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STATE OF COLORADO
DEPARTMENT OF LAW

May 22, 2026

The Honorable R. Brooke Jackson
Byron G. Rogers United States Courthouse, C252
1961 Stout Street
Denver, Colorado 80294

RE: *ACA Int'l et al. v. Fulford et al.*, U.S. District Court Case No. 1:25-cv-03530-RBJ

Your Honor:

Pursuant to the Court’s Practice Standards, Defendants Martha Fulford, Administrator of Colorado’s Uniform Consumer Credit Code (the “Administrator”), and Colorado Attorney General Philip J. Weiser (the “Attorney General”), submit this letter outlining the grounds for dismissal they intend to raise in a motion to dismiss in part the second amended complaint. The parties have conferred regarding Defendants’ anticipated motion via videoconference and email on numerous occasions. Plaintiffs intend to oppose the motion.

Plaintiffs challenge legislation concerning consumer reporting of medical debt information. In 2023, the Colorado Consumer Credit Reporting Act (“CCRA”) was amended to prohibit consumer reporting agencies from making consumer reports containing adverse medical debt information, with certain exceptions. C.R.S. § 5-18-109(1)(f)(I) (the “CCRA Reporting provision”). The Colorado Fair Debt Collection Practices Act (“CFDCPA”) was also amended by enlarging the list of deceptive conduct prohibited in connection with debt collection, to include misrepresenting that medical debt will be included in a consumer report or credit score. *Id.* § 5-16-107(1)(r)(I) (the “CFDCPA Misrepresentation provision”). Finally, the CFDCPA was amended to require debt collectors to disclose in writing that Colorado law prohibits credit bureaus from reporting medical debt, absent an exception. *Id.* § 5-16-105(3)(e)(I) (the “CFDCPA Disclosure provision”). Plaintiffs assert that all three laws are preempted by the federal Fair Credit Reporting Act and violate the First Amendment’s Free Speech Clause.

As discussed below, this Court lacks jurisdiction over all claims concerning the CCRA because they are barred by sovereign immunity and Plaintiffs lack standing to assert them. Additionally, as to the CFDCPA, Plaintiffs fail to state a plausible First Amendment claim.

I. Sovereign immunity bars Plaintiffs’ challenge to the CCRA Reporting provision.

Plaintiffs’ claims concerning the CCRA Reporting provision are barred by the Eleventh Amendment, because neither the Administrator nor the Attorney General enforces the CCRA, and thus the *Ex parte Young* exception to sovereign immunity does not apply. Generally, the Eleventh Amendment bars suits against state officers sued in their official capacity, as

Defendants are here. *Free Speech Coal., Inc. v. Anderson*, 119 F.4th 732, 736 (10th Cir. 2024). Though the *Young* doctrine provides an exception, it only applies if the state official sued has (1) “a particular duty to enforce” the challenged statute, as well as (2) “a demonstrated willingness to exercise that duty.” *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10th Cir. 2021) (quotations omitted). As to the CCRA Reporting provision, Defendants have neither.

The Administrator: The Administrator lacks a “particular duty” to enforce the CCRA, which is instead enforced by consumers through a private right of action. *See* C.R.S. § 5-18-116(1); *see also Free Speech Coal.*, 119 F.4th at 739-41 (claims against attorney general barred by sovereign immunity where statute was solely enforced by private parties). Nor do Plaintiffs plausibly allege that the Administrator has shown a demonstrated willingness to enforce the CCRA. Instead, they assert that because the Administrator enforces the CFDCPA—which requires debt collectors to disclose that Colorado law bars medical debt reporting and prohibits misrepresentations to the contrary—the Administrator “gives life” to the CCRA Reporting provision. Dkt. 28 ¶ 33. But that does not amount to a “particular duty” to enforce the CCRA itself. *See Mi Familia Vota v. Ogg*, 105 F.4th 313, 327 (5th Cir. 2024) (“[O]ur [*Ex parte Young*] analysis is provision-by-provision: The officer must enforce the particular statutory provision that is the subject of the litigation.” (quotation marks omitted)). Plaintiffs also allege that the Administrator enforces the CCRA through coordination with the Attorney General, but as discussed below, the Attorney General similarly lacks any particular duty to enforce the CCRA.

