STATE OF MINNESOTA
IN COURT OF APPEALS
A18-0476

Andrew Carufel, et al.,
Appellants,

vs.

Minnesota Department of Public Safety, et al.,
Respondents,

Seven, Inc., d/b/a Smart Start, et al.,
Defendants,

Intoxalock,
Respondent.

Filed December 17, 2018
Affirmed in part, reversed in part, and remanded
Bratvold, Judge

Ramsey County District Court
File No. 62-CV-17-1030

Timothy J. Becker, Jennell K. Shannon, Johnson Becker, PLLC, St. Paul, Minnesota; and

Daniel J. Koewler, Ramsay Law Firm PLLC, Roseville, Minnesota (for appellants)

Lori Swanson, Attorney General, Jason Marisam, Assistant Attorney General, St. Paul, Minnesota (for respondent Minnesota Department of Public Safety, et al.)

K. Jon Breyer, Kutak Rock LLP, Minneapolis, Minnesota; and

Stephen H. Locher, Belin McCormick, P.C., Des Moines, Iowa (for respondent Intoxalock)

Considered and decided by Bratvold, Presiding Judge; Worke, Judge; and Jesson, Judge.

U N P U B L I S H E D O P I N I O N

BRATVOLD, Judge

Appellants Andrew Carufel, Steven Demko, and Kristen Murray, on behalf of themselves and all other similarly situated individuals (collectively, appellants), challenge the district court's dismissal of their claims under Minn. R. Civ. P. 12.02(e) against respondents Minnesota Department of Public Safety (DPS), Driver and Vehicle Services (DVS), the DPS commissioner, the DVS director (collectively, state respondents), and ignition interlock device manufacturer, Consumer Safety Technology (Intoxalock).[1]

Appellants have limited drivers' licenses under the Minnesota Ignition Interlock Program (the program), which requires participants to install an ignition interlock device (device) on their motor vehicle. Appellants commenced a putative class action against the state respondents and Intoxalock on two theories. Appellants' primary theory is that the device collects and stores location data that is made available to the state respondents via a website maintained by Intoxalock. But appellants also assert a separate theory based on the participation agreement that requires them to provide the state respondents with private and confidential data, such as date of birth.

In a second amended complaint (second amended complaint or complaint), appellants allege several causes of action, including violations of the Minnesota Government Data Practices Act (MGDPA or Act) against the state respondents and

[1] Appellants also commenced suit against additional defendants, Seven, Inc. d/b/a Smart Start, Alcolock MN, Inc. d/b/a Alcolock, and #1A LifeSafer of Minnesota, Inc. d/b/a LifeSafer, all manufacturers of ignition interlock devices. Appellants' claims against all other defendants were resolved before the district court issued the decision on appeal.

Intoxalock, based on its performance of a government function; and, against Intoxalock alone, appellants alleged fraudulent nondisclosure under the Minnesota Consumer Fraud Act, breach of contract, and unjust enrichment. Appellants seek injunctive relief, damages, and attorney fees.

We address each of the causes of action asserted in the complaint. First, we examine the MGDPA claims against the state respondents and determine that the complaint fails to state a violation of the Act because it does not allege that the location data is collected, stored, or received *by the state respondents*. In other words, the complaint does not allege that the location data is "government data," as that term in defined under the MGDPA, and the state's duties under the Act are not triggered as to the location data. Regarding the private and confidential data collected in the participation agreement, however, we conclude that the complaint sufficiently alleges a violation of the Act's requirement to provide a Tennessen warning.

Second, we consider the MGDPA claim against Intoxalock for collecting location data and conclude that the complaint does not sufficiently allege that Intoxalock entered into a valid contract with the state respondents, as required to assert liability under the Act. *See* Minn. Stat. § 13.05, subd. 11 (2018) (privatization of a government function).

Third, we consider appellants' other causes of action against Intoxalock and find them lacking for several distinct reasons: (a) the complaint fails to sufficiently allege a special relationship giving rise to a duty to disclose under the Minnesota Consumer Fraud Act (MCFA), Minn. Stat. § 325F.69, subds. 1, 4 (2018); (b) the complaint fails to sufficiently allege a breach of the express terms of the contract between appellants and

Intoxalock; and (c) the complaint fails to allege a claim for unjust enrichment because it asserts that appellants' relationship with Intoxalock is governed by a contract. Accordingly, we affirm in part and reverse in part the decision of the district court and remand appellants' Tennessen-warning claim for further proceedings in accordance with this opinion.

