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UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL GUZMAN; JEREMY ALBRIGHT, individually on behalf of themselves and all others similarly situated, *Plaintiffs-Appellants*, v. POLARIS INDUSTRIES INC., a Delaware corporation; POLARIS SALES, INC., a Minnesota corporation; POLARIS INDUSTRIES INC., a Minnesota corporation; DOES, 1 through 10, inclusive, *Defendants-Appellees.*	No. 21-55520 D.C. No. 8:19-cv-01543-FLA-KES OPINION

Appeal from the United States District Court
for the Central District of California
Fernando L. Aenlle-Rocha, District Judge, Presiding

Argued and Submitted May 9, 2022
Pasadena, California

Filed September 29, 2022

Before: Paul J. Watford and Michelle T. Friedland, Circuit Judges, and Eduardo C. Robreno,[*] District Judge.

Opinion by Judge Robreno

SUMMARY[**]

California Law

The panel reversed the district court's summary judgment against Jeremy Albright, and remanded with instructions for the district court to dismiss Albright's California Unfair Competition Law ("UCL") claim without prejudice for lack of equitable jurisdiction, in Albright and Paul Guzman's class action alleging that the labels on their Polaris Industries vehicles were false and misleading, and that putative class members relied on the false labels when purchasing the vehicles.

Guzman's claims are resolved in a separate memorandum disposition filed concurrently with this opinion. The district court dismissed Albright's Consumer Legal Remedies Act ("CLRA") and False

[*] The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

[**] This summary constitutes no part of the opinion of the court. It has been prepared by court staff for the convenience of the reader.

Advertising Law claims as time-barred, which Albright does not challenge on appeal, leaving Albright only with his UCL claim.

Polaris sells off-road vehicles that have roll cages, or rollover protective structures ("ROPS"). The labels on the Polaris vehicles stated that the ROPS complied with Occupational Safety and Health Administration standards.

The panel agreed with the district court that Albright could not bring his equitable UCL claim in federal court because he had an adequate legal remedy in his time-barred CLRA claim. Reading *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), and *United States v. Elias*, 921 F.2d 870 (9thCir. 1990), together, the panel concluded that Albright had an adequate remedy at law through his CLRA claim for damages, even though he could no longer pursue it, and that the district court was therefore required to dismiss his equitable UCL claim. The panel held that Sonner required that it consider federal equitable principles even when doing so caused the disposition of the case to diverge from state law. The panel affirmed the district court's order to the effect that it lacked equitable jurisdiction to hear Albright's UCL claim.

The panel held that it must still reverse the entry of summary judgment against Albright because no decision was reached on the merits of the claim. Because the district court lacked equitable jurisdiction, which it recognized, it should have denied Polaris' motion for summary judgment and dismissed

Albright's UCL claim without prejudice for lack of equitable jurisdiction.

COUNSEL

Adrian R. Bacon (argued), Todd M. Friedman, and Thomas E. Wheeler, Law Offices of Todd M. Friedman, Woodland Hills, California; John P. Kristensen, Carpenter & Zuckerman, Beverly Hills, California; for Plaintiffs- Appellants.

Richard C. Godfrey (argued), Andrew Bloomer, and Paul Collier, Kirkland & Ellis LLP, Chicago, Illinois; David A. Klein, Kirkland & Ellis LLP, Los Angeles, California; for Defendants-Appellees.

OPINION

ROBRENO, District Judge:

Jeremy Albright appeals the district court's grant of summary judgment in favor of Polaris Industries. Polaris sells off-road vehicles that have roll cages, or rollover protective structures ("ROPS"). Jeremy Albright and Paul Guzman (whose claims are the subject of a separate memorandum disposition filed concurrently with this opinion) filed a class action alleging that the labels on their Polaris vehicles, which state that the ROPS complied with Occupational Safety and Health Administration ("OSHA") standards, are false and misleading and that Albright, Guzman and the putative class members relied on the false labels when purchasing

the vehicles. Albright brought his action pursuant to: (1) the California Consumers Legal Remedies Act ("CLRA"), Cal. Civ. Code § 1750, *et seq*.; (2) the California Unfair Competition Law ("UCL"), Cal. Bus. & Prof. Code § 17200, *et seq*.; and (3) the California False Advertising Law ("FAL"), Cal. Bus & Prof. Code § 17500, *et seq*.

For the reasons that follow, we reverse the summary judgment against Albright and remand the action with instructions for the district court to dismiss Albright's UCL claim without prejudice for lack of equitable jurisdiction.

FACTS and PROCEDURAL HISTORY

In February 2016, Albright purchased a Polaris vehicle that had a label on the roll cage that read "Polaris" and "[t]his ROPS structure meets OSHA requirements of 29 CFR § 1928.53." Albright alleges that he saw and read the ROPS label prior to purchase and understood the label to mean that the ROPS met OSHA safety standards. Albright alleges that he would not have purchased the vehicle if the label had not been present.

Albright filed his complaint on August 8, 2019, alleging violations of the CLRA, UCL, and FAL. He contends that the ROPS label is false and misleading

because Polaris tests the vehicles in a manner inconsistent with the Section 1928.53 standard.[1]

The CLRA prohibits a number of "unfair methods of competition and unfair or deceptive acts or practices," including "[r]epresenting that goods or services are of a particular standard . . . ." Cal. Civ. Code § 1770(a)(7). The UCL prohibits "unfair competition," which it defines as "any unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by [the FAL]." Cal. Bus. & Prof. Code § 17200. The FAL prohibits statements about property or services which are "untrue or misleading." *Id.* § 17500.

On February 13, 2020, the district court dismissed Albright's CLRA and FAL claims as time-barred, which Albright does not challenge on appeal, leaving Albright with only his UCL claim. Then, on May 12, 2021, the district court granted summary judgment in favor of Polaris and entered judgment on Albright's remaining UCL claim.

In its summary judgment order, the district court relied on *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), and concluded "that federal courts must apply equitable principles derived from federal common law to claims for equitable restitution under [the UCL] and [the CLRA]." *Guzman v. Polaris*

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[1] Polaris disagrees that its testing methods are inconsistent with Section 1928.53, but the district court did not reach the merits of this claim.

Indus. Inc., No. 8:19-cv-01543- FLA (KESx), 2021 WL 2021454, at *11 (C.D. Cal. May 12, 2021) (quoting *Sonner*, 971 F.3d at 837). The district court continued that, under *Sonner*, plaintiffs can seek equitable remedies only if they lack an adequate legal remedy. *Id*. Therefore, Albright could maintain his equitable UCL claim only if his CLRA claim was not an adequate remedy. *Id*. The district court concluded, however, that Albright still had an adequate legal remedy under the CLRA, even though his CLRA claim for damages had been dismissed as time- barred. *Id*. at *12. The court explained that "a plaintiff's failure to timely comply with the requirements to obtain a remedy at law does not make the remedy inadequate, so as to require the district court to exercise its equitable jurisdiction." *Id*. (citing *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990)). As a result, the court granted summary judgment in favor of Polaris on Albright's UCL claim. *Id*. at *13.

Albright asserts that, by granting summary judgment in favor of Polaris, the district court disposed of his UCL claim with prejudice. Albright timely appealed the district court's summary judgment order arguing that: (1) the district court erred in finding that his equitable UCL claim was barred because he had an adequate remedy at law through his previously dismissed CLRA claim; and (2) if he did have an adequate legal remedy, the district court erred by disposing of his UCL claim with prejudice, which could preclude him from refiling the claim in state court.

JURISDICTION and STANDARD OF REVIEW

The district court had jurisdiction pursuant to the Class Action Fairness Act of 2005, 28 U.S.C. § 1332(d)(2). We have jurisdiction pursuant to 28 U.S.C. § 1291 to consider the final summary judgment order.

We review the appeal of a summary judgment ruling de novo, applying "the same standard used by the trial court under Federal Rule of Civil Procedure 56(c)." *Fontana v. Haskin*, 262 F.3d 871, 876 (9th Cir. 2001).

DISCUSSION

A. Albright Had an Adequate Remedy at Law

We agree with the district court that Albright could not bring his equitable UCL claim in federal court because he had an adequate legal remedy in his time-barred CLRA claim.

In *Sonner v. Premier Nutrition Corp.*, the plaintiff initially brought claims for equitable relief under the UCL and CLRA and for damages under the CLRA, but later strategically dismissed her CLRA damages claim to avoid a jury trial. 971 F.3d 834, 837–38 (9th Cir. 2020). We concluded that "federal courts must apply equitable principles derived from federal common law to claims for equitable restitution under California's [UCL] and [CLRA]," including "the principle precluding courts from awarding equitable relief when an adequate legal remedy exists." *Id.* at 837, 842. We held that under this federal inadequate-

remedy-at-law principle, if the plaintiffs had an adequate legal remedy under the CLRA, they could not also maintain equitable claims under the UCL and CLRA in federal court. *Id*. at 844. We reasoned that, even if the relevant state court would allow the equitable claims to proceed, the federal court must apply federal principles governing equity jurisdiction. *Id*. at 841–44. As a result, having concluded that the plaintiff had an adequate legal remedy in the CLRA, we affirmed the dismissal of the plaintiff's equitable UCL and CLRA claims. *Id*. at 845.

