IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:25-cv-03530-RBJ

ACA INTERNATIONAL et al.,

Plaintiffs,

v.

ADMINISTRATOR OF THE UNIFORM CONSUMER CREDIT CODE, MARTHA FULFORD, in her official capacity, et al.,

Defendants.

REPLY IN SUPPORT OF MOTION TO DISMISS IN PART (DOC. 38)

Plaintiffs' Opposition confirms that their claims challenging the CCRA should be dismissed.[1] Defendants are protected by sovereign immunity, and Plaintiffs lack standing. As to the CFDCPA, Plaintiffs' First Amendment claims fail under well-established law.

I. Plaintiffs' claims challenging the CCRA are not justiciable.

The CCRA challenges are barred by sovereign immunity. Plaintiffs have not met their burden of showing the *Ex parte Young* exception applies. As to the Administrator, her enforcement of the CFDCPA Disclosure and Misrepresentation laws does not amount to a "particular duty to enforce" the CCRA itself. *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10th Cir. 2021) (quotations omitted). By enforcing those laws, the Administrator may prevent debt collectors from misleading consumers about the circumstances under which credit reporting agencies may report medical debt on credit reports. But she does not enforce the CCRA's limitations on medical debt reporting; if a credit reporting agency violates the CCRA,

[1] All abbreviations have the same meaning as in Defendants' Motion, Doc. 38.

the Administrator can do nothing. Plaintiffs theorize that by ensuring consumers learn of the CCRA's limitations, the Administrator assists in dissuading credit reporting agencies from violating the law. The purpose of *Ex parte Young*, however, is to allow courts to enjoin state officials who, through a state law's enforcement, engage in an ongoing violation of federal law. *See Verizon Md., Inc. v. Pub. Serv. Comm'n of Md.*, 535 U.S. 635, 645 (2002). If the CCRA is unconstitutional, the Administrator herself does not violate federal law when she ensures consumers are not misled about that law's contents.

Plaintiffs next point to an entirely separate CFDCPA provision that prohibits debt collectors from publishing lists of consumers that allegedly refuse to pay debts. *See* § 5-16-106(1)(c), C.R.S. Again, in enforcing that provision, the Administrator is not enforcing the CCRA. Though the requisite enforcement connection for *Ex parte Young* need not be specified in the challenged law itself, *see Peterson v. Martinez*, 707 F.3d 1197, 1207 (10th Cir. 2013), the relevant question remains whether the state official sued has a particular duty to enforce the provision that is challenged as unconstitutional—not some other legal provision.

As to the Attorney General, Plaintiffs' misguided request for this Court to take judicial notice of a Facebook video does not establish that he has a "demonstrated willingness" to use his CCPA authority to enforce the CCRA's limitations on medical debt reporting. To begin with, the video is an inappropriate subject for judicial notice. *See* Doc. 41. And because Defendants here assert a facial attack on the complaint, the Court should not consider it. *See, e.g.*, *Pro. Background Screening Ass'n v. Weiser*, No. 25-CV-00295-PAB-CYC, 2026 WL 787585, at *3 (D. Colo. Mar. 20, 2026) (declining to consider evidence extrinsic when deciding sovereign immunity in context of facial attack). But even if it did, the video does not satisfy *Ex parte*

Young. In it, Attorney General Weiser does not say he plans to take CCPA (or any other) enforcement action to enforce the CCRA. Instead, he says he "fought for legislation in Colorado" concerning medical debt collection and reporting; that "the Trump administration is trying to take away these protections"; and that "we" will "fight for these protections." Doc. 39 at 4. The video says nothing about how or when he might do so. Indeed, Plaintiffs allege the video stems from Mr. Weiser's gubernatorial campaign. If that allegation is accepted as true—though it should not be, as it was not pled in the complaint—and the video reflects Mr. Weiser's intentions if elected Governor, then it is also irrelevant. The Attorney General is sued here in his official capacity, and any actions Mr. Weiser may take if he later occupies the Office of the Governor are irrelevant to whether Colorado's Attorney General has sovereign immunity here.

