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The Honorable R. Brooke Jackson
Byron G. Rogers United States Courthouse, C252
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RE: *ACA Int'l et al. v. Fulford*, U.S. District Court Case No. 1:25-cv-03530-RBJ

Your Honor:

Plaintiffs ACA International and Fresno Credit Bureau ("Plaintiffs") submit this responsive letter pursuant to the Court's Practice Standards. Martha Fulford, Administrator of Colorado's Uniform Consumer Credit Code (the "Administrator"), asks the Court to dismiss Plaintiffs' challenge to the Colorado Consumer Credit Reporting Act's ("CCRA") prohibition of medical debt reporting on the grounds of sovereign immunity and standing, and to dismiss Plaintiffs' First Amendment challenge to the Colorado Fair Debt Collection Practices Act ("CFDCPA") amendments for failure to state a claim. The Court should not dismiss these claims because the Administrator has a sufficient enforcement connection to the challenged statutory scheme, Plaintiffs' injuries are traceable to and redressable by relief against the Administrator, and the complaint plausibly alleges First Amendment violations.

I. Sovereign Immunity Does Not Bar Plaintiffs' Challenge to HB 23-1126 Because the Administrator Has a Sufficient Enforcement Connection.

HB 23-1126 was enacted and functions as an integrated set of provisions that work together to suppress speech about medical debt in the credit reporting channel. In addition to creating the CCRA's reporting restriction, HB 23-1126 amended the CFDCPA to (1) prohibit debt collectors from telling consumers that medical debt will be included in a consumer report, C.R.S. § 5-16-107(1)(r)(I), and (2) compel a specific statement in their first written notice that "Colorado law prohibits credit bureaus from reporting medical debt or factoring medical debt into a credit score" absent certain exceptions. C.R.S. § 5-16-105(3)(e)(I). The Administrator enforces the CCRA's reporting restriction—i.e., the provisions of HB 23-1126 that prohibit medical debt reporting—in at least two key ways.

First, the Administrator's enforcement of the CFDCPA amendments is the mechanism for conditioning compliance with the CCRA reporting restriction. The Administrator has authority to enforce compliance with the CFDCPA, *see* C.R.S. § 5-16-103, including by setting "standards of conduct for licensees and collection notices and forms." C.R.S. § 5-16-114. For example, when issuing licenses to debt collectors, the Administrator requires applicants to provide a sample first notice letter, which must include the statement that medical debt information will not be reported. C.R.S. § 5-16-105(e)(I). It is even included in a compliance checklist. The Administrator can, and would, revoke debt collector licensing, require practice changes or remediation via supervisory audits, and initiate enforcement actions based on debt collector's failure to comply with the CFDCPA amendments.

The Administrator's enforcement of the CFDCPA provisions "assist[s] in giving effect to" the CCRA's reporting restriction and therefore opens her to suit. *See Prairie Band Potawatomi Nation v.*

Wagnon, 476 F.3d 818, 828 (10th Cir. 2007). The CFDCPA amendments ensure that consumers receive—and act upon—the message that medical debt will not appear on credit reports, and this behavior-shaping mechanism is what gives life to the reporting restriction. This case is thus materially different from a suit against an official who has no role in enforcing any part of the challenged statutory scheme. *See Free Speech Coal., Inc. v. Anderson*, 119 F.4th 732, 736 (10th Cir. 2024).

Second, the Administrator can sue consumer reporting agencies ("CRAs") under the Colorado Consumer Protection Act ("CCPA") for "engag[ing] in any unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent act or practice." C.R.S. § 6-1-105(rrr). Based on the CCRA's reporting restriction and the CFDCPA amendments, a CRA's reporting of medical debt would fall into that category. And the Administrator has demonstrated a willingness to exercise that duty under the CCPA in cases in which the Administrator was a co-plaintiff. *See, e.g.*, *State ex rel. Weiser v. Ctr. for Excellence in Higher Educ., Inc.*, No. 20CA1692, 2025 WL 3725122, at *1 (Colo. App. Dec. 24, 2025); *State ex rel. Weiser v. Castle L. Grp., LLC*, 457 P.3d 699 (Colo. App. 2019); *State ex rel. Coffman v. Castle L. Group, LLC*, 375 P.3d 128 (Colo. 2016). The Administrator's assertion that she could not do anything if a CRA reported medical debt information in violation of the CFDCPA amendments is simply inaccurate. The Administrator has the authority to sue CRAs under the CCPA, and she has demonstrated a willingness to use this enforcement mechanism. Thus, she can be sued under *Prairie Band Potawatomi Nation's* precepts.