Under those federal equitable principles, we have held that equitable relief must be withheld when an equivalent legal claim would have been available but for a time bar. In *United States v. Elias*, we affirmed the district court's decision not to exercise equitable jurisdiction where the plaintiff failed to timely follow the procedures to obtain a legal remedy in connection with his claim for a return of seized property. 921 F.2d 870, 874–75 (9th Cir. 1990). We explained that a "[f]ailure to comply with a remedy at law does not make it inadequate so as to require the district court to exercise its equitable jurisdiction." *Id*.; *see also United States v. Bame*, 721 F.3d 1025, 1031 (8th Cir. 2013) ("[T]he fraudulent transfer statutes are an adequate remedy at law even if recovery under these statutes is time-barred."); *Norris v. Grosvenor Mktg. Ltd.*, 803 F.2d 1281, 1287 (2d Cir. 1986) ("An equitable claim cannot proceed where the plaintiff has had and let pass an adequate alternative remedy at law." (citing *Russell v. Todd*, 309 U.S. 280, 289 (1940))), *superseded on other grounds by* Fed. R. Civ. P. 11.

Reading *Sonner* and *Elias* together, we conclude that Albright had an adequate remedy at law through his CLRA claim for damages, even though he could no longer pursue it, and that the district court was therefore required to dismiss his equitable UCL claim. Under *Sonner*, Albright could not pursue his equitable UCL claim in federal court while his CLRA claim was timely. 971 F.3d at 844. Albright's failure to have timely pursued his CLRA claim cannot confer equitable jurisdiction on a federal court to entertain his UCL claim. *See Elias*, 921 F.2d at 874. In other words, Albright cannot have neglected his opportunity to pursue his CLRA damages claim, which was an adequate remedy at law, and then be rewarded for that neglect with the opportunity to pursue his equitable UCL claim in federal court.

It may be that this case would have come out differently had it been brought in California state court. The California Supreme Court has held that the UCL's four-year statute of limitations applies even when an equivalent claim for damages would have been available under a state law with a shorter statute of limitations had the plaintiff brought the claim earlier. *Cortez v. Purolator Air Filtration Prods. Co.*, 999 P.2d 706, 716 (Cal. 2000). But Sonner requires that we consider federal equitable principles even when doing so causes our disposition of the case to diverge from state law. *Sonner*, 971 F.3d at 841–42.

We reject Albright's attempt to distinguish *Sonner* on the ground that the plaintiff in that case was attempting to avoid a jury trial by voluntarily

dismissing her CLRA damages claim, while Albright's claim was dismissed involuntarily and involved no attempts at gamesmanship. *Sonner's* holding applies to equitable UCL claims when there is a viable CLRA damages claim, regardless of whether the plaintiff has tried to avoid the bar to equitable jurisdiction through gamesmanship. Nothing in *Sonner's* reasoning suggested that its holding was limited to cases in which a party had voluntarily dismissed a damages claim to avoid a jury trial.[2] Indeed, *Sonner* relies on *Guaranty Trust Co. of New York v. York*, in which the Supreme Court noted the generally applicable rule that equitable relief is not available in federal court in a diversity action unless "a plain, adequate and complete remedy at law [is] wanting." 326 U.S. 99, 105 (1945). As noted by Polaris, the facts in York did not reveal any ulterior motives by the party against which the equitable principle was applied.

We conclude that, because Albright had an adequate legal remedy in his time-barred CLRA claim, the district court lacked equitable jurisdiction to hear Albright's UCL claim. Therefore, we affirm the district

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[2] Likewise, we reject Albright's argument that the federal inadequate-remedy-at-law principle should be limited to cases where an equitable claim and a legal claim have the same statute of limitations. Here, the UCL's statute of limitations is a year longer than that of the CLRA. Thus, Albright argues, they are not interchangeable, and the CLRA claim is not an adequate legal remedy. Albright provides no relevant authority to support that position. Moreover, we have already determined in *Sonner* that the availability of a CLRA claim for damages precludes a UCL claim for equitable relief in federal court. 971 F.3d at 841–45.

court's order to that effect. However, and as discussed below, we must still reverse the entry of summary judgment against Albright because no decision was reached on the merits of the claim. Because the district court lacked equitable jurisdiction, which it recognized,[3] it should have denied Polaris' motion for summary judgment and dismissed Albright's UCL claim without prejudice for lack of equitable jurisdiction.

B. The District Court Should Have Dismissed Albright's Claim Without Prejudice Because It Lacked Equitable Jurisdiction

Albright argues that, if he did have an adequate remedy at law that barred his UCL claim, the district court erred in disposing of his UCL claim with prejudice by entering summary judgment in favor of Polaris. Albright acknowledges that the district court concluded that, pursuant to federal common law, it lacked equitable jurisdiction to hear his UCL claim because he had an adequate remedy at law. Albright argues, however, that a jurisdictional dismissal is necessarily without prejudice because the court does not reach the merits of the claims. On this issue, we agree with Albright.

"[T]he UCL provides only for equitable remedies." *Hodge v. Superior Ct.*, 51 Cal. Rptr. 3d 519,

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[3] *Guzman*, 2021 WL 2021454, at *12 ("[A] plaintiff's failure to timely comply with the requirements to obtain a remedy at law does not make the remedy inadequate, *so as to require the district court to exercise its equitable jurisdiction*.") (emphasis added).

523 (Ct. App. 2006). In order to entertain a request for equitable relief, a district court must have equitable jurisdiction, which can only exist under federal common law if the plaintiff has no adequate legal remedy. *Sonner*, 971 F.3d at 843–44; *see also Payne v. Hook*, 74 U.S. 425, 430 (1868) ("The absence of a complete and adequate remedy at law, is the only test of equity jurisdiction").

Equitable jurisdiction is distinct from subject matter jurisdiction, although both are required for a federal court to hear the merits of an equitable claim. Even when a court has subject matter jurisdiction, "[t]here remains the question of equitable jurisdiction" before "the District Court properly [can] reach the merits." *Schlesinger v. Councilman*, 420 U.S. 738, 754 (1975); *see also United States v. Kama*, 394 F.3d 1236, 1237 (9th Cir. 2005) ("Kama argues only the merits of his motion and fails to address the threshold issue of whether the district court abused its discretion in declining to exercise its equitable jurisdiction."); *Mort v. United States*, 86 F.3d 890, 893 (9th Cir. 1996) ("Because the district court declined to exercise [equitable] jurisdiction, it did not reach the merits of the Morts' equitable subrogation claim."). Subject matter jurisdiction regards "whether the claim falls within the limited jurisdiction conferred on the federal courts" by Congress, while equitable jurisdiction regards "whether consistently with the principles governing equitable relief the court may exercise its remedial powers." *Schlesinger*, 420 U.S. at 754; *see also Yuba Consol. Gold Fields v. Kilkeary*, 206 F.2d 884, 887 (9th Cir. 1953) ("Reference to 'equity jurisdiction' does not relate to the power of the court

to hear and determine a controversy but relates to whether it ought to assume the jurisdiction and decide the cause.").

As argued by Polaris, the district court had subject matter jurisdiction. However, that is not dispositive of whether the court could exercise equitable jurisdiction over Albright's UCL claim. As discussed above, the district court lacked equitable jurisdiction because Albright had an adequate remedy at law in his time-barred CLRA claim. *See Sonner*, 971 F.3d at 844 ("Sonner must establish that she lacks an adequate remedy at law before securing equitable restitution for past harm under the UCL and CLRA.").

Because the district court lacked equitable jurisdiction over Albright's UCL claim, it could not, and did not, make a merits determination as to liability and should not have granted summary judgment in favor of Polaris on this claim. As is the case when federal courts decline to exercise jurisdiction under abstention principles or the doctrine of *forum non conveniens*, a federal court that dismisses a claim for lack of equitable jurisdiction necessarily declines "to assume the jurisdiction and decide the cause." *Yuba Consol.*, 206 F.2d at 887; see *Piper Aircraft Co. v. Reyno*, 454 U.S. 235, 241 (1981) (*forum non conveniens*); *United States v. Morros*, 268 F.3d 695, 704–05 (9th Cir. 2001) (*Burford* abstention). Thus, a federal court's pre-merits determination to withhold relief is binding on other federal courts, but not on courts outside the federal system that might properly exercise their own jurisdiction over the claim.

In accordance with this general rule, the district court should have dismissed Albright's UCL claim without prejudice to refiling the same claim in state court. *See Freeman v. Oakland Unified Sch. Dist.*, 179 F.3d 846, 847 (9th Cir. 1999) ("Dismissals for lack of jurisdiction 'should be . . . without prejudice so that a plaintiff may reassert his claims in a competent court.'" (quoting *Frigard v. United States*, 862 F.2d 201, 204 (9th Cir. 1988))); Fed. R. Civ. P. 41(b) (stating that a dismissal "for lack of jurisdiction" generally does not "operate[] as an adjudication on the merits"); *see also Holmberg v. Armbrecht*, 327 U.S. 392, 393 (1946) (noting that the court below dismissed the equity suit without prejudice because the suit failed on procedural grounds). The import of this rule is particularly apparent in this case because, for the reasons noted above, a California court might allow Albright to pursue his UCL claim. The possibility that federal and state courts would reach different results on the same claim is itself a consequence of *Sonner's* rule that federal courts sitting in diversity may exercise equitable jurisdiction only to the extent federal equitable principles allow them to do so. But where federal law bars us from considering the merits of state-law claims, we also lack authority to prevent state courts from doing so.

CONCLUSION

The district court correctly concluded that Albright had an adequate legal remedy in his CLRA claim which, pursuant to the federal inadequate-remedy-at-law principle, meant that the court lacked equitable jurisdiction to entertain Albright's UCL

claim. However, the district court erred in granting summary judgment in favor of Polaris on that claim, which could prevent Albright from attempting to raise his UCL claim in state court. Instead, the district court should have denied summary judgment on the UCL claim and dismissed it without prejudice for lack of equitable jurisdiction.

