UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF TEXAS
WACO DIVISION

Christine Monahan, Renee Iannotti, and Lillian Taylor, individually and on behalf of all others similarly situated, *Plaintiffs*,	§	
v.	§	Case No. 6:21-CV-00887-ADA
Southwest Airlines Co., *Defendant*.	§	

ORDER

Before the Court is Defendant Southwest Airlines Co.'s ("Southwest") Motion to Stay, Transfer, Dismiss, and Strike. Dkt. 12. Southwest requests, among other things, that the Court dismiss Plaintiffs' complaint for lack of Article III standing pursuant to Federal Rule of Civil Procedure 12(b)(1). *Id.* at 3. For the reasons below, the Court grants Southwest's motion in this regard.

I. Background

This case arises from Southwest's use of the Boeing 737 MAX 8 ("MAX"). Dkt. 1, at ¶¶ 1–2. Boeing introduced the 737 in the 1960s and has developed several "generations" of the aircraft over time. *Id.* at ¶ 53. The MAX is part of the most recent generation and is designed to be more fuel efficient. *See id.* at ¶¶ 53, 64. The MAX came after the Next Generation Line, which included the 737-700, 737-800, and other 737 variants. *Id.* at ¶ 53. Southwest has both the MAX and earlier generations of the 737 in its fleet. *Id.* at ¶¶ 38, 133.

On March 13, 2019, the Federal Aviation Administration ("FAA") grounded all MAX aircraft in the United States. *Id.* at ¶ 147. This occurred soon after two MAX aircraft crashed within a five-month period. *Id.* at ¶¶ 2, 78. The first crashed into the Java Sea and resulted in 189 fatalities. *Id.* at ¶¶ 4, 8. The second crashed near Addis Ababa, Ethiopia, and resulted in 157 fatalities. *Id.* at ¶ 9. Neither crash involved a MAX operated by Southwest; the aircraft were operated by Lion Air and Ethiopian Airlines. *Id.* at ¶ 2. After being grounded, the MAX was redesigned to fix the issues that led to these accidents. *Id.* at ¶¶ 74, 76.

A couple of years later, Christine Monahan, Renee Iannotti, and Lillian Taylor ("Plaintiffs") filed this class action against Southwest. *Id.* at 1. Plaintiffs are individuals who "purchased Southwest tickets for air travel which occurred between August 29, 2017 and March 13, 2019." *Id.* at ¶¶ 22–24. Plaintiffs seek to represent a class defined as "[a]ll persons who provided valuable consideration, whether in money or other form (e.g., voucher, miles/points, etc.), in exchange for a ticket for air transportation on Southwest Airlines which transportation took place between August 29, 2017, and March 13, 2019." *Id.* at ¶ 188.

During the class period, Southwest sold tickets for and operated flights carrying roughly forty million passengers, including flights aboard the MAX. *Id.* at ¶ 152. Southwest operated the MAX on routes that were also serviced by earlier generations of the 737 in its fleet. *Id.* at ¶ 153. Although Plaintiffs flew with Southwest during the class period, none of them claim to have flown on a MAX operated by Southwest. *Id.* at ¶¶ 22–24. In fact, Southwest's records show that they

flew on the 737-700 and 737-800, which are part of the Next Generation Line. Dkt. 13, at ¶¶ 4–5.

Nonetheless, Plaintiffs allege that Southwest breached its Contract of Carriage with its passengers. *Id.* at ¶ 1. This contract is a forty-page document that sets forth various terms and conditions pertaining to travel with Southwest. *See* Dkt. 1-1. Relevant here, it states that transportation by Southwest is subject not only to the terms and conditions contained therein, but also any terms and conditions specified on Southwest's website. *Id.* at 3. The contract also incorporates by reference Southwest's Customer Service Commitment. *Id.* at 40. And it warns passengers that flight schedules are subject to change and that Southwest may need to substitute aircraft without prior notice. *Id.* at 36.