Nor does the Tenth Circuit’s decision in *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818 (10th Cir. 2007), support Plaintiffs’ theory. *See* Dkt. 15 ¶ 35. There, a federally recognized tribe challenged a state policy that did not recognize tribally issued motor vehicle registrations, which had resulted in tribally licensed vehicles being cited for violating state law requiring all vehicles to be properly registered. *Id.* at 820-21. The Court concluded that all defendants had a sufficient connection to the law’s enforcement for *Young* to apply: two of the three defendants made the decision to deny the validity of tribal registrations, and the third oversaw traffic enforcement. *Id.* at 828. Here, by contrast, the Administrator has neither decision-making nor enforcement authority over the challenged portion of the CCRA.

The Attorney General: Like the Administrator, the Attorney General has neither a particular duty nor demonstrated willingness to enforce the CCRA. *See Pro. Background Screening Ass’n v. Weiser*, No. 25-CV-00295-PAB-CYC, 2026 WL 787585, at *3-7 (D. Colo. Mar. 20, 2026) (holding Attorney General entitled to sovereign immunity in CCRA suit). Plaintiffs theorize that the Attorney General could sue parties who violate the CCRA Reporting Provision under the Colorado Consumer Protection Act (“CCPA”), which, in relevant part, allows the Attorney General to bring suit against those who engage in unfair, unconscionable, or deceptive practices if certain conditions are met. *See* C.R.S. § 6-1-105(1)(rrr). But that does not amount to a “particular duty” to enforce the CCRA itself; the Attorney General has shown no demonstrated willingness to use the CCPA to target acts that also constitute CCRA violations; and *Ex parte Young* cannot be based on such hypothetical speculation about future events. *See Whole Woman’s Health v. Jackson*, 595 U.S. 30, 43-44 (2021) (“series of hypotheticals” insufficient for *Ex parte Young*).

II. Plaintiffs lack standing to challenge the CCRA Reporting provision.

For similar reasons, Plaintiffs lack standing to challenge the CCRA Reporting provision. Any injury Plaintiffs suffer due to that provision is not traceable to Defendants, because they do not enforce it. *Frank v. Lee*, 84 F.4th 1119, 1135 (10th Cir. 2023) (for causation element of standing to be satisfied, the defendant must have authority to enforce the challenged law). Nor would enjoining Defendants from enforcing the CCRA Reporting provision redress Plaintiffs' claimed injury, because it would not change the status quo. Finally, Plaintiffs' assertion that they fear future CCPA enforcement by the Attorney General is too speculative to support standing.

III. Plaintiffs' First Amendment challenges to the CFDCPA fail.

A. The disclosure requirements are factual and uncontroversial.

The CFDCPA Disclosure provision compels only the disclosure of accurate, objective information about existing Colorado law. Such compelled commercial speech is reviewed under the deferential standard set forth in *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626 (1985). Courts consistently hold that requiring businesses to inform consumers of their legal rights serves a legitimate state interest. *E.g.*, *Milavetz, Gallop & Milavetz, P.A. v. United States*, 559 U.S. 229, 250 (2010) (upholding disclosure requirements reasonably related to the state's interest in preventing deception of consumers). Here, the disclosure is factual, uncontroversial, and reasonably related to consumer protection. Plaintiffs' claim therefore fails as a matter of law.

B. Fraudulent speech is not protected.

Plaintiffs also challenge the CFDCPA Misrepresentation provision, which prohibits false or misleading statements about medical debt and credit reporting. Fraudulent speech and false or misleading commercial speech are not protected under the First Amendment. *See Illinois ex rel. Madigan v. Telemarketing Assoc.*, 538 U.S. 600, 612 (2003); *see also Virginia State Bd. of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 771, (1976). The statute is viewpoint-neutral and targets only deceptive practices, which legislatures may regulate. Plaintiffs remain free to express opinions about medical debt, but not to misrepresent Colorado law. The First Amendment claims should be dismissed.

Respectfully,

FOR THE ATTORNEY GENERAL

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