The grant of summary judgment in favor of Polaris is REVERSED and the case is REMANDED with instructions to dismiss Albright's UCL claim without prejudice.

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

PAUL GUZMAN and JEREMY ALBRIGHT, individually on behalf of themselves and all others similarly situated, Plaintiffs-Appellants, v. POLARIS INDUSTRIES, INC., a Delaware corporation; et al., Defendants-Appellees.	No. 21-55520 D.C. No. 8:19-cv-01543-FLA-KES ORDER

FILED NOV 9 2022
Molly C. Dwyer, Clerk
U.S. Court of Appeals

Before: WATFORD and FRIEDLAND, Circuit Judges, and ROBRENO*, District Judge.

The panel unanimously votes to deny the petition for panel rehearing. Judges Watford and Friedland vote to deny the petition for rehearing en banc, and Judge Robreno so recommends. The full court has been advised of the petition for rehearing en

* The Honorable Eduardo C. Robreno, United States District Judge for the Eastern District of Pennsylvania, sitting by designation.

banc, and no judge requested a vote on whether to rehear the matter en banc. Fed. R. App. P. 35. The petition for panel rehearing and rehearing en banc, filed October 13, 2020 is DENIED.

UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

CIVIL MINUTES – GENERAL

Case No. 8:19-cv-01543-FLA (KESx) Date May 12, 2021

Title Paul Guzman, et al. v. Polaris Industries Inc, et al.

Present: The Honorable FERNANDO L. AENLLE-ROCHA
UNITED STATES DISTRICT JUDGE

V.R. Vallery	Note Reported
Deputy Clerk	Court Reporter/Recorder
Attorneys Present for Plaintiff:	Attorneys Present for Defendants:
Not Present	Not Present

Proceeding: (IN CHAMBERS) DEFENDANTS' MOTION FOR SUMMARY JUDGEMENT [85]

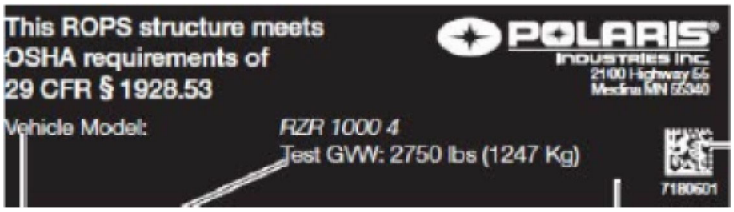
Ruling

The court GRANTS Defendants' Motion for Summary Judgment (Dkt. 85). Plaintiffs' Motion for Class Certification (Dkt. 67) and Defendants' Ex Parte Application to Strike Plaintiffs' Class Certification "Reply" Report and Plaintiffs' Use of Merits Reports in Their Class Certification Reply Brief (Dkt. 134), and the remaining portions of Plaintiffs' Motion Requesting Amendment of the Scheduling Order to Continue Outstanding Motions, Discovery, and Trial Deadlines by One Hundred Eighty Days (Dkt. 84) are MOOT.

Background

Defendants Polaris Industries Inc., Polaris Sales Inc., and Polaris Inc. (collectively "Polaris" or "Defendants") sell various models of off-road vehicles that allow occupants to sit side by side. Dkt. 85-2 (Defs. Sep. State. of Uncontroverted Facts, "DSUF") ¶¶ 1-2. Defendants' vehicles are sold under the brand names "RZR," "Ranger," and "General." *Id.* ¶3. Each vehicle is equipped with a roll cage, which is also known as a rollover protective structure or "ROPS." *Id.* ¶ 4. The shape, configuration, and design of the ROP differs among Polaris' side-by-side vehicle models. *Id.* ¶ 5.

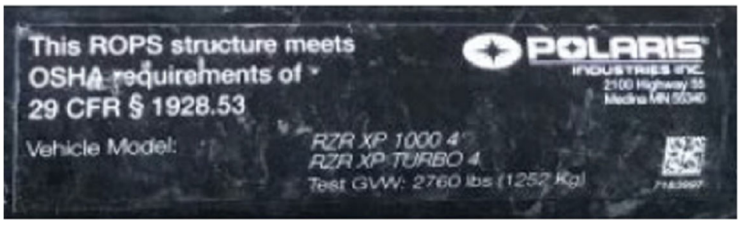
Polaris voluntarily complies with the American National Standards Institute ("ANSl")/Recreational Off-Highway Vehicle Association ("ROHVA") standard for ROPS's, which provides that the ROPS shall comply with the performance requirements of either International Organization for Standardization ("ISO") standard 3471 or 29 C.F.R. § 1928.53 ("§ 1928.53"). *Id.* ¶ 6. Certain of Defendants' vehicles contain a label on the ROIPS (which the Complaint refers to as a "sticker") that contains the language: "This ROPS Structure meets OSHA requirements of 29 C.F.R. § 1928.53" along with the vehicle model and test gross vehicle weight ("GVW"). DSUF ¶ 15. One example of this label is:



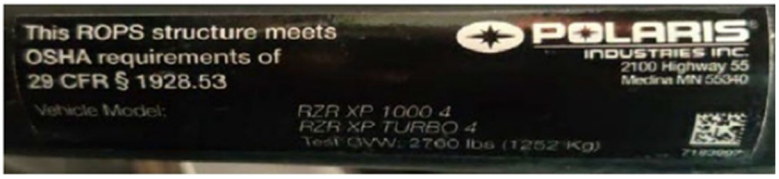
Id.

In February 2016, Plaintiff Jeremy Albright ("Albright") purchased a model year 2016 Polaris RZR 4 XP. *Id.* ¶8. In November 2018, Plaintiff Paul Guzman ("Guzman") purchased a model year 2018 Polaris RZR XP. *Id.* ¶ 9. Plaintiffs Albright and Guzman (collectively "Plaintiffs") allege they saw and read the ROPS labels on their vehicles prior to purchase and understood those labels to mean the vehicles' ROPS structures met the OSHA standards for safety. Dkt. 39 (Second Am. Compl., "SAC") ¶¶ 45-46, 49-50. According to Plaintiffs, they relied on these labels and would not have purchased the vehicles if the labels had not been on the vehicles. *Id.* ¶¶ 47, 51.

The ROPS label on Albright's vehicle allegedly reads:



SAC ¶ 45. The ROPS label on Guzman's vehicle allegedly reads:



SAC ¶ 49.

According to Plaintiffs, the ROPS label is false and misleading because none of the class vehicles meet the requirements of § 1928.53. Polaris allegedly tested every model of class vehicle based on the Gross Vehicle Weight ("GVW"), rather than based off of either the maximum power take off horsepower or 95% of the net engine flywheel, as is required under § 1928.53. *Id.* ¶¶37-41. Plaintiffs conclude consumers were damaged by Polaris' failure to provide accurate and truthful information about the true nature and characteristics of the class vehicles, since they have to retrofit purchased vehicles for adequate safety and are faced with a strong likelihood of serious injury or death. *Id.* ¶42.

Plaintiffs filed the Complaint on August 8, 2019 and filed the SAC on March 3, 2020, asserting class action claims on behalf of a putative class of "All persons in California that purchased a Class Vehicle in the four years preceding the filing of [the] Complaint." Dkt. 1 ("Compl.") ¶51; SAC ¶57. The proposed Class Vehicles include a list of various models of Polaris "RZR," "Ranger," and "General" vehicles. Compl. ¶2; SAC ¶2.

Plaintiff Guzman asserts three causes of action in the SAC alleging respectively violations of: (1) Cal. Civ. Code § 1750, et seq. (the California Consumers Legal Remedies Act, "CLRA"); (2) Cal. Bus. & Prof. Code § 17200, et seq. (the California Unfair Competition Law, "UCL"); and (3) Cal. Bus & Prof. Code § 17500, et seq. (the California False Advertising Law, "FAL") against Defendants on behalf of the proposed class. SAC ¶¶85-136. Plaintiff Albright only asserts the second cause of action - a violation of the UCL - against Defendants on behalf of the proposed class. This court has subject matter jurisdiction over this action pursuant to the Class Action Fairness Act of 2005 ("CAFA"), 28 U.S.C. § 1332(d)(2).

Defendants filed the Motion for Summary Judgment ("Motion") on February 12, 2021. Dkt. 85, Dkt. 85-1 ("MSJ Br."). Plaintiffs filed their opposition to the Motion on March 26, 2021, and Defendants filed their reply on April 16, 2021. Dkt. 100, Dkt. 108-1 ("Opp."); Dkt. 128 ("Reply"). The Motion came for hearing on April 30, 2021.

Discussion

I. Evidentiary Objections

On a motion for summary judgment, the parties may only object to evidence if it "cannot be presented in a form that would be admissible in evidence." Fed. R. Civ. P. 56(c)(2). While the parties' objections may be cognizable at trial, on a motion for summary judgment, the court is concerned only with the admissibility of the relevant facts at trial, and not the

form of these facts as presented in the motions. *See* Fed. R. Civ. P. 56(c)(2) advisory committee's note to 2010 amendment ("Subdivision (c)(2) provides that a party may object that material cited to support or dispute a fact cannot be presented in a form that would be admissible in evidence. The objection functions much as an objection at trial, adjusted for the pretrial setting."); *Fraser v. Goodale*, 342 F.3d 1032, 1036-37 (9th Cir. 2003) ("At the summary judgment stage, we do not focus on the admissibility of the evidence's form. We instead focus on the admissibility of its contents."); *Block v. City of L.A.*, 253 F.3d 410, 418-19 (9th Cir. 2001) ("To survive summary judgment, a party does not necessarily have to produce evidence in a form that would be admissible at trial, as long as the party satisfies the requirements of Federal Rule of Civil Procedure 56.").