FACTS

According to the complaint, the program allows drivers "who have received alcohol-related driving offenses—offenses which would normally result in the cancellation or revocation of a driver's license—to maintain possession and operation of their vehicle and license." Program participants must enter into an "Ignition Interlock Participation Agreement" (agreement), which requires them to provide their name, address, telephone number, date of birth, and driver's license number. Upon executing the agreement with the DPS, participants retain a limited license and separately contract with an ignition interlock device manufacturer to lease and install a device that is attached "to a vehicle's ignition system" and will measure the alcohol concentration of a breath sample. A participant must blow into the device before starting the car. If the device detects the presence of alcohol above a specified level, the car will not start and the device records the failure.

Minnesota law directs the commissioner of public safety to "establish guidelines for participation in the ignition interlock program." Minn. Stat. § 171.306, subd. 3(a) (2018). The commissioner also must establish "performance standards and a process for certifying devices used in the [program]." *Id.*, subd. 2(a). Before a manufacturer may lease devices to program participants, the device must be certified by DPS, and a device manufacturer

must renew this certification annually. *Id.* Each year, DPS, through DVS, publishes performance standards and "certification process" guidelines (DVS guidelines).

The DVS guidelines require that the device "collect and store personal information on participants." The guidelines state that "[t]he manufacturer is responsible for recording information regarding the program participants' usage of the device. . . . Records must be electronically maintained on every participant including results of every monitoring check." The guidelines also require device manufacturers to make the information available on a "website platform ('Web Portal') which allows DPS, DVS, and the [manufacturers] to access participants' information for the purposes of monitoring compliance with the [program]."

Beginning in 2016, the DVS guidelines required that the devices be equipped with "real-time reporting capabilities." The 2016 guidelines define "real-time" as the "instant transmission of ignition interlock data, including photos, to the manufacturer's website for viewing by DVS without delay as cellular reception permits." Essentially, real-time reporting capabilities facilitate swift notice to the DPS/DVS if a device records a failure or a participant fails to comply with the ignition protocol.

The complaint alleges that, after the DVS guidelines added the real-time reporting capabilities, the state respondents could "collect and monitor participants' real-time locations through GPS tracking." Also according to the complaint, Intoxalock began collecting participants' real-time data, including their location data, "as early as 2002."

Appellants filed their second amended complaint in September 2017 and asserted two counts against the state respondents related to the MGDPA. In count I, appellants claim

that the state respondents violated the MGDPA by requiring real-time location information to be "recorded and stored" by the devices, and "then requiring 'any and all' data collected by [the devices] be transmitted or released to the [s]tate for the [s]tate's review for use in evaluating [p]rogram compliance." In count II, appellants assert that the state respondents failed to provide a "Tennessen warning" when it collected private and confidential data from program participants, as required by Minn. Stat. § 13.04, subd. 2 (2018).

Appellants assert four counts against Intoxalock. In count III, appellants assert that Intoxalock violated the MGDPA because it collected appellants' real-time location information and made this data available to the state. In count IV, appellants assert that Intoxalock also failed to provide a "Tennessen warning" when it collected private and confidential data from appellants. In count V, appellants claim that Intoxalock failed to disclose to appellants that it had collected location data in violation of the Minnesota Consumer Fraud Act (MCFA), Minn. Stat. § 325F.69, subds. 1, 4. In count VI, appellants allege that Intoxalock breached its contract with them by failing to inform them that it "actually collected and actually intended to collect" their real-time location data. Finally, in count VII, appellants assert that they "paid extra for having illegal and improper real-time GPS location data collected" by the device, therefore, Intoxalock was unjustly enriched.

The state respondents and Intoxalock filed motions to dismiss. The district court granted the motions, dismissing appellants' entire complaint, and this appeal followed.

