IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

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

ACA INTERNATIONAL and FRESNO CREDIT BUREAU,

Plaintiffs,

v.

ADMINISTRATOR OF THE UNIFORM CONSUMER CREDIT CODE, MARTHA FULFORD, in her official capacity, ATTORNEY GENERAL OF COLORADO, PHILIP WEISER, in his official capacity,

Defendants.

PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS IN PART THE SECOND AMENDED COMPLAINT

Plaintiffs ACA International and Fresno Credit Bureau d/b/a Creditors Bureau USA (collectively, "Plaintiffs") submit this Opposition to the Motion to Dismiss in Part the Second Amended Complaint filed by Defendants Fulford, Administrator of Colorado's Uniform Consumer Credit Code, and Colorado Attorney General Weiser (collectively, "Defendants").

Defendants raise three arguments in support of their Motion to Dismiss, Dkt. 38 ("Motion"), but each fails. First, sovereign immunity does not apply because Plaintiffs sufficiently allege the *Ex parte Young* exception. Second, Plaintiffs have standing because their inability to speak about adverse medical debt information is directly traceable to Defendants' official enforcement powers and is at least partially redressable by this Court. Third, the lawful compelled speech argument fails because the disclosure the Administrator requires is unconstitutionally controversial and inaccurate in two separate ways.

Defendants' Motion rests on the fallacy that the challenged HB 23-1126 provisions stand alone. But in First Amendment cases, courts must look at context and examine the totality of the circumstances to find not just express speech suppression, but also coercive suppression. "[A] government official cannot do indirectly what she is barred from doing directly: A government official cannot coerce a private party to punish or suppress disfavored speech on her behalf." *Nat'l Rifle Ass'n of Am. v. Vullo*, 602 U.S. 175 (2024) (citing *Bantam Books, Inc.* v. *Sullivan*, 372 U. S. 58, at 67–69 (1963)).

FACTS

Laws at Issue. ***First***, the Medical Debt Reporting Ban under the Consumer Credit Reporting Act ("CCRA"), C.R.S. § 5-18-109(1)(f)(I), prohibits Credit Reporting Agencies ("CRAs") from reporting medical debt information. 2d Am. Compl., Dkt. 28 ¶¶ 13, 60–65. Medical debt credit reporting relies upon the Fair Credit Reporting Act ("FCRA"), which proscribes means of coding medical debt as different from other debts and requires a permissible purpose to receive credit reports. 15 U.S.C. § 1681s-2(a)(9). These provisions work in conjunction with the Colorado Fair Debt Collection Practices Act ("CFDCPA"), C.R.S. § 5-16-106(1)(c), which forbids debt collectors from using any communication channel other than CRAs (*e.g.*, ACA members Equifax or TransUnion) to share information about defaulted accounts. Dkt. 28 ¶ 7 ("By shutting down credit reporting, the Colorado Legislature has blocked the only legal avenue of conveying credit risk information between furnishers and lenders.") Thus, the CCRA and CFDCPA together cause a complete suppression of adverse medical debt information for Plaintiff debt collectors.

Second, the Misrepresentation Provision enshrined in the CFDCPA, C.R.S. § 5-16-107(1)(r)(I), penalizes statements that medical debt "will be included in a consumer report." Dkt. 28 ¶¶ 13–14. ***Third***, the CFDCPA Disclosure Provision, C.R.S. § 5-16-105(3)(e)(I), compels collectors to state that "Colorado law prohibits credit bureaus from reporting medical debt…" *Id.* ¶ 13. This statement is inaccurate on its face, as the HB 23-1126 Medical Debt Ban only prohibits reporting "adverse" medical debt information. *Compare* C.R.S. § 5-18-109(1)(f)(I) *with* C.R.S.

§ 5-16-105(3)(e)(I). In addition, the Misrepresentation Provision and Disclosure Provision would not be needed or true unless the Medical Debt Reporting Ban was valid constitutional law. Dkt. 28 ¶¶ 14, 33–36, 62–64. Defendants say a purpose of the Disclosure Provision is "avoiding harm to consumers' creditworthiness." Dkt. 38 at 12. Thus, they admit in their own briefing that the CFDCPA provisions give effect to the CCRA's Medical Debt Reporting Ban.

Defendants' Official Duties. Defendants do not contest that they actively enforce the CFDCPA. The Administrator directly enforces the Misrepresentation and Disclosure Provisions through licensing, supervision, civil actions, audits, penalties, remediation, and license revocation or rescission. Dkt. 28 ¶¶ 29–36, 64, 121. She also enforces the CFDCPA provision that makes it unlawful for debt collectors to communicate adverse information about consumer debt to anyone other than the consumer or to a CRA. C.R.S. § 5-16-106(1)(c). The Attorney General funds, administers, and supervises the Administrator's office, so likewise has a nexus to CFDCPA enforcement. *Id.* ¶ 39.

The Administrator and Attorney General also file actions as co-plaintiffs asserting violations of the CFDCPA, Uniform Consumer Credit Code, C.R.S. § 5-6-101 *et seq.*, and the Colorado Consumer Protection Act ("CCPA"), C.R.S. § 6-1-105(rrr). Dkt. 28 ¶¶ 42–46. An official duty of the Administrator is to share information about CCPA violations with the Attorney General. C.R.S. § 5-6-104(1)(j). *Id.* ¶¶ 37–48. The Attorney General has a history of using the CCPA against financial services providers and pursuing conduct made unlawful by separate statutory requirements. *Id.* ¶¶ 44–48, 63, 83, 122, 135. Defendants have not disclaimed this authority. *See generally* Dkt 38; Pls.' Mot. for Jud. Notice, Dkt. 39. The Attorney General also may bring federal actions related to medical debt reporting under the FCRA, 15 U.S.C. § 1681s(c)(1), if the Administrator discovers them in connection with other duties. *Id.* ¶ 36. The two officials operate within the same Colorado Department of Law and work in tandem to enforce HB 23-1126. *Id.* ¶¶ 39–40.

LEGAL STANDARDS

Defendants raise facial challenges under Rules 12(b)(1) and 12(b)(6). At this stage, the Court evaluates the sufficiency of Plaintiffs' allegations rather than resolving factual disputes or the ultimate merits of their claims. A facial Rule 12(b)(1) challenge questions the sufficiency of the complaint's jurisdictional allegations. *Peterson v. Martinez*, 707 F.3d 1197, 1205–06 (10th Cir. 2013). The Court therefore accepts Plaintiffs' well-pleaded factual allegations as true and draws reasonable inferences in Plaintiffs' favor. *Id*. at 1206. At the pleading stage, general allegations may embrace the specific facts necessary to establish standing, and the complaint must be construed in Plaintiffs' favor. *Petrella v. Brownback*, 697 F.3d 1285, 1292 (10th Cir. 2012).

A complaint survives Rule 12(b)(6) when it includes "enough facts to state a claim to relief that is plausible on its face." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Applied here, these standards require the Court to credit Plaintiffs' detailed allegations connecting Defendants to enforcement of the challenged scheme.

ARGUMENT

Defendants urge dismissal of the claims that HB 23-1126's changes to the CCRA and CFDCPA caused a complete all-channel suppression of speech about adverse medical debt information in violation of the First and Fourteenth Amendments. Where the injury is chilled speech, the Court is required to consider all relevant circumstances of state action. *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 69–70 (1963) (commission actions to intimidate book and magazine wholesale distributors outraged constitutionally protected expression notwithstanding commission not regulating or suppressing obscenity directly).

Defendant's three arguments all fail. First, because Plaintiffs seek only injunctive relief to protect federal rights, Defendants' statutory duties under the CFDCPA and CCPA, among others, meet the *Ex parte Young* exception to sovereign immunity. Second, Plaintiffs' complete chilling of speech concerning unpaid medical debt information directly derives from Defendants' official enforcement duties. Further, Plaintiffs seek orders from this Court that can at least partially redress the injury. Third, the speech that the Administrator requires Plaintiffs to make is unconstitutional because it is controversial and inaccurate in two separate ways.

