SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, Plaintiff, v. RENTGROW, INC., and YARDI SYSTEMS, INC., Defendants.	Civil Action No. 2024-CAB-006253 Judge Leslie A. Meek Next Court Date: July 10, 2025 at 11:00 A.M. Event: Remote Status Hearing

DEFENDANT RENTGROW, INC.'S MOTION TO DISMISS

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INTRODUCTION

NACA brings this lawsuit to challenge tenant screening services provided by RentGrow, Inc. ("RentGrow"), alleging primarily that RentGrow violates the Fair Credit Reporting Act ("FCRA") and the D.C. Human Rights Act ("DC HRA"). But NACA does not—and cannot—sue under the private causes of action created to enforce those provisions. Rather, NACA tries to mold purported violations of those statutes into a claim under the D.C. Consumer Protection Procedures Act ("CPPA"), which prohibits unfair and deceptive trade practices in transactions between merchants and consumers. That claim should be dismissed: it is brought against an improper defendant by an improper plaintiff, and the challenged conduct is not actionable under the CPPA.

RentGrow is not a proper defendant, because RentGrow does not offer tenant screening services to District of Columbia consumers, and consumers do not buy anything from RentGrow. Rather, the tenant screening services at issue in this case are provided only to landlord and property management businesses such as the D.C. Housing Authority. RentGrow thus is neither a "merchant" nor engaged in a "consumer transaction" as those terms are defined by the CPPA.

NACA also is not a proper plaintiff. NACA claims it has standing to sue under a provision of the CPPA that gives it authority to act "on behalf of the interests of a consumer or a class of consumers." Compl. ¶¶ 68–69, 89–90 (citing D.C. Code § 28–3905(k)(1)(D)). But NACA does not identify any consumers who have been affected by RentGrow's alleged conduct and it lacks the requisite "nexus to the interests" of any such consumers to give it standing to bring this suit.

The CPPA claim fails for other reasons as well. The Complaint fails to allege any deceptive conduct, as NACA cannot predicate a deception claim on either general, non-actionable statements that are not marketing claims or alleged contractual breaches in an agreement between RentGrow and the D.C. Housing Authority. The Complaint also fails to identify any unfair practice, as purported violations of the FCRA or DC HRA do not constitute unfair practices, and NACA has

failed to allege facts showing that RentGrow plausibly engages in anything resembling an unfair practice under any relevant standard. Finally, NACA's attempt to use the CPPA to hold RentGrow liable for providing allegedly inaccurate or biased information or for failing to process disputes as quickly as NACA would prefer is foreclosed by the FCRA's express preemption provisions.

NACA's actions and representations after RentGrow removed this case to federal court further confirm that its lawsuit should be dismissed with prejudice. NACA persuaded a federal court to order remand only by narrowing its claims, and those narrowed claims are not viable.

BACKGROUND

A. RentGrow Offers its Services to District of Columbia Housing Providers.

RentGrow, a tenant screening company, contracts with "landlords, property managers, and other housing providers" to provide tenant screening information related to those companies' prospective tenants. Compl. ¶ 1. At a client's request, RentGrow obtains information about the applicant from third-party data vendors to merge and assemble tenant screening information that it provides to the client. *See id.* ¶¶ 1, 24, 45. RentGrow's client may then use—or not use—that tenant screening information in deciding whether to offer the applicant a lease. *See id.* ¶ 45.

RentGrow provides these services to housing providers across the country, including in the District of Columbia. *See id.* ¶ 23. One of its clients is the D.C. Housing Authority ("DCHA"), which has used RentGrow's services since at least 2018 in operating the Housing Choice Voucher Program. *Id.* ¶ 1. Under RentGrow's contract with the DCHA (the "DCHA Contract"),[1] the DCHA sets the criteria it uses in evaluating housing voucher applicants. DCHA Contract at 2 § 4.b. RentGrow "plays no role in any tenancy decisions" made by the DCHA. *Id*. The DCHA

[1] Available at https://perma.cc/QDD7-QHXM. The Court may consider the DCHA Contract on RentGrow's motion to dismiss because it is incorporated by reference in NACA's Complaint. *See* Compl. ¶¶ 2 n.4, 23 n.11, 24 n.13, 42 n.34, 46 n.36, 48–50 nn.41–43; *Bell v. First Invs. Servicing Corp.*, 256 A.3d 246, (D.C. 2021).

has never accused RentGrow of breaching any of its obligations under the DCHA Contract, and the Complaint does not allege otherwise.

B. The Fair Credit Reporting Act Governs RentGrow's Screening Services.

RentGrow assembles and merges information from third-party vendors, making RentGrow a reseller consumer reporting agency under the FCRA. *See* 15 U.S.C. § 1681a(u); Compl. ¶¶ 48–49; *Grant v. RentGrow, Inc.*, 2023 WL 5813140, at *8 (W.D. Tex. Sept. 6, 2023) ("[I]t is undisputed that RentGrow is a reseller under the FCRA.").[2] As a reseller, RentGrow is subject to several FCRA requirements, including (1) following "reasonable procedures" to assure the maximum possible accuracy of reported information, 15 U.S.C. § 1681e; (2) making available a method for individuals to provide notice of and dispute allegedly inaccurate or incomplete information, *id.* § 1681i; (3) transmitting notices of dispute to each consumer reporting agency that provided the disputed information, *id.* § 1681i(f); and (4) notifying the individuals of the findings and resolution of the dispute, *id.* § 1681i(f)(3). The FCRA provides a limited private right of action to sue for certain violations of the statute. *See id.* §§ 1681n–o. The FCRA also contains two express preemption provisions that prevent resellers like RentGrow from being sued under state law in "any action or proceeding in the nature of . . . negligence with respect to the reporting of information," *id.* § 1681h(e), or "with respect to any subject matter regulated under" the provisions of § 1681i "relating to the time by which a consumer reporting agency must take any action . . . in any procedure related to the disputed accuracy of information in a consumer's file," *id.* § 1681t.