Defendants object to certain statements Albright and Guzman made during their depositions. Dkt. 128-1. The court declines to rule on these evidentiary objections as they are not material to the court's ruling.

II. Legal Standard

Summary judgment is appropriate where "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). The moving party bears the initial burden of identifying relevant portions of the record that demonstrate the absence of a fact or facts necessary for one or more essential elements of each claim upon which the moving party seeks

judgment. *Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986). Facts are "material" only if dispute about them may affect the outcome of the case under applicable substantive law. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute about a material fact is "genuine" if the evidence is such that a reasonable jury could return a verdict for the nonmovant. *Id.*

If the moving party meets its initial burden, the opposing party must then set out specific facts showing a genuine issue for trial to defeat the motion. *Anderson*, 477 U.S. at 247-48; *see also* Fed. R. Civ. P. 56(c), (e). Summary judgment must be granted for the moving party if the nonmoving party "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*, 477 U.S. at 322. The court must decide whether the moving party is entitled to judgment as a matter of law in light of the facts presented by the nonmoving party, along with any undisputed facts. *See T.W. Elec. Serv., Inc. v. Pac. Elec. Contractors Ass'n*, 809 F.2d 626, 630-31, n.3 (9th Cir. 1987). "Where the record taken as a whole could not lead a rational trier of fact to find for the nonmoving party, there is no 'genuine issue for trial.'" *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986).

When deciding a motion for summary judgment, "the inferences to be drawn from the underlying facts ... must be viewed in the light most favorable to the party opposing the motion." *Matsushita*, 475 U.S. at 587. "If the nonmoving party

produces direct evidence of a material fact, the court may not assess the credibility of this evidence nor weigh against it any conflicting evidence presented by the moving party. Inferences from the nonmoving party's 'specific facts' as to other material facts, however, may be drawn only if they are reasonable in view of other undisputed background or contextual facts and only if such inferences are otherwise permissible under the governing substantive law." *T.W Elec.*, 809 F.2d at 631-32. "[S]ummary judgment should not be granted where contradictory inferences may reasonably be drawn from undisputed evidentiary facts...." *Hollingsworth Solderless Terminal Co. v. Turley*, 622 F.2d 1324, 1335 (9th Cir. 1980). The nonmoving party, however, must not simply rely on the pleadings and must do more than make "conclusory allegations [in] an affidavit." *Lujan v. Nat'l Wildlife Fed'n*, 497 U.S. 871, 888 (1990); *see also Celotex*, 477 U.S. at 324.

III. Analysis

A. Legal Standard for CLRA, UCL, and FAL

The CLRA prohibits "unfair methods of competition and unfair or deceptive acts or practices." Cal. Civ. Code § 1770. Among the practices made unlawful by the CLRA are: "(5) Representing that, goods or services have sponsorship, approval, characteristics, ingredients, uses, benefits, or quantities that they do not have..." and "(7) Representing that goods or services are of a particular standard, quality, or grade...." *Id.* § 1770(a)(5), (7).

The UCL prohibits "unfair competition," which it defines as any "unlawful, unfair or fraudulent business act or practice and unfair, deceptive, untrue or misleading advertising and any act prohibited by the [FAL]." Cal. Bus. and Prof. Code § 17200. The FAL prohibits any "unfair, deceptive, untrue, or misleading advertising." Cal. Bus. and Prof. Code § 17500. "Section 17500 proscribes not only advertising which is false, but also advertising1 which, although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public." *Hansen v. Newegg.com Ams., Inc*., 25 Cal. App. 5th 714, 722 (2018) (internal quotation marks and brackets omitted). "'[A]ny violation of the false advertising law ... necessarily violates the UCL.'" *Id*. (quoting *Kasky v. Nike, Inc.*, 27 Cal. 4th 939, 950 (2002) (internal quotation marks omitted)).

In November 2004, the California electorate approved Proposition '64, substantially revising the UCL and FAL's standing provisions for private individuals. *Kwikset Corp. v. Superior Court*, 51 Cal. 4th 310, 318 (2011); *see also* Bus. & Prof. Code §§ 17204, 17535. "[W]here once private suits could be brought by 'any person acting for the interests of itself, its members or the general public' (former § 17204 , as amended by Stats. 1993, ch. 926, § 2, p. 5198), now private standing is limited to any 'person who has suffered injury in fact and has lost money or property' as a result of unfair competition (§ 17204, as amended by Prop. 64, as approved by voters, Gen. Elec. (Nov . 2, 2004) § 3...)." *Kwikset*, 51 Cal. 4th at 320-21.

Claims under the CLRA, FAL, and UCL are governed by the "reasonable consumer" standard, pursuant to which, "[Plaintiffs] must show that members of the public are likely to be deceived." *Williams v. Gerber Prods. Co.*, 552 F.3d 934, 938 (9th Cir. 2008) (internal quotation marks and citation omitted). "The California Supreme Court has recognized that these laws prohibit not only advertising which is false, but also advertising which, although true, is either actually misleading or which has a capacity, likelihood or tendency to deceive or confuse the public." *Id.* (internal quotation marks and brackets omitted) (quoting *Kasky*, 27 Cal. 4th at 951). "This requires more than a mere possibility that [a] label 'might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner.'" *Ebner v. Fresh, Inc.*, 838 F.3d 958, 965 (9th Cir. 2016) (quoting *Lavie v. Procter & Gamble Co.*, 105 Cal. App. 4th 496, 508 (2003)). "Rather, the reasonable consumer standard requires a probability 'that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled.'" *Id.* (quoting *Lavie*, 105 Cal. App. 4th at 508).

B. Reliance

"[C]onsumers seeking to recover damages under the CLRA based on a fraud theory must prove 'actual reliance' on the misrepresentation and harm." *Sateriale v. R.J. Reynolds Tobacco Co.*, 697 F.3d 777, 794 (9th Cir. 2012). Similarly, because FAL and UCL claims centered on a misrepresentation are "based on a fraud theory involving false advertising and

misrepresentations to consumers," a plaintiff "must demonstrate actual reliance on the allegedly deceptive or misleading statements, in accordance with well-settled principles regarding the element of reliance in ordinary fraud actions." *Kwikset*, 51 Cal. 4th at 326-27 (internal quotations omitted). "Consequently, 'a plaintiff must show that the misrepresentation was an immediate cause of the injury-producing conduct....'[Citation.] However, a plaintiff is not required to allege that the challenged misrepresentations were the sole or even the decisive cause of the injury-producing conduct." *Id*. at 327 (internal brackets omitted).

Defendants contend they are entitled to summary judgment because Plaintiffs cannot establish actual reliance on the ROPS label under the undisputed facts, including their admissions at deposition. Dkt. 85-1 (MSJ Br.) at 10. Plaintiffs respond they have sufficiently testified that they relied on the ROPS label's assertion that the cage met OSHA standards to demonstrate their reliance on Polaris' allegedly false statements caused damages. Dkt. 100 (Opp.) at 8-9.

Defendants raise four primary arguments regarding lack of reliance. The court will address each in turn.

1. Plaintiff Guzman's Admission that He Did Not Read the ROPS Label

First, Defendants argue Plaintiff Guzman cannot establish he relied on the ROPS label when he

decided to purchase his vehicle because he admitted at deposition that he did not actually read the ROPS label before making the purchase. Dkt. 85-1 (MSJ Br.) at 11 (citing DSUIF, ¶¶39-42, 49). Defendants cite this court's ruling on Defendants' Motion to Dismiss the First Amended Complaint ("FAC"), Dkt. 38, and cases including *In re iPhone Application Litigation*, 6 F. Supp. 3d 1004, 1022-23 (N.D. Cal. 2013), to argue that a plaintiff must have seen, read, or heard the alleged misrepresentation to establish reliance. Dkt. 85-1 (MSJ Br.) at 10-11.

Courts have recognized there can be no actual reliance where the buyer did not see, read, or hear an alleged misrepresentation before purchasing the product, and that mere receipt of or exposure to a statement is insufficient to establish reliance and standing. *E.g., Brazil v. Dole Packaged Foods, LLC*, 660 Fed. App'x 531, 533-34 (9th Cir. 2016) (holding claims were properly dismissed because the plaintiff did not see the allegedly offending statements before he purchased the product); *In re iPhone Appl.*, 6 F. Supp. 3d at 1022-23 (recognizing generalized allegations of exposure to misrepresentations are insufficient and collecting cases); *Graham v. VGA Antech, Inc.*, Case No. 2:14-cv-08614-CAS (JCx), 2016 WL 5958252, at *5 (C.D. Cal. Sept. 12, 2016) ("[l]it is not enough to 'receive' a misrepresentation in a document; a plaintiff must see, read, or hear the alleged misrepresentation and rely on it."); *Phillips v. Apple Inc.*, Case No. 15-CV-04879- LHK, 2016 WL 1579693, at *7 (N.D. Cal. Apr. 19, 2016) ("If Plaintiffs did not view Apple 's statement until after suffering

injury, then viewing the statement could not have been the 'immediate cause' of the injury.").