D E C I S I O N

The district court granted the state and Intoxalock's motions to dismiss under Minn. R. Civ. P. 12.02(e). We review de novo decisions on motions to dismiss for failure to state a claim upon which relief can be granted; in doing so we consider only the facts alleged in the complaint, accept those facts as true, and construe all reasonable inferences in the non-moving party's favor. *In re Individual 35W Bridge Litigation*, 806 N.W.2d 811, 815 (Minn. 2011).[2]

I. The MGDPA claims against the state

A. MGDPA claim related to location data

The MGDPA provides that the government's collection of data on individuals must be limited to only what is necessary to effectuate a government program. Minn. Stat. § 13.05, subd. 3 (2018). The complaint alleges that location data is "not necessary for the administration and management of the Ignition Interlock Program," therefore, the state respondents violated the MGDPA when the device manufacturers collected and stored

[2] When the state respondents and Intoxalock moved to dismiss appellants' lawsuit, they submitted exhibits not included in the second amended complaint. "If, on a motion asserting the defense that the pleading fails to state a claim upon which relief can be granted, matters outside the pleading are presented to and not excluded by the court, the motion shall be treated as one for summary judgment." Minn. R. Civ. P. 12.02. We conclude, however, that the motions to dismiss were not converted to summary judgment motions because the exhibits filed with the district court included the appellants' contract with Intoxalock and legislative history. When, as here, appellants did not attach the relevant contract to the complaint, the court may nonetheless consider the contract in its entirety without converting the motion to one for summary judgment. *See In re Hennepin Cty. 1986 Recycling Bond Litig.*, 540 N.W.2d 494, 497 (Minn. 1995). Further, the district court can consider legislative history and matters of public record, without converting the motion to one for summary judgment. *See, e.g.*, C*entral Lakes Educ. Ass'n v. Indep. Sch. Dist. No. 743*, 411 N.W.2d 875, 881 (Minn. App. 1987), *review denied* (Minn. Nov. 13, 1987).

location data on the Web Portal to which the state respondents had access. The district court concluded that the location data on the manufacturers' websites was not subject to the MGDPA, because the state respondents did not "collect and store" the data. On appeal, appellants argue that the district court's interpretation of the MGDPA was too narrow and the MGDPA applies to all data to which the state has "access."

We review the district court's interpretation of statutory language de novo. *See KSTP-TV v. Metro. Council*, 884 N.W.2d 342, 345 (Minn. 2016). The goal of statutory interpretation and construction "is to ascertain and effectuate the intention of the legislature," and each statute "shall be construed, if possible, to give effect to all its provisions." Minn. Stat. § 645.16 (2018). When the legislature's intent is clearly discernible from a statute's plain and unambiguous language, an appellate court interprets the language according to its plain meaning. *State v. Kelbel*, 648 N.W.2d 690, 701-02 (Minn. 2002). In the absence of statutory definitions, we interpret the words in a statute "according to their common and approved usage." Minn. Stat. 645.08(1) (2016); *see also Shire v. Rosemount, Inc.*, 875 N.W.2d 289, 297 (Minn. 2016) ("We have considered dictionary definitions as a helpful tool in determining plain and ordinary meaning.").

The MGDPA, Minn. Stat. §§ 13.01-.90 (2018), "regulates the collection, creation, storage, maintenance, dissemination, and access to government data in government entities." Minn. Stat. § 13.01, subd. 3. "Government data" is defined as "all data collected, created, received, maintained or disseminated by any government entity regardless of its physical form, storage media or conditions of use." Minn. Stat. § 13.02, subd. 7. The MGDPA imposes specific duties on government entities when they collect and store data

on individuals. One specific duty, as already mentioned, is found in section 13.05 of the MGDPA, which provides that "[c]ollection and storage of all data on individuals and the use and dissemination of private and confidential data on individuals shall be limited to that necessary for the administration and management of programs specifically authorized by the legislature." Minn. Stat. § 13.05, subd. 3. In this case, the district court concluded that the "presentation and storage of data by private manufacturers" on their websites is not "collection and storage of data" by the government. Thus, the district court concluded that the MGDPA did not apply to the location data on the device manufacturer's website.

We agree with the district court. The complaint acknowledges that the device "manufacturers collect and store the personal information of [program] participants" and "[t]he manufacturer is the owner of the data." Also, the 2016 DVS guidelines, which are referenced in the complaint, provide that device manufacturers are "responsible for recording information regarding the program participants' usage of the device." The complaint does not allege that the state respondents collected or stored location data on program participants.[3] Because the complaint alleges that the device manufacturers "are collecting, creating, receiving, and maintaining the ignition interlock data," the complaint fails to state a claim under the MGDPA against the state respondents.

