

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
Miami Division**

**MDL No. 2599
Master File No. 15-2599-MD-MORENO
14-24009-CV-MORENO**

IN RE:

**TAKATA AIRBAG PRODUCTS
LIABILITY LITIGATION**

THIS DOCUMENT RELATES TO
ECONOMIC LOSS TRACK CASES

ORDER GRANTING MOTION TO DISMISS COUNTS 104–106

This multidistrict litigation (“MDL”) consolidates allegations of economic loss and personal injury related to airbags manufactured by defendants Takata Corporation and TK Holdings (collectively, “Takata”) and equipped in vehicles manufactured by defendants Honda, BMW, Ford, Mazda, Mitsubishi, Nissan, Subaru, and Toyota (collectively, “Automotive Defendants”). This cause comes before the Court upon the Automotive Defendants’ Motion to Dismiss Automotive Recyclers Association’s Claims (“Motion”) [D.E. 609]. The Court has reviewed the Motion, the Response (D.E. 654), and the Reply (D.E. 699). The Court held oral argument on the issue of the Automotive Recyclers Association’s (“ARA”) standing on February 16, 2016, and is duly advised.

I. BACKGROUND

In the Second Amended Consolidated Class Action Complaint (“Complaint”) (D.E. 579), ARA alleges three Counts pursuant to three assignments, from Rigsby’s Auto Parts & Sales, Inc. (“Rigsby’s”), M&K Used Auto Parts, Inc. (“M&K”), and Quarno’s Auto Salvage (“Quarno’s”)

(collectively, “Assignors”). The three Counts are: Count 104, fraudulent misrepresentation and concealment; Count 105, violations of 28 states’ deceptive trade practices acts; and Count 106, violation of Florida’s Deceptive and Unfair Trade Practices Act. Each Count is brought on behalf of a specific putative class. The Assignors are located in Florida and there is no allegation they purchased vehicles outside of Florida.

The Automotive Defendants move to dismiss these three counts with prejudice for numerous reasons, including three discrete standing issues: 1) ARA has not sufficiently alleged the assignments it asserts in this litigation; 2) ARA has not sufficiently alleged the Assignors’ purchases of vehicles manufactured by all Automotive Defendants; and 3) ARA cannot pursue class claims under the deceptive trade practices statutes of states other than Florida.¹ The Court addresses only the standing issues because standing is a threshold matter and, here, the standing issues raised are dispositive.

II. STANDARD OF REVIEW

Article III of the U.S. Constitution limits federal court jurisdiction to actual cases and controversies. *See* U.S. Const. art. 3, § 2; *Cone Corp. v. Fla. Dep’t of Transp.*, 921 F.2d 1190, 1204 (11th Cir. 1991). “The standing doctrine is an aspect of this case or controversy requirement and has its origins in ‘both constitutional limitations on federal-court jurisdiction and prudential limitations on its exercise.’” *Id.* (quoting *Warth v. Seldin*, 422 U.S. 490, 498 (1975)). Accordingly, “standing is a jurisdictional threshold question which must be addressed prior to and independent of the merits of a party’s claims.” *DiMaio v. Democratic Nat’l Comm.*,

¹ Additionally and for the first time at oral argument, the Automotive Defendants argued that ARA lacks standing because fraud claims are not assignable under Florida law. As this argument was not briefed and would not change the outcome of the Court’s ruling, the Court does not address this argument.

520 F.3d 1299, 1301 (11th Cir. 2008); *see also Stalley ex rel. United States v. Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008); *Cone Corp.*, 921 F.2d at 1203 n.42.

“Because sanding is jurisdictional, a dismissal for lack of standing is essentially the same as a dismissal for want of subject matter jurisdiction under Federal Rule of Civil Procedure 12(b)(1).” *Mitchell v. Balboa Ins. Co.*, No. 11-cv-02580, 2012 WL 2358563, at *2 (M.D. Fla. June 20, 2012); *see also Stalley*, 524 F.3d at 1232. The party invoking federal jurisdiction has the burden of proving standing. *See Lujan v. Defenders of Wildlife*, 504 U.S. 555, 561 (1992). Each element of standing “must be supported in the same way as any other matter on which the plaintiff bears the burden of proof.” *Id.* In a motion to dismiss, “general factual allegations of injury resulting from the defendant’s conduct” may be sufficient to allege standing because “on a motion to dismiss we presume that general allegations embrace those specific facts that are necessary to support the claim.” *Id.* (internal quotation marks and bracket omitted). The Court construes the disputed facts in a motion to dismiss in the light most favorable to the plaintiff. *Bischoff v. Osceola Cty.*, 222 F.3d 874, 878 (11th Cir. 2000).