At deposition, Guzman admitted he did not read the ROPS label or see any other words beyond "Polaris" and "OSHA." Dkt. 85-9 (Klein Decl. Ex. 5 ("Guzman Dep.")) at 28:1- 4 ("Q. Did you read the entire sticker? A. No. Like I said, I don't remember when I bought it, but I noticed that it had an OSHA sticker on it."); *id.* at 141:7-10 ("Q. And when you walked to the back, did you actually read the sticker? A. No. I just saw that it said 'OSHA' on it. So I said, 'Okay, it's good.'"); *id.* at 148:14-20 ("Q. Okay. When you purchased your vehicle, did you notice anything on this sticker or read anything on this sticker other than 'Polaris' and 'OSHA'? A. Yeah. That was pretty much it. That is all I was looking for. Because there is really nothing else to look at. As long as it's OSHA-approved, everything on that sticker is legit."). Guzman could not remember whether the label said anything else, aside from "Polaris" at the top of the label. *Id.* at 141:11-23.

Guzman also admitted he did not speak with a salesperson or anyone else at the dealership about the ROPS label, *id.* at 143:20-22, 149:17-21, and did not recall seeing any Polaris brochures, advertisements, or marketing materials that mentioned or discussed the ROPS on Polaris off-road vehicles, *id.* at 117:15-118:6. Further, Guzman did not testify to seeing the words "ROPS structure" on the label or to any facts that would give him a reasonable basis to believe Defendants were making any specific representations regarding rollover protection or the ROPS. To the

contrary, Guzman testified it was his understanding the label indicated "that OSHA had approved the entire vehicle," not just the ROPS, and that, in his opinion, the label was in the wrong location and should have been placed on the front of the vehicle like the other warning stickers. DSUF 1148; Dkt. 85-9 (Guzman Dep.) 150:3-17.

Because Guzman admits he did not read the ROPS sticker and instead only looked for and saw the words "OSHA" and "Polaris," Guzman fails to demonstrate a genuine dispute exists that he relied on any statement or representation by Defendants regarding the ROPS structure's compliance with OSHA standards when he decided to purchase his vehicle.

Guzman contends he establishes reliance because he "made it clear under cross- examination that he would not have purchased the vehicle if it did not have an OSHA sticker on it." Dkt. 100 (Opp.) at 9 (citing Dkt. 100-1 (Plaintiffs' Statement of Disputed Facts, "PSDF") ¶ 25). However, Guzman's asserted reliance on the existence of an OSHA label does not establish he reasonably relied on the specific statements by Defendants regarding the ROPS structure in making his purchase decision. To the contrary, Guzman's testimony clearly demonstrates he did not do so and instead relied only on his own assumptions regarding the vehicle, rather than the actual representations of the ROPS label.

At the hearing, Guzman argued it was reasonable for him to rely on the ROPS label because

he believed (erroneously) that the label stated the entire vehicle met OSHA standards, and his belief encompassed the scope of the actual representation. *See also* Dkt. 100 (Opp.) at 9. Plaintiff further argued it was sufficient for him to have had an understanding of the label that he later confirmed. Plaintiff further argued that he had seen OSHA stickers in the past in connection with his employment and understood them to mean that a product met federal safety requirements. According to Plaintiff, a reasonable jury viewing the facts in their entirety could conclude Guzman actually and reasonably relied on the ROPS label when he purchased his vehicle. The court disagrees.

The fact that Defendants' actual statement that the ROPS met OSHA standards happened to fall within the scope of Guzman's assumptions regarding the label is insufficient to establish justifiable reliance. To state claims under the CLRA, UCL, or FAL, a plaintiff "must demonstrate actual reliance on the allegedly deceptive or misleading statements…" *Kwikset*, 51 Cal. 4th at 326; *Sateriale*, 697 F.3d at 794. Courts in this district have recognized that a reasonable consumer would not "assume things about [a] product[] other than what the statement actually says." *E.g. Weiss v. Trader Joe's Co.*, Case No. 8:18-cv-0113.0-J LS (GJSx), 2018 WL 6340758, at *5 (C.D. Cal. Nov. 20, 2018). Similarly, a reasonable consumer who was concerned about a safety feature, acting reasonably, would have actually read the label in question and/or asked a salesperson or representative about the label or the product's OSHA compliance, rather than looking to see if it contained the word

"OSHA," and then making assumptions about what the label actually said. *See Becerra*, 945 F.3d at 1228-29 (recognizing the "reasonable consumer" standard requires more than "a mere possibility" that a product's label "might conceivably be misunderstood by some few consumers viewing it in an unreasonable manner"). It was per se unreasonable for Guzman to have only looked for a single word and to have not actually read the relevant portions of the ROPS label. Plaintiff does not cite any legal authority for the proposition that a consumer can establish actual reliance on a statement after reading only one or two words and reaching a mistaken understanding of the statement that was actually made.[1] The ROPS label was not a generic label that indicated the vehicle complied with all applicable OSHA standards, but a specific statement regarding the ROPS structure. *See* DSUF ¶15. It is clear Guzman could not have and did

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[1] At the hearing, Plaintiff cited *Roley v. Google LLC*, Case No., 18-cv-07537-BLF, 2021 U.S. Dist. LEXIS 53648 (N.D. Cal. Mar. 22, 2021), to argue that the question of whether a buyer's reliance was reasonable under the circumstances is ordinarily to be decided by a jury and may be decided as a matter of law only if the facts permit reasonable minds to come to just one conclusion. *Roley* is factually distinguishable from the case at hand as there was no question the consumer in that case read the entire statement in question. *See generally id. Roley* is inapposite to the question of whether a consumer who only looks for and reads one or two words of a statement to confirm his erroneous assumptions regarding the statement, can establish actual reliance based on his limited reading of the statement. As discussed herein, the court finds that reasonable minds could not find Guzman justifiably relied on the ROPS label given that he admitted he only looked for and read the words OSHA and Polaris to confirm his preexisting beliefs regarding the vehicle.

not, in fact, understand the meaning of the ROPS label simply by looking for the word "OSHA." Thus, he could not have reasonably relied on the statements in the ROPS label when he decided to purchase his vehicle and cannot now establish reliance on Defendants' statements for his belief that the vehicle and the ROPS complied with OSHA standards.

Guzman further contends he reasonably relied on the ROPS label because he spoke with Albright before he purchased his vehicle and "they discussed that it was OSHA approved." Dkt. 100 at 9 (citing PSDF ¶ 26). According to Guzman, he discussed the vehicle's safety with Albright, who was "all about safety," before Guzman purchased his vehicle, and Albright told him it was a "safe vehicle" and "OSHA-approved." Guzman Dep. at 36:19-37:3.[2] Guzman's deposition testimony demonstrates he relied on Albright's representations when he grew to believe the vehicle complied with OSHA standards, prior to purchasing his vehicle, rather than any representations made by Defendants by way of the ROPS label.

The evidence in the record makes clear Guzman did not have an understanding of the actual statement made in the ROPS label, and that he only viewed the label superficially to confirm his own preexisting

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[2] Plaintiff requested the court accept pages 36, 37, and 142 of the Guzman deposition transcript at the hearing, stating these pages had been inadvertently omitted from Plaintiffs' submitted evidence. Defendants did not object, and the court accepted these pages into the record.

assumptions regarding Defendants' vehicle, rather than the statement itself and Defendants' actual representations. The claims of the SAC are based on Defendants' alleged misrepresentation that the ROPS structure met the OSHA requirements of §1928.53-not any representation that the vehicle as a whole complied with OSHA requirements or that the vehicle and all of its component parts were generally "safe" because the vehicle contained a label with the word "OSHA." As Guzman did not read the actual statement of the ROPS label and only looked for and read two words ("OSHA" and "Polaris"), Plaintiff Guzman fails to establish actual reliance on the label as a matter of law.[3] *See In re iPhone Appl.*, 6 F. Supp. 3d at 1022-23.

Accordingly, the court GRANTS Defendants' Motion as to Plaintiff Guzman and GRANTS summary judgment with respect to Guzman's claims.

2. Plaintiffs' Understanding of § 1928.53

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[3] The court's ruling is limited to the unique facts of this case, where the buyer expressly admitted he did not read the full statement and only read enough words of the statement to confirm his preexisting, erroneous assumptions. This holding should not be read to establish that a buyer must necessarily read and understand every word in a statement to establish actual reliance. As discussed below, Guzman's unique circumstances stand in contrast to Plaintiff Albright, who read enough of the ROPS label to establish a genuine dispute as to whether he understood and reasonably relied on Defendants' representations regarding the ROPS structure's compliance with OSHA standards.

Second, Defendants contend Plaintiffs cannot establish reliance because they admitted at deposition that they "have never read 29 C.F.R. § 1928.53, have no knowledge of that provision, what it says, what it applies to, or how it should be interpreted." Dkt. 85-1 (MSJ Br.) at 12. According to Defendants, since the basis of Plaintiffs' claims is that the ROPS label states the vehicles' ROPS's "[meet] the requirements of 29 CFR § 1928.53, when in fact, they do not," *id*. (citing SAC ¶¶ 1, 4-6), Plaintiffs could not have reasonably relied on the alleged misrepresentation that forms the basis of their claims. *Id*. at 12.

At his deposition, Plaintiff Albright testified he did not have any knowledge of § 1928.53 and had not read any OSHA regulation relating to rollover protection systems or the testing of rollover protection systems. DSUF ¶75. Albright further testified he believed the reference to § 1928.53 in the ROPS label referred to the price of the roll bar and did not realize it related to a regulation. *Id.* ¶76. Plaintiff Guzman likewise admitted he had never read or reviewed § 1928.53 and had no knowledge of the regulation. *Id*. 39-42, 49.