Between its Contract of Carriage, Customer Service Commitment, and other documents on its website, Southwest made a number of representations related to safety. Dkt. 1, at ¶¶ 34–44. For example, Southwest stated that "the first priority of this airline and its Employees, and our first responsibility to you, our valued Customer, is and has always been safety." *Id.* at ¶ 34. Plaintiffs take this representation and others to convey three main promises: (1) that "Southwest's pilots have been trained on and are familiar with every aircraft Southwest operates, including the 737 MAX"; (2) that "Southwest operates safe flights on safe and airworthy aircraft"; and (3) that "Southwest complies with FAA safety regulations." *Id.* at ¶ 43; *see also* Dkt. 17, at 4.

Plaintiffs allege that Southwest breached those promises "by flying the unsafe, non-airworthy, and defective Boeing 737 MAX, by not sufficiently training its pilots to fly the 737 MAX, and by violating FAA regulations." Dkt. 1, at ¶¶ 15, 154–85. Plaintiffs allege that they "were overcharged by Southwest for their tickets as a result of Southwest's failure to fulfill its promises, such that purchasing a ticket for travel on any route operated by Southwest meant rolling the dice on whether they would be flying on a fatally flawed aircraft—the 737 MAX." *Id.* at ¶ 19.[1] Plaintiffs also allege that because of Southwest's misconduct, they "did not receive the benefit of the bargain." *Id.* at ¶ 186.

After Plaintiffs sued, Southwest filed the instant Motion to Stay, Transfer, Dismiss, and Strike. Dkt. 12. Southwest first asked the Court to stay or dismiss this case pursuant to the first-to-file rule. *Id.* at 7, 47. Southwest highlighted that a similar class action—*Earl v. Boeing Company*—had been filed against Boeing and Southwest around two years earlier in the Eastern District of Texas. Dkt. 12, at 1, 7. Southwest pointed out that the Fifth Circuit had recently granted Southwest and Boeing permission to appeal the district court's class certification order. *Id.* at 9.

After considering Southwest's motion, the Court stayed the case pending the Fifth Circuit's decision. Dkt. 26, at 1. The Court agreed with Southwest that the primary issues and operative facts in this case substantially overlap with those in *Earl*. *Id.* at 4. The Court also recognized that "the Fifth Circuit will resolve

[1] Plaintiffs similarly allege, at another point in their complaint, that "purchasing a ticket with Southwest (regardless of whether one ultimately flew on a 737 MAX or one of Southwest's Legacy 737 Aircraft) meant that customers were unwittingly taking a chance of flying aboard the fatally flawed 737 MAX." *Id.* at ¶ 165.

overarching issues such as Article III standing and requested recovery, both of which share significant overlap with the present action." *Id.* The Court ordered the parties to file a status report within a week of the Fifth Circuit's decision. *Id.* at 5.

The Fifth Circuit came down in Southwest's favor, holding that the plaintiffs' case must be dismissed for lack of Article III standing. *Earl v. Boeing Co.*, 53 F.4th 897, 903 (5th Cir. 2022). Following that decision, the parties filed a status report providing their opposing views on how this Court should proceed in light of *Earl*. Dkt. 27. The Court held a hearing on the issue of standing, at the end of which the Court said that it was going to grant Southwest's motion to dismiss. *See* Dkt. 33.

II. Legal Standard

Plaintiffs must have standing "for each claim that they press and for each form of relief that they seek." *TransUnion LLC v. Ramirez*, 594 U.S. 413, 431 (2021).[2] To establish standing, "the plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). Put simply, the plaintiff must be able to answer the question: "What's it to you?" *TransUnion*, 594 U.S. at 423 (quoting Scalia, *The Doctrine of Standing as an Essential Element of the Separation of Powers*, 17 Suffolk U. L. Rev. 881, 882 (1983)).