Appellants respond that, because the state had access to the location data stored on the manufacturers' websites, the data should be subject to the MGDPA. In support of their

[3] While not mentioned in the complaint, the parties agree that, in 2017, the legislature specifically provided that DVS guidelines may not require device manufacturers to collect location data. *See* Minn. Stat. § 171.306, subd. 2(a) (Supp. 2017).

argument, appellants point to Minn. Stat. § 13.01, subd. 3, which states that the MGDPA "regulates the collection, creation, storage, maintenance, dissemination, and *access to* government data in government entities." Minn. Stat. § 13.01, subd. 3 (emphasis added). The complaint asserts that the state respondents have the *ability* to access location data through the device manufacturer's Web Portal. Importantly, the complaint does not allege that the state respondents have *actually* accessed any location data through the Web Portal.

Appellants' claim fails because the MGDPA regulates the public's access to government data, and does not regulate the government's *ability* to access data. Government data is limited to "all data collected, created, received, maintained or disseminated by any government entity." Minn. Stat. § 13.02, subd. 7. Based on the commonly understood meaning of these terms, government data does not include data to which the government has access.[4] Our view of the MGDPA is confirmed by examining the duties imposed by the Act, which are not triggered unless the state collects and stores the data, *see* Minn. Stat. § 13.05, subd. 3, or receives the data, *see* Minn. Stat. § 13.02, subd. 7.

[4] The MGDPA does not provide definitions for "collected, created, received, maintained, or disseminated," so we consider the common meaning of these terms. "Collect" is defined as, "[t]o gather together; to bring scattered things (assets, accounts, articles of property) into one mass or fund; to assemble." *Black's Law Dictionary* 238 (5th ed. 1979). "Create" is defined as "bring[ing] (something) into existence . . . caus[ing] (something) to happen as a result of one's actions." *Oxford Dictionary of English* 408 (3d ed. 2010). "Receive" is defined as "tak[ing] (something offered, given, sent, etc.); to come into possession of or get from some outside source." *Black's Law Dictionary* 1460 (10th ed. 2014). "Maintain" is defined as "[t]o continue (something) . . . [t]o continue in possession of (property, etc.) . . . [t]o care for (property)." *Black's Law Dictionary* 1097 (10th ed. 2014). Finally, "disseminate" is defined as "spread[ing] (something, especially information) widely." *Oxford Dictionary*, *supra*, at 507.

We conclude the state respondents' ability to access location data is not sufficient to trigger the MGDPA for two additional reasons. First, appellants have not offered any authority for us to expand the scope of the MGDPA to include data that the government may access. *See Frederick Farms, Inc. v. County of Olmsted*, 801 N.W.2d 167, 172 (Minn. 2011) (refusing to interpret a statute in such a way that would in effect add words to the statute). Second, our view that the ability to access data is not the same as collecting, storing, or receiving data is consistent with previous caselaw construing government data. We have held that government data must be recorded in some physical form other than the human brain and does not include verbal statements by government employees unless those statements disclose recorded government data. *See Deli v. Hasselmo*, 542 N.W.2d 649, 653-54 (Minn. App. 1996), *review denied* (Minn. Apr. 16, 1996); *see also Keezer v. Spickard*, 493 N.W.2d 614, 617 (Minn. App. 1992), *review denied* (Minn. Feb. 12, 1993). Because the location data maintained on Intoxalock's website has not been recorded by the government in some physical form, or received by the state respondents, it is not covered by the MGDPA.[5]

Simply put, the complaint fails to allege that the location data is government data. The district court correctly concluded that the complaint failed to state a claim under the

[5] Additionally, we observe that appellants' interpretation of the MGDPA would dramatically broaden the scope of the Act, given the state's ability to access data from a wide variety of regulated services and industries. For example, the state may have the ability to access health records in a licensing investigation. Under appellants' view of the Act, mere ability to access the health records would mean that the health records are government data, even though the state did not actually access or receive the health records.

MGDPA because it does not allege that location data was collected, stored, or received by the state respondents. Thus, we affirm dismissal of count I of the complaint.

B. Tennessen-warning claim for private or confidential data

The MGDPA provides:

> An individual asked to supply private or confidential data concerning the individual shall be informed of: (a) the purpose and intended use of the requested data within the collecting government entity; (b) whether the individual may refuse or is legally required to supply the requested data; (c) any known consequence arising from supplying or refusing to supply private or confidential data; and (d) the identity of other persons or entities authorized by state or federal law to receive the data.