III. ANALYSIS

A. Constitutional Standing

To have Article III standing, a plaintiff “must allege personal injury fairly traceable to the defendant’s allegedly unlawful conduct and likely to be redressed by the requested relief.” *DaimlerChrysler Corp. v. Cuno*, 547 U.S. 332, 342 (2006) (internal quotation marks omitted). Accordingly, constitutional standing has three elements: 1) that Plaintiff “suffered an injury in fact — an invasion of a judicially cognizable interest, which is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical,” 2) “there must be a causal connection between the injury and the conduct complained of — the injury has to be fairly

traceable to the challenged action of the defendant,” and 3) it must be “likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.” *Lujan*, 504 U.S. at 560 (internal quotation marks, citations, and brackets omitted).

B. ARA has Sufficiently Alleged the Assignments at Issue

As to the Automotive Defendants’ first standing argument, ARA has sufficiently alleged the assignments at issue. ARA alleges it is proceeding in this litigation “pursuant to an assignment of claims by Rigsby’s Auto Parts & Sales, Inc., M&K Used Auto Parts, Inc., and Quarno’s Auto Salvage.” (D.E. 579 ¶ 190). Given that the Court must take the facts alleged in the Complaint as true, by expressly alleging the existence of assignments, ARA has sufficiently alleged the assignments. Furthermore, at oral argument on February 16, 2016, Plaintiffs stated that they provided Defendants with the written assignments at issue.

C. ARA Fails to Sufficiently Implicate the Vehicle Manufacturer Defendants in the Complaint

As to the Automotive Defendants’ second argument, ARA has not sufficiently alleged the Assignors’ purchases of vehicles manufactured by each Automotive Defendant, and thus, has not established that the Assignors’ alleged injuries are fairly traceable to any Automotive Defendant.

Detailing the purchases of each of the Assignors, ARA states in the Complaint:

- “Rigsby’s purchased Recalled Vehicles, as defined below, which contained Takata airbags, prior to the recalls set forth herein, and Rigsby’s still possesses and maintains the Takata airbags that were contained in the Recalled Vehicles. Had Rigsby’s known of the Inflator Defect, it would not have purchased the Recalled Vehicles or it would not have paid as much for them.” (D.E. 579 ¶ 191).
- “M&K purchased Recalled Vehicles, which contained Takata airbags, prior to the recalls set forth herein, and M&K still possesses and maintains the Takata airbags that were contained in the Recalled Vehicles. Had M&K known of the Inflator Defect, it would not have purchased the Recalled Vehicles or it would not have paid as much for them as it did.” (D.E. 579 ¶ 192). And,

- “Quarno’s purchased Recalled Vehicles, which contained Takata airbags, prior to the recalls set forth herein, and Quarno’s still possesses and maintains the Takata airbags that were contained in the Recalled Vehicles. Had Quarno’s known of the Inflator Defect, it would not have purchased the Recalled Vehicles or it would not have paid as much for them as it did.” (D.E. 579 ¶ 193).

ARA fails to allege the specific vehicles the Assignors purchased, the general make of the vehicles purchased, or otherwise indicate which Automotive Defendants’ vehicles the Assignors purchased. The Complaint does not expressly define “Recalled Vehicles,” though it does have a table listing all vehicles which have been recalled for possessing allegedly defective airbags. (*See* D.E. 579, at 81–87). The Complaint does define “Class Vehicles” as referring to “all vehicles purchased or leased in the United States that have Defective Airbags” (D.E. 579 ¶ 196), but this definition and the Complaint fail to illuminate which Automotive Defendants’ vehicles the Assignors purchased. Thus, it is impossible to ascertain from the Complaint which Automotive Defendants would be responsible for the wrongful conduct alleged.

