

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

ARNO GRAVES, et al.)	
on behalf of themselves and all others)	
similarly situated,)	
)	
Plaintiffs,)	
)	
v.)	Case No. 3:19-cv-05089-SRB
)	
CAM2 INTERNATIONAL LLC, et al.)	
)	
Defendants.)	

ORDER

Before the Court is Missouri Plaintiff Arno Graves’ (“Graves”) Motion for Partial Summary Judgment Regarding Missouri Merchandising Practices Act (“MMPA”) Private Right of Action. ([Doc. #139](#).) For the reasons discussed below, the motion is DENIED.

I. BACKGROUND

This dispute arises from Defendants CAM2 International LLC (“CAM2”) and Smitty’s Supply, Inc.’s (“Smitty’s”) (collectively, “Defendants”) manufacture, sale, and marketing of tractor hydraulic fluid (“THF”), a multifunctional lubricant designed to offer certain protective benefits when used in tractors and heavy equipment as a hydraulic fluid, transmission fluid, and gear oil. Graves represents consumers who purchased at least one of four allegedly defective products at issue in this case: Smitty’s Super S Super Trac 303 Tractor Hydraulic Fluid (“Smitty’s Super Trac 303”), Smitty’s Super S 303 Tractor Hydraulic Fluid (“Smitty’s Super S 303”), Cam2’s Promax 303 Tractor Hydraulic Oil (“Cam 2 Promax 303”), and Cam2’s 303 Tractor Hydraulic Oil (“Cam2 303”) (collectively, the “303 THF Products”). Defendants manufactured the 303 THF Products, which were sold nationwide by multiple retailers under

various label names.

This case will be tried in August as the bellwether case of the multidistrict litigation (“MDL”) pending before this Court. *See In re: Smitty’s/CAM2 303 Tractor Hydraulic Fluid Mktg., Sales Practices & Prods. Liab. Litig.*, MDL No. 2936 (W.D. Mo.). On behalf of Missouri purchasers, Graves asserts negligence, breach of the implied warranty of merchantability, and violation of the MMPA.

II. LEGAL STANDARD

Under Rule 56, summary judgment is warranted “if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a). The moving party has the burden of identifying “the basis for its motion, and must identify those portions of the record which it believes demonstrate the absence of a genuine issue of material fact.” *Torgerson v. City of Rochester*, 643 F.3d 1031, 1042 (8th Cir. 2011) (en banc) (cleaned up). If the moving party makes this showing, “the nonmovant must respond by submitting evidentiary materials that set out specific facts showing that there is a genuine issue for trial.” *Id.* (quotation marks omitted). “Credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge.” *Id.*

III. DISCUSSION

Graves seeks a summary judgment that businesses who used the 303 THF Products can sue under the MMPA. Specifically, the MMPA confers a right of action to “[a]ny person who purchases . . . merchandise primarily for personal, family or household purposes and thereby suffers an ascertainable loss of money or property[.]” Mo. Ann. Stat. § 407.025.1 (West). Graves argues that businesses can qualify as a person because person is defined in the statute as

“any natural person or his legal representative, partnership, firm, for-profit or not-for-profit corporation, whether domestic or foreign, company, foundation, trust, business entity or association, and any agent, employee, salesman, partner, officer, director, member, stockholder, associate, trustee or cestui que trust thereof.” [Mo. Ann. Stat. § 407.010\(5\)](#) (West). He asserts that “personal use” then “must be harmonized and read in conjunction with ‘person’ as statutorily defined.” ([Doc. #139, p. 9.](#)) Therefore, he argues that “personal use” encompasses “purchases of merchandise for a purchaser’s own use in a business enterprise[.]” ([Doc. #139, p. 10.](#)) Further, Graves maintains that “family use” is broad, and “[n]othing restricts the [phrase] to non-business matters.” ([Doc. #139, p. 11.](#)) Thus, he concludes that “[i]t is inconsistent with the language, definitions, and purposes of the MMPA to construe it in a way that restricts a right of action to only those who purchase for non-business purposes.” ([Doc. #139, p. 14.](#))

