IN THE UNITED STATES DISTRICT COURT FOR THE
WESTERN DISTRICT OF MISSOURI
WESTERN DIVISION

TAMMIE MCGAUTHA AND WALTER MCGAUTHA, ON BEHALF OF THEMSELVES AND ALL OTHERS SIMILARLY SITUATED;	)	
Plaintiffs,	)	Case No. 4:23-cv-00799-RK
v.	)	
FORD MOTOR COMPANY,	)	
Defendant.	)	

ORDER

Before the Court are two motions filed by Defendant Ford Motor Company (1) a motion to dismiss (Doc. 30), and (2) a motion to compel arbitration (Doc. 44). The motions are fully briefed. (Docs. 31, 37, 40, 45, 46, 47). After careful consideration and review, the Court **ORDERS** that: (1) the motion to compel arbitration is **DENIED**, and (2) the motion to dismiss is **DENIED without prejudice**.

Background and Procedural Posture[1]

In this putative class action, Plaintiffs Tammie McGautha and Walter McGautha seek damages as well as equitable and injunctive relief against Defendant Ford Motor Co. alleging that certain model-years of three Ford automobiles suffer the same design defect in the engine oil pump system which causes low engine oil pressure and ultimately engine failure. Plaintiffs assert two claims for relief: Count 1 – violation of the Missouri Merchandising Practices Act ("MMPA"), and Count 2 – unjust enrichment. The allege that the following vehicles suffer the design defect in the engine oil pump in that they have the same Ford 1.0L EcoBoost engine: 2016-2017 Ford Fiesta, 2018-2021 Ford EcoSport, and 2016-2018 Ford Focus (collectively, "Class Vehicles").

[1] Because the parties have submitted evidence outside the pleadings corresponding to Ford's motion to compel arbitration, the Court treats the motion to compel arbitration akin to a motion for summary judgment, viewing the evidence and all reasonable inferences in the record in the light most favorable to Plaintiffs as the non-moving parties. *Ballou v. Asset Mktg. Servs., LLC*, 46 F.4th 844, 850-51 (8th Cir. 2022). In considering Ford's motion to dismiss, the Court takes the facts pleaded in the complaint as true and construes them in the light most favorable to Plaintiffs as the non-moving parties. *Hafley v. Lohman*, 90 F.3d 264, 266 (8th Cir. 1996).

Plaintiffs Tammie and Walter McGautha purchased a 2020 Ford EcoSport SE from a Ford dealership located in Blue Springs, Missouri, ("Blue Springs dealership") on January 21, 2021. (Doc. 1 at ¶¶ 14, 17.) When they bought it, Plaintiffs' EcoSport was one year old and had been driven for approximately 20,000 miles. (*Id.* at ¶ 16.) Plaintiffs conducted regular maintenance, including oil changes, between January 2021 and March 2023. (*Id.* at ¶ 18.) In March 2023 while Plaintiffs were driving to Nashville, Tennessee, on the interstate, the oil light indicator activated on the EcoSport's dashboard; shortly thereafter the vehicle shuddered and stopped operating. (*Id.* at ¶¶ 19, 20.)

Plaintiffs' EcoSport was towed to a Ford dealership in Springfield, Tennessee, which told Plaintiffs that the engine oil pump had failed and had destroyed the engine. (*Id.* at ¶ 23.) Plaintiffs were told that the dealership had "seen this happen so many times," and gave Plaintiffs a repair estimate of $7,254.01 (including more than $3,100 in parts/supplies and $3,300 in labor). (*Id.* at ¶¶ 23, 25.) Plaintiffs were told that the EcoSport had "'no value' because of the defect and related damage to the vehicles," and therefore the dealership would not consider the EcoSport for a trad in or buy-back purchase. (*Id.* at ¶ 30.) Plaintiffs sought assistance from the Blue Springs dealership—which told Plaintiff Tammie McGautha that because Plaintiffs had not purchased an extended warranty on the vehicle, the dealership was unable to provide any assistance—and from Ford as well, which did not provide further assistance, either. (*Id.* at ¶¶ 32, 33.) Plaintiffs' EcoSport was not repaired until October 2023, during which time they continued to make installment payments and insurance coverage payments for the vehicle. (*Id.* at ¶¶ 26, 27.) The repair ultimately cost $8,181.08. (*Id.* at ¶ 28.)

Plaintiffs allege that had they known of the defective oil pump "they would not have purchased the Ford EcoSport vehicle or any other Ford model with the 1.0L EcoBoost engine containing the defective oil pump" and "would not have paid the amount that they paid for the EcoSport vehicle." (*Id.* at ¶ 35.) Furthermore, they allege that Ford knew or should have known of the defective design when Plaintiffs purchased the EcoSport from a myriad of sources including, *inter alia*, Special Service Messages issued by Ford concerning the same 1.0L EcoBoost engine in certain model-years of the EcoSport and the Ford Focus; publicly posted video criticisms by mechanics; pre-release evaluation, testing, repair data, and design, manufacturing, and engineering internal knowledge; consumer complaints filed with the National Highway Traffic Safety

Administration ("NHTSA") concerning certain model-years of the EcoSport and Focus. (*Id.* at 8-20.)

Plaintiffs allege that the engine oil pumps in the Ford 1.0L EcoBoost engine present in the Class Vehicles are defectively designed because they rely on a so-called "wet belt" design with belt tensioners and belts that fail, in turn causing pieces of the belt tensioner and metal shavings from metal pieces of the engine coming into contact that circulate through the engine, accompanied by a loss of engine oil pressure, causing the engine to fail and requiring replacement of the engine. Plaintiffs allege that the defectively designed oil pump is a safety risk in that it "can cause the engine to stall or fail without warning or cause the vehicle to decelerate or stop suddenly," as it did with Plaintiffs in March 2023. (*Id.* at ¶ 5.)