ARA argues in its Response that the Complaint alleges “the Assignors purchased vehicles that were recalled due to the Inflator Defect, and these vehicles necessarily include automobiles manufactured by each and every Vehicle Manufacturer Defendant.” (D.E. 564 at 13). However, contrary to ARA’s assertion, the Complaint does not indicate the Assignors purchased a vehicle manufactured by each Automotive Defendant. It would require a leap in logic to conclude that the purchase of “Recalled Vehicles” equates to the purchase of vehicles manufactured by each Automotive Defendant. ARA is not entitled to such an inference, as it would not be a reasonable inference.

By failing to indicate that the Assignors purchased a vehicle manufactured by any particular Automotive Defendant, ARA has not sufficiently established that the injury alleged is fairly traceable to an Automotive Defendant. Because the alleged injury is not fairly traceable to

the challenged action of any Automotive Defendant, ARA lacks standing to bring claims against the Automotive Defendants. Additionally, because no particular Automotive Defendant is implicated by the claims brought by ARA, ARA has not sufficiently established that the injury is likely redressable by the instant litigation against the Automotive Defendants. For this related reason, ARA lacks standing to bring claims against the Automotive Defendants.

Accordingly, the Court dismisses Counts 104, 105, and 106 as to the Automotive Defendants. *See cf. Dapeer v. Neutrogena Corp.*, 95 F. Supp. 3d 1366, 1372–73 (S.D. Fla. 2015) (demonstrating a plaintiff must purchase the product about which it is suing. The court dismissed the plaintiff's claims pertaining to products he had not purchased because the plaintiff lacked standing to bring such class claims even though the plaintiff had purchased similar products also manufactured by the same defendant. The court based its standing decision on the injury requirement, not traceability or redressability).

D. ARA lacks standing to bring, on behalf of a putative class, state law claims under which the Assignors' injuries did not arise

The Automotive Defendants also argue that ARA lacks standing to bring state law claims when the Assignors' injuries do not arise under the laws of those states, as seen in Count 105. In response, ARA argues that "class certification is 'logically antecedent to standing'" and that "[i]mposing a requirement that . . . there be a named plaintiff in every state" conflates the issues of standing and class certification. (D.E. 654, at 17, 18).

1) ARA does not assert its own rights and interests

In addition to the above-mentioned constitutional standing requirements, a plaintiff must also meet the three prudential limits on standing: 1) "the plaintiff must assert its own rights and interests and may not rely on the rights and interests of others"; 2) "the federal courts will not adjudicate 'abstract questions of wide public significance'"; and 3) "the plaintiff's complaint

must fall within the ‘zone of interests’ to be protected by the statute in question.” *Region 8 Forest Serv. Timber Purchasers Council v. Alcock*, 993 F.2d 800, 805 (11th Cir. 1993). The first prudential requirement is relevant to the case at hand, as ARA is not asserting its own rights and interests in its claims under the laws of 27 states in Count 105.²

When proceeding on behalf of a putative class, “it is not enough that a named plaintiff can establish a case or controversy between himself and the defendant by virtue of having standing as to just one of many claims he wishes to assert.” *Griffin v. Dugger*, 823 F.2d 1476, 1483 (11th Cir. 1987). The Eleventh Circuit continued: “[r]ather, each claim must be analyzed separately, and a claim cannot be asserted on behalf of a class unless at least one named plaintiff has suffered the injury that gives rise to that claim.” *Id.* In *Griffin*, the Eleventh Circuit concluded the named plaintiff had standing to assert claims of racially discriminatory disciplinary and promotional practices against his employer, but lacked standing to assert racially discriminatory testing practices because he had already met his employer’s education and testing requirements. *Id.* at 1483–84. While the Eleventh Circuit focused its standing analysis on the factual differences between one of the named plaintiffs and the putative class in *Griffin*, several courts in the Southern District of Florida have extended the logic of *Griffin*.