C. Plaintiff's Lawsuit.

The core premise of this suit is NACA's contention that RentGrow must comply with the

[2] *Grant* is cited at Compl. ¶¶ 26 n.18, 28 n.21, 34 n.27. At the motion to dismiss stage, this Court may consider facts incorporated by reference in the Complaint, *see supra* n.1, and "laws, statutes, and other matters of public record," *Bostic v. District of Columbia*, 906 A.2d 327, 332 (D.C. 2006).

FCRA, *see* Compl. ¶ 48, yet does not, *see, e.g.*, *id.* ¶¶ 2–3, 30–31, 53, 55, 93–94, 102. In particular, NACA claims that RentGrow "generates reports based improperly on inaccurate and/or biased information" and does not offer adequate dispute procedures. *Id.* ¶¶ 2, 56–61. NACA's Complaint does not, however, identify *any* inaccurate or biased information reported by RentGrow. Nor does NACA identify *any* District of Columbia consumer allegedly harmed by RentGrow. NACA does not claim that it or its members have been harmed by RentGrow's activities, either.

NACA suggests that RentGrow's conduct violates the FCRA and the DC HRA. *See, e.g.*, *id.* ¶¶ 30–33, 98–100. Those statutes contain private rights of actions, but NACA does not—and cannot—sue under those provisions. NACA instead seeks to cloak its criticisms of RentGrow's tenant screening services as an alleged CPPA violation, claiming that the CPPA "incorporates" the requirements of the FCRA and that discrimination proscribed by the DC HRA also violates the CPPA. *Id.* ¶¶ 3, 98. NACA solely seeks declaratory and injunctive relief, not damages.

NACA's allegations fall into two broad categories: (1) alleged misrepresentations; and (2) alleged unfair practices. NACA bases its misrepresentation claims on one statement on RentGrow's website and on statements made in the DCHA Contract. *Id.* ¶¶ 45–46, 48–50. NACA claims these statements amount to deceptive representations that RentGrow's service is "reliable for making critical housing decisions" and that "consumers affected by inaccuracies have a reasonable [sic] accessible means to mount challenges to reports." *Id.* ¶¶ 92, 95.

As to the alleged "unfair practices," NACA claims that RentGrow employs artificial intelligence ("AI") and automated decision-making ("ADM") systems that source data from unreliable vendors and does not take adequate steps to audit or improve the data; as a result, NACA alleges that the data RentGrow reports to its clients is inaccurate or not properly reported under the FCRA. *See Id.* ¶¶ 20–28, 31–32, 35. NACA further alleges that reporting even accurate data

constitutes an unfair practice if it incorporates systemic racial bias or results in discrimination based on source of income. *See e.g.*, *id.* ¶¶ 33–38, 40–44. NACA similarly challenges RentGrow's dispute procedures, arguing they are ineffective because they are "cumbersome" and "take[] up to 30 days" to resolve. *See id.* ¶¶ 54–59.

D. RentGrow's Removal and Subsequent Federal Court Proceedings.

RentGrow removed this action to federal court on the ground that NACA's CPPA claim necessarily raises a substantial federal question regarding RentGrow's compliance with the FCRA. *See* Notice of Removal, *NACA v. RentGrow, Inc., et al.*, No. 1:24-cv-3218-PLF (D.D.C. Nov. 14, 2024), ECF No. 1. NACA sought remand to D.C. Superior Court on the grounds that (1) it lacks Article III standing, and (2) its Complaint "does not raise any question of federal law[.]" Pl.'s Mot. to Remand at 4–8, ECF No. 26. In doing so, NACA significantly limited its claims in a manner that compromises its ability to seek relief in this Court.

In "assum[ing] the somewhat odd posture of disclaiming its own [Article III] standing," *NACA v. RentGrow, Inc.*, 2025 WL 1429172, at *8 (D.D.C. May 16, 2025), NACA expressly disavowed any attempt to base this suit on concrete injuries suffered by itself, its members, or any specific consumers, *see* Pl.'s Mot. to Remand at 4–7, ECF No. 12. NACA maintained that its "Complaint does not plead any [concrete] injury to NACA's interests," *id.* at 5, and that it "is ***not*** bringing suit on behalf of its members," even those who were allegedly screened by RentGrow, *id.* at 6. NACA also expressly "disclaim[ed] acting on behalf of specific consumers," *id.*, and confirmed that it was "***not NACA's CPPA theory of liability***" that consumers "who were subject to RentGrow's allegedly inaccurate marketing and tenant screening practices have standing to bring this lawsuit in their own right," Pl.'s Mot. to Remand Reply at 8.