Discussion

I. Motion to Compel Arbitration (Doc. 44)

The Court first considers Ford's motion to compel arbitration, seeking to enforce an Agreement to Arbitrate that Plaintiffs executed as part of the Retail Purchase Agreement when they purchased the EcoSport vehicle from the Blue Springs dealership. In a declaration attached to the motion, Ford's counsel indicates that the proffered arbitration agreement was executed in conjunction with Plaintiffs' purchase of the vehicle in January 2021 and maintained by the Blue Springs dealership in the regular course of its business, and that counsel received a copy of the arbitration agreement from the dealership on April 16, 2024. (Doc. 45-1.)

The arbitration agreement as attached to the Retal Purchase Agreement, executed between Plaintiff Walter McGautha and the Blue Springs dealership provides as follows:

> By entering this Agreement to Arbitrate ("Agreement"), Customer(s) and Dealership (collectively referred to as "the Parties") agree, except as otherwise provided in this Agreement, to settle in binding arbitration any dispute between them regarding: (1) the purchase/lease by Customer(s) of the above-referenced vehicle; (2) any products and services purchased in conjunction with the Vehicle; and/or (3) any dispute with respect to the existence, scope or validity of this Agreement. Matters that the Parties agree to arbitrate include, but are not limited to, disputes related to the Retail Purchase/Retail Lease Agreement and any documents incorporated therein by reference (whether such reference is made in the Retail Purchase/Lease Agreement or the document itself), the application for and terms of financing for the transaction, the Finance/Lease Contract, any alleged promises, representations and/or warranties made or relied upon by the Parties, and any alleged unfair, deceptive, or unconscionable acts or practices.
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> . . .

> BY SIGNING BELOW, CUSTOMER ACKNOWLEDGES THAT HE OR SHE HAS READ THIS AGREEMENT TO ARBITRATE AND AGREES TO BE BOUND BY THE TERMS AND CONDITIONS OF THIS AGREEMENT. THIS AGREEMENT IS INCORPORATED BY REFERENCE INTO THE RETAIL PURCHASE/LEASE AGREEMENT. . . .

(Doc. 45-3 at 2.) Ford asserts that under Missouri law[2] it can enforce the arbitration agreement against Plaintiffs in the context of this lawsuit even though Ford is not itself a signatory to the arbitration agreement.[3]

A. Whether the Court can decide the question of Ford's ability to enforce the arbitration agreement as a non-signatory party

As a threshold matter, Ford argues that the issue of whether it may enforce the arbitration agreement as a non-signatory party is a question of arbitrability which has been delegated to the arbitrator and is therefore an issue which the Court cannot decide here. Specifically, Ford points out that in the arbitration agreement the parties expressly agreed to arbitrate "any dispute between them regarding . . . any dispute with respect to the existence, scope or validity of this Agreement."

The Eighth Circuit has recognized that "[w]hether a particular arbitration provision may be used to compel arbitration between a signatory and a nonsignatory is a threshold question of arbitrability." *Eckert/Wordell Architects, Inc. v. FJM Props. of Willmar, LLC*, 756 F.3d 1098, 1100 (8th Cir. 2014) (citation omitted). Questions of arbitrability are questions the Court must resolve "unless there is clear and unmistakable evidence the parties intended to commit questions of arbitrability to an arbitrator." *Id.* (citations omitted). Ford does not persuasively argue that the arbitration agreement here "expressly delegates issues of arbitrability to the arbitrator," however.

In *Burnett v. National Association of Realtors*, 75 F.4th 975 (8th Cir. 2023), the Eighth Circuit affirmed the district court's holding, under Missouri law, that the question of the enforcement of an arbitration agreement by a non-signatory was *not* a threshold issue of arbitrability that had been delegated to the arbitrator where the delegation provision—in that case effectuated by incorporating the AAA Rules[4]—applied "only when the dispute or claim [was]

[2] The parties appear to agree that whether Ford can compel Plaintiffs to arbitrate their claims against it under an arbitration agreement to which it is not a signatory is a question of Missouri state law. *See Donaldson Co., Inc. v. Burroughts Diesel, Inc.*, 581 F.3d 726, 732 (8th Cir. 2009).

[3] Plaintiffs do not dispute that Plaintiff Walter McGautha executed the subject Retail Purchase Agreement in conjunction with Plaintiffs' January 2021 purchase of the subject Ford vehicle and that Blue Springs Ford is a "legally separate and distinct entity form Ford Motor Company." (Doc. 46 at 7-8.)

[4] Ford does not argue that the subject arbitration agreement here delegates particular issues such as arbitrability to the delegator by incorporating any particular recognized arbitration organization rules. And

'between the parties.'" *Id.* at 983. So it is here. Ford asserts that the delegation provision in the arbitration agreement—that "Customer(s) and Dealership (collectively referred to as 'the Parties') agree . . . to settle in binding arbitration any dispute between them regarding: . . . (3) any dispute with respect to the existence, scope or validity of this Agreement" (Doc. 45-3)—applies only to certain disputes arising *between the parties* to the arbitration agreement. Ford, of course, is not a party to the arbitration agreement. Accordingly, the question of whether Ford as a non-signatory can enforce the arbitration agreement is a question properly for the Court to decide in this instance.