Minn. Stat. § 13.04, subd. 2. A notice given in compliance with this subdivision is commonly called a Tennessen warning. *See generally Kobluk v. Univ. of Minnesota*, 613 N.W.2d 425, 426 (Minn. App. 2000), *review denied* (Minn. Sept. 13, 2000) (considering use of data collected without Tennessen warning).

The district court, after determining that the MGDPA did not apply to the location data stored on the manufacturers' websites, dismissed appellants' claim against the state respondents for failing to provide a Tennessen warning. We agree with the district court that the complaint fails to state a Tennessen claim regarding the location data on the device manufacturer's websites because it is not government data.

But the complaint's Tennessen-warning claim was not limited to the location data on the manufacturers' websites. According to the complaint, and reiterated in appellants' written arguments to the district court and to this court on appeal, the state respondents required appellants to complete an agreement with DPS in order to participate in the

program. Also according to the complaint, the agreement requested appellants' names, addresses, telephone numbers, dates of birth, and driver's license numbers. The complaint also asserts that, before 2014, the participation agreement did not include any Tennessen warning whatsoever, and during and after 2014, the agreement did not satisfy the warning requirements in section 13.04, subdivision 2.

The state respondents do not deny that they collected private or confidential data in the participation agreement, but instead rely on *Edina Educ. Ass'n v. Bd. of Educ. of Indep. Sch. Dist. No. 273*, to argue that they were not required to give a Tennessen warning. 562 N.W.2d 306, 311 (Minn. App. 1997), *review denied* (Minn. June 11, 1997). But *Edina Education* is not applicable here. That case involved a school psychologist's claim that a school board had violated the MGDPA in requesting and obtaining information about her interactions with a student and parent. *Id.* at 311. We reversed the district court's decision that the Act applied, reasoning that the school board did not ask the school psychologist to provide private or confidential data about herself, therefore, a Tennessen warning was not required. *Id.* at 311-12. Instead, we described the school board's investigation as "attempting to gather factual information about an incident within the course and scope of [the psychologist's] employment." *Id*. at 311.

In contrast, according to the complaint, the state respondents requested private or confidential information from appellants in the agreement that they were required to execute before participating in the program. Additionally, appellants have alleged facts to support their claim that the state respondents either did not provide a Tennessen warning, or that the warnings they received were not sufficient. Thus, without deciding the merits of

the claim, we conclude that appellants' Tennessen-warning claim against the state respondents is sufficient to withstand a motion to dismiss under Minn. R. Civ. P. 12.02(e).

While the district court correctly determined that the complaint fails to state a Tennessen-warning claim for location data, the district court incorrectly dismissed the Tennessen-warning claim for private or confidential information in the participation agreement required by the state respondents. Thus, we reverse and remand the dismissal of count II of the complaint.

II. MGDPA claims against Intoxalock.

Appellants allege in their complaint that Intoxalock "is liable as a government entity for violations of the MGDPA under Minn. Stat. § 13.05, subd. 11(a) because [Intoxalock] entered into a contract with [the state]" to perform its duties under the "[c]ertification [p]rograms and the Ignition Interlock Program." In other words, appellants contend that their MGDPA claims against Intoxalock are valid because they have properly alleged that government functions were privatized under the program.

A. Absence of a contractual relationship between the state and Intoxalock

Under Minn. Stat. § 13.05, subd. 11, the MGDPA allows a political subdivision, responsible authority, statewide system, or state agency to "contract with a private person to perform any of its functions." When such a contract exists, the government entity must ensure that: "all of the data created, collected, received, stored, used, maintained, or disseminated by the private person in performing those functions is subject to the requirements of this chapter and the private person must comply with those requirements as if it were a government entity." Minn. Stat. § 13.05, subd. 11(a). In other words, a private

person is subject to the MGDPA only if it enters into a contract with a government entity to perform a government function. *See WDSI, Inc. v. County of Steele*, 672 N.W.2d 617, 621 (Minn. App. 2003).

In granting Intoxalock's motion to dismiss, the district court determined that the complaint alleged an "implied contract" existed because the state offered the manufacturers "the opportunity to participate in the program" and the manufacturers "accepted when they agreed to be bound by the certification process." The district court, however, found that the certification process was not an express or implied contract; the guidelines were "performance standards" and state "agencies hold private companies to . . . similar certification processes in a variety of industries," but this does not "mean that the [s]tate has a contractual relationship with all of them." Because it found that there was no contract between the state and Intoxalock, the district court determined that the MGDPA did not apply and dismissed the claim.