NACA also confirmed that it is "not request[ing] any order requiring RentGrow to change its FCRA compliance practices—nor could D.C. Superior Court issue such an order." *Id.* at 20.

Further, NACA confirmed it has not brought any DC HRA claim. *See* Opp. to RentGrow's Mot. to Dismiss at 18, ECF No. 22. The district court ultimately remanded this case back to this Court on the ground that NACA lacks Article III standing. *RentGrow, Inc.*, 2025 WL 1429172, at *9.

PROCEDURAL STANDARD

The District of Columbia has "adopted the pleading standard articulated by the Supreme Court in" *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *Poola v. Howard Univ.*, 147 A.3d 267, 276 (D.C. 2016). To survive dismissal under D.C. Superior Court Rule 12(b)(6), "a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*, 556 U.S. at 678; *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 n.4 (D.C. 2011) (same). To do so, NACA must plead more than a "formulaic recitation of the elements of a cause of action." *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) (quoting *Twombly*, 550 U.S. at 555).

ARGUMENT

I. The CPPA Does Not Apply to RentGrow or the Services it Provides Clients.

NACA's CPPA claim should be dismissed because NACA does not allege that RentGrow is engaged in conduct subject to the CPPA. RentGrow does not conduct "consumer transactions" and is not a "merchant" or a "consumer credit service organization" as defined by the CPPA.

First, the tenant screening services that RentGrow provides to its clients are not "consumer transactions" under the CPPA. The CPPA reaches only the "ultimate retail transaction between the final distributor and the individual member of the consuming public." *Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003, 1005 (D.C. 1989). Transactions "along the distribution chain that do not involve the ultimate retail customer" are outside the CPPA's scope. *Id.*; *see also Ford v. Chartone, Inc.*, 908 A.2d 72, 81 (D.C. 2006) ("[T]he CPPA . . . does not apply to commercial dealings outside the consumer sphere."). That includes "back-office services that one company

provides to another." *McDowell v. CGI Fed. Inc.*, 2017 WL 2392423, at *3 (D.D.C. June 1, 2017).

As NACA recognizes, RentGrow does not provide services to District of Columbia consumers. Instead, the Complaint alleges only that RentGrow provides tenant screening services "to *property owners and managers*," and those services are "used in the District *by D.C. housing providers*," not rental applicants. Compl. ¶¶ 7, 34 (emphases added). Because NACA's complaint does not challenge "consumer transactions," it should be dismissed. *See Osinubepi-Alao v. Plainview Fin. Servs.*, 44 F. Supp. 3d 84, 93 (D.D.C. 2014) (dismissing CPPA claim for this reason); *Ihebereme v. Cap. One, N.A.*, 933 F. Supp. 2d 86, 108 (D.D.C. 2013) (same); *Snowder v. District of Columbia*, 949 A.2d 590, 599–600 (D.C. 2008) (dismissing CPPA claim where District of Columbia was not engaged as a seller or provider in a consumer transaction).

Courts regularly dismiss CPPA claims for this reason. For example, in *McDowell*, a plaintiff sued a company that "processed passport applications on behalf of the State Department" for failing to secure her personal information. 2017 WL 2392423, at *1. Although the company represented in a brochure that "it would secure the passport application data" yet did not, the court held that the plaintiff could not sustain a CPPA claim because "transactions between two merchants that are on the 'supply side' of the consumer-merchant [relationship] do not fall within [the] ambit of [the] CPPA." *Id.* at *3. Similarly here, consumers did not purchase anything from RentGrow, *housing providers* did. NACA's speculative allegations that some unidentified consumers might ultimately have been impacted by the services RentGrow provided to another business cannot bring RentGrow's screening services within the purview of the CPPA.

Second, even if this case involved "consumer transactions"—and it does not—the CPPA is "designed to police trade practices arising only out of consumer-merchant relationships," and RentGrow is not a "merchant" under the statute. *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709

(D.C. 1981). A "merchant" must be "connected with the 'supply' side of a consumer transaction." *Id.*; *see also* D.C. Code § 28–3901(a)(3)(A) (merchant means one who would "sell, lease, or transfer . . . consumer goods or services"). A defendant is therefore not liable under the CPPA if it "sells nothing to" consumers and consumers "obtain nothing from" the defendant. *In re G–Fees Antitrust Litig.*, 584 F. Supp. 2d 26, 43 (D.D.C. 2008).

NACA's allegations "do not afford either an inference that [RentGrow] was the final distributor of a good or service to [consumers], or an inference that [consumers] and [RentGrow] had a consumer-merchant relationship." *Id.*; *see also Snowder*, 949 A.2d at 599–600 (dismissing CPPA claim against District of Columbia because though it coordinated with towing companies to tow vehicles, it never "enter[ed] into a consumer-merchant relationship with any of the vehicle owners"). While RentGrow offers services to the DCHA and other clients in D.C., it does not have a "consumer-merchant relationship" with any D.C. consumer.

