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**UNITED STATES DISTRICT COURT  
DISTRICT OF MINNESOTA**

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CHAD REIS, and THOMAS LAMB,

Plaintiffs,

v.

POLARIS INDUSTRIES, INC., a Minnesota corporation; and JOHN DOES I-X,

Defendants.

Case No: 0:19-cv-02481-DSD-TNL

**FIRST AMENDED COMPLAINT  
AND  
JURY DEMAND**

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TO: DEFENDANT ABOVE-NAMED:

Plaintiffs CHAD REIS and THOMAS LAMB, by and through their counsel of record, hereby submit this First Amended Complaint for causes of action against the Defendant and state and allege the following:

1. At all times relevant herein, Plaintiff Chad Reis has resided at 1498 Turquoise Dr., Corona, California 92882.
2. At all times relevant herein, Plaintiff Thomas Lamb has resided at 5642 Serenity Pl. Unit D, Eastvale, California 91752.
3. The parties referred to in Paragraphs 1 and 2 may be collectively or individually referred to herein as "Plaintiffs."
4. Defendant Polaris Industries, Inc. (hereinafter "Polaris"), is a Minnesota corporation with its principle place of business at 2100 Highway 55, Medina, Hennepin County, Minnesota 55340. Polaris does business in the state of Minnesota, including but not limited to, advertising, designing,

testing, manufacturing, shipping, and selling its products in the State of Minnesota, and owning and operating multiple facilities in Minnesota.

5. John Does I-X are presently unknown individuals or entities who may have been involved in manufacturing, designing, assembling, distributing, servicing, repairing, modifying, and/or selling the Polaris vehicle at issue.

6. At all times pertinent, Polaris has sold, manufactured, designed, assembled, distributed, tested, and marketed off-road vehicles (“ORVs”), including without limitation, the Polaris RZR. The RZR is a side-by-side, four-wheel, off-road vehicle.

#### **Incident Facts**

7. On February 23, 2019, Plaintiffs were traveling in a 2019 RZR Turbo (“The RZR”) near Thousand Palms, County of Riverside, California.

8. The RZR was owned by Plaintiff Reis.

9. Plaintiffs were travelling on a trail, the type of which was foreseeable to Polaris.

10. Suddenly and without warning, the RZR started on fire (“the Incident”).

11. As soon as Plaintiffs realized the RZR was on fire, they moved as quickly as possible to get out of the RZR.

12. Plaintiff Reis was able to get out of the RZR first, but tried to help Plaintiff Lamb exit the vehicle.

13. Plaintiff Lamb was eventually able to exit the vehicle with help.

14. Plaintiffs suffered severe burns in the Incident.

15. Plaintiffs narrowly escaped suffering even more significant burn injuries or being killed by the RZR fire.

16. The RZR was quickly destroyed by the fire.

17. As a result of nearly being burned to death themselves, Plaintiffs have suffered and continue to suffer severe emotional distress.

#### **Other Facts**

18. For many years, Polaris has known that its systems for reporting and communicating the hazards of fires involving Polaris ORVs are deficient. These problems date back to at least 1999-2001, when Polaris received reports that due to defects in certain of its ORVs, some vehicles were prone to catch fire during use. Although Polaris received reports of more than 40 fires during this period, causing at least 18 injuries during that time, Polaris did not issue recalls of these ORVs, nor did Polaris timely report the problems to the Consumer Products Safety Commission (“CPSC”). The CPSC fined Polaris for failing to comply with federal laws that required Polaris to timely report these incidents. In 2005, Polaris paid the fine.

19. For the 2011 model year, Polaris brought out the RZR XP 900 equipped with a new “Prostar” engine and exhaust system, using a forward mounted cylinder and exhaust routing. This design generated excessive thermal heat between the under chassis mounted engine (located just behind and under the passenger seats) and the passenger seat backs, where the seat belt harness buckle is located. This created the conditions which led to thermal damage to components and fires.

20. Within the first year after release of the new Prostar equipped RZR XP 900, Polaris received hundreds of reports that RZRs were experiencing melting, thermal damage, and fires near the divider panel between the exhaust header and the seat backs.

21. In 2011 or 2012, Polaris' own Safety manager, Kenneth d'Entremont, recommended to management that the 2011 RZR be recalled due to this thermal hazard. Polaris did not do so. Nor did it conduct any robust assessment of the Prostar-equipped RZRs then in development (including the XP 1000) to redesign the engine/exhaust orientation or determine the extent of the thermal hazard inherent in the design.

22. Disregarding the thermal hazards, Polaris proceeded to release new Prostar models which were much more powerful, including the XP 1000. The first XP 1000s were sold in late 2013.