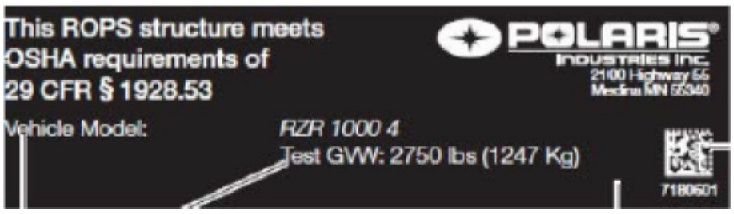
Defendants cite cases, including *Shanks v. Jarrow Formulas, Inc.*, Case No. CV 18-09437-PA (AFMx), 2019 WL 4398506 (C.D. Cal. Aug. 27, 2019), to argue that technical statements "are unlikely to be understood by an average consumer" and are unlikely to induce reliance or be material. Dkt. 85-1 (MSJ Br.) at 12. *In Shanks*, 2019 WL 4398506, at *5, the district court held that the statements: "Source of Medium Chain Triglycerides"; "No Trans Fatty Acids"; "No

Hydrogenation"; and "Coconut oil is a source of medium chain triglycerides (MCTs), such as lauric acid (C-12) and caprylic acid (C-8)" were not reasonably likely to mislead or deceive a significant portion of the public because the average consumer was unlikely to understand the statement given the scientific terminology. *Id*. ("Unlike the phrase 'Helps Maintain a Healthy Heart,' these scientific terms are unlikely to be understood by an average consumer, let alone lead a consumer to believe that coconut oil is healthy. An average consumer could easily conclude that the challenged label is disclosing unhealthy attributes of coconut oil.")

Shanks does not stand for the proposition that a consumer must understand all technical terms within a statement to establish reliance, and only establishes that allegedly false or misleading statements must be viewed under the "reasonable consumer" standard and that a reasonable consumer must be able to understand the statement to establish reliance. *See id*. The "reasonable consumer" standard does not require consumers to be lawyers with an encyclopedic knowledge of statutes and regulations to rely on warning labels and assert CLRA, UCL, and FAL claims. Under that standard, the relevant question is not whether a reasonable consumer would understand every word within a statement, but whether "a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances," who read or heard the statement, could find it false or misleading. *See Becerra*, 945 F.3d at 1228. "This requires more than a mere possibility that [the label] 'might

conceivably be misunderstood by some few consumers viewing it in an unreasonable manner,'" and requires a probability "'that a significant portion of the general consuming public or of targeted consumers, acting reasonably in the circumstances, could be misled.'" *Id.* (quoting *Lavie*, 105 Cal. App. 4th at 492).

The ROPS labels at issue appear, with minor variances related to the listed vehicle model and test weight, as follows:



DSUIF ¶ 15; *see also* SAC ¶¶ 45, 49.

Here, unlike in *Shanks*, the statement: "This ROPS structure meets OSHA requirements of 29 CFR § 1928.53" can be read and understood even if the technical term "29 CFR § 1928.53" is omitted. *Compare* DSUF ¶ 15 with *Shanks*, 2019 WL 4398506, at *5 (where the allegedly misleading statements do not convey a complete thought). Viewing the evidence in the light most favorable to Plaintiffs, a triable issue, therefore, exists as to whether a significant portion of the "general consuming public" or "targeted consumers," acting reasonably in the circumstances would understand the statement: "This ROPS structure meets OSHA requirements," on a label attached to the roll bar of Polaris' vehicles, to indicate that the ROPS structure met the relevant OSHA

standards and testing requirements, even if they did not understand the meaning of the phrase "29 CFR § 1928.53." *See* SAC ¶ 45.

Plaintiff Albright testified he remembered seeing the ROPS label at the dealer before he purchased the vehicle and read the portion of the label that stated the ROPS structure met OSHA requirements. Dkt. 85-8 (Klein Decl. Ex. 4 ("Albright Dep.")) at 148:8-20, 149:2- 6, 171:6-9. According to Albright, he understood the language on the label to mean the roll bar was "OSHA-app roved," which he defined to mean "that it meets the standard of OSHA." *Id*. at 163:24-164:6. This evidence is sufficient to demonstrate the existence of a genuine dispute as to whether Albright reasonably understood the label to state that the ROPS met the relevant OSHA requirements, even if Albright did not understand that the phrase "29 CFR § 1928.53" referred to a regulation and erroneously believed it was the price of the ROPS. As such, the court will not grant the Motion as to Albright on this basis.

In contrast, Plaintiff Guzman testified he did not read the label beyond seeing the words "OSHA" and "Polaris" and that he understood the label to mean the entire vehicle was OSHA compliant. Dkt. 85-9 (Guzman Dep.) at 141:7-10, 141:11-23, 150:3-17. As discussed above, even when viewed in the light most favorable to Guzman, he could not have established reliance based solely on reading the words "OSHA" and "Polaris" on the label, especially since he admitted he believed the label referred to the entire vehicle and not the ROPS. Because Guzman admitted he did not

read the label beyond those two words, his understanding or lack thereof of the meaning of the phrase "29 CFR § 1928.53" is irrelevant as this statement could not have and did not affect his understanding of the meaning of the label.

In sum, a genuine dispute exists as to whether Plaintiff Albright reasonably understood the statement, "This ROPS structure meets OSHA requirements", to mean that the rollover protection structure of the vehicle met the relevant OSHA requirements, even if he had not read and did not have knowledge of § 1928.53. The court, therefore, will not grant the Motion as to Albright on this basis.

3. Plaintiffs' Understanding of the ROPS Label Compared to the Actual Language

Third, Defendants contend Plaintiffs cannot establish reliance because Plaintiffs did not rely on the actual language of the ROPS labels and instead relied on their mistaken belief that the labels stated "OSHA Approved." Dkt. 85-1 (MSJ Br.) at 14. Polaris argues Plaintiffs' deposition testimony establishes they were under the mistaken belief the labels stated OSHA had approved the ROPS, even though the word "approved" did not appear on the labels. *Id*. at 15. According to Defendants, there is a clear difference between (1) a representation that the ROPS is "OSHA-approved," which means that OSHA personally approved it, and (2) a statement by Polaris on the label that the ROPS meets the requirements of a particular OSHA regulation. *Id*.

Although Albright testified he understood the ROPS label to say that the roll bar was "OSHA-approved," he explained that he meant "that it meets the standard of OSHA." Dkt. 85-8 (Albright Dep.) at 163:24-164:6. Viewing the evidence in the light most favorable to Plaintiffs, a reasonable jury could find Albright's statements that the ROPS was "OSHA approved" were intended to mean that the ROPS met the applicable OSHA standards, and not that OSHA had approved the ROPS. The court, therefore, will not grant the Motion against Plaintiff Albright on this basis. Having granted the motion as to Plaintiff Guzman based on his failure to read the ROPS label, the court need not address the parties' arguments as to this Plaintiff.

4. Plaintiffs' Understanding of the ROPS Label

Fourth, Defendants argue Plaintiffs could not have relied on any alleged misrepresentations on the ROPS label because they admitted they did not know how the label was false or misleading. Dkt. 85-1 (MSJ Br.) at 13. Polaris contends Guzman repeatedly admitted he did not know whether any language on the label was false or misleading, and that Albright testified he did not understand what the label meant or whether the ROPS on his vehicle satisfied the requirements of § 1928.53. *Id.*; DSUF ¶¶ 53-54, 77-78.

As stated, a genuine dispute exists as to whether a significant portion of the "general consuming public" or "targeted consumers" who saw

the ROPS label would understand the label to mean the ROPS satisfied the relevant OSHA standards for a rollover protective structure. Defendants do not cite any legal authority to establish a plaintiff must have personal knowledge and understanding of the technical language and specific requirements of an OSHA regulation to rely reasonably on a manufacturer's statement that its products comply with applicable OSA regulations.

At his deposition, Albright testified he understood the language of the ROPS label to mean the rollover bar "[met] the standard of OSHA" and that it "could handle the weight [of the vehicle] so [the vehicle] wouldn't crush you" in a rollover. Dkt. 85-8 (Albright Dep.) at 163:24-164:21. Albright further testified he believed Polaris should pay to replace the stock roll bar with a stronger one. *Id*. at 220:25-221:4. Viewing the evidence in the light most favorable to Plaintiff, Albright's testimony is sufficient to establish that he believes the ROPS label is misleading because the ROPS does not meet OSHA standards regarding rollover protection and the existence of a genuine dispute as to whether Albright understands the essence of his claim, even if he does not have personal knowledge of the requirements of § 1928.53. Accordingly, the court will not grant the Motion against Albright on this basis.[4] Having granted the

[4] On reply, Defendants contend Plaintiffs have not introduced any evidence demonstrating the ROPS is unsafe or cannot handle the weight of a rollover. Dkt. 128 (Reply) at 9. The relevant question is not whether the ROPS is "safe" or "could handle the weight of a rollover," but whether the ROPS meets the relevant OSHA requirements. Polaris did not move for summary

motion as to Plaintiff Guzman based on his failure to read the ROPS label, the court need not address whether he demonstrated sufficient knowledge of the basis of his claims to survive summary judgment.