Third, NACA cannot use the CPPA to sue RentGrow for violations of Chapter 46 of the D.C. Code. Chapter 46 only applies to "consumer credit service organizations," and the statute expressly exempts from its scope "[a]ny consumer reporting agency as defined in the Federal Fair Credit Reporting Act." D.C. Code § 28–4601(2)(D)(viii). To the extent NACA's claims depend on allegations that RentGrow violated obligations owed by "consumer credit service organizations" under Chapter 46 of the CPPA, *see* Compl. ¶ 95, those claims should be dismissed because there can be no dispute that "RentGrow is a consumer reporting agency" as defined by the FCRA, *McIntyre v. RentGrow, Inc.*, 34 F.4th 87, 91 (1st Cir. 2022), and therefore cannot be a consumer credit service organization. *See* D.C. Code § 28–4601(2)(D)(viii).

II. NACA Lacks Statutory Standing to Challenge RentGrow's Screening Services.

NACA attempts to sue under a provision of the CPPA that permits a public interest organization to sue "on behalf of the interests of a consumer or a class of consumers . . . if the

consumer or class could bring an action" and the organization demonstrates "sufficient nexus" to the consumers' interests. D.C. Code § 28–3905(k)(1)(D). NACA has not identified a consumer or class on whose behalf it sued, instead asserting it sued on behalf of the "general public." Compl. ¶ 89. That is not the standard. NACA also lacks a sufficient nexus to the only group of District of Columbia consumers possibly impacted by the conduct NACA attributes to RentGrow.

A. NACA Has Not Identified a Consumer Who Could Have Brought This Suit Against RentGrow.

The CPPA provision under which NACA brought this suit, D.C. Code § 28–3905(k)(1)(D), requires a public interest organization to "adequately identify the class of consumers it seeks to represent." *Ctr. for Inquiry Inc. v. Walmart, Inc.*, 283 A.3d 109, 116 (D.C. 2022). NACA has not done so. To the contrary, it asserts that it is *not* acting on behalf of any consumer or class of consumers. *See* Compl. ¶ 82. In its motion to remand, it explicitly "disclaim[ed] acting on behalf of specific consumers," *RentGrow, Inc.*, 2025 WL 1429172, at *8, and emphasized that it was *not* NACA's position that D.C. consumers "who were subject to RentGrow's allegedly inaccurate marketing and tenant screening practices have standing to bring this lawsuit in their own right," Pl.'s Mot. to Remand Reply at 8. These admissions are fatal to its § 28–3905(k)(1)(D) claim.

NACA's claim cannot be saved by its assertion that it has sued on behalf of "the general public of D.C. consumers." Compl. ¶ 89. While a separate provision of the CPPA allows organizations to sue "on behalf of the general public," D.C. Code § 28–3905(k)(1)(C), that is not the provision that NACA invokes in its Complaint, *see* Compl. ¶¶ 68–69, 89–90 (all invoking § 28–3905(k)(1)(D)). The fact that the D.C. Council used the phrase "general public" in (k)(1)(C), but not in (k)(1)(D), means that public interest organizations cannot satisfy subparagraph (k)(1)(D) simply by declaring that they act on behalf of the "general public." *See Sosa v. Alvarez-Machain*, 542 U.S. 692, 712 n.9 (2004) ("[W]hen the legislature uses certain language in one part of the

statute and different language in another, the court assumes different meanings were intended."). Indeed, NACA's pleading choice appears to be intentional, because litigants who invoke (k)(1)(C) must directly satisfy Article III's standing requirements, regardless of whether their claims proceed in federal or local courts. *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 182 n.5 (D.C. 2021). If, as the district court held in its remand order, NACA lacks Article III standing to maintain its CPPA claim, then NACA would be unable to maintain a claim under (k)(1)(C).

In any event, this is not a case that could be brought on behalf of the general public. Not every District of Columbia consumer rents housing, is screened for housing using RentGrow's services, or is affected by the purported harms alleged here because many rental applications are approved. The "open-ended group" consisting of "D.C. consumers generally" that NACA seeks to represent "could conceivably include every person within the District of Columbia who is a 'consumer,'" even though the only consumers allegedly injured are those who "plan[] on renting a property and subjecting themself to RentGrow's tenant screening service." *RentGrow, Inc.*, 2025 WL 1429172, at *12, *15. NACA has not identified a single consumer actually screened by RentGrow or denied housing as a result of RentGrow's alleged conduct.

This case is therefore distinguishable from others such as *Animal Legal Defense Fund* and *Center for Inquiry*, where the plaintiff organizations had (k)(1)(D) standing because they identified a specific class of District of Columbia consumers impacted by the challenged conduct. Although NACA reads the D.C. Court of Appeals decision in *Earth Island Institute. v. Coca-Cola Co.* to suggest that a (k)(1)(D) lawsuit could be brought on behalf of "the general public of the District of Columbia," in actuality, the court did so there only because the plaintiff alleged a "pervasive presence of Coca-Cola in modern life, and the ubiquity of the internet where Coca-Cola's statements appear," as well as "empirical data" demonstrating that the scope of that group of

consumers in fact extended to the general public. 321 A.3d 654, 662 (D.C. 2024). NACA has pleaded no facts to support a similar expansion of the "class of consumers" allegedly impacted by RentGrow's services to the "general public of District of Columbia consumers." RentGrow's alleged misrepresentations—that it helps landlords make "informed decisions," Compl. ¶ 45, and its representations in the DCHA Contract, *id.* ¶¶ 2, 48—are not directed to every member of the "general public" and are not ubiquitous. Because NACA has not identified a consumer or class of consumers *actually allegedly injured* by RentGrow's services as required under § 28–3905(k)(1)(D), the Complaint should be dismissed.