23. Within a few months of release, Polaris became aware that new XP 1000 vehicles were suddenly catching fire without an apparent reason, and sometimes completely burning to the ground.

24. By February 2014, the Polaris employee assigned to track safety claims had advised Polaris' Global Safety Manager and other senior Polaris management that the fire situation "raised alarms."

25. Despite this, for at least the next 18 months, Polaris continued to sell the dangerous vehicles without any modifications to eliminate or reduce the fire hazard.

26. For the next 18 months, Polaris failed to modify or redesign the vehicles' thermal systems.

27. For the next two years, Polaris failed to advise consumers that there was a serious fire hazard problem affecting all 2013-2016 RZRs; instead, it continued to aggressively market the vehicles for adventure sports use.

28. By April 19, 2016, Polaris had knowledge of more than 160 RZR model 2013-2016 fires, which had resulted in at least 19 injuries and the death of Baylee Hoaldrige, a teenage girl.

29. On April 19, 2016, Polaris announced a recall of 133,000 2013-2016 RZR 900 and 1000 models due to multiple defects causing fires and burn injuries.

30. In dealing with the Consumer Product Safety Commission in 2015 and 2016, Polaris falsely represented to the CPSC that it had found solutions to the thermal hazards which, once implemented in recall repairs, would make the vehicles safe.

31. Polaris gave these false assurances in other public statements intended for consumers and investors.

32. Since April, 2016, Polaris has continued recalling other RZR models, for having defects that can cause fires.

33. However, the recall modifications Polaris made, in 2016 and thereafter, are “band-aid” solutions which do not correct the thermal hazards. Indeed, RZR’s, including the 2019 RZR Turbo, continue to catch fire at alarming rates. Plaintiffs’ counsel have been personally involved in several cases in which occupants sustained such severe burn injuries that they eventually died. Other occupants have been catastrophically burned.

34. In the meantime, Polaris has spent millions of dollars on recall and public relations efforts (i.e brand crisis management), which have been consciously, falsely, and in some cases, fraudulently, designed and created to (1) mislead consumers that RZR vehicles, once recalled for corrective service, are safe to drive, and (2) mislead consumers that the changes Polaris has made to RZR’s are effective to eliminate the risk of sudden and rapid propagating fires in new models, including those for model year 2019.

35. It has become increasingly clear that recall repairs and design alterations being performed by Polaris have not eliminated the risk of fire and burn injuries. Polaris has continued to receive

scores of reports of fires that have destroyed vehicles even though owners report that the vehicles had Polaris' recall service performed.

36. For many years, Polaris has failed to: make changes to its RZRs to adequately reduce the risk of fire and protect occupants in the event of fire; properly and timely inform the CPSC and consumers of the gravity and extent of the problem and the risk to occupants of these vehicles; recall unsafe vehicles; or properly warn of the hazards and how to minimize risk.

37. Prior to the events at issue in this case, Polaris also knew that its vehicles lacked design features that provided occupant protection or safety to escape in time in the event a fire started.

38. Polaris also knew that its prior actions to notify users of the hazards or issue recalls with regard to the fires were insufficient.

39. Polaris also knew that any changes it had made to the design and warnings of the RZRs failed to provide proper notice to consumers of the extent and gravity of the fire hazards and had not proven to be effective.

40. Polaris did not sufficiently educate its engineers with regard to the many reports it received of RZR fires or the claims related to such fires. Polaris did not adequately staff a product safety department. Polaris limited the authority of employees to recall products. Polaris continued to aggressively market, promote, and sell Polaris RZRs, and through its advertising and public relations efforts, encouraged its users to modify vehicles.

41. Polaris' negligent, reckless, and deliberate decisions in the years leading up to the incidents described in this case included continuing to rush new RZR models, including those for model year 2019, to market before they were ready. This led to problems with manufacturing, assembly

quality, poor quality control, inadequate testing and premature release of products prior to validation of their safety.

42. In April 2018, Polaris agreed to pay a civil fine imposed by the United States CPSC of \$27,250,000 for failing to properly and timely report fires in 2013-2016 RZR models.

43. Had Polaris properly and truthfully communicated to Plaintiffs about the thermal hazards related to its RZR vehicles, including the 2019 RZRs, Plaintiff Reis would not have purchased the RZR and Plaintiffs would not have used the RZR.