A named plaintiff lacks standing to assert legal claims on behalf of a putative class pursuant to state law under which the named plaintiff’s own claims do not arise. *In re Terazosin Hydrochloride Antitrust Litig.*, 160 F. Supp. 2d 1365, 1371 (S.D. Fla. 2001) (“*In re Terazosin*”). In *In re Terazosin*, the court stated, “the named plaintiffs cannot rely on unidentified persons within those states [whose law the named plaintiffs were asserting] to state a claim for relief. Class allegations that others suffered injuries giving rise to claims ‘add . . . nothing to the

² Count 105 includes claims under the laws of 28 states, including Florida. This discussion relates to the laws of the 27 states other than Florida.

question of standing.” *Id.* Accordingly, the Court dismissed, for lack of standing, the state law claims of states in which the named plaintiffs had not suffered injury. *Id.* at 1371–72. Similarly, in *In re Checking Account Overdraft Litig.*, the court dismissed state law claims of named plaintiffs suing under state consumer protection statutes of states in which the named plaintiffs did not reside because the named plaintiffs did not have standing to assert those claims. *In re Checking Account Overdraft Litig.*, 694 F. Supp. 2d 1302, 1324–25 (S.D. Fla. 2010) (*In re Checking Account I*). The court held, “Plaintiffs may only assert a state statutory claim if a named plaintiff resides in that state,” “assum[ing] for purposes of th[e] motion that the applicable law is the law of the state in which each Plaintiff resides.” *Id.* at 1325, 1325 n.12. *See also Renzi v. Demilec (USA) LLC*, no. 12-80516, 2013 WL 6410708, at *3 (S.D. Fla. Dec. 9, 2013) (granting partial summary judgment because the named plaintiff lacked standing to assert other states’ consumer protection acts on behalf of putative class members).

At oral argument, Plaintiffs cited to *Wilson v. EverBank, N.A.*, 77 F. Supp. 3d 1202 (S.D. Fla., 2015), and other out of Circuit cases cited in Plaintiffs’ Response, arguing that “once an individual class representative has an injury and has standing, the ability to bring claims on behalf of a class of states, or plaintiffs from multiple states, is an issue for class certification.” (D.E. 942 at 91). The Court is unpersuaded to depart from this District’s precedent, discussed *supra*.

In *Wilson*, the court departed from this District’s precedent and held that the named plaintiffs had standing to assert state law claims for unjust enrichment and tortious interference under the laws of states where they did not reside and where they did not claim to have been injured. *Wilson*, 77 F. Supp. 3d at 1229–31. The court in *Wilson* relied on three cases binding on the Court, along with out of Circuit cases. *See id.* The court in *Wilson* first cited to *Klay*, in

which the Eleventh Circuit stated class certification in multi-state class actions is “a realistic possibility.” *Klay v. Humana, Inc.*, 382 F.3d 1241, 1261–62 (11th Cir. 2004). However, the Eleventh Circuit made that statement responding to arguments related to Rule 23(b)(3)’s predominance requirement, not to standing arguments. *Id.* Moreover, the Eleventh Circuit expressly stated that, on appeal “the defendants do not challenge the standing of the named plaintiffs.” *Id.* at 1251. The court in *Wilson* also relied on *In re Checking Account Overdraft Litig.*, 275 F.R.D. 666 (S.D. Fla. 2011) (“*In re Checking Account I*”) because that court certified a nationwide class with common law claims represented by Plaintiffs from New York, California, and Washington. *Wilson*, 77 F. Supp. 3d at 1230. However, the court in *In re Checking Account II* certified the class only after it had dismissed various state law claims because the named plaintiffs lacked standing. *See In re Checking Account I*, 694 F. Supp. 2d 1302, 1324–25 (S.D. Fla. 2010) (discussed *supra*). Finally, the court in *Wilson* relied on *Ortiz v. Fibreboard*, 527 U.S. 815, 831 (1999), for the proposition that “it is appropriate to defer standing objections until after class certification where certification issues are ‘logically antecedent’ to Article III concerns.” *Wilson*, 77 F. Supp. 3d at 1230. In *Ortiz*, the Supreme Court reversed class certification and did not rule on standing issues pertaining to class *members*. *Ortiz*, 527 U.S. at 830–31. In *Ortiz*, “petitioners call[ed] the class claims nonjusticiable under Article III . . . with the ‘vast majority’ of the ‘exposure-only’ class *members* being without injury in fact and hence without standing to sue.” *Id.* at 831 (emphasis added). Because the standing issue pertained to class *members*, not named plaintiffs, class certification in *Ortiz* was logically antecedent to standing. If the class were never certified, whether class members had standing would be irrelevant, as there would be no class members.

