PHIL WEISER
Attorney General

NATALIE HANLON LEH
Chief Deputy Attorney General

SHANNON STEVENSON
Solicitor General

TANJA WHEELER
Associate Chief Deputy Attorney General

RALPH L. CARR
COLORADO JUDICIAL CENTER
1300 Broadway, 10th Floor
Denver, Colorado 80203
Phone (720) 508-6000

STATE OF COLORADO
DEPARTMENT OF LAW

February 5, 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,* U.S. District Court Case No. 1:25-cv-03530-RBJ

Your Honor:

Pursuant to the Court's Practice Standards, Martha Fulford, Administrator of Colorado's Uniform Consumer Credit Code (the "Administrator"), submits this letter outlining the grounds for dismissal she intends to raise in a motion to dismiss in part the amended complaint.

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 or including such debt in credit scores, 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, all claims concerning the CCRA should be dismissed under Federal Rule of Civil Procedure 12(b)(1) because they are barred by sovereign immunity and Plaintiffs lack standing to assert them. Additionally, Plaintiffs' First Amendment challenges to the CFDCPA provisions should be dismissed under Rule 12(b)(6), because Plaintiffs do not state a plausible claim for relief.

The parties conferred regarding the Administrator's anticipated motion to dismiss via videoconference on February 2, 2026. Plaintiffs intend to oppose the motion.

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 the Administrator does not enforce 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 the Administrator is 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, the Administrator has neither.

First, 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). Second, Plaintiffs do not 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. 15 ¶ 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)). Put simply, if a consumer reporting agency included medical debt information in a credit report, the Administrator could do nothing about it.

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 had made the decision to deny the validity of tribal registrations, and the third oversaw enforcement of state traffic laws. *Id.* at 828. Here, by contrast, the Administrator has neither decision-making nor enforcement authority over the challenged portion of the CCRA. As a result, Plaintiffs' challenge to the CCRA Reporting provision should be dismissed.

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 the Administrator, because she does 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 the Administrator from enforcing the CCRA Reporting provision redress Plaintiffs' claimed injury, because it would not change the status quo. Finally, Plaintiffs

cannot establish injury in fact by alleging "an intention to engage in a course of conduct arguably affected with a constitutional interest, but proscribed by a statute" and "a credible threat of prosecution thereunder," *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 159 (2014) (quotation marks omitted), because there is no credible threat of enforcement by the Administrator.

III. Plaintiffs' First Amendment challenge to the CFDCPA provisions fails to state a claim upon which relief may be granted.

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 is not protected under the First Amendment, nor is false or misleading commercial speech. *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 whether Colorado law permits medical debt to be included in a credit report.

Because these provisions regulate either factual disclosures or unprotected fraudulent speech, Plaintiffs cannot state a First Amendment claim. The Court should dismiss these claims.

Respectfully,

FOR THE ATTORNEY GENERAL

s/ Talia Kraemer
Talia Kraemer
Kevin Burns
Senior Assistant Attorneys General
Direct: (720) 508-6544/6110
Email: talia.kraemer@coag.gov/
kevin.burns@coag.gov