Plaintiffs' remaining arguments on the Attorney General's hypothetical use of his CCPA authority confuse sovereign immunity with standing. They argue they face a credible threat that the Attorney General will use his CCPA authority against them because he has not disavowed doing so, and the bar for establishing a credible threat of enforcement is not high. Doc. 40 at 10. However, disavowal is not one of the prongs of the *Ex parte Young* test. Instead, whether a state official has disavowed enforcement is typically relevant to whether a plaintiff has established the "credible threat of enforcement" necessary to show an injury sufficient for standing in a pre-enforcement challenge. S*ee, e.g.*, *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 110 (10th Cir. 2024) (addressing standing). For standing, the focus is on whether the plaintiff has identified harm sufficient to create a case or controversy. By contrast, *Ex parte Young* focuses on whether the named official has a sufficient enforcement nexus to the statute in question. Where, as here, there is no evidence that an official has either a particular duty or a demonstrated willingness to enforce the challenged law, there is no need to inquire into disavowal. *See, e.g.*, *Free Speech Coal. v. Anderson*, 119 F.4th 732, 736 (10th Cir. 2024) (resolving sovereign immunity without inquiring into disavowal); *Peterson*, 707 F.3d at 1205-07 (same).

Plaintiffs' reliance on the Attorney General's FCRA enforcement authority also fails. They theorize the Attorney General could enforce FCRA against entities that fail to properly identify medical debt when furnishing it to credit reporting agencies, after which the credit reporting agency might inadvertently include such debt on a credit report. Doc. 40 at 9. But taking enforcement action against an entity that improperly identifies medical debt is simply not the same as enforcing the CCRA's limitations against a credit reporting agency that includes such debt in a credit report. *Ex parte Young* does not apply on these facts.

Plaintiffs lack standing as to the CCRA. Plaintiffs argue they have standing because enjoining the Administrator from enforcing the CFDCPA Misrepresentation and Disclosure laws would redress their injuries by removing barriers to their publication of medical debt. Doc. 40 at 11-12. But they focus on the wrong law: Defendants do not dispute that Plaintiffs have standing to challenge the CFDCPA. Plaintiffs lack standing for their claims challenging the CCRA. Enjoining Defendants from enforcing the CCRA would have no practical effect, as they do not enforce it to begin with. And to the extent Plaintiffs rely on the Attorney General's theoretical enforcement through the CCPA to establish traceability and redressability, such speculation cannot support standing. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 409 (2013).

II. Plaintiffs' First Amendment claims should be dismissed in part.

Plaintiffs argue the Court cannot resolve their First Amendment challenges to the CFDCPA provisions unless it first adjudicates the CCRA's validity. But sovereign immunity bars their

CCRA claim, and Plaintiffs lack standing to pursue it. This motion is therefore not "premature"—it seeks dismissal of claims that Plaintiffs themselves say depend on a merits determination the Court is jurisdictionally prohibited from making. Under Plaintiffs' own logic, dismissal follows.

Plaintiffs' argument about supposed "inaccurate speech" in the disclosure provision simply asserts that the disclosure should have been drafted more narrowly. But *Zauderer* squarely rejects any requirement that compelled commercial disclosures use the "least restrictive means," and it holds that such disclosures are not unconstitutional merely because they are imperfectly tailored. *Zauderer v. Off. of Disciplinary Couns.*, 471 U.S. 626, 651 n.14 (1985). Plaintiffs' theory demands a level of precision the First Amendment does not require.

Plaintiffs' reading of *CompassCare* is likewise misplaced. Because Plaintiffs cannot bring a merits challenge to the CCRA, the statute is, for the purposes of this litigation, an "otherwise-valid" statute in exactly the sense *CompassCare* uses that term. *CompassCare v. Hochul*, 125 F.4th 49, 65 (2d Cir. 2025). The CFDCPA provisions must therefore be assessed under settled First Amendment standards, and Plaintiffs offer no viable challenge to them independent of their nonjusticiable challenge to the CCRA.

CONCLUSION

The motion to dismiss in part the Second Amended Complaint should be granted.

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