B. NACA Lacks Sufficient Nexus to the Only Consumers Possibly Impacted by RentGrow's Alleged Conduct.

The D.C. Code further provides that an action brought under § 28–3905(k)(1)(D) "shall be dismissed" if "the public interest organization does not have sufficient nexus to the interests involved of the consumer or class to adequately represent those interests." D.C. Code § 28–3905(k)(1)(D)(ii). Even if NACA "adequately identif[ied] the class of consumers it seeks to represent," *Ctr. for Inquiry Inc.*, 283 A.3d at 116, NACA still lacks a "sufficient nexus" to the only consumers possibly injured by RentGrow's alleged conduct: District residents who were screened using RentGrow's services, and, as a result of alleged biases or inaccuracies, denied housing.

This "nexus" requirement "functions to ensure that an organization has a sufficient stake in the action to pursue it with the requisite zeal and concreteness." *Id.* at 115 (internal quotation omitted). In other § 28–3905(k)(1)(D) cases, courts have found sufficient nexus where the plaintiff organizations had a demonstrated history of advocacy addressing the *particular* sorts of practices challenged. *See, e.g.*, *id.* at 115–16 (organization that "long worked to counter the negative impact of pseudoscientific alternative medicine upon society" had sufficient nexus to consumers sold homeopathic products to challenge homeopathic marketing).

As the district court recognized in its remand order, "plaintiff's complaint does not provide any information about how plaintiff relates to the D.C. consumers on whose behalf it acts." *RentGrow, Inc.*, 2025 WL 1429172, at *10. NACA alleges nexus based only on a generalized commitment to "representing consumers' interests" and "consumer advocacy." Compl. ¶¶ 4, 11, 69. That simply parrots the CPPA's definition of a "public interest organization"—an organization that has "the purpose of promoting interests or rights of consumers," D.C. Code § 28–3901(15)—and does not satisfy the requirement that the organization have a sufficient nexus to the interests of the consumers on whose behalf it purports to act. To hold otherwise would effectively permit NACA—indeed, *any* public interest organization—to challenge *any* and *every* allegedly unfair consumer practice in the District. That outcome would nullify the D.C. Council's efforts to "modify[] Article III's doctrinal requirements with a more expansive statutory test" for plaintiffs pursuing claims under § 28–3905(k)(1)(D) while still "account[ing] for core standing concerns" by imposing a meaningful nexus requirement. *Animal Legal Def. Fund*, 258 A.3d at 183. The fact that the Council permitted "public interest organizations" to file suit *only if* the organizations satisfy the nexus requirement reflects that the Council viewed that requirement as "an important limit" that must have meaningful force. *Id.* at 187 (internal quotation omitted) (quoting D.C. Council Committee Report).

The conclusory allegation that NACA "specifically advocates for the protection of consumer rights in the improper use and dissemination of inaccurate consumer reports," Compl. ¶ 11, is wholly unsupported by any facts alleged. This Court is "not bound to accept as true a legal conclusion couched as a factual allegation." *Iqbal*, 556 U.S. at 678. Nothing in the Complaint satisfies the CPPA's nexus requirement. Thus, NACA lacks statutory standing to sue.

III. NACA Fails to Allege A CPPA Violation.

Even if RentGrow is a merchant engaged in consumer transactions, and even if NACA has standing to sue under the CPPA, NACA has not plausibly alleged that RentGrow is engaged in a "deceptive" or "unfair" practice prohibited by the CPPA. *See* D.C. Code § 28–3904.

A. No Deception Is Alleged.

NACA claims that RentGrow violated CPPA provisions prohibiting deceptive practices. *See* Compl. ¶¶ 45–52, 95, 102. Practices that are "deceptive" under the CPPA "have a tendency to mislead reasonable consumers." *Earth Island Inst.*, 321 A.3d at 664. To prevail on a CPPA deception claim, a plaintiff must specifically identify the allegedly deceptive statement or omission. *See Floyd v. Bank of Am. Corp.*, 70 A.3d 246, 254–57 (D.C. 2013) (affirming dismissal of CPPA claim for failure to identify alleged misstatement). The only specific statements challenged in the Complaint are (1) a statement on RentGrow's website that it helps housing providers make "***informed***" decisions, Compl. ¶ 45, and (2) provisions in a contract between RentGrow and the DCHA, *id.* ¶¶ 2, 48. Neither is sufficient to state a claim.