B. Whether Ford can enforce the Arbitration Agreement as a non-signatory

Arbitration agreements are enforceable under federal law in federal court. *See* 9 U.S.C. § 2 (arbitration agreements "shall be valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract"). Accordingly, under 9 U.S.C. § 3, a party may seek a stay of a federal lawsuit "upon any issue referable to arbitration under an agreement in writing for such arbitration." Furthermore, any "party 'aggrieved' by the failure of another party 'to arbitrate under a written agreement for arbitration' may petition a federal court 'for an order directing that such arbitration proceed in the manner provided for in such agreement.'" *Rent-A-Center, W., Inc. v. Jackson*, 561 U.S. 63, 68 (2010) (quoting 9 U.S.C. § 4). Federal law liberally favors arbitration. *See AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 339 (2011). And indeed, federal law requires that "upon being satisfied that the making of the agreement for arbitration . . . is not in issue, the court shall make an order directing the parties to proceed to arbitration in accordance with the terms of the agreement." 9 U.S.C. § 4. Ultimately, the party seeking to compel arbitration "bears the burden of proving that there was a valid and enforceable [arbitration] agreement." *Duncan v. Int'l Markets Live, Inc.*, 20 F.4th 400, 402 (8th Cir. 2021) (citation omitted).

Under Missouri law, a non-signatory to an arbitration agreement can enforce an arbitration agreement against a signatory in "limited circumstances." *Tucker v. Vincent*, 471 S.W.3d 787, 798 (Mo. Ct. App. 2015). A non-signatory may enforce an arbitration agreement and compel a signatory to arbitration "when the relationship of the persons, wrongs and issues involved is a close

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for good reason. Rather than expressly incorporating the rules of a particular recognized arbitration organization, the arbitration agreement here merely provides that "[t]he party first demanding arbitration may select the applicable rules of any one of the following" three national arbitration organization rules, and that "[t]he Rules in effect at the time of the request for arbitration is made will govern." (Doc. 45-3 at 2.) Ford does not otherwise rely on the specific rules of any recognized arbitration organization for the delegation question; it rests instead on the language contained within the four corners of agreement itself.

one"; this is referred to as the "alternative estoppel theory" to compel arbitration. *CD Partners, LLC v. Grizzle*, 424 F.3d 795, 799 (8th Cir. 2005) (citation and quotation marks omitted). Missouri courts generally recognize that a non-signatory may enforce an arbitration agreement "when a signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the nonsignatory." *Kohner Props., Inc. v. SPCP Grp. VI, LLC*, 408 S.W.3d 336, 344 (Mo. Ct. App. 2013) (quoting *Grizzle*, 424 F.3d at 798). Put another way, "[w]hen each of a signatory's claims against a nonsignatory makes reference to or presumes the existence of a written agreement, the signatory's claims arise out of and directly relate to the written agreement, and arbitration is appropriate." *Id.* (quoting *Grizzle*, 424 F.3d at 798).

Here, Ford argues that as an element of their claims under the MMPA and for unjust enrichment Plaintiffs must prove the purchase of the EcoSport from the Blue Springs dealership. Therefore, Ford argues, because Plaintiffs "rely on" their purchase of the EcoSport to assert their claims, the arbitration agreement arising out of that purchase agreement is enforceable in this action, even though Ford is a non-signatory party to the agreement. The Court concludes that Ford's argument applies the limited alternative estoppel theory too broadly. The cases on which Ford primarily relies—*Grizzle* and *Barton Enterprises, Inc. v. Cardinal Health, Inc.*, No. 4:10 CV 324 DDN, 2010 WL 2132744 (E.D. Mo. May 27, 2010)—illustrates this conclusion.

In *Grizzle*, C.D. Partners, LLC, brought a tort lawsuit asserting claims for negligence, negligent misrepresentation, and fraudulent misrepresentation against three principals of a franchisor (C.D. Warehouse, Inc.), with which C.D. Partners had entered several franchise agreements. The lawsuit alleged that the principles were negligent in their operation of the franchises and that they had provided C.D. Partners with false information and otherwise acted to deceive C.D. Partners in franchise transactions. *See Grizzle*, 424 F.3d at 798. The three defendant-principals sought to enforce arbitration clauses contained within the franchise agreements to which they were not signatories. The district court denied the motion to compel but the Eighth Circuit reversed on appeal.

In finding that the three principals could enforce the arbitration agreements to which they were not signatory parties, the Eighth Circuit applied the principles of alternative estoppel. It found in particular that the tort claims asserted against the principals by C.D. Partners in the subsequent lawsuit "rely upon, refer to, and presume the existence of the written agreement

between the two corporations." *Id.* at 799. The court of appeals reasoned that the subsequent tort lawsuit between C.D. Partners and the three principals "arises out of and relates directly to the contractual agreement between the signatories, where the core of the dispute is the conduct of the three nonsignatories in fulfilling . . . [the] promises" of the franchisor of which they were the corporate principals.[5]

Similarly, in *Barton Enterprises*, the district court permitted a non-signatory-defendant to enforce an arbitration agreement where the plaintiff had brought suit alleging that the non-signatory-defendant tortiously interfered with contract and business expectancy, which required the plaintiff to prove that the non-signatory-defendant's actions were not justified. The district court reasoned that the question whether the non-signatory-defendant's actions were unjustified "depends on the interpretation of fee terms found in the license agreement." *Barton Enters.*, 2010 WL 2132744, at *4. Accordingly, the district court reasoned that "it would be unfair to allow [the plaintiff] to rely on these terms for its complaint yet disavow the arbitration terms found in the very same license agreement." *Id.*