5. Conclusion on Reliance

For these reasons, the court GRANTS the Motion in Defendants' favor against Plaintiff Guzman. The Motion is DENIED on the above bases as to Plaintiff Albright.[5]

C. Plaintiff Albright's Equitable Relief Claims

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judgment on the grounds that Plaintiffs cannot demonstrate the ROPS does not satisfy the requirements of § 1928.53. Thus, the fact that Plaintiffs did not submit evidence regarding the safety or strength of the ROPS in connection with their opposition does not constitute grounds to grant the Motion.

[5] At the hearing, Plaintiffs urged the court to deny summary judgment because buyers could be injured due to Defendants' failure to meet the requirements of § 1928.53 if this action were not allowed to proceed. Those concerns exceed the scope of Plaintiffs' lawsuit. Plaintiffs did not bring product liability or product defect claims. The SAC only asserts misrepresentation claims under the CLRA, UCL, and FAL, based on the ROPS label. Assuming, arguendo, Plaintiffs are correct that the label is false or misleading and that the ROPS structures of Polaris' vehicles do not meet OSHA standards, a buyer could not recover under this action unless he or she actually read and justifiably relied on the ROPS label. *See Sateriale*, 697 F.3d at 794; *Kwikset*, 51 Cal. 4th at 326-27. The fact that buyers could potentially be injured if they were involved in a rollover accident is alone insufficient to establish that Plaintiffs can maintain their asserted misrepresentation claims, and the court will not deny summary judgment on this basis.

In the SAC, Plaintiff Albright asserts the second cause of action for violation of the UCL. SAC ¶¶ 100-23. As the UCL is a statutory claim, the relief available is entirely the function of statute. Cal. Bus. & Prof. Code. § 17203 states in relevant part:

> Any person who engages, has engaged, or proposes to engage in unfair competition may be enjoined in any court of competent jurisdiction. The court may make such orders or judgments ... as may be necessary to prevent the use or employment by any person of any practice which constitutes unfair competition, as defined in this chapter, or as may be necessary to restore to any person in interest any money or property, real or personal, which may have been acquired by means of such unfair competition....

Cal. Bus. & Prof. Code § 17203.

The second cause of action requests declaratory relief, restitution and disgorgement of all profits obtained, and public injunctive relief. SAC ¶ 123. The SAC Prayer, however, neither requests declaratory relief nor identifies any specific declaration Plaintiffs wish the court to make. *See* SAC, Prayer ¶¶ 1-8. Accordingly, the court finds Plaintiff Albright only requests equitable restitution and injunctive relief in

connection with the second cause of action.[6] SAC Prayer ¶¶ 4, 7.

Defendants move for summary judgment on the grounds that Plaintiffs' claims for equitable relief fail because they have not pleaded they lack an adequate remedy at law and, thus, lack standing to seek injunctive relief. Dkt. 85-1 (MSJ Br.) at 2. The court will address the parties' arguments as to each in turn with respect to Plaintiff Albright.[7]

1. Injunctive Relief

Defendants contend Plaintiff Albright's injunctive relief claims fail because he does not intend to buy an off-road vehicle from Polaris again in the future. Dkt. 85-1 (MSJ Br.) at 22. Polaris cites *Lanovaz v. Twinings North America, Inc.*, 726 Fed. App'x 590 (9th Cir. 2018) for the proposition that a plaintiff who learns of an alleged misrepresentation regarding a product lacks standing to seek injunctive relief unless, at a minimum, the plaintiff intends to

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[6] In their opposition, Plaintiffs argue attorney's fees are recoverable under the UCL and FAL. Dkt. 100 (Opp.) at 22. They are not. *E.g., America Online, Inc. v. Superior Court*, 90 Cal. App. 4th 1, 15 n.10 (recognizing that unlike the CLRA, neither actual damages nor attorney's fees are recoverable under the UCL); *Shadoan v. World Savings & Loan Ass'n*, 219 Cal. App. 3d 97, 108 n.7 ("The Business and Professions Code does not provide for an award of attorney fees for an action brought pursuant to section 17203, and there is nothing in the statutory scheme from which such a right could be implied").

[7] Having granted summary judgment in Defendants' favor against Plaintiff Guzman, the court need not address the parties' arguments with respect to that Plaintiff.

purchase that product again in the future. Dkt. 85-1 (MSJ Br.) at 22.

In *Lanovaz*, 726 Fed. App'x at 591, the Ninth Circuit affirmed a district court's order granting summary judgment against a plaintiff's injunctive relief claims where the plaintiff stated at deposition that she would not purchase the defendant's products again even if the company removed the allegedly misleading labels. As *Lanovaz* explained: "Though 'a previously deceived plaintiff' suing under the UCL, FAL, and CLRA 'may have standing to seek injunctive relief,' the plaintiff must still show 'that [he] faces an imminent or actual threat of future harm caused by [the defendant's] allegedly false advertising'" and that there is "a sufficient likelihood that [he] will again be wronged in a similar way." *Id*. at 590-91 (internal citations omitted).

According to Defendants, Plaintiffs' injunctive relief claims fail because Albright has not alleged or provided evidence to show he would purchase another Polaris vehicle in the future if the label were removed from Polaris vehicles or corrected. Dkt. 85-1 (MSJ Br.) at 23. Plaintiffs respond by quoting *Davidson v. Kimberly-Clark Corp.*, 873 F.3d 1103, 1115 (9th Cir. 2017), to argue "a previously deceived consumer may have standing to seek an injunction against false advertising or labeling, even though the consumer now knows or suspects that the advertising was false at the time of the original purchase, because the consumer may suffer an 'actual and imminent, not conjectural or hypothetical' threat of future harm." Dkt. 100 (Opp.) at 22-23. According to Plaintiffs,

Albright should not be precluded from seeking injunctive relief because he is now aware that the statement on the ROPS label is false. *Id*. at 24-25. Plaintiffs do not respond to Defendants' argument regarding Albright's intent to purchase another Polaris vehicle in the future.

The relevant question before the court is not whether a plaintiff who becomes aware that a statement is false or misleading can ever seek injunctive relief, but whether Albright has pleaded sufficient facts regarding his intent to purchase Polaris' products to establish an "actual and imminent, not conjectural or hypothetical" threat of future harm. *See Lanovaz*, 726 Fed. App'x at 590-91; *Davidson*, 889 F.3d at 969. Here, Plaintiff Albright testified at deposition that if he "had to do it all over again," he "probably wouldn't have" purchased his vehicle due to "safety and life changes." Dkt. 85-8 (Albright Dep.) 221:11-17. When asked to explain his statement regarding "life changes," Albright stated: "Just different times of life when you're buying things, you know. I bought it for a family vehicle and - I don't know, you know. I would rather have my boys ride dirt bikes nowadays. It's safer." *Id*. at 221:17-24. When asked whether he was now claiming he would not have purchased his vehicle, Albright stated he "probably wouldn't have" because "that's - you know, the time of life. It's just when you would buy it," and he added that he "[doesn't] want to buy anything during the corona.'" *Id*. at 222:3-14. Plaintiffs do not identify any facts or evidence to suggest Albright intends to or would consider purchasing another vehicle from Polaris. *See* Dkt. 100 (Opp.) at 22-25.

Even when viewed in the light most favorable to Plaintiff, Albright's admission that he likely would not have purchased the vehicle if he "had to do it all over again" and his statements about "life changes," that he "would rather have [his] boys ride dirt bikes nowadays" because "[i]t's safer", and that he "[does not] want to buy anything during the corona" clearly establish the absence of any "imminent or actual threat of future harm" arising from Defendants' alleged misrepresentations because there is no sufficient likelihood Albright would purchase another Polaris vehicle and "again be wronged in a similar way." *See* Dkt. 85-8 (Albright Dep.) 221:11-222:14.

Plaintiff Albright, thus, lacks standing to seek injunctive relief on his UCL claim, and the court GRANTS the Motion with respect to this claim. *See Lanovaz*, 726 Fed. App'x at 590-91.

2. Equitable Restitution

Defendants next contend Plaintiff Albright's equitable relief claims fail because he cannot show he lacks an adequate remedy in law. Dkt. 85-1 (MSJ Br.) at 19-24. Defendants cite *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834, 839 (9th Cir. 2020) for the proposition that the Ninth Circuit has confirmed that a plaintiff can only seek equitable remedies, including restitution, if he lacks an adequate legal remedy. Dkt. 85-1 (MSJ Br.) at 19-20.

In *Sonner*, 971 F.3d at 837, the Ninth Circuit held "that federal courts must apply equitable

principles derived from federal common law to claims for equitable restitution under California's Unfair Competition Law ('UCL') and Consumers Legal Remedies Act ('CLRA')." Under federal common law in this circuit, "the traditional principles governing equitable remedies in federal courts, including the requisite inadequacy of legal remedies, apply when a party requests restitution under the UCL and CLRA in a diversity action." *Id*. at 844. Plaintiff Albright, therefore, must establish he lacks an adequate remedy at law to maintain his equitable restitution claim under the UCL. *See id*.

Defendants argue *Sonner* requires the court to grant summary judgment against Plaintiffs' equitable claims because the SAC is devoid of any allegation that Plaintiffs lack an adequate remedy at law and because their request for monetary damages under the CLRA establishes that adequate legal remedies are available. Dkt. 85-1 (MSJ Br.) 19-22. The court agrees with Defendants.