This dispute centers on the injury-in-fact element of standing. *See* Dkt. 12, at 30. "To establish injury in fact, a plaintiff must show that he or she suffered 'an

[2] Southwest properly raised the issue of standing through a motion to dismiss under Rule 12(b)(1). *See, e.g.*, *Students for Just. in Palestine, at Univ. of Hou. v. Abbott*, 756 F. Supp. 3d 410, 420 (W.D. Tex. 2024) ("Standing is a component of subject matter jurisdiction, and it is properly raised by a motion to dismiss under Rule 12(b)(1).").

invasion of a legally protected interest' that is 'concrete and particularized' and 'actual or imminent, not conjectural or hypothetical.'" *Spokeo*, 578 U.S. at 339 (quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)). The injury must actually exist—that is, it must be "real, and not abstract." *Id.* at 340 (internal quotation marks omitted). For example, if a defendant has caused a monetary injury to the plaintiff, "the plaintiff has suffered a concrete injury in fact under Article III." *TransUnion*, 594 U.S. at 425.

In a class action, "federal courts lack jurisdiction if no named plaintiff has standing." *Frank v. Gaos*, 586 U.S. 485, 492 (2019); *see also Perez v. McCreary, Veselka, Bragg & Allen, P.C.*, 45 F.4th 816, 826–27 (5th Cir. 2022) (remanding with instruction to dismiss because named plaintiff lacked standing). When a suit is filed as a class action, it "adds nothing to the question of standing, for even named plaintiffs who represent a class 'must allege and show that they personally have been injured, not that injury has been suffered by other, unidentified members of the class to which they belong.'" *Spokeo,* 578 U.S. at 338 n.6 (quoting *Simon v. E. Ky. Welfare Rts. Org.*, 426 U.S. 26, 40 n.20 (1976)).

III. Analysis

Southwest argues that Plaintiffs lack standing because they have not pleaded a cognizable injury-in-fact. Dkt. 12, at 30. Southwest explains that Plaintiffs' alleged injury is premised on a safety risk that did not actually hurt them. *Id.* The MAX may have injured others flying on foreign airlines, but it was not defective as to Plaintiffs' flights. *Id.* at 32. Indeed, no Plaintiff even flew on a MAX aircraft, so no risk ever

actually manifested. *Id.*; Dkt. 20, at 14. Any alleged difference in value of their flights is based entirely on a hypothetical, speculative risk. Dkt. 12, at 34. Because Plaintiffs received what they bargained for (i.e., a safe flight from Point A to Point B), they have not suffered a concrete, particularized injury. *Id.* at 30, 32.

Southwest principally relies on the Fifth Circuit's decision in *Rivera v. Wyeth-Ayerst Laboratories*, 283 F.3d 315 (5th Cir. 2002). *Rivera* involved a class action against the manufacturer of a painkiller that reportedly caused liver failure in some patients. *Id.* at 316–17. The *Rivera* plaintiffs were patients who took the painkiller but suffered no physical or emotional injury. *Id.* at 317. They instead asserted an "economic injury" stemming from the manufacturer's failure to warn and sale of a defective product. *Id.* The Fifth Circuit dismissed the case for lack of standing, holding that the plaintiffs asserted no concrete injury because they paid for an effective painkiller and received just that. *Id.* at 320–21.

Plaintiffs respond that Southwest misapprehends their contract claim. Dkt. 17, at 25. Plaintiffs argue that they bargained for far more than merely arriving at Point B uncrashed; they bargained for express promises relating to the reduction of a safety risk. *Id.* Plaintiffs paid for those promises at the time of purchase; thus, Southwest's breach economically injured them regardless of whether they survived their flight. *Id.* Southwest's argument that Plaintiffs cannot show the requisite economic harm because they received a flight that did not crash improperly conflates an assessment of standing with one of the merits of Plaintiffs' claim. *Id.* at 29.