The Missouri Supreme Court has itself recognized that the limited exception of alternative estoppel usually applies where "the very basis of the claim against the non-signatory was that it had breached duties and responsibilities purportedly assigned it by the agreement." *Netco, Inc. v. Dunn*, 194 S.W.3d 353, 361 (Mo. banc 2006); *accord Nitro Distrib., Inc. v. Dunn*, 194 S.W.3d 339, 350 (Mo. banc 2006) (recognizing that a non-signatory enforcing an arbitration provision against a signatory under an estoppel theory most often occurs "in cases where a plaintiff alleges that a defendant is liable under the terms of a contract, even though the defendant was a non-signatory to the contract"). Here, the acts of Ford which form the basis of Plaintiffs' MMPA and unjust enrichment claims here—the material omission(s), and fraudulent conduct—necessarily occurred before Plaintiffs entered the Retail Purchase Agreement with the Blue Springs dealership in purchasing the Ford EcoSport. *See Abdiana Props., Inc. v. Bengtson*, 575 S.W.3d 754, 763 (Mo. Ct. App. 2019). And neither are Plaintiffs' claims "derived from" the enforcement of the Retail

[5] In applying the alternative estoppel doctrine, the Missouri Court of Appeals has distinguished *Grizzle*—which it noted as involving an ongoing business relationship—from a case involving a purchase agreement as involving only a "one-shot transaction[]" and explained that alternative estoppel applies when a signatory's claims against a non-signatory substantively rely on the terms of an agreement. *See Tucker*, 473 S.W.3d at 796-96 (holding that a non-signatory could not enforce an arbitration provision against a signatory where the signatory's claims against the non-signatory concerned conduct "which occurred outside any duties or obligations required of [the signatory] under the [agreement]").

Purchase Agreement (or the arbitration agreement it incorporates) or depend on the terms of the purchase agreement in asserting their MMPA and unjust enrichment claims against Ford. *See id.*; *see also Burnett*, 75 F.4th at 984 (affirming the denial of non-signatory's motion to compel arbitration where the plaintiffs' claims "do not allege that non-signatory . . . breached duties to them purportedly assigned it by the agreement").

That Plaintiffs must allege (and prove) that they purchased the Ford EcoSport which they allege suffered the underlying oil pump design defect, doing so does not substantively implicate the Retail Purchase Agreements; Plaintiffs do not "rely on" the Retail Purchase Agreement in this action such that Ford as a non-signatory may enforce the arbitration agreement executed as part of that Retail Purchase Agreement. Under Missouri law, a non-signatory may enforce an arbitration clause in a written agreement "when the signatory to a written agreement containing an arbitration clause must rely on the terms of the written agreement in asserting its claims against the non-signatory." *Bull v. Torbett*, 529 S.W.3d 832, 838 (Mo. Ct. App. 2017). In Missouri, arbitration is "ultimately a matter of agreement between the parties." *Dunn*, 194 S.W.3d at 361-62 (citation omitted); *see Curns v. Akins*, 669 S.W.3d 672, 679 (Mo. Ct. App. 2023) (where non-signatory defendant "is not alleging that [signatory-plaintiff] failed to perform" under the agreement and where the signatory-plaintiff's claims "are outside the scope" of the underlying contract, "equitable estoppel does not apply"). Ford as a non-signatory is not entitled to enforce the arbitration agreement it offers here under the limited doctrine of alternative estoppel.

C. Conclusion

Therefore, Ford's motion to compel arbitration is **DENIED**.

II. Motion to Dismiss (Doc. 30)

Next, the Court turns to Ford's motion to dismiss under Rule 12(b)(6) of the Federal Rules of Civil Procedure. Under Rule 12(b)(6), a party may move to dismiss a complaint for failure to state a claim for relief. In order to avoid dismissal under Rule 12(b)(6), the Court must be satisfied that the complaint alleges "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 547 (2007). This standard "simply calls for enough fact[s] to raise a reasonable expectation that discovery will reveal evidence of [the claim]." *Id.* at 556. However, the plausibility pleading standard requires the plaintiff show more than just a mere possibility that the relief sought is in fact obtainable. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). When reviewing a 12(b)(6) motion to dismiss, the Court must accept the plaintiff's specific factual

allegations as true and construe them in favor of the plaintiff, but it is not obligated to accept as true the plaintiff's legal conclusions. *Buckley v. Hennepin Cnty.*, 9 F.4th 757, 760 (8th Cir. 2021) (citation omitted).

A. Prudential Ripeness

First, Ford argues that the Court should decline to exercise jurisdiction in this case under the principles of prudential ripeness. Specifically, Ford points to a December 22, 2023 voluntary recall it initiated under the National Highway Traffic Safety Administration, recalling 2016-2018 model years of the Ford Focus and the 2018-2022 Ford EcoSport. (*See* Doc. 40-1.)[6]

The voluntary recall describes the subject defect as follows: "The engine oil pump drive belt tensioner arm may fracture, separate from the tensioner backing plate, and/or the oil pump drive belt material may degrade and lose teeth, resulting in a loss of engine oil pressure." (Doc. 40-1 at 3-4.) It acknowledges that "[a] loss of engine oil pressure can result in engine damage or seizure, which can result in a loss of motive power and a loss of the mechanical vacuum pump required to provide power braking assist, increasing the risk of a crash" and that a "low oil pressure warning message may appear," after which "[i]f the vehicle continues to be driven, there may be a reduction in available power." (*Id.* at 4.) Accordingly, the December 2023 recall calls for the replacement of the "oil pump drive belt tensioner assembly [and] the oil pump drive belt" at no cost, and also indicates that "Ford provided the general reimbursement plan for the cost of remedies paid for by vehicle owners prior to notification of a safety recall in May 2023." (*Id.* at 6.)