The statement on RentGrow's website that it "prepares tenant screening reports for property owners and managers who use the information to make ***informed*** decisions about rental applications," *id.* ¶ 45, does not constitute a deceptive trade practice. The statement is a general business assertion, "the truth or falsity of which cannot be precisely determined," and is thus not actionable under the CPPA. *Whiting v. AARP*, 701 F. Supp. 2d 21, 30 n.7 (D.D.C. 2010), *aff'd*, 637 F.3d 355 (D.C. Cir. 2011). Courts have dismissed CPPA claims based on similar statements that a policy provides "essential health benefits" or "is a smart option," *id.*, or that a product is "stunning and brilliant," *Scott v. Apple Inc.*, 757 F. Supp. 3d 1, 12–13 (D.D.C. Nov. 6, 2024). Like the claim that a policy option is "smart," RentGrow's statement that its service permits housing providers to make "informed" decisions is simply "too general and subjective" to support a

misrepresentation claim. *Whiting*, 701 F. Supp. 2d at 30 n.7; *Baker v. Twitter, Inc.*, 2023 WL 6932568, at *4 (C.D. Cal. Aug. 25, 2023) (statement that Twitter empowers users "to make informed decisions" was "non-actionable puffery").

NACA likewise cannot sustain a CPPA claim based on provisions in the contract between RentGrow and the DCHA. Claims that a party's representations in a contract have not been honored are not actionable under the CPPA. *See Kelleher v. Dream Catcher, LLC*, 2019 WL 3458459, at *8 (D.D.C. July 31, 2019) (dismissing CPPA claim premised on "an ordinary breach of contract after the contract's formation"). Moreover, RentGrow's contractual commitments were to the DCHA, not District consumers.[3] *See McDowell*, 2017 WL 2392423, at *3 (dismissing CPPA claim based on alleged misrepresentations made by defendant to another business). The DCHA is not a "consumer" on whose behalf NACA can assert CPPA claims. *See Weschler*, 561 A.2d at 1005 (CPPA does not "supply merchants with a private cause of action against other merchants").

B. No Unfair Practices Are Alleged.

NACA's attempt to shoehorn alleged violations of federal or local laws into an "unfair practice" claim fails for two reasons. First, alleged violations of the FCRA or the DC HRA do not constitute "unfair practices" under the CPPA. Second, NACA's allegations that RentGrow engaged in an unfair practice are speculative.

1. RentGrow's Purported Violations of the FCRA and DC HRA Cannot Constitute a CPPA Claim.

The Complaint repeatedly invokes standards imposed by laws *other than* the CPPA, such

[3] Indeed, the DCHA Contract was not publicly available *at all* until NACA's counsel posted it on its own website after obtaining it through a FOIA request. *See* Compl. ¶ 48 n.37 (agreement hosted on "epic.org" and titled in part "DCHA-FOIA").

as the FCRA and DC HRA. *See* Compl. ¶¶ 30–31, 101–102. But the CPPA was amended in 2018 to replace an "unlawful trade practice" with an "unfair or deceptive trade practice." 2018 D.C. Laws 22-140 (Act 22-367); *see also* Compl. ¶ 70 (acknowledging this change). A violation of some other law "itself" is thus not "automatically a violation of the CPPA." *District of Columbia v. Wash. Hebrew Congregation, Inc*., 2022 WL 22585211, at *5 (D.C. Super. Ct. Sept. 13, 2022). NACA must allege more than a violation of the FCRA or DC HRA to state a CPPA claim, and it has not done so.

The CPPA itself confirms that merely alleging violations of the FCRA or the DC HRA, as NACA has done here, is insufficient to plead an unfairness claim under the CPPA. The CPPA expressly provides that claims may be predicated on violations of certain enumerated statutes, *see* D.C. Code § 28–3904(w)–(ll), but neither the FCRA nor DC HRA is among those laws. Courts refuse to hold a defendant liable under the CPPA for alleged violations of statutes "conspicuously" not mentioned in § 28–3904 in the absence of an otherwise adequately pled unfair or deceptive trade practice. *Gomez v. Indep. Mgmt. of Del., Inc.*, 967 A.2d 1276, 1285 (D.C. 2009) (dismissing CPPA claim premised on alleged failure to comply with the Sale Act); *see also Ihebereme*, 933 F. Supp. 2d at 109 (dismissing attempt "to create a private right of action by using the DCCPPA to remedy an alleged violation of [D.C. Code] section 47–1431(a)").

The Complaint misleadingly asserts that 15 U.S.C. § 1681s "explicitly identif[ies] FCRA violations as unfair or deceptive trade practices." Compl. ¶ 3 n.5. Section 1681s of the FCRA is an *administrative* enforcement provision, which explicitly states that FCRA violations "shall constitute an unfair or deceptive act or practice" *only* "[f]or the purpose of the exercise by the Federal Trade Commission of its functions and powers under the Federal Trade Commission Act." 15 U.S.C. § 1681s(a)(1). It does not provide that FCRA violations are unfair trade practices for

purposes of a lawsuit filed by any plaintiff other than the FTC or under any other statute.

Nor would NACA's interpretation comport with the provisions of the CPPA. Both the FCRA and the DC HRA contain private causes of action. *See id.* §§ 1681o, 1681n; D.C. Code § 2–1403.16. Allowing NACA to bootstrap alleged violations of the FCRA and DC HRA into a CPPA "unfairness" claim improperly conflates "unlawful" with "unfair" and thus overrides the deliberate scheme that the D.C. Council created to enforce its consumer protection statute. "[T]here is no compelling reason to shoehorn the allegations made here into the ill-fitting language of the CPPA" when the claims are based on "comprehensive legislation which not only creates the right at issue here but also establishes detailed requirements for compliance" and "contains its own detailed provisions for implementation and enforcement." *Gomez*, 967 A.2d at 1285.

