *Huynh v. Quora, Inc.*, 2020 WL 7495097, at \*19 (N.D. Cal. Dec. 21, 2020).

19 18. Plaintiffs bear the burden of showing they lack an adequate remedy at law.  
20 *Sonner*, 971 F.3d at 844; *Gibson v. Jaguar Land Rover N. Am., LLC*, 2020 WL 5492990,  
21 at \*3 (C.D. Cal. Sept. 9, 2020).

22 19. Plaintiffs seeking equitable relief must show that they lack any adequate  
23 remedy at law in their complaint. *Hanna v. Walmart Inc.*, 2020 WL 7345680, at \*6  
24 (C.D. Cal. Nov. 4, 2020); *Williams v. Apple, Inc.*, 2020 WL 6743911, at \*10 (N.D. Cal.  
25 Nov. 17, 2020); *MacBook*, 2020 WL 6047253, at \*3.

26 20. Plaintiffs do not allege facts in the complaint showing they lack an  
27 adequate remedy at law. For this reason alone, summary judgment should be granted  
28 against all of plaintiffs' claims for equitable relief.

1           21. Money damages are a legal remedy that can be awarded as a remedy for  
2 alleged mislabeling or misrepresentation of a product. *E.g.*, *Sonner*, 971 F.3d at 837-  
3 38; *Williams*, 2020 WL 6743911, at \*1-2, 9-10; *Gibson*, 2020 WL 5492990, at \*2-4;  
4 *Gomez v. Jelly Belly Candy Co.*, 2017 WL 8941167, at \*1-2 (C.D. Cal, Aug. 18, 2017).

5           22. Because money damages can be a remedy for plaintiffs’ alleged  
6 misrepresentation claims, they cannot show they lack an adequate remedy law. Thus,  
7 summary judgment should be granted against all of plaintiffs’ claims for equitable  
8 relief.

9           23. Courts have rejected equitable remedies under the UCL and FAL when a  
10 party also brings claims under the CLRA—as plaintiffs do here—because the CLRA  
11 provides for the legal remedy of damages. *See Duttweiler v. Triumph Motorcycles*  
12 *(Am.) Ltd.*, 2015 WL 4941780, at \*8-9 (N.D. Cal. Aug. 19, 2015); *Nguyen v. Nissan N.*  
13 *Am, Inc.*, 2017 WL 1330602, at \*4-5 (N.D. Cal. Apr. 11, 2017); *Bird v. First Alert, Inc.*,  
14 2014 WL 7248734, at \*6 (N.D. Cal. Dec. 19, 2014); *see also Sonner*, 971 F.3d at 838,  
15 844.

16           24. Damages are an adequate legal remedy even if a claim for damages is time-  
17 barred. *See Alvarado v. Wal-Mart Assocs., Inc.*, 2020 WL 6526372, at \*4 (C.D. Cal.  
18 Aug. 7, 2020); *Kitazato v. Black Diamond Hospitality Invs., LLC*, 655 F. Supp. 2d 1139,  
19 1147 (D. Haw. 2009); *see also Sonner*, 971 F.3d at 838, 844.

20           25. Plaintiffs seek or sought damages under the CLRA, and thus have an  
21 adequate remedy at law. Accordingly, summary judgment should be granted against  
22 all of plaintiffs’ claims for equitable relief.

23           26. Plaintiffs’ Second Amended Complaint repeatedly states that they seek  
24 damages, which are an adequate legal remedy. Thus, summary judgment should be  
25 granted against all of plaintiffs’ claims for equitable relief.

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1           **E. Summary Judgment Should Be Granted Against Plaintiffs' Claims**  
2           **For Injunctive Relief Because They Do Not Intend To Buy Polaris**  
3           **RZRs Again.**

4           27. A plaintiff cannot obtain injunctive relief unless they intend to purchase  
5 the product with the alleged misrepresentation again in the future. *E.g., Lanovaz v.*  
6 *Twinings N. Am., Inc.*, 726 F. App'x 590 (9th Cir. 2018); *Yu v. Dr Pepper Snapple*  
7 *Group, Inc.*, 2020 WL 5910071, at \*8 (N.D. Cal. Oct. 6, 2020); *Prescott v. Nestle USA,*  
8 *Inc.*, 2020 WL 3035798, at \*6 (N.D. Cal. June 4, 2020); *Anthony v. Pharmavite*, 2019  
9 WL 109446, at \*6 (N.D. Cal. Jan. 4, 2019); *Tryan v. Ulthera, Inc.*, 2018 WL 3955980,  
10 at \*10 (E.D. Cal. Aug. 17, 2018); *Lucas v. Breg, Inc.*, 212 F. Supp. 3d 950, 962-64 (S.D.  
11 Cal. 2016).

12           28. Neither plaintiff alleges they intend to purchase another Polaris label in the  
13 future if the label at issue were removed, and their testimony demonstrates no intention  
14 to do so. Thus, without the intent to purchase another RZR in the future, plaintiffs'  
15 claims for injunctive relief fail as a matter of law.

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1 DATED: February 12, 2021

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**CERTIFICATE OF SERVICE**

I hereby certify that on February 12, 2021, I caused the foregoing document to be served on the following counsel for Plaintiffs via the Court’s electronic filing system:

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