I. Defendants Are Proper Parties Under the *Ex parte Young* Exception to Sovereign Immunity.

The sovereign immunity that the Eleventh Amendment grants to states is not absolute. *Hendrickson v. AFSCME Council 18*, 992 F.3d 950, 965 (10th Cir. 2021). Under the *Ex parte Young* exception, a plaintiff may sue individual state officers acting in their official capacities when the state official has (1) a particular duty to enforce the statute in question and (2) a demonstrated willingness to exercise that duty. *Id.* (citing *Ex parte Young*, 209 U.S. 123, 157 (1908)). The required enforcement connection may arise outside the challenged statute itself. *Peterson*, 707 F.3d at 1207. But also, an official's "[c]onnection to the enforcement of an act may come by way of another state law, an administrative delegation, or a demonstrated practice of enforcing a provision." *Id.* "So long as there is such a connection, it is not necessary that the officer's enforcement duties be noted in the act." *Finstuen v. Crutcher*, 496 F.3d 1139, 1151 (10th Cir. 2007) (citation omitted).

A. The Administrator gives effect to the Medical Debt Reporting Ban through direct enforcement of the interdependent CFDCPA Provisions.

Defendants argue that the Administrator cannot enforce the Medical Debt Reporting Ban because the CCRA itself does not confer enforcement authority on the Administrator. Dkt. 39 at 4. But *Ex parte Young* does not require that the state official "have a 'special connection' to the unconstitutional act or conduct." *Prairie Band Potawatomi Nation v. Wagnon*, 476 F.3d 818, 828 (10th Cir. 2007). To "enforce" a law means "[t]o give effect" to it, so officials may be proper defendants even when they are "not specifically empowered to ensure compliance with the statute at issue" if they "assist . . . in giving effect to the law." *Id.* at 828 & n.15. "The fact that the state officer, by virtue of his office, has some connection with the enforcement of the act, is the important and material fact . . ." *Ex parte Young*, 209 U.S. at 157.

That connection is specifically alleged here in two separate respects. First, the Administrator's enforcement of the CFDCPA provisions gives life to the CCRA's Medical Debt Reporting Ban. Dkt. 28 ¶ 33. The Misrepresentation and Disclosure Provisions ensure that consumers receive and act upon the Medical Debt Reporting Ban's message, prevents collectors from representing that medical debt will be reported, and deters alternative means of communicating medical debt information. *Id.* at ¶¶ 33–36, 64. Neither the Misrepresentation nor the Disclosure Provisions serve a purpose other than coercing compliance with the Medical Debt Reporting Ban because they are superfluous to pre-existing prohibitions on deceptive debt collection. *See* C.R.S. § 5-16-107 ("A debt collector or collection agency shall not use any false, deceptive, or misleading representation.. . ."). Thus, the Administrator encourages consumers to punish reporting of medical debt information. Second, the CFDCPA forbids the "publication of a list of consumers who allegedly refuse to pay debts, except to a consumer reporting agency. . ." C.R.S. § 5-16-106(1)(c). So the CCRA Medical Debt Reporting Ban works with the CFDCPA communication channel limitation to cause a complete prohibition of speech in violation of the First Amendment. See *Ward v. Rock Against Racism*, 491 U.S. 781, 791 (1989) (certain content-neutral time, place, and manner restrictions are constitutional if they leave open another channel for communication).

The CCRA and CFDCPA Provisions do not "exist in parallel" where "neither depends on the other." *Free Speech Coal., Inc. v. Anderson*, 119 F.4th 732, 738 (10th Cir. 2024). The Disclosure and Misrepresentation Provisions depend on the Medical Debt Reporting Ban and exist to communicate and reinforce it. Defendants themselves confirm this connection, arguing in their brief that the Disclosure Provision is to avoid harm to consumers' creditworthiness, an acknowledgment that these provisions are designed to effectuate the ban. Dkt. 38 at 12. If the ban did not exist, there would be no basis to compel collectors to say that Colorado prohibits medical debt reporting or to penalize statements that such reporting will occur. Likewise, if collectors could publish information about unpaid accounts through a means other than a CRA, the CCRA Medical Debt Reporting Ban may not completely suppress speech. The Administrator's enforcement of the CFDCPA provisions accordingly "assist[s] in giving effect to the law." *Prairie Band*, 476 F.3d at 828.