### **COUNT 1**

#### **Negligence**

44. The preceding paragraphs are hereby incorporated by reference.

45. Polaris was negligent in one or more of the following respects, among others:

A. In failing to use reasonable care in the selection of proper materials reasonably suited for the safe utilization and/or operation of RZR vehicles;

B. In failing to use reasonable care in the manufacturing of RZRs;

C. In failing to use reasonable care in the design of RZRs;

D. In failing to use reasonable care in the assembly of RZRs;

E. In failing to use reasonable care in inspecting RZRs;

F. In failing to use reasonable care in testing RZRs;

G. In failing to use reasonable care for quality control and quality assurance during the manufacturing, design, maintenance, assembly, distribution, and/or sale of the RZRs;

H. In failing to use reasonable care in providing adequate warnings and/or instructions for safe use of RZR's;

I. In failing to use reasonable care to warn members of the public generally, and the Plaintiffs specifically, before and after RZR's were sold, of the foreseeable and latent dangers and defects, related to fire and burn hazards, inherent in the usage of RZR's;

J. In failing to use reasonable care in using recalls related to RZR's;

K. For any and all other defects, presently unknown, that may exist and may be determined by discovery; and

L. For any and all other acts and omissions of negligence, presently unknown, that may exist and may be determined by discovery.

46. Defendants' negligence was the direct and proximate cause of Plaintiffs' damages.

## COUNT 2

### Strict Liability

47. The preceding paragraphs are hereby incorporated by reference.

48. Polaris, at all times pertinent hereto, in the regular course of its individual business, designed, manufactured, constructed, distributed, assembled, sold, and/or placed RZR's, including the RZR at issue in this Case, into the stream of interstate commerce for use by the public, including the RZR used by the Plaintiffs. The RZR was defective in design, manufacturing, assembly, testing and warnings.

49. By placing the RZR into the stream of commerce, Polaris represented that the RZR could be used safely by the public for the intended purpose. The RZR remained in the same defective



condition as when it was manufactured and was unreasonably dangerous when used by Plaintiffs as they were intended.

50. The defects in the RZR were the direct and proximate cause of Plaintiffs' damages.

### **COUNT 3**

#### **Manufacturing Flaw**

51. The preceding paragraphs are hereby incorporated by reference.

52. The above-referenced RZR was in a defective condition and was unreasonable dangerous since Plaintiffs could not have anticipated the danger of the product. Polaris failed to properly assemble, manufacture, inspect, and test the RZR or its design to determine if the RZR would be sufficiently safe to permit foreseeable users to use the machines without injury. The defective conditions were hidden and not apparent to Plaintiffs.

53. The defects in the RZR were the direct and proximate cause of Plaintiffs' damages.

### **COUNT 4**

#### **Failure to Warn**

54. The preceding paragraphs are hereby incorporated by reference.

55. Polaris failed to properly warn Plaintiffs and other people who would foreseeably be in close proximity to, use, or drive the RZR of the defective and dangerous condition of the RZR, both before and after sale.

56. Polaris' failure to warn was the direct and proximate cause of Plaintiffs' damages.

### **COUNT 5**

#### **Breach of Express and Implied Warranties**

57. The preceding paragraphs are hereby incorporated by reference.

58. In the design, manufacture, marketing, assembly, distribution, and/or sale of the RZR, Polaris expressly and/or impliedly warranted to the public in general and to Plaintiffs in particular, that the products designed, manufactured, marketed, assembled, distributed, installed and/or sold by them or under their supervision, direction, and/or control, were merchantable and reasonably fit and suitable for the ordinary purposes for which such goods are used, and that the products conform to the standards imposed by law.

59. Polaris breached its express and implied warranties of fitness and merchantability, insofar as the RZR was placed into the stream of commerce in such a manner as to constitute an unreasonable danger and a hazard to Plaintiffs when used as it was intended.

60. Polaris' breach of warranties was the direct and proximate of Plaintiffs' damages.

#### **COUNT 6**

##### **Negligent Infliction of Emotional Distress**

61. The preceding paragraphs are hereby incorporated by reference.

62. Plaintiffs were in the zone of danger when the RZR was consumed by fire.

63. Plaintiffs reasonably feared for their own safety.

64. Plaintiffs suffered severe emotional distress with attendant physical manifestations.

##### **Injuries and damages**

65. The liable conduct of Polaris described above caused Plaintiffs to sustain substantial injuries and damages, including but not limited to property damage, loss of interest, past and future medical expense, income loss, earning capacity loss, disability, emotional distress, pain, suffering and loss of household services. Each Plaintiff has sustained damages greater than \$50,000.

THEREFORE, Plaintiffs pray for judgment against Polaris as follows:

1. For damages in an amount greater than \$50,000 for each Plaintiff;
2. For prejudgment interest on all special damages pursuant to Minnesota law; and
3. For costs and such other further relief as the Court deems proper.

Plaintiffs hereby demand a jury trial.

DATED this 25<sup>th</sup> day of September 2019.

**WOJTALEWICZ LAW FIRM, LTD.**

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