The Administrator's enforcement of the CCRA's reporting requirement through conditioning licensing on compliance with the CFDCPA amendments, and her authority to sue CRAs under the CCPA for engaging in fraudulent practices, demonstrates both the Administrator's particular duty to enforce HB 23-1126 and her demonstrated willingness to exercise that duty. *See Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10th Cir. 2021).

II. Plaintiffs Have Standing Because Their Injuries Are Traceable to the Administrator and Are Redressable by Prospective Relief Against Her.

Plaintiffs' injuries flow from the same enforcement connection described above: the Administrator's ongoing authority over debt collectors' compliance with the CFDCPA amendments, exercised through licensing and supervision, creates conditions that suppress the reporting of medical debt information, as prohibited by the CCRA's reporting provision. And CRAs that report medical debt face the threat of being sued by the Administrator under the CCPA for fraudulent practices.

Redressability is likewise satisfied because an injunction against the Administrator would stop her enforcement of the CFDCPA amendments and prevent her from punishing noncompliance with those unlawful requirements. An injunction would likewise bar the Administrator from bringing suit under the CCPA against CRAs that report medical debt. Enjoining use of those enforcement mechanisms would relieve Plaintiffs' injuries flowing from the CCRA's unlawful reporting restriction and the CFDCPA amendments. Such an injunction would also alleviate the injuries resulting from the CFDCPA amendments' violation of the First Amendment.

Finally, Plaintiffs plausibly allege a credible threat of enforcement by the Administrator. Here, the Administrator has statutory enforcement authority over the CFDCPA debt collection provisions, and the Administrator can enforce compliance with such provisions through licensing, supervisory audits, and license-related sanctions. The Administrator has already demonstrated a credible threat of enforcement by requiring applicants seeking a debt collector license to provide a sample first notice letter, which must include the statement that medical debt information will not be reported.

C.R.S. § 5-16-105(e)(I). Plaintiffs have similarly demonstrated a credible threat of enforcement for the CCRA's ban on medical debt reporting, as the Administrator has a demonstrated history of using the CCPA to bring suit against entities engaging in unfair trade practices.

III. Plaintiffs State Plausible First Amendment Claims Because HB 23-1126 Compels and Restricts Debt Collection Speech.

A. The Disclosure Requirement is Not Immune from First Amendment Scrutiny Because It Compels a Government-Scripted Message that Is Vulnerable to Becoming Inaccurate.

The Administrator argues the compelled disclosure is "accurate, objective information about existing Colorado law." But the compelled statement is vulnerable to becoming inaccurate given that legal developments can change the underlying medical debt reporting landscape. While the government can require private entities to disclose truthful, non-controversial information, it may not require private entities to disclose inaccurate information. *See Nat'l Inst. of Fam. & Life Advocs. v. Becerra*, 585 U.S. 755, 768. Requiring debt collectors to repeat a State-scripted assertion about what the law "prohibits" is vulnerable to inaccuracy where Plaintiffs contend the underlying prohibition is invalid and where the compelled message can become misleading as reporting practices change.

B. The Misrepresentation Provision Similarly Requires Speech that Is Arguably Inaccurate.

The Administrator characterizes the CFDCPA misrepresentation provision as a prohibition on false or misleading statements. However, the CFDCPA restricts communications about medical debt reporting as part of a coordinated system that suppresses speech through the credit reporting channel. Plaintiffs, once again, contend that the underlying prohibition on medical debt reporting is unlawful. Should the Court agree, the CFDCPA misrepresentation prohibition would no longer be accurate. Thus, the misrepresentation provision does not merely govern fraudulent speech and instead requires arguably inaccurate information. *See Nat'l Inst. Of Fam & Life Advocs.*, 585 U.S. at 768. This Court must determine the merits of Plaintiffs' underlying argument—that the medical debt reporting ban is unconstitutional and preempted—in order to determine the validity of the CFDCPA claims.

Ultimately, the Administrator's challenge is a waste of judicial resources because the Court cannot determine whether the government-mandated speech required by the CFDCPA provisions is "inaccurate" until the Court first determines whether the underlying medical debt reporting ban is lawful. In addition, a successful challenge by the Administrator will not narrow discovery in this matter. No matter the result of a motion to dismiss, discovery will be narrowly directed to legislative rationale for the statute and brief requests for records from the defendant. The issues under review will stay the same. Defendant's challenge here is academic and will not serve to streamline the resolution of this matter.

Respectfully,

/s/ Adam E. Lyons
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