Defendants likewise read too much into the CCRA's private right of action. *Free Speech Coalition* did not establish a categorical rule barring *Ex parte Young* suits whenever private parties may enforce the challenged law. It held that the officials before it lacked the required enforcement connection where their separate responsibilities did not give effect to the challenged statute. *Free Speech Coal.*, 119 F.4th at 736–39. Here, by contrast, the Administrator directly enforces provisions enacted as part of the same legislation specifically to communicate, reinforce, and prevent circumvention of the Medical Debt Reporting Ban. Dkt. 28 ¶¶ 13–14, 29–36, 64. This enforcement is impermissibly coercive—getting private plaintiffs to enforce a restriction on disfavored speech. *Bantam*, 372 U. S. at 67–69. By the same logic, the Attorney General who funds, administers, and supervises the Administrator's CFDCPA responsibilities also has the requisite connection for *Ex parte Young* purposes.

B. The Attorney General's CCPA authority, supervision, and enforcement powers supply an independent connection to the challenged scheme.

The Attorney General also has authority under a separate statute to deter, punish, and halt conduct contrary to the Medical Debt Reporting Ban. The CCPA gives him the broad authority to challenge conduct that is unfair, unconscionable, deceptive, deliberately misleading, false, or fraudulent and to seek injunctions, restitution, civil penalties, and other relief. Dkt. 28 ¶¶ 41–46. The Attorney General regularly enforces the CCPA in coordinated consumer protection actions with the Administrator on issues concerning financial services. *See, e.g.*, *State ex rel. Weiser v. Ctr. for Excellence in Higher Educ., Inc.*, No. 20CA1692, 2025 WL 3725122, at *1–2 (Colo. App. Dec. 24, 2025) (CCPA and UCCC claims concerning marketing, admissions, and student loan practices); *State ex rel. Weiser v. Castle Law Grp., LLC*, 457 P.3d 699, 706 (Colo. App. 2019) (coordinated state enforcement action asserting CCPA and CFDCPA claims).

The Attorney General publicly touts the Medical Debt Reporting Ban, stating in his gubernatorial campaign that "We will fight for these protections." Dkt. 39. It strains credulity to assert that if CRAs ignored the Medical Debt Reporting Ban our Attorney General would do nothing. It is therefore plausible that the Attorney General may bring a CCPA action against a CRA that continues reporting medical debt contrary to the CCRA. Dkt. 28 ¶¶ 45–48, 63, 83, 122, 135. In any event, the mere threat of action that chills speech is enough to state a claim for relief. *D.L.S. v. Utah*, 374 F.3d 971, 975 (10th Cir. 2004).

The Attorney General also has authority under the FCRA to bring actions related to medical debt credit reporting. *Id.* ¶ 47. HB 23-1126 relies on a system of laws that govern consumer credit reporting for its effectiveness, including the FCRA restrictions on how medical debt is furnished and coded. If medical accounts are not identified in compliance with the FCRA, the CRAs would not be able to suppress them to comply with HB 23-1126's Medical Debt Reporting Ban. Like the Superintendent of the Kansas Highway Patrol in *Prairie Band*, who issued citations to drivers operating vehicles not recognized as registered under Kansas law, the Attorney General "gives practical effect" to the provision that causes a complete all-channel suppression of adverse medical debt information. 476 F.3d at 828.

The Supreme Court's analysis in *Whole Woman's Health v. Jackson*, 595 U.S. 30 (2021) confirms that an independent enforcement mechanism suffices even when the challenged statute also relies on private actions. There, executive licensing officials were proper defendants because other provisions of state law authorized disciplinary action for violating the challenged restrictions. *Id.* at 45–48. The plaintiffs had "identified provisions of state law that appear to impose a duty on the licensing-official defendants to bring disciplinary actions against them if they violate" the challenged law. *Id.* at 47–48. That was "enough at the motion to dismiss stage to suggest . . . the petitioners will be the target of an enforcement action and thus allow this suit to proceed." *Id.* at 47–48.