Ford argues that considering the December 2023 recall, the Court should exercise its discretion to dismiss this action without prejudice under the prudential ripeness doctrine.[7] Ripeness, in federal court, "flows both from the Article III 'cases' and 'controversies' limitations

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[6] Ford unsuccessfully attempted to attach Ford's recall notice assertedly filed with the NHTSA, and attached the document to its reply. As Ford notes, the Court may take judicial notice of publicly available information on government websites. *See Missourians for Fiscal Accountability v. Klahr*, 830 F.3d 789, 793 (8th Cir. 2016). Ford does not point the Court to where the recall notice is publicly available on the NHTSA (or another governmental) website, however. Nonetheless, Plaintiffs do not dispute the fact or substance of the referenced recall. Accordingly, and for sake of argument, the Court considers the fact and the substance of the recall as set out by the parties here.

[7] Rather than address prudential ripeness, Plaintiffs address the separate doctrine of prudential mootness. The Eighth Circuit has recognized the doctrine of prudential mootness as "a mélange of doctrines relating to the court's discretion in matters of remedy and judicial administration," under which "[e]ven if a court has jurisdiction . . . prudential concerns may militate against the use of judicial power, i.e., the court should treat the case as moot for prudential reasons. *Ali v. Cangemi*, 419 F.3d 722, 724 (8th Cir. 2005) (citation and quotation marks omitted).

and also from prudential considerations for refusing to exercise jurisdiction." *Neb. Pub. Power Dist. v. MidAmerican Energy Co.*, 234 F.3d 1032, 1037 (8th Cir. 2000) (citing *Reno v. Catholic Soc. Servs., Inc.*, 509 U.S. 43, 57 n.18 (1993)). At its core, "[r]ipeness is a justiciability doctrine designed" to safeguard court-involvement in "premature" disputes involving "abstract disagreements," and furthers the requirement that a litigant must have been impacted in some "concrete way" to bring a suit for adjudication in federal court. *Nat'l Park Hospitality Ass'n v. Dept. of Interior*, 538 U.S. 803, 808 (2003). Prudential ripeness (separate from the principles underlying constitutional ripeness) considers: (1) "the fitness of the issues for judicial decision" and (2) "the hardship to the parties of withholding court consideration." *Nat'l Park*, 538 U.S. at 808. "The fitness prong safeguards against judicial review of hypothetical or speculative disagreements"; "[t]he hardship prong considers whether delayed review inflicts significant practical harm on the petitioner." *United States v. Gates*, 915 F.3d 561, 563 (8th Cir. 2019) (citations and quotation marks omitted). The Eighth Circuit has held that the two prongs must be satisfied together "to at least a minimal degree." *MidAmerican Energy*, 234 F.3d at 1039 (recognizing that "the two prongs must play off each other").[8]

Ford suggests that to the extent its voluntary recall "provides for part replacement free of charge or, if the parts have already been replaced, reimbursement," the Court would be better positioned "to rule on the elements of Plaintiffs' MMPA claim or if Plaintiffs have incurred any harm." The Court is not persuaded that dismissal on the basis of prudential ripeness is warranted in this case. Rather than based on any hypotheticals, the damage or injury underlying Plaintiffs' MMPA claims are concrete. Ford does not persuasively argue otherwise. The complaint alleges that Plaintiffs would not have purchased the EcoSport or would have paid less had they known of the defective oil pump in the EcoSport. To the extent the voluntary recall would provide reimbursement of the oil pump parts as Ford suggests (which proposition is not clearly established

[8] There is some question whether the prudential ripeness doctrine as independent from Article III's justiciability requirements remains a valid consideration for the Court in exercising its jurisdiction. *See Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014) (noting "tension" between the prudential ripeness doctrine apart from constitutional justiciability inquiry with "the principle that a federal court's obligation to hear and decide cases within its jurisdiction is virtually unflagging"). Nonetheless, neither the Supreme Court, *see Driehaus*, 573 U.S. at 167 (declining to "resolve the continuing vitality of the prudential ripeness doctrine in this case"), nor the Eighth Circuit has definitively addressed the validity of the doctrine as a sufficient basis on its own for the Court to decline to exercise its jurisdiction in a case. Accordingly, the Court will consider Ford's argument that the Court should decline to exercise its jurisdiction under the prudential ripeness doctrine here.

at this point anyway), Plaintiffs' damages are broader than the oil pump parts that fail (i.e. the tensioner assembly and drive belt which Ford represents are replaced as part of the voluntary recall) and include damage to the engine, among other damages. *See also Rosen v. Mercedes-Benz USA, LLC*, No. 1:21-cv-00787-WMR, 2022 WL 20766104 (N.D. Ga. Nov. 1, 2022) (holding that where plaintiffs "allege damages outside the coverage of the [extended warranty program]" the hardship prong for prudential ripeness was satisfied).