The Supreme Court's relevant discussion in *Ortiz* is based largely on its analysis in *Amchem Prods., Inc. v. Windsor*, 521 U.S. 591, 612–13 (1997). *See Ortiz*, 527 U.S. at 831 (1999). In *Amchem*, the Court stated it was “mindful that Rule 23’s requirements must be interpreted in keeping with Article III constraints, and with the Rules Enabling Act, which instructs that rules of procedure ‘shall not abridge, enlarge or modify any substantive right.’” *Amchem*, 521 U.S. at 612–13. The Court also quoted Federal Rule 82 with approval: “‘rules shall not be construed to extend the subject-matter jurisdiction of the United States district court.’” *Id.* (brackets in original omitted). Given these statements, the Supreme Court’s decisions to delay consideration of whether class *members* have standing should not be extended to the standing inquiry of named plaintiffs.

In the case at hand, class certification is not logically antecedent to ARA’s standing because ARA is a named plaintiff, not a class member. The standing analysis for ARA would remain unchanged, irrespective of class certification. Either the Complaint alleges sufficient facts for ARA to have standing or it does not. Here, the Complaint does not allege sufficient facts for ARA to have standing to assert claims under the consumer protection laws of states other than Florida, as the Assignors neither reside in those states nor allegedly suffered injury due to any transactions in those states.

2) ARA Lacks Associational Standing

Associational standing is an exception to the first prudential requirement that plaintiff assert its own rights and interests and not rely on the rights and interests of others. An association has standing to bring suit on behalf of its members when: 1) “its members would have standing to sue in their own right”; 2) “the interests at stake are germane to the organization’s purpose”; and 3) “neither the claim asserted nor the relief requested requires the participation of individual

members in the lawsuit.” *Ouachita Watch League v. Jackobs*, 463 F.3d 1163, 1170 (11th Cir. 2006).

ARA argues it “brings this action on behalf of automotive recyclers nationwide” (D.E. 654, at 17), though it provides no citation to any legal authority supporting the proposition that ARA has associational standing, nor does ARA point to any allegation in the Complaint stating that it is relying on associational standing. In fact, ARA does not use the term “associational standing” in the Complaint or in its Response. In the Complaint, ARA states at least twice that it brings its claims on the basis of assignments. (*See* D.E. 579 ¶ 190 (stating “ARA proceeds with this litigation pursuant to an assignment of claims by Rigsby’s . . . , M&K . . . , and Quarno’s”) and ¶ 375 (describing the automotive recycler putative classes, stating “ARA, as assignee of the claims of Rigsby’s, M&K and Quarno’s, brings this action pursuant to Federal Rules of Civil Procedure 23(a), (b)(2) and/or (b)(3)”).

ARA has not adequately alleged facts to support associational standing. First, and most importantly, the Complaint does not limit the automotive recycler putative classes only to ARA’s members. (*See* D.E. 579 ¶ 375³). Rather, the automotive recycler putative classes include “[a]ll automotive recyclers in the United States,” “[a]ll automotive recyclers in [27 states],” and “[a]ll automotive recyclers in the state of Florida” that meet certain criteria unrelated to being an ARA member. (D.E. 579 ¶ 375). Nor does the Complaint assert that all automotive recyclers are members of ARA. (*See generally* D.E. 579). Accordingly, ARA is not suing pursuant to the rights of its members and thus, associational standing is not available to ARA. Second, ARA has not established that the interests at stake are germane to ARA’s purpose. The only information in the Complaint regarding ARA’s purpose is that ARA is “dedicated to the efficient removal and

³ This paragraph is improperly numbered, as it is found between paragraphs 393 and 394.

reuse of automotive parts, and the safe disposal of inoperable motor vehicles.” (D.E. 189). This bare statement is insufficient to satisfy the “germane” prudential standing requirement. Accordingly, ARA has not pleaded facts to establish associational standing.

ARA lacks standing to assert the consumer protection laws of states other than Florida on behalf of putative class members. Thus, the Court dismisses Count 105 for this alternative reason.

IV. CONCLUSION

Accordingly, it is hereby

ORDERED AND ADJUDGED that the Motion to Dismiss [D.E. 609] is **GRANTED IN PART**. Counts 104, 105, and 106 in the Complaint (D.E. 579) are dismissed without prejudice.

DONE AND ORDERED in Chambers, Miami, Florida, this 10 day of March, 2016.



FEDERICO A. MORENO
UNITED STATES DISTRICT JUDGE

Copies furnished to:
Counsel of record