On appeal, appellants first argue that the district court erred in dismissing their MGDPA claim against Intoxalock because, "[i]rrespective of whether or not [they] will ultimately *prove* a contractual relationship existed, . . . at this stage the [complaint] sufficiently pled Intoxalock contracted with the government." Appellants contend that the complaint makes "no less than three dozen" references to a contract, which satisfies Minnesota's notice pleading rules, and they should be allowed to proceed because the existence of a contract is generally a question of fact to be determined by the factfinder.

Appellants are correct that the complaint does make several references to "express or implied contracts" between the state and Intoxalock. Appellants are also correct that

Minnesota does not require specificity in pleading, and it is enough to set forth "a sufficient basis of facts to notify the opposing party of the claims raised against it." *Meyer v. Best W. Seville Plaza Hotel*, 562 N.W.2d 690, 692 (Minn. App. 1997), *review denied* (Minn. June 26, 1997). But "whether a particular entity is . . . subject to the MGDPA is a question of law." *Minnesota Joint Underwriting Ass'n v. Star Tribune Media Co.*, 862 N.W.2d 62, 65 (Minn. 2015). Additionally, when a complaint refers to a document as a contract, the court may consider the document to determine whether, as a matter of law, the document supports the allegation of a contractual relationship. *See In re Hennepin Cty.*, 540 N.W.2d at 497. The district court determined that, after considering the DVS guidelines, which the complaint alleges is the basis for an implied contract, Intoxalock was not subject to the MGDPA, as a matter of law. Thus, the district court appropriately dismissed the claim once it determined that appellants had failed to sufficiently state a privatization claim under Minn. Stat. § 13.05, subd. 11(a).

Second, appellants argue that the complaint sufficiently alleges that the "Affidavit of Certification," the document that certified Intoxalock to participate in the program, was an express contract between the parties. Appellants also assert that, even if the Affidavit of Certification is not an express contract, it supports the inference of an implied contract because the state "offered the Device Manufacturers the opportunity to participate in [the program]" and the manufacturers accepted when they agreed "to be bound by the [s]tate certification process." Intoxalock and the state respond that the complaint does not allege an express contract because the Affidavit of Certification and DVS guidelines included no "bargained-for promises, manifestation of mutual consent, or consideration." And,

Intoxalock and the state contend that there could not have been an implied contract because "a contract with a state agency must be in writing" to be valid. *See* Minn. Stat. § 16C.02, subd. 6 (2018); Minn. Stat. § 16C.05, subd. 2 (2018).

A complaint must allege offer, acceptance, and consideration to sufficiently plead the existence of either an express or implied contract. *See Commercial Assocs., Inc. v. Work Connection, Inc.*, 712 N.W.2d 772, 782 (Minn. App. 2006). We begin by considering whether appellants' complaint alleges that any consideration was exchanged. "Consideration may consist of either a benefit accruing to a party or a detriment suffered by another party." *Kielley v. Kielley*, 674 N.W.2d 770, 777 (Minn. App. 2004) (quoting *C & D Invs. v. Beaudoin*, 364 N.W.2d 850, 853 (Minn. App. 1985), *review denied* (Minn. June 14, 1985)). Consideration must be the result of a bargain, and is "essential evidence of the parties' intent to create a legal obligation." *Baehr v. Penn-O-Tex Oil Corp.*, 104 N.W.2d 661, 665 (Minn. 1960).

Here, no consideration is alleged to support either an express or implied contract. The DVS guidelines provide that if a manufacturer's device meets performance standards, the state may issue a certificate. But the guidelines do not legally obligate the manufacturers to participate in the program. There is also no bargain; the manufacturers either choose to comply with the standards or choose not to participate in the program. Finally, Minn. Stat. § 171.306, subds. 2, 3, mandates that the commissioner establish performance standards and a process for certifying devices for the program. In other words, the state is already legally obligated to implement the program and certify device manufacturers. A promise to do something that "one is already legally obligated to do

provides no benefit" and does not constitute consideration. *Med. Staff of Avera Marshall Reg'l Med. Ctr. v. Avera Marshall*, 857 N.W.2d 695, 701-02 (Minn. 2014).