Additionally, the primary case on which Ford relies is distinguishable. In *Elkins v. American Honda Motor Co., Inc.*, No. 8:19-cv-00818-JLS-KES, 2020 WL 4882412 (C.D. Cal. July 20, 2020), the district court found that prudential ripeness considerations weighed in favor of "sound judgment by the court at a future date" in light of an extended warranty program initiated by Honda concerning a defective AC condenser in 2016-2018 Honda Civics after the putative class action for breach of warranty based on the same defective AC condenser, among other claims, had been filed. *Id.* at *5. The district court reasoned that the court "will be better positioned to rule on the efficacy and legal sufficiency of Honda's warranties, as well as whether Honda breached any of its warranties," after "putting Honda's warranty extension to use." *Id.* In that case, though, and as the district court acknowledged, the core of the lawsuit was of course a breach of warranty claim. This is not a warranty case.

Accordingly, the Court declines to dismiss the case under the prudential ripeness doctrine at this juncture. Plaintiffs' claims concern issues and damages extending beyond the (purported) scope of relief that may be provided under Ford's voluntary recall. In this case, the Court and the parties would benefit little from delayed review, which delayed review would financially harm Plaintiffs and putative class members to the extent they are entitled to damages above and beyond the remedy provided by the voluntary recall. Moreover, a judicial resolution in this case will settle the parties' dispute.

Ford's motion to dismiss on prudential ripeness grounds is denied.

B. Standing

Ford next argues that Plaintiffs lack Article III standing to represent the putative class as to Ford vehicles they did not purchase.

It is well established that there must be at least one named plaintiff with sufficient Article III standing for a class action to proceed. *In re SuperValu, Inc.*, 870 F.3d 763, 768 (8th Cir. 2017). It is similarly well established that class members must have Article III standing as well. *Avritt v.*

Reliastar Life Ins. Co., 615 F.3d 1023, 1034 (8th Cir. 2010) ("to put it another way, a named plaintiff cannot represent a class of persons who lack the ability to bring a suit themselves"). The next—and as of yet largely unresolved—question recognized by courts and legal authorities alike is *what exactly* does a named plaintiff in a class action have standing to litigate? *See* 1 Newberg and Rubenstein on Class Actions § 2:6 (6th ed. 2024) ("Standing to litigate what?").

That is, does a named plaintiff in a class action have "standing" to litigate claims only on behalf of class members who also suffered the same injury in kind, similar in all respects? Or may a named plaintiff with individual standing litigate claims on behalf of class members who suffered perhaps the same kind of injury but under somewhat different circumstances? This question is particularly salient in class actions fundamentally based on product liability or consumer protection statutes involving the sale or purchase of a product. Does Article III demand that the class action include a named plaintiff with standing as to each specific *product* for which class-based relief is sought? Or is a class action permitted to proceed so long as the named plaintiff purchased *one of* the products at issue where class-based relief is additionally sought for consumers who purchased other products? And if so, what level of similarity between products is required? Federal courts, including the U.S. Supreme Court, have generally recognized that this question raises a tension between Article III and Rule 23 class certification requirements. *See Gratz v. Bollinger*, 539 U.S. 244, 263 n.15 (2003) (recognizing "tension" in the caselaw whether a named plaintiff's ability to class members with non-identical claims "is appropriately addressed under the rubric of standing or adequacy").

Neither party points the Court to any Eighth Circuit case specifically addressing this issue. And both parties suggest the answer is binary and focus on Article III standing alone. A review of caselaw persuades the Court that the better course is to consider this issue, whether as implicating Article III standing principles or Rule 23's class certification standards, at the later class-certification stage. *See In re Folgers Coffee*, No. 21-2984-MD-W-BP, 2021 WL 7004991, at * (W.D. Mo. Dec. 28, 2021); *Bratton v. Hershey Co.*, No. 2:16-cv-4322-NKL, 2017 WL 212864, at *11 (W.D. Mo. May 16, 2017) (citing *In re: McCormick & Co., Inc.*, 217 F. Supp. 3d 124, 143-44 (D.D.C. 2016)).

Ford's real argument here is that Plaintiffs' allegation that each model-year included as a Class Vehicle in the complaint as having "identical EcoBoost 1.0L engines" is not borne out in

fact. (Doc. 31 at 14.)[9] This is the motion to dismiss stage, and the Court accordingly must accept as true the facts alleged in the complaint. Plaintiffs allege that each of the model-year combinations of the specific Ford vehicles included as a Class Vehicle "have identical EcoBoost 1.0L engines" and that "[e]ach of the Class Vehicles ha[ve] a defective oil pump that causes catastrophic engine failure" to the extent that, together, the engine oil pump tensioners and belts "do not meet industry standards." (Doc. 1 at ¶¶ 3, 4, 36.) Whether each of the model years in the complaint have identical EcoBoost 1.0L engines, as to which Plaintiffs allege have the so-called defective oil pump, is more properly addressed at the class certification stage, whether as a matter of standing or Rule 23 class certification considerations and the specific class(es) Plaintiffs seek to certify, or even as a matter of Article III standing, if implicated.

Ford's motion to dismiss on Article III standing grounds is denied.

C. Count 1 – MMPA claim

Third, Ford argues that Plaintiffs fail to state a claim under the MMPA. To state a claim under the MMPA, Plaintiffs must allege facts sufficient to plausibly show (1) they "purchased a product or service from defendant; (2) primarily for personal, family, or household purposes; and (3) [they] suffered an ascertainable loss of money or property; (4) as a result of an act declared unlawful by § 407.020 RSMo." *Schulte v. Conopco, Inc.* , 997 F.3d 823, 825-26 (8th Cir. 2021) (citation and quotation marks omitted); *accord* Mo. Rev. Stat. § 407.025.1(1). Actual damages are recoverable under the MMPA if Plaintiffs show that (1) they "acted as a reasonable consumer would in light of all circumstances," (2) "the method, act or practice declared unlawful by section 407.020 would cause a reasonable person to enter into the transaction that resulted in damages," and (3) the individual damages are supported by "sufficiently definitive and objective evidence to allow the loss to be calculated with a reasonable degree of certainty." § 407.025.1(2). Under § 407.020.1, RSMo, it is unlawful under Missouri law "in connection with the sale or advertisement of any merchandise" to use "deception, fraud, false pretense, false promise, misrepresentation, [or] unfair practice," or to "conceal[], suppress[], or omi[t] . . . any material fact."