Plaintiffs have pleaded enough. They identify the CCPA provisions authorizing the Attorney General to pursue broad enforcement remedies and allege how those provisions can be applied to medical debt reporting contrary to the goals of HB 23-1126. Dkt. 28 ¶¶ 41–48. They also identify official duties that give practical effect to the complete suppression of speech that is HB 23-1126's aim. The Attorney General also supervises the Administrator, whose office operates within the Department of Law and cannot undertake major enforcement litigation without approval from the Attorney General or his designees. *Id.* ¶¶ 39–40. "One who hires and supervises the attorneys responsible for enforcing a law has the power to make important strategic decisions regarding their work and thus necessarily has the requisite connection with enforcement of the law." *Bella Health & Wellness v. Weiser*, 793 F. Supp. 3d 1320, 1336 (D. Colo. 2025). The Attorney General's CCPA authority and supervision of the Administrator each reinforce his connection to the challenged scheme. *See Kitchen v. Herbert*, 755 F.3d 1193, 1204 (10th Cir. 2014) (defendants' supervisory authority and ability to compel compliance with the challenged law provided the "requisite nexus" between the defendants and the provision at issue).

Nor is that connection speculative merely because the Attorney General has not yet sued a CRA for reporting medical debt. Plaintiffs need not expose themselves to enforcement before seeking prospective relief. In a pre-enforcement lawsuit, "showing a credible threat of enforcement is not a high bar." *Sanchez v. Torrez*, 173 F.4th 1202, 1214 (10th Cir. 2026). A credible threat exists where the official "has not disavowed any intention of invoking" the challenged authority against the plaintiff. *Rocky Mountain Gun Owners v. Polis*, 121 F.4th 96, 110 (10th Cir. 2024). The Attorney General has not disavowed using his CCPA authority against CRAs or other ACA members that engage in conduct contrary to the CCRA. Indeed, in their Motion, Defendants state they "have no demonstrated willingness" to enforce the CCRA's medical debt limitation. Dkt. 38 at 8. This is not disavowal, as required by the Tenth Circuit. The Court therefore must accept Plaintiffs' well-pleaded enforcement allegations and reasonable inferences from them at this stage. *See Bella Health*, 793 F. Supp. 3d at 1336 (where the Attorney General had "not averred that he would refrain" from bringing disciplinary action, court must assume he was willing to exercise authority and thus had demonstrated a willingness to enforce the challenged law).

Plaintiffs thus allege both elements required by *Ex parte Young*. The Administrator actively enforces the CFDCPA Provisions that give effect to the Medical Debt Reporting Ban, while the Attorney General possesses specific CCPA authority to deter and halt reporting contrary to the ban and supervises the Administrator's enforcement apparatus. Dkt. 28 ¶¶ 29–48, 63–64, 121–22. Because neither Defendant has disavowed using those powers, Plaintiffs have also sufficiently alleged Defendants' demonstrated willingness to enforce the challenged scheme.

II. Plaintiffs' Injuries Are Traceable to Defendants' Enforcement and Redressable by Prospective Relief.

Defendants' Article III standing arguments do not challenge that Plaintiffs have sufficiently alleged the injury that the Medical Debt Reporting Ban and the Misrepresentation and Disclosure Provisions work with the FCRA and CFDCPA to wholly chill Plaintiffs' speech about adverse medical debt information. They challenge only that the injury cannot be traced to them and cannot be redressed by a favorable decision. *See Awad v. Ziriax*, 670 F.3d 1111, 1120 (10th Cir. 2012). "The standing inquiry, at the motion to dismiss stage, asks only whether the plaintiff has sufficiently alleged a cognizable injury, fairly traceable to the challenged conduct that is likely to be redressed by a favorable judicial decision." *Petrella*, 697 F.3d at 1295 (citation omitted).