Appellants suggest that the state enters into a contract every time that it issues a certificate pursuant to state law. As the district court aptly stated, "State agencies hold private companies to performance standards through similar certification process in a variety of industries; this doesn't mean that the state has a contractual relationship with all of them." While the legislature expressly contemplated that the MGDPA will apply when the government has contracted to privatize a government function, there is nothing in section 13.05, subdivision 11, which suggests that every private party that holds a state certificate is subject to the MGDPA. In fact, were we to hold otherwise, we would greatly expand the reach of the Act.

Because the complaint did not allege any facts establishing that consideration was exchanged when the state certified Intoxalock's device, we conclude that Intoxalock did not enter into a contract with the state respondents; therefore, Intoxalock is not subject to the MGDPA. We decline to address whether Intoxalock performed a government function. Thus, the district court correctly dismissed the MGDPA claim against Intoxalock.

B. Tennessen-warning claim

The complaint alleges that Intoxalock failed to provide a Tennessen warning before collecting private or confidential data. After determining that the MGDPA did not apply to Intoxalock, the district court dismissed appellants' Tennessen-warning claim against Intoxalock. We agree. As discussed above, any private or confidential information that

Intoxalock requested and received from program participants was not subject to the MGDPA, and appellants were not entitled to a Tennessen warning from Intoxalock.

C. Standing

In its brief to this court, Intoxalock argues that appellants lack standing because they have not alleged that the state or Intoxalock disclosed their location data, and thus, they have suffered no harm. The district court did not consider or decide whether appellants have standing.

"Standing is a prerequisite to a court's exercise of jurisdiction." *Petition for Improvement of County Ditch No. 86 v. Phillips*, 625 N.W.2d 813, 817 (Minn. 2001). A plaintiff has standing because either (1) she "has suffered some 'injury-in-fact'" or (2) she is "the beneficiary of some legislative enactment granting standing." *Id.* While many claims brought under the MGDPA involve the disclosure of government data and the statute provides injunctive relief for improper disclosure, the statute also provides an action for damages against "a responsible authority or government entity which violates *any* provision of this chapter." Minn. Stat. § 13.08, subd. 1 (emphasis added). And the statute prohibits the "use and dissemination of private data" beyond what is "necessary for the administration" of government programs. Minn. Stat. § 13.05, subd. 3. Accordingly, a party has standing to bring a claim under the MGDPA if they can plead damages and a violation of any of the chapter's provisions, even if they do not plead improper disclosure of their data. We conclude that appellants have standing under the MGDPA.

In sum, although appellants have standing to bring their MGDPA claims against Intoxalock, the district court correctly concluded that there was no contract between the

state and Intoxalock. Thus, we affirm the district court's dismissal of the MGDPA and Tennessen-warning claims against Intoxalock as stated in counts III and IV of the complaint.

III. Other statutory and common law claims against Intoxalock.

A. Minnesota Consumer Fraud Act

In count V, the complaint asserts that Intoxalock violated the Minnesota Consumer Fraud Act (MCFA) because it failed to disclose that the device collected appellants' location information. The complaint further alleges that Intoxalock's failure to disclose that "it intended to collect, store and use" appellants' location data was "false, deceptive or misleading" and Intoxalock caused appellants to enroll in the program under "false pretenses." In its motion to dismiss, Intoxalock argued that the MCFA does not permit claims for failure to disclose in the absence of a special relationship, which has not been alleged. The district court agreed with Intoxalock. Appellants argue on appeal that their complaint sufficiently alleges special circumstances under the MCFA.

Under the MCFA:

> The act, use, or employment by any person of any fraud, false pretense, false promise, misrepresentation, misleading statement or deceptive practice, with the intent that others rely thereon in connection with the sale of any merchandise, whether or not any person has in fact been misled, deceived, or damaged thereby, is enjoinable as provided in section 325F.70.

Minn. Stat. § 325F.69, subd. 1. To adequately assert a claim under the MCFA, a plaintiff "must plead and prove not only an omission of material fact, but also special circumstances that trigger a duty to disclose. It is not enough that the plaintiff simply alleges that the

defendant omitted material information in a transaction." *Graphic Commc'ns Local 1B Health & Welfare Fund A v. CVS Caremark Corp.*, 850 N.W.2d 682, 696 (Minn. 2014). In other words, if a plaintiff fails to plead special circumstances creating a duty to disclose, the MCFA claim must be dismissed. *Id.* Minnesota case law has recognized the following circumstances are sufficiently special to give rise to a duty to disclose in omission-based consumer fraud claims:

> (a) One who speaks must say enough to prevent his words from misleading the other party.
> (b) One who has special knowledge of material facts to which the other party does not have access may have a duty to disclose these facts to the other party.
> (c) One who stands in a confidential or fiduciary relation to the other party to a transaction must disclose material facts.