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[9] Relatedly, Ford asserts that it offered different engine options within the different model-years encompassed by the putative class action complaint.

1. Defect

Initially, Ford argues that Plaintiffs fail to adequately plead a defect in the oil pump to plausibly assert an MMPA claim based on any deception, misrepresentation, omission, or half-truth. The Court disagrees. As to defect, Plaintiffs allege that the oil pump in the EcoSport 1.0L engine within the model-year combinations set out in the complaint is defective in that (1) the engine oil pump tensioners "are prone to premature failure and do not meet industry standards," and (2) the belts are made of "insufficiently robust materials . . . which also do not meet industry standards." (Doc. 1 at ¶ 4.) Plaintiffs allege further that the "wet belt" oil pump design is defective because it "fails to maintain adequate oil pressure," "allow[s] pieces of the belt tensioner to disintegrate," and "allow[s] metal pieces of the engine to come into contact with each other," causing debris and metal shavings to "break loose and circulate throughout the engine." (*Id.* at ¶¶ 44, 45.) Plaintiffs sufficiently allege a defect for purposes of notice pleading under Rule 8(a) of the Federal Rules of Civil Procedure.

2. Loss Damages

Next, Ford argues that Plaintiffs fail to state a claim because they do not allege any ascertainable loss *caused* by the alleged defect. That is, Ford argues that Plaintiffs fail to allege that they did not receive the benefit of the bargain in purchasing the vehicle considering the 60,000-mile warranty when they purchased the vehicle. The warranty that accompanied the vehicle with Plaintiffs' purchase is not alleged in the operative complaint; at most, the complaint alleges that Plaintiffs did not purchase an extended warranty on the vehicle (Doc. 1 at ¶ 32). Ford does not set forth any authority or manner in which the Court can consider this fact at the motion to dismiss stage, which focuses solely on the face of the pleadings. Accordingly, the Court declines to consider any argument based on the purported 60,000-mile warranty at the pleadings stage.

Plaintiffs allege that had they known of the oil pump defect, they would not have purchased the EcoSport vehicle or would not have paid the price they did for the vehicle. (*Id.* at ¶ 35.) Furthermore, Plaintiffs allege that the oil pump defect "destroyed the vehicle's engine" and that they were unable to trade in or engage in a buy-back transaction with a Ford dealership because of the oil pump defect and the damage it caused to their vehicle. (*Id.* at ¶¶ 23, 30.) Plaintiffs allege that the oil pump defect in the Class Vehicles "pose an immediate safety risk and will have to be repaired or replaced." (*Id.* at ¶ 100.) Plaintiffs' allegations as to an ascertainable loss caused by the alleged defect are sufficient to survive a Rule 12(b)(6) motion to dismiss.

3. Heightened Pleading Standard for Pre-Sale Knowledge

Third, Ford argues that Plaintiffs fail to state a claim under the MMPA because they do not satisfy the heightened pleading requirement under Rule 9(b) of the Federal Rules of Civil Procedure to sufficiently allege fraud. Rule 9(b) requires that in fraud-like claims "a party must state with particularity the circumstances constituting [the] fraud or mistake." The parties do not dispute that Rule 9(b)'s heightened pleading standard applies to fraud-like MMPA claims, including MMPA claims based on omissions of a material fact. Specifically here, Ford argues that Plaintiffs fail to satisfy Rule 9(b)'s heightened pleading standard as to alleging pre-sale knowledge of the oil pump defect.

"A claim for omission of a material fact under the MMPA has a scienter requirement," that is, "[a] plaintiff must show the defendant failed to disclose material facts that were known . . . or upon reasonable inquiry would have been known." *Elfaridi v. Mercedes-Benz USA, LLC*, 2018 WL 4071155, at *5 (cleaned up). In *Elfaridi*, the district court found that the plaintiffs failed to plead sufficient facts to plausibly establish the car manufacturer's knowledge of defective panoramic sunroofs prior to their purchase of the particular vehicle. The complaint in *Elfaridi* included 33 complaints filed with the NHTSA as well as allegations concerning the defendant's own internal monitoring. The district court found the allegations were insufficient, reasoning that a majority of the complaints were filed after the plaintiffs had purchased their vehicles, and held that "[12] monitored complaints of glass breakage are insufficient to infer defendants' knowledge of a defect affecting thousands of vehicles." *Id.* at *5.

At first blush, the complaint here appears to allege more than the complaint in *Elfaridi*, citing special service messages issued by Ford; online complaints posted as YouTube videos; pre-release evaluation, testing, design, and manufacturing; complaints by consumers posted on NHTSA's website; reports directly to Ford from dealership and customers (including Plaintiffs); and a September 2023 NHTSA investigation into the EcoBoost engines focusing on the 2018-2021 Ford EcoSport vehicles following 95 consumer complaints regarding the loss of oil pressure which "may be due to a failed engine oil pump assembly." (Doc. 1 at 8-22.) On closer review, though, the vast majority of these allegations concern conduct taken *after* Plaintiffs' January 2021 purchase of the 2020 Ford EcoSport in this case.