Plaintiffs' chilled speech is traceable to Defendants' official duties under the state laws discussed herein. Indeed, "there is a common thread between Article III standing analysis and *Ex parte Young* analysis." *Cressman v. Thompson*, 719 F.3d 1139, 1146 n.8 (10th Cir. 2013). Plaintiffs allege that the Administrator enforces the Misrepresentation and Disclosure Provisions through licensing, supervision, audits, penalties, remediation, civil actions, and license revocation or rescission. Dkt. 28 at ¶¶ 29–36, 64, 121. That enforcement suppresses the exchange of medical debt information and ensures that consumers receive and act upon the Medical Debt Reporting Ban's message. *Id.* ¶¶ 33–36, 64. Plaintiffs further allege that the Attorney General may use his

CCPA authority to deter, punish, and halt a CRA's continued reporting through injunctions, restitution, civil penalties, and other relief. *Id.* ¶¶ 41–48, 63, 83, 122, 135. These enforcement mechanisms cause CRAs, creditors, and collectors to comply with the challenged scheme and therefore supply the required "meaningful nexus" between Defendants and Plaintiffs' injuries. *See Frank v. Lee*, 84 F.4th 1119, 1135 (10th Cir. 2023) ("Plaintiffs suing public officials can satisfy the causation and redressability requirements of standing by demonstrating 'a meaningful nexus' between the defendant and the asserted injury." (citation omitted)).

Prospective relief would stop chilling the dissemination of truthful information about medical debts. First, an injunction would prevent the Administrator from compelling the challenged disclosure, penalizing statements about medical debt reporting, conditioning licenses on compliance, and using supervisory and remedial authority to reinforce the Medical Debt Reporting Ban. It would also prevent the Attorney General from supporting the Administrator's CFDCPA enforcement concerning medical debt and using the CCPA to pursue CRAs or other ACA members based on adverse medical debt reporting. The resulting relief would remove significant state enforcement mechanisms that suppress Plaintiffs' speech and alter consumer behavior. Dkt. 28 ¶¶ 15, 119–22 & Prayer for Relief ¶¶ 6–8.

Defendants' reliance on the CCRA's private right of action, Dkt. 38 at 4, does not defeat redressability. "[C]omplete redressability of the plaintiff's injuries is not required." *Sanchez*, 173 F.4th at 1213. A favorable decision need only redress "*an* injury," not "*every* injury," *Larson v. Valente*, 456 U.S. 228, 243 n.15 (1982) (emphasis in original). It is sufficient that an injunction against Defendants would "alleviate the injury to some extent." *Consumer Data Indus. Ass'n v. King*, 678 F.3d 898, 903 (10th Cir. 2012). Where officials possess enforcement authority, like Defendants here, the possibility of private enforcement does not eliminate the redress supplied by enjoining those officials. *Id.* at 905–06; *Sanchez*, 173 F.4th at 1217 ("The fact that private litigants may also have a right to individually enforce their rights does not undermine the special threat of enforcement posed by the New Mexico Officials, which is redressable by a favorable decision."). Because the requested relief would stop Defendants' distinct enforcement activities and alleviate the resulting injuries, Plaintiffs have standing.

III. Plaintiffs State Plausible First Amendment Claims Against the CFDCPA Provisions

Defendants' argument that the First Amendment challenges to the CFDCPA Disclosure and Misrepresentation Provisions (together, "CFDCPA Provisions") fail to state a claim under Rule 12(b)(6), Dkt. 38 at 10–15, is premature and substantively flawed. First, the unconstitutionality of the CFDCPA Provisions depends on the unresolved merits of Plaintiffs' challenge to the underlying Medical Debt Reporting Ban. Second, the mandatory disclosure is inaccurate on its face. In addition, because the Motion only seeks partial dismissal, discovery will proceed regardless of the outcome. Thus, prudence suggests allowing the record to more fully develop before the Court renders a decision on this point.

A. The Court must first resolve Plaintiffs' challenge to the underlying CCRA ban before adjudicating the CFDCPA claims.

Because the CFDCPA Provisions compel or prohibit speech in furtherance of the Medical Debt Reporting Ban, both CFDCPA Provisions are only constitutionally valid if the underlying ban is lawful and enforceable. The Disclosure Provision compels collectors to state that "Colorado law prohibits credit bureaus from reporting medical debt," *see* C.R.S. § 5-16-105(3)(e)(I), and the Misrepresentation Provision penalizes statements that medical debt "will be included in a consumer report." *Id.* § 5-16-107(1)(r)(I). If the CCRA ban is unlawful—as Plaintiffs argue here—then the compelled disclosure is inaccurate and the law penalizes true speech. Thus, the First

Amendment claims against the CFDCPA Provisions cannot be resolved without first determining whether the underlying ban is lawful.