Plaintiffs rely heavily on the Fifth Circuit's decision in *Cole v. General Motors Corp.,* 484 F.3d 717 (5th Cir. 2007). *Cole* involved a class action against the manufacturer of a vehicle that had allegedly defective airbags. *Id.* at 718. The *Cole* plaintiffs were customers that bought the vehicle but did not sustain any physical injuries from the airbags. *Id.* at 719. They instead claimed to have suffered an economic injury because the vehicles were defective at the moment of purchase and the manufacturer did not repair or replace the airbags within a reasonable time. *Id.* at 722–23. The Fifth Circuit held that the plaintiffs established a concrete injury because they sought "recovery for their actual economic harm (e.g., overpayment, loss in value, or loss of usefulness) emanating from the loss of their benefit of the bargain." *Id.* at 723.

In addition to the arguments above, the parties also dispute *Earl*'s effect on this case. In *Earl*, the plaintiffs alleged that Boeing and Southwest defrauded them by, among other things, concealing a serious safety defect in the MAX aircraft. 53 F.4th at 899. The plaintiffs claimed that they were harmed because the ticket prices they paid "were significantly higher than the value of those tickets, which for many, if not most, passengers was zero." *Id.* at 901 (internal quotation marks omitted). The Fifth Circuit pointed out that "there are two ways to understand this alleged injury." *Id.* at 902. The first is that the plaintiffs were harmed because the defendants' fraud induced them to buy tickets they never would have bought otherwise. *Id.* The second is that the plaintiffs were harmed because the defendants' fraud allowed Southwest

to set higher prices for the plaintiffs' tickets than they could have done absent the fraud. *Id.*

The Court noted that everyone agreed the first theory could not support standing under *Rivera*. *Id.* The Court then determined that the second theory rested on two unsupportable inferences. *Id.* at 903. First, the plaintiffs assumed that if the public had known about the safety defect in the MAX, Southwest would have continued offering the same MAX flights, but with a price discount to offset the heightened risk. *Id.* Second, the plaintiffs assumed the FAA would have permitted the airline to fly the MAX even with full knowledge of the defect. *Id.* The more plausible inference, as the Court saw it, was that Southwest would have offered zero MAX flights until the defect could be fixed and the FAA would have grounded the MAX. *Id.* That would have caused ticket prices to go up, not down, because Southwest's usable fleet would have been smaller. *Id.* Thus, the Court held that the plaintiffs had not plausibly alleged a concrete injury sufficient to confer standing. *Id.*

Plaintiffs in this case try to distance themselves from *Earl*. Dkt. 27, at 3–4. Plaintiffs argue that their standing is not founded on a fraud injury; it is founded on a breach-of-contract injury. *Id.* at 4. And even if contractual privity were insufficient to confer standing, the damages theory in *Earl* (involving the hypothetical where the MAX defect was publicly known but the plane was not grounded as a result) is absent in this case. *Id.* The damages theory here does not require an evaluation of a "but for fraud-on-the-market" scenario but rather a time-honored comparison of the difference between the value represented and the value actually received. *Id.*

Southwest responds that calling a purported injury contractual rather than fraudulent does not make it concrete. *Id.* at 3. The plaintiffs in both cases claim the same overcharge for tickets. *Id.* That overcharge theory of injury does not confer standing regardless of how the claim is labeled. *Id.* Moreover, Plaintiffs do not attempt to explain how one could calculate the difference between the value represented and the value received without hypothesizing a "but-for" world in the absence of the alleged misrepresentations, which *Earl* rejected as raising no plausible theory of economic harm. *Id.*

Taking a step back, the Court reads Plaintiffs' complaint as asserting two overcharge theories. *Cf. Earl*, 53 F.4th at 902. The first is that Plaintiffs were overcharged because they were unknowingly exposed to a safety risk by purchasing tickets with Southwest. Dkt. 1, at ¶ 19 (alleging that Plaintiffs were overcharged "such that purchasing a ticket for travel on any route operated by Southwest meant rolling the dice on whether they would be flying on a fatally flawed aircraft—the 737 MAX."). Because this theory rests on a past risk of physical injury that never materialized, it cannot support standing. *Earl*, 53 F.4th at 903 (holding that plaintiffs lacked standing because they "complain of a past risk of physical injury" that "never materialized").