Defendants argue that Graves is seeking an improper advisory opinion because Graves does not admit that he used CAM2 ProMax 303 primarily for business purposes. Further, they assert that if the Court reaches the merits of the motion, “[s]uch a broad interpretation is clearly not contemplated by the MMPA.” ([Doc. #154, p. 6.](#)) Specifically, they assert that “Graves’[] interpretation would render superfluous the statutory limitation that merchandise must be used ‘primarily for personal, family or household purposes.’” ([Doc. #154, p. 7.](#)) They maintain that “elsewhere in the MMPA, the General Assembly expressly distinguishes between business purposes and personal purposes, indicating that the two are not interchangeable.” ([Doc. #154, p. 7.](#)) Further, they argue that “[t]his Court has previously considered and rejected precisely the same argument Graves now makes.” ([Doc. #154, p. 9.](#))

For the Court to not issue an advisory opinion

the issue before it must be: “definite and concrete, touching the legal relations of parties having adverse legal interests. It must be a real and substantial

controversy admitting of specific relief through a decree of a conclusive character, as distinguished from an opinion advising what the law would be upon a hypothetical state of facts.”

Robson v. Duckpond Ltd, No. 4:19-CV-01862-SRC, [2021 WL 1222429](#), at *8 (E.D. Mo. Mar. 31, 2021) (quoting *North Carolina v. Rice*, [404 U.S. 244, 246](#) (1971)). Awarding summary judgment on issues “which depend upon the resolution of controverted matters would be tantamount to advisory opinions.” *Id.* (quoting *Marshall Contractors, Inc. v. Peerless Ins. Co.*, [827 F. Supp. 91, 93](#) (D.R.I. 1993)).

First, the Court finds that it can reach the merits of Graves’ summary judgment motion. Graves asserts that he purchased CAM2 ProMax 303 “for tractors used in a family commercial farming operation.” ([Doc. #139, p. 5.](#)) The Court agrees with Graves when he states in his reply suggestions that “[i]t is plainly uncontroverted that [Graves] purchased CAM2 [ProMax] 303 for the . . . two tractors used in his farming business.” ([Doc. #171, p. 2.](#)) Thus, the Court is not issuing an advisory opinion since it is uncontroverted that Graves used the CAM2 ProMax 303 during the course of his business operations, so whether the MMPA allows him to bring suit is a real controversy. *See Robson*, [2021 WL 1222429](#), at *8.

However, the Court finds that the MMPA does not allow purchasers who used the 303 THF Products during the course of their business operations to bring suit. This Court follows Chief Judge Beth Phillips well-reasoned opinion. *See HEMCO Corp. v. ADP, Inc.*, No. 12-00407-CV-W-BP, [2012 WL 13027553](#), at *4 (W.D. Mo. Sept. 25, 2012) (“After reviewing relevant case law and the purpose of the MMPA, the Court concludes that [business plaintiff’s] purchase of [defendant’s] services was primarily for business purposes. . . . Therefore, the purchases are not ‘personal’ as defined by the MMPA. Further, [business plaintiff] is a corporation that can ostensibly protect itself better than an individual consumer, and [business plaintiff] presents no evidence that [defendant’s] oppressive conduct stemmed from any superior bargaining power.

Therefore, it does not appear as though the Missouri legislature intended the MMPA to cover the claim [business plaintiff] presents.”)

IV. CONCLUSION

For these reasons and the additional reasons stated by Defendants, Graves’ Motion for Partial Summary Judgment Regarding MMPA Private Right of Action is DENIED.

IT IS SO ORDERED.

/s/ Stephen R. Bough
STEPHEN R. BOUGH
UNITED STATES DISTRICT JUDGE

Dated: June 3, 2024