NACA cannot save its Complaint by disclaiming any CPPA theory that depends on this Court finding a violation of the FCRA or DC HRA, *see* Pl.'s Mot. to Remand Reply at 12, because the Complaint makes no other attempt to plead the elements of an unfair practice claim. Although the CPPA does not expressly define what constitutes an "unfair" trade practice, it directs courts to give "due consideration and weight . . . to the interpretation by the Federal Trade Commission and the federal courts." D.C. Code § 28–3901(d) (citing 15 U.S.C. § 45(a)). The FTC Act defines an "unfair" practice as one that is (1) "likely to cause substantial injury to consumers" (2) "which is not reasonably avoidable by consumers themselves and" (3) "not outweighed by countervailing benefits to consumers or to competition." 15 U.S.C. § 45(n). Whether a particular practice is unfair "depends upon the surrounding circumstances of the particular case." *Am. Fin. Servs. Ass'n v. FTC*, 767 F.2d 957, 966 (D.C. Cir. 1985). Thus, even if a trade practice is likely to cause substantial injuries to consumers that consumers cannot avoid, the CPPA does not prohibit it unless the alleged harms to consumers are not outweighed by countervailing benefits. *See Yimam v. Myle*

Vape, Inc., 2020 WL 13614925, at *6–7 (D.C. Super. Ct. June 11, 2020) (dismissing CPPA claim for failing to address "the cost-benefit calculus" for the "third element[] of an unfairness claim").

Although the Complaint refers vaguely to the FTC Act's test for unfairness, *see* Compl. ¶ 71, NACA does not even try to plead facts demonstrating why any of the challenged conduct constitutes an unfair trade practice under that test, and it has disclaimed that its unfairness claim depends on finding a violation of the FCRA. Most glaringly, NACA makes no attempt to allege facts regarding the "countervailing benefits" of RentGrow's tenant screening practices. *Id.* NACA's pleading failure is a separate and independent basis for dismissal.

2. *NACA Fails to Allege Facts Showing RentGrow Employed an Unfair Practice.*

NACA's unfairness claim also fails because its Complaint does not allege facts establishing that RentGrow's conduct constitutes an "unfair" practice. NACA asserts that "[t]he FTC has noted specifically that the use of AI and ADM systems which discriminate based on protected classes . . . is prohibited under its own unfair or deceptive acts or practices authority." Compl. ¶ 96. Even if true, NACA has not alleged facts showing that RentGrow employs any such practices.

A close read of NACA's Complaint reveals that there are no factual allegations to support NACA's conclusory assertion that RentGrow "uses AI and ADM systems" to compile third party data into tenant screening information. *Id.* ¶ 29. NACA alleges as a general matter that AI or ADM can introduce inaccuracies or bias. But nowhere in the Complaint are there allegations that RentGrow itself provided inaccurate or biased data. *See, e.g.*, *id.* ¶¶ 21–22, 33, 36–40.

Other allegations confirm the speculative nature of NACA's Complaint. NACA asserts that "[f]alse or incomplete tenant screening reports can directly impact whether District residents receive housing," but it does not identify a single instance in which a District resident was in fact denied housing because of information that RentGrow provided to a housing provider. *Id.* ¶ 53;

see also, id. ¶¶ 57, 59 (speculating that consumers could "potentially" or "likely" be denied housing). Nor has NACA alleged that RentGrow is responsible for any housing decision ultimately made by a housing provider. The only agreement identified in NACA's Complaint confirms that RentGrow "plays no role in any tenancy decisions." DCHA Contract at 2 § 4.b.

NACA's allegations are not "enough to raise a right to relief above the speculative level." *Twombly*, 550 U.S. at 555. Having identified no inaccuracies, no consumers suffering any alleged damages, and no causal link between RentGrow's service and any hypothetical damages, NACA cannot proceed with its claim. *See Turlock Irr. Dist. v. FERC*, 786 F.3d 18, 24 (D.C. Cir. 2015) (alleged harms "purely conjectural" where plaintiff's theory "stacks speculation upon hypothetical upon speculation," including because it required assumptions "regarding the future behavior of third parties"). The court "must retain the power to insist upon some specificity in pleading before allowing a potentially massive factual controversy to proceed." *Twombly*, 550 U.S. at 558.

C. NACA's CPPA Claim Is Preempted by the FCRA.

If this Court concludes that NACA has stated a CPPA claim—and NACA has not—it should nevertheless dismiss that claim as preempted by the FCRA. The FCRA has two express preemption provisions: 15 U.S.C. §§ 1681h(e) and 1681t. Both bar aspects of NACA's claim.

First, § 1681h(e) prohibits "any action or proceeding in the nature of . . . negligence with respect to the reporting of information against any consumer reporting agency . . . except as to false information furnished with malice or willful intent to injure [the] consumer," and "[e]xcept as provided in sections 1681n and 1681o," the FCRA's private-right-of-action provisions. 15 U.S.C. § 1681h(e). In other words, plaintiffs challenging the accuracy of information disclosed by a consumer reporting agency are limited to bringing suit *under the FCRA*. The FCRA preempts lawsuits alleging negligent reporting of inaccurate information under *state law*. *Id.*; *see Young v. Equifax Credit Info. Servs., Inc.*, 294 F.3d 631, 638 (5th Cir. 2002) (holding that, absent proof of

"malice or willful intent to injure," the FCRA preempts state law claims); *Spitzer v. Trans Union LLC*, 140 F. Supp. 2d 562, 566 (E.D.N.C. 2000), *aff'd*, 3 F. App'x 54 (4th Cir. 2001) (dismissing a state unfair and deceptive trade practices claim on § 1681h(e) grounds).