The second is that Plaintiffs were overcharged because they paid for specific promises related to safety and Southwest breached those promises. Dkt. 1, at ¶¶ 19, 186 (alleging that Plaintiffs were overcharged because of "Southwest's failure to fulfill its promises" and that Plaintiffs "did not receive the benefit of the bargain"). This

theory, contrary to Southwest's position, is not a repackaged version of the "overcharge-by-fraud" theory in *Earl*. That theory relied on faulty assumptions about how things would have unfolded if the public learned about the defendants' fraudulent scheme. 53 F.4th at 902–03. This theory does not rely on the same implausible series of events; it is based on the idea that Plaintiffs got something that was worth less than what they paid for. *See* Dkt. 1, at ¶ 186. That is fundamentally different than the overcharge-by-fraud theory in *Earl*.

But even though Plaintiffs' theory is different, it is still implausible. *See Barilla v. City of Houston*, 13 F.4th 427, 431 (5th Cir. 2021) (noting that, on a motion to dismiss, plaintiffs must allege facts that give rise to a *plausible* claim of standing). The problem is that Plaintiffs do not claim to have flown on a MAX during the class period and records show that they flew on 737s in the Next Generation Line. Dkt. 13, at ¶ 4–5. Plaintiffs have not alleged that these aircraft were unsafe or non-airworthy, that Southwest failed to train its pilots on these aircraft, or that Southwest violated FAA regulations as to these aircraft. All of the allegedly bad things that Southwest did relate to an aircraft that Plaintiffs did not fly on. Because of this, the Court cannot draw the reasonable inference that Plaintiffs were overcharged by Southwest.[3]

The consequences of Plaintiffs' theory help illustrate why this is so. Assume that only one of Southwest's pilots lacked proper training on only one of its aircraft.

[3] Plaintiffs also contend that "[i]t is axiomatic that [they], as parties to the [Contract of Carriage], have standing to sue for SW's breach of that contract." Dkt. 17, at 28. However, this argument appears to conflate their cause of action with an injury in fact. *Cf. Dodson v. ExamWorks, L.L.C.*, No. 24-50248, 2025 WL 655055, at *4 (5th Cir. Feb. 28, 2025). As the Supreme Court recently explained, "an injury in law is not an injury in fact" under Article III. *TransUnion*, 594 U.S. at 427.

Under Plaintiffs' theory, anyone who flew with Southwest while that pilot was around, regardless of whether they flew on an aircraft flown by that pilot, would have standing to allege that they were overcharged because Southwest breached its representation that its pilots are trained and familiar with every aircraft in its fleet. It should be obvious that passengers who never flew with that pilot were not overcharged for the service they received. But Plaintiffs' theory would allow their claims to proceed. "Courts sometimes make standing law more complicated than it needs to be." *Thole v. U. S. Bank N.A*, 590 U.S. 538, 547 (2020). There is no reason to do that here.

IV. Conclusion

Plaintiffs lack Article III standing because they have not plausibly alleged an injury in fact. As a result, the Court does not have jurisdiction over their class action complaint. *Frank*, 586 U.S. at 492 (noting that "federal courts lack jurisdiction if no named plaintiff has standing"). The Court therefore grants Southwest's motion to dismiss under Rule 12(b)(1) and dismisses this case without prejudice.[4]

SIGNED on June 9, 2025.

ALAN D ALBRIGHT
UNITED STATES DISTRICT JUDGE

[4] "Ordinarily, when a complaint is dismissed for lack of jurisdiction, including lack of standing, it should be without prejudice." *Green Valley Special Util. Dist. v. City of Schertz*, 969 F.3d 460, 468 (5th Cir. 2020) (internal quotation marks omitted).