This interdependency renders Defendants' Rule 12(b)(6) arguments premature and illustrates the interconnectedness of the reporting ban scheme. For example, Defendants argue that under *Zauderer v. Off. of Disciplinary Couns. of Supreme Ct. of Ohio*, 471 U.S. 626, 651 (1985), the compelled disclosures are "reasonably related to Colorado's legitimate interest in consumer protection. . . By requiring debt collectors to disclose that medical debt cannot be reported except under narrow circumstances, Colorado advances its goals of promoting transparency, preventing deception, and *avoiding harm to consumers' creditworthiness*." Dkt. 38 at 12 (emphasis added). The Disclosure and Misrepresentation Provisions only exist to give effect to, or, in other words, *to enforce*, the Medical Debt Reporting Ban. Thus, without the underlying ban, the CFDCPA provisions would simply not exist; there would be no speech to compel nor prohibit.

This Court should not—and cannot—determine the validity of the CFDCPA enforcement provisions without first determining the validity of the provision being enforced. Defendants' attempts to compartmentalize these issues are neither legally sound nor judicially efficient, and seeking dismissal of Plaintiffs' CFDCPA claims at this stage betrays the unified structure of the reporting ban scheme.

Defendants cite to *CompassCare v. Hochul*, 125 F.4th 49, 54 (2d Cir. 2025), where the Second Circuit upheld requirements that employers provide certain notices to employees. Plaintiffs there challenged both New York State's notice requirements and the underlying substantive rule (a nondiscrimination provision). *Id*. The court upheld the state's notice requirements under the *Zauderer* standard—but only *after* it had determined the underlying substantive rule (the nondiscrimination provision) was lawful. *Id*. at 65 ("The required disclosure of the existence and basic nature of an otherwise-valid statute is similar to the mandated commercial disclosures [in *Zauderer*] . . ."). Through their Motion here, Defendants seek to skip this threshold step and find the CFDCPA provisions unlawful without first determining that the statute at the heart of the case is "otherwise-valid." *See id*. Defendants' Motion and arguments are premature and should be denied.

B. <u>If the underlying Medical Debt Reporting Ban is unlawful, the CFDCPA provisions clearly fail under First Amendment scrutiny.</u>

Defendants are correct that "purely factual and noncontroversial compelled commercial disclosures are permissible if they are (1) reasonably related to the government's interest, and (2) not unjustified or unduly burdensome." Dkt. 38 at 11. And Defendants are right to note that "[t]here is no First Amendment right to make false or misleading representations in connection with debt collection, because such speech is not protected speech." *Id.* at 14.

But the compelled speech is not accurate. C.R.S. § 5-16-105(3)(e)(I) compels collectors to state that "Colorado law prohibits credit bureaus from reporting medical debt. . ." Dkt. 28 ¶¶ 13. This statement is wrong on its face, as the Medical Debt Reporting Ban only prohibits reporting "adverse" medical debt information. *Compare* C.R.S. § 5-18-109(1)(f)(I) *with* § 5-16-105(3)(e)(I). CRAs may report positive information about medical accounts, like timely payments on a plan. The State cannot compel inaccurate speech, nor can it prohibit truthful speech. *See Zauderer*, 471 U.S. at 768–69; *Sorrell v. IMS Health Inc*., 564 U.S. 552, 566 (2011) (holding "[c]ommercial speech is no exception" to First Amendment protections).

CONCLUSION

Plaintiffs allege facts sufficient to establish standing, this Court's jurisdiction, and cognizable constitutional claims that are plausible on their face. Plaintiffs' speech is restricted based on actual enforcement and threats of government enforcement, which this Court may restrain. Plaintiffs respectfully request that the Court deny Defendants' Motion in its entirety.

Dated: August 7, 2026

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CERTIFICATE OF SERVICE

I hereby certify that on August 7, 2026, I electronically filed the foregoing **PLAINTIFFS' OPPOSITION TO DEFENDANTS' MOTION TO DISMISS IN PART THE SECOND AMENDED COMPLAINT** with the Clerk of Court using the CM/ECF system which will send notification of such filing to all parties of record:

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