Klein v. First Edina Nat'l Bank, 196 N.W.2d 619, 622 (Minn. 1972) (citations omitted).

Appellants argue that Intoxalock had special knowledge of material facts "which it does not disclose to consumers . . . namely, the fact it collects real-time GPS data." In *Graphic Communications*, the supreme court held that special knowledge of material facts must be accompanied by "actual knowledge of fraudulent conduct" to trigger a duty to disclose under the MCFA. 850 N.W.2d at 697-98. Here, the complaint does not demonstrate or allege that Intoxalock had actual knowledge of any fraudulent activity. Rather, the complaint only alleges that Intoxalock, "as a national supplier of [devices] knew, or should have known, that collection of GPS data amounted to a violation of the Minnesota Constitution." Because the complaint does not allege that Intoxalock had actual knowledge of fraudulent activity, we affirm the district court's dismissal of appellants' MCFA claim against Intoxalock as stated in count V.

B. Breach of contract

In count VI, the complaint asserts that Intoxalock breached its contract with appellants by failing to inform them that it "*actually* collected and actually *intended* to collect" their real-time location data. The district court concluded that appellants failed to "point to a specific provision that was broken in the lease agreement" between Intoxalock and appellants, and dismissed the claim.

"In order to state a claim for breach of contract, the plaintiff must show (1) formation of a contract, (2) performance by plaintiff of any conditions precedent to his right to demand performance by the defendant, and (3) breach of the contract by defendant." *Park Nicollet Clinic v. Hamann*, 808 N.W.2d 828, 833 (Minn. 2011). Under Minn. R. Civ. P. 12.02(e), it is appropriate for the district court to dismiss a breach-of-contract claim if the complaint does not provide any basis for concluding that a breach occurred. *See, e.g.*, *Reed v. Univ. of N.D.*, 543 N.W.2d 106, 110 (Minn. App. 1996) (concluding appellants' failure to identify "a breach of a specific contractual provision," in part, supported the district court's conclusion that the contract claim failed as a matter of law), *review denied* (Minn. Mar. 28, 1996).

Here, the complaint alleges that appellants entered into a contract with Intoxalock when they leased a device to participate in the program. Intoxalock produced a copy of the written agreement between the appellants and Intoxalock. But the complaint does not claim that Intoxalock breached a term in the written agreement. Instead, the appellants claim Intoxalock failed to disclose that its device would collect location data. Because the complaint does not allege that the written agreement between appellants and Intoxalock

was breached, we affirm the district court's dismissal of appellants' breach of contract claim as stated in count VI.

C. Unjust enrichment

In count VII, the complaint asserts an unjust-enrichment claim against Intoxalock, alleging that appellants had "paid extra for having illegal and improper real-time GPS location data collected" and by collecting this data, "while failing to disclose its collection to [appellants,]" Intoxalock was "unjustly enriched." In its motion to dismiss, Intoxalock argued that the parties had a valid contract and there was nothing "illegal or inequitable . . . about Intoxalock charging [appellant] the precise amount [she] agreed to pay for her [device.]" The district court found that appellants failed to state a claim for unjust enrichment because appellants alleged they entered into a valid contract with Intoxalock.

An unjust-enrichment claim "cannot be granted where the rights of the parties are governed by a valid contract." *U.S. Fire Ins. Co. v. Minnesota State Zoological Bd.*, 307 N.W.2d 490, 497 (Minn. 1981). Here, there is no dispute that the relationship between appellants and Intoxalock was governed by a valid contract. *Southtown Plumbing, Inc. v. Har-Ned Lumber Co.*, 493 N.W.2d 137, 140 (Minn. App. 1992) ("It is well settled in Minnesota that one may not seek a remedy in equity when there is an adequate remedy at law. . . . Relief under the theory of unjust enrichment is not available where there is an adequate legal remedy or where statutory standards for recovery are set by the legislature."). Accordingly, we affirm the district court's dismissal of appellants' unjust-enrichment claim as stated in count VII.

Affirmed in part, reversed in part, and remanded.