

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

**NATIONAL ASSOCIATION OