

**IN THE
SUPREME COURT OF THE UNITED STATES**

No. ____

POLARIS INC.; POLARIS INDUSTRIES INC.; POLARIS SALES INC.,
Applicants,

v.

JEREMY ALBRIGHT,

Respondent.

**APPLICATION TO THE HON. ELENA KAGAN FOR AN EXTENSION
OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF
CERTIORARI TO THE UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT**

Pursuant to Supreme Court Rule 13(5), Polaris Inc., Polaris Industries Inc. and Polaris Sales Inc. (collectively, “Polaris”) hereby move for an extension of time of 59 days, to and including Friday, April 7, 2023, for the filing of a petition for a writ of certiorari to review the decision of the United States Court of Appeals for the Ninth Circuit dated September 29, 2023 (Exhibit 1). A petition for rehearing was denied on November 9, 2023 (Exhibit 2). Unless an extension is granted, the deadline for filing the petition for certiorari is February 7, 2023. The jurisdiction of this Court is based on 28 U.S.C. §1254(1).

1. Respondent purchased a Polaris off-road vehicle that had a label on its roll cage stating that the cage “meets OSHA requirements of 29 CFR § 1928.53.” Alleging that the label is false and misleading because Polaris tests the vehicles in a manner that Respondent claims is inconsistent with the standard under 29 C.F.R.

§1928.53, Respondent sued Polaris in the United States District Court for the Central District of California under California’s Consumers Legal Remedies Act (CLRA), Unfair Competition Law (UCL), and False Advertising Law (FAL). Respondent asserted claims on behalf of a putative class of all persons in California that had purchased a vehicle in the preceding four years. The district court dismissed the CLRA and FAL claims as time-barred, leaving Respondent with only a claim for equitable restitution under the UCL. The court subsequently granted summary judgment to Polaris on Respondent’s UCL claim. Relying on the Ninth Circuit’s decision in *Sonner v. Premier Nutrition Corp.*, 971 F.3d 834 (9th Cir. 2020), which held that a plaintiff cannot maintain equitable claims in federal court if he had an adequate legal remedy, the court concluded that Respondent still had an adequate legal remedy under the CLRA, even though it was time-barred, and thus could not seek equitable restitution. See *Guzman, et al. v. Polaris Indus.*, 2021 WL 2021454, at *11-13 (C.D. Cal. May 12, 2021); *Guzman, et al. v. Polaris Indus.*, 2020 WL 2477684, at *4 (C.D. Cal. Feb. 13, 2020).

2. The Ninth Circuit reversed the grant of summary judgment and remanded with instructions to dismiss Respondent’s UCL claim without prejudice to refile in state court. The court agreed that Respondent had an adequate legal remedy in his time-barred CLRA claim and thus could not bring his equitable UCL claim. Ex. 1 at 7-10. Nevertheless, because “the district court lacked equitable jurisdiction,” it “should have denied Polaris’ motion for summary judgment and dismissed [Respondent’s] UCL claim without prejudice for lack of equitable

jurisdiction.” *Id.* at 10-11. The Ninth Circuit conceded that the district court had subject-matter jurisdiction, but “[e]quitable jurisdiction is distinct from subject matter jurisdiction.” *Id.* at 12. And because the district court “lacked equitable jurisdiction,” 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.” *Id.* at 13. Instead, the district court “should have dismissed [Respondent’s] UCL claim without prejudice to refileing the same claim in state court.” *Id.*

3. The Ninth Circuit’s conclusion that the absence of “equitable jurisdiction” requires dismissal without prejudice to refileing in state court, rather than summary judgment on the merits precluding a subsequent state-court filing, cannot be reconciled with decisions from this Court or decisions from the federal courts of appeals. This Court long ago held that “[w]hether a [party] is entitled to equitable relief in the federal courts, other jurisdictional requirements being satisfied, is strictly not a question of jurisdiction in the sense of the power of a federal court to act,” but “a question only of the merits.” *Di Giovanni v. Camden Fire Ins. Ass’n*, 296 U.S. 64, 69 (1935). And the Court’s more recent cases noting that “jurisdiction” is a word of “many, too many, meanings,” *Fort Bend Cnty., Tex. v. Davis*, 139 S. Ct. 1843, 1848 (2019), underscore that the phrase “equitable jurisdiction” does not address whether a court retains the power to hear cases and enter final judgment on the merits, but merely concerns whether a plaintiff has satisfied the requirements for a court to grant equitable relief. If he has not, the district court, exercising subject-matter jurisdiction, can enter final judgment on the merits with prejudice. Courts of

appeals thus consistently hold that the failure to state a cognizable equitable claim does not deprive a court of subject-matter jurisdiction to enter a judgment on the merits. *See, e.g., ACS Recovery Servs., Inc. v. Griffin*, 723 F.3d 518, 522-23 (5th Cir. 2013) (en banc); *Carlson v. Principal Fin. Grp.*, 320 F.3d 301, 307 (2d Cir. 2003); *Pozsgay v. S.W. Ill. Health Facilities, Inc.*, 924 F.2d 677, 678 (7th Cir. 1991). Certiorari is warranted to correct the Ninth Circuit's erroneous understanding of jurisdiction and restore uniformity to this important area of the law.

4. Polaris's counsel of record in this Court, George W. Hicks, Jr., was not involved in the proceedings below and requires additional time to review the record in this case and to prepare a petition that fully addresses the significant issues raised by the decision below in a manner that will be most helpful to the Court. Furthermore, between now and the current due date of the petition, Mr. Hicks has substantial briefing obligations, including a response brief in *Street v. BP Exploration & Production, Inc.*, No. 22-30393 (5th Cir.) (due January 27, 2023), a response brief in *Amgen, Inc. v. Sanofi*, No. 21-757 (U.S.) (due February 3, 2023), a petition for certiorari in *Ultra Petroleum Co. v. Ad Hoc Committee of OpCo Unsecured Creditors* (due February 13, 2023), and a reply brief in *In re Aearo Technologies*, No. 22-2606 (7th Cir.) (due February 15, 2023).

For the foregoing reasons, Polaris requests that an extension of time to and including Friday, April 7, 2023, be granted within which Polaris may file a petition for a writ of certiorari.

Respectfully submitted,



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