Nonetheless, for purposes of Ford's plausibly alleging pre-sale knowledge, the Court notes that Plaintiffs *do* allege—in addition to allegations about design, development, manufacturing,

testing, and repair data, among other internal sources—twelve consumer complaints prior to January 2021 directed to the NHTSA regarding engine failure while driving, with a few referencing oil pump belt failure concerning the 2016 and 2017 Ford Focus (which Plaintiffs allege have the same Ford 1.0L EcoBoost engine as the Ford EcoSport they purchased in January 2021). In addition, although the 2019 Special Service Message was initially limited to the 1.0L EcoBoost engine in 2018-2019 EcoSport vehicles built on or before April 3, 2019, it specifically cited a problem with "loss of engine oil pressure" that "may be due to a broken/failed engine oil pump tensioner which leads to a loss of engine oil pressure" and which may require an engine replacement "[d]ue to the nature of this failure." (Doc. 1 at ¶ 51.) Ford then expanded the Special Service Message in 2021 to include other vehicles built with the same 1.0L EcoBoost engine, including the Ford Focus, and expanded applicable period to EcoSport and Focus vehicles built on or before July 3, 2019. (*Id.* at ¶ 52.)

Although it is somewhat close, considering together Plaintiffs' allegations concerning Ford's internal knowledge, the NHTSA complaints and Special Service Message that concerns the same 1.0L EcoBoost engine as the 2020 EcoSport Plaintiffs purchased in January 2021 is sufficient to plausibly allege Ford's pre-sale knowledge to survive a Ford's Rule 12(b)(6) motion to dismiss.

Ford's motion to dismiss Count 1 for failure to state a claim is denied.

D. Count 2 – Unjust Enrichment claim

Finally, Ford argues that Plaintiffs fail to plead a claim for unjust enrichment.

"To state a claim for unjust enrichment, Plaintiff[s] must plausibly allege that (i) [Ford] received a benefit, (ii) at the Plaintiff[s'] expense, and (iii) allowing [Ford] to retain the benefit would be unjust." *Martin v. Wm. Wrigley Jr. Co.*, 2017 WL 4797530, at *6 (W.D. Mo. Oct. 24, 2017) (citing *Gerke v. City of Kansas City*, 493 S.W.3d 433, 438 (Mo. Ct. App. 2016)). Ford argues that Plaintiffs' claim for unjust enrichment fails as pleaded because (1) Plaintiffs do not allege that they have no adequate legal remedy, and (2) "prevailing on their MMPA claims means Plaintiffs retain an adequate legal remedy via damages."

The second argument is easily dispensed with. District courts in this district regularly permit plaintiffs in MMPA cases and otherwise to plead unjust enrichment as an alternative claim, relying on Rule 8(d) of the Federal Rules of Civil Procedure. *See, e.g.*, *Browning v. Anheuser-Busch, LLC*, 539 F. Supp. 3d 965, 975 (W.D. Mo. 2021); *Hays v. Nissan N. Am., Inc.*, 297 F. Supp. 3d 958, 963-64 (W.D. Mo. 2017). The Court easily rejects the former argument as well.

Ford's hyper-technical argument that Plaintiffs must affirmatively *plead* a lack of adequate remedy at law (and either that Plaintiffs cannot do so to the extent they plead a claim under the MMPA or they do not include as a separate allegation that they lack an adequate remedy at law) is not supported in the caselaw. The Missouri Supreme Court has explained the elements of an unjust enrichment claim as follows: "(1) the plaintiff conferred a benefit on the defendant; (2) the defendant appreciated the benefit; and (3) the defendant accepted and retained the benefit under inequitable and/or unjust circumstances." *Hargis v. JLB Corp.*, 357 S.W.3d 574, 586 (Mo. banc 2011) (cleaned up). That Plaintiffs are not entitled to the equitable remedy of unjust enrichment if they do have an adequate remedy at law is of no moment at the pleading stage, where the federal rules permit pleading in the alternative.

In Count 2, Plaintiffs allege that Ford knew or should have known of the oil pump defect and the safety risk it poses and wrongfully obtained monies from Plaintiffs and putative class members as a result of the wrongful and fraudulent acts and omissions pertaining to the oil pump defect and Ford's concealment of it, and that "Ford appreciated, accepted and retained the non-gratuitous benefits (i.e. profits) conferred by Plaintiffs and [putative] Class members who had no knowledge of the oil pump defect." (Doc. 1 at ¶¶ 105-107.) Plaintiffs allege that they paid a higher price for the vehicle "which actually had lower values" or that they "paid Ford monies" for vehicles they "would not have purchased had they been aware of the oil pump defect." (*Id.* at ¶ 107.) Plaintiffs allege that "Ford's retention of these wrongfully obtained profits would violate the fundamental principles of justice, equity, and good conscience." (*Id.* at ¶ 109.) Ford does not otherwise quibble with the sufficiency of these allegations to state a claim for unjust enrichment otherwise.

Ford's motion to dismiss Count 2 for failure to state a claim is denied.

Conclusion

Accordingly, after careful consideration and review, the Court **ORDERS** that (1) Ford's motion to compel arbitration (Doc. 44) is **DENIED**, and (2) Ford's motion to dismiss (Doc. 30) is **DENIED without prejudice**.

IT IS SO ORDERED.

s/ Roseann A. Ketchmark
ROSEANN A. KETCHMARK, JUDGE
UNITED STATES DISTRICT COURT

DATED: July 10, 2024