NACA's challenge to the accuracy of information RentGrow provides falls squarely within the scope of §1681h(e) and is preempted. NACA accuses RentGrow of failing to adequately: (1) "inquire about the quality or limitations of the" information it receives, (2) "remedy any inaccuracies, omissions and biases" in that information, (3) "mitigate the impact of inaccuracies, errors, and biases," (4) "validate the outputs of its Service or to test the Service for accuracy and bias," and (5) ensure that consumer disputes submitted to RentGrow will "correct inaccuracies present within the third-party data sources that RentGrow uses." Compl. ¶¶ 28, 30, 58.

These claims sound in a negligence theory: NACA does not accuse RentGrow of willfully or maliciously providing inaccurate information, and its allegation that RentGrow "knowingly" used "flawed third-party information," *id.* ¶ 32, is not enough to bring this case within § 1681h(e)'s exception for "false information furnished with malice or willful intent to injure [the consumer]." A speaker acts with "malice" when they "either knew [a statement] was false or acted in reckless disregard of its truth or falsity." *Wiggins v. Equifax Servs., Inc.*, 848 F. Supp. 213, 223 (D.D.C. 1993). Reckless disregard requires "evidence that the speaker entertained actual doubt about the truth of the statement." *Id.* The malice standard is a "high bar," *Zimmerman v. Al Jazeera Am., LLC*, 246 F. Supp. 3d 257, 280 (D.D.C. 2017), and NACA's conclusory allegation of knowledge is simply "a formulaic recitation of the elements of a cause of action" that "will not do," *Twombly*, 550 U.S. at 555; *see also Ihebereme*, 933 F. Supp. 2d at 99 (holding that state law claim was preempted by § 1681h(e) where complaint did "not allege malice"). The Complaint does not plead a single example of when RentGrow provided false information, much less maliciously. NACA's

claims are therefore preempted, because under § 1681h(e), the FCRA's private cause of actions are the exclusive remedies for the negligence-based claims in NACA's Complaint.

Second, § 1681t provides that "[n]o requirement or prohibition may be imposed under the laws of any State . . . with respect to any subject matter regulated under . . . section 1681i of [the FCRA], relating to the time by which a consumer reporting agency must take any action . . . in any procedure related to the disputed accuracy of information in a consumer's file." 15 U.S.C. § 1681t(b)(1)(B). Section 1681i governs the manner in which RentGrow must process consumer disputes about the information RentGrow reported. Thus, § 1681t expressly preempts any attempt to regulate how quickly RentGrow must respond to consumer disputes.

NACA's challenge to RentGrow's dispute resolution procedures falls squarely within the type of claims preempted by § 1681t(b)(1)(B). NACA complains that RentGrow's dispute procedure, "when utilized, takes up to 30 days," which NACA says is "untimely." Compl. ¶¶ 57, 59. But the FCRA regulates how long RentGrow has to process disputes and report the results of reinvestigation. After receiving a notice of dispute, resellers such as RentGrow have five days to determine whether it is the source of any alleged inaccuracy. 15 U.S.C. § 1681i(f)(2). If RentGrow is the source, it has twenty days after receiving the notice to correct the inaccuracy. *Id.* § 1681i(f)(2)(B)(i). If some other information provider is the source of the inaccuracy, RentGrow must forward the dispute to the provider, *id.* § 1681i(f)(2)(B)(ii), which then has thirty days to process the dispute and report the results of its reinvestigation to RentGrow, *id.* § 1681i(a)(1)(A). After receiving the provider's results, RentGrow must then "immediately" reconvey those results to the consumer. *Id.* § 1681i(f)(3)(B). NACA's attempt to use the CPPA to challenge RentGrow's dispute process as "untimely," therefore is expressly preempted by § 1681t(b)(1)(B).

CONCLUSION

This Court should dismiss the Complaint with prejudice.

ORAL HEARING REQUESTED.

June 27, 2025

Respectfully submitted,

/s/ Andrew Soukup

Andrew Soukup (D.C. Bar No. 995101)
Valerie L. Hletko (D.C. Bar No. 485610)
Jehan A. Patterson (D.C. Bar No. 1012119)
Alyssa C. McGraw (D.C. Bar No. 1671498)
Andrew Gonzales (D.C. Bar. No. 90033537)
Maeve McBride (D.C. Bar. No. 90030005)
COVINGTON & BURLING LLP
One CityCenter, 850 Tenth Street, NW
Washington, DC 20001
Email: vhletko@cov.com
asoukup@cov.com
jpatterson@cov.com
amcgraw@cov.com
agonzales@cov.com
mmcbride@cov.com

Counsel for Defendant RentGrow, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2025, a copy of the foregoing document was served on all counsel of record via eFileDC.

By: */s/ Andrew Soukup*
Andrew Soukup