The SAC seeks damages for violations of the CLRA in addition to restitution under the UCL. Compare SAC ¶99 (claiming damages for the allegedly deceptive practices) with *id*. ¶123 (seeking restitution and disgorgement of all profits obtained). Courts have recognized that a plaintiff who seeks both damages under the CLRA and restitution under the UCL must allege facts suggesting that damages under the CLRA alone would not provide adequate relief thus necessitating equitable restitution. *E.g., Duttweiler v. Triumph Motorcycles (Am.) Ltd.*, Case No. 14-cv-04809-HSG, 2015 WL 4941780, at *8-9 (N.D. Cal. Aug.

18, 2015) (dismissing UCL and FAL claims after finding plaintiff had not alleged sufficient facts to demonstrate he had no adequate legal remedy); *see also Sonner*, 971 F.3d at 844 (affirming a district court's dismissal of equitable restitution claims under the UCL and CLRA where the plaintiff sought the same sum in equitable restitution and in damages).

Plaintiffs do not identify facts to establish that Albright lacks an adequate legal remedy, or even raise this argument in their opposition. Instead, Plaintiffs contend Albright's equitable restitution claim must survive because he has not pleaded any legal remedy and only seeks restitution under the UCL. *See* Dkt. 100 (Opp.) at 21-22. The relevant question, however, is not whether Albright has pleaded legal remedies, but whether he could have sought an adequate legal remedy. *See Sonner*, 971 F.3d at 844; *see also Rhynes v. Stryker Corp.*, No. 10-cv-5619-SC, 2011 WL 2149095, at *4 (N.D. Cal. May 31, 2011) ("Where the claims pleaded by a plaintiff may entitle her to an adequate remedy at law, equitable relief is unavailable.'") (emphasis in original). The fact that Albright previously sought legal damages under the CLRA in the Complaint and FAC, based on the same alleged misrepresentations at the heart of his UCL claim, and that Guzman continues to seek legal damages in the SAC, indicates that an adequate remedy at law exists in the form of damages under the CLRA. *See* Dkt. 1 (Campi.) ¶¶69, 89, Prayer ¶ 5; Dkt. 26 (FAC) ¶¶69, 89, Prayer ¶5; Dkt. 39 (SAC) ¶¶75, 99, Prayer ¶ 5. Plaintiffs' argument, thus, fails.

At the hearing, Plaintiffs argued that Albright lacks an adequate remedy at law because the court previously dismissed his CLRA claims as untimely. Plaintiffs further argued that the facts at hand are distinguishable from *Sonner* because Albright will have no other remedy if the court were to deny equitable relief and because Albright lost his ability to seek a legal remedy based on Defendants' assertion of the statute of limitations as an affirmative defense, rather than due to procedural gamesmanship like the plaintiff in *Sonner*.

As the Ninth Circuit has explained, however, a plaintiff's failure to timely comply with the requirements to obtain a remedy at law does not make the remedy inadequate, so as to require the district court to exercise its equitable jurisdiction. *United States v. Elias*, 921 F.2d 870, 874 (9th Cir. 1990) (denying equitable relief where the plaintiff failed to timely follow the procedures to obtain a legal remedy in connection with his claim for a return of seized property); *see also Franckowiak v. Scenario Cockram United States, Inc.*, Case No. CV 20-8569-JFW (PVCx), 2020 U.S. Dist. LEXIS 252824, at *9 (C.D. Cal. Nov. 30, 2020) ("failure to file a proper claim within the statute of limitations does not make the remedy at law inadequate; it simply means Plaintiffs missed their opportunity to seek legal redress under those statutes"). That Albright can no longer obtain a legal remedy is insufficient to establish that he did not have an adequate remedy at law in the first instance. It is irrelevant whether Albright lost his remedy due to Defendants' assertion of the statute of limitations or

based on an election of remedies like in Sonner. The court will not deny the Motion on this basis.

Next, Plaintiffs argue Albright may seek equitable restitution because a plaintiff may ordinarily seek inconsistent remedies based on the same set of facts and ordinarily need not elect, and cannot be compelled to elect, between inconsistent remedies during the course of trial prior to judgment. Dkt. 100 (Opp.) at 21-22, citing, *e.g., Kraif v. Guez*, Case No. CV 12-06206-SJO (SHx), 2013 WL 12121362, at *3 (C.D. Cal. Apr. 16, 2013), and *Roam v. Koop*, 41 Cal. App. 3d 1035, 1039 (1974).

The Ninth Circuit, however, has expressly held that a plaintiff must establish, under federal common law, that he "lacks an adequate remedy at law before securing equitable restitution for past harm under the UCL and CLRA." *Sonner*, 971 F.3d at 844. "The question is not whether or when Plaintiffs are required to choose between two available inconsistent remedies, it is whether equitable remedies are available to Plaintiffs at all." *In re Macbook Keyboard Litig.*, Case No. 5:18-cv-02813-IEJ D, 2020 WL 6047253, at *2 (N.D. Cal. Oct. 13, 2020). Plaintiffs do not cite any relevant authority decided after *Sonner* that supports their assertion that Albright may continue to seek equitable relief without demonstrating he lacks an adequate remedy at law. *See* Dkt. 100 (Opp.) at 21-22. Plaintiffs' argument, thus, fails.

Finally, Plaintiffs contend that "where the plaintiff seeks remedies both at law and in equity, the

claims for equitable relief may be allowed if they arise from a theory distinct from that underlying the claim for damages." *Id*. at 22. Plaintiffs, however, offer no explanation as to how Albright's UCL claims arise from a distinct *theory of liability* from his dismissed CLRA claims. *See id*. at 21-22. This argument also fails.

In sum, Plaintiffs fail to demonstrate Albright lacks an adequate legal remedy, and the court finds his claim for equitable restitution is barred under federal common law. *See Sonner*, 971 F.3d at 843-44. The court, therefore, GRANTS Defendants ' Motion as to Plaintiff Albright's equitable restitution claims under the UCL.

3. Conclusion on Equitable Relief Claims

For these reasons, the court GRANTS Defendants' Motion against Plaintiff Albright's claims for equitable and injunctive relief. As Albright has not sought any other relief under the UCL, the court, therefore, GRANTS summary judgment in Defendants' favor on Albright 's entire second cause of action.

Conclusion

The court GRANTS summary judgment in Defendants' favor against all of Plaintiffs Guzman and

Albright's causes of action in the SAC[8]. Plaintiffs' Motion for Class Certification (Dkt. 67), Defendants' Ex Parte Application to Strike Plaintiffs' Class Certification "Reply" Report and Plaintiffs' Use of Merits Reports in Their Class Certification Reply Brief (Dkt. 134), and the remaining portions of Plaintiffs' Motion Requesting Amendment of the Scheduling Order to Continue Outstanding Motions, Discovery, and Trial Deadlines by One Hundred Eighty Days (Dkt. 84) are MOOT.

This Order shall constitute notice of entry of judgment pursuant to Fed. R. Civ. P. 58. Pursuant to Local Rule 58-6, the court ORDERS the Clerk to treat this order, and its entry on the docket, as an entry of judgment.

IT IS SO ORDERED.

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[8] Having granted the Motion for the aforementioned reasons, the court need not address the parties' arguments regarding benefit of the bargain and causation. *See* Dkt. 85-1 (MSJ Br.) at 16-19.

28 U.S.C. §1332(d)(2)-(4)

* * *

(d)(2) The district courts shall have original jurisdiction of any civil action in which the matter in controversy exceeds the sum or value of $5,000,000, exclusive of interest and costs, and is a class action in which –

(A) any member of a class of plaintiffs is a citizen of a State different from any defendant;
(B) any member of a class of plaintiffs is a foreign state or a citizen or subject of a foreign state and any defendant is a citizen of a State; or
(C) any member of a class of plaintiffs is a citizen of a State and any defendant is a foreign state or a citizen or subject of a foreign state.

(3) A district court may, in the interests of justice and looking at the totality of the circumstances, decline to exercise jurisdiction under paragraph (2) over a class action in which greater than one-third but less than two-thirds of the members of all proposed plaintiff classes in the aggregate and the primary defendants are citizens of the State in which the action was originally filed based on consideration of—

(A) whether the claims asserted involve matters of national or interstate interest;
(B) whether the claims asserted will be governed by laws of the State in which the

action was originally filed or by the laws of other States;
(C) whether the class action has been pleaded in a manner that seeks to avoid Federal jurisdiction;
(D) whether the action was brought in a forum with a distinct nexus with the class members, the alleged harm, or the defendants;
(E) whether the number of citizens of the State in which the action was originally filed in all proposed plaintiff classes in the aggregate is substantially larger than the number of citizens from any other State, and the citizenship of the other members of the proposed class is dispersed among a substantial number of States; and
(F) whether, during the 3-year period preceding the filing of that class action, 1 or more other class actions asserting the same or similar claims on behalf of the same or other persons have been filed.

(4) A district court shall decline to exercise jurisdiction under paragraph (2)—

(A)(i) over a class action in which—

(I) greater than two-thirds of the members of all proposed plaintiff classes in the aggregate are citizens of the State in which the action was originally filed;
(II) at least 1 defendant is a defendant--

(aa) from whom significant relief is sought by members of the plaintiff class;
(bb) whose alleged conduct forms a significant basis for the claims asserted by the proposed plaintiff class; and
(cc) who is a citizen of the State in which the action was originally filed; and

(III) principal injuries resulting from the alleged conduct or any related conduct of each defendant were incurred in the State in which the action was originally filed; and

(ii) during the 3-year period preceding the filing of that class action, no other class action has been filed asserting the same or similar factual allegations against any of the defendants on behalf of the same or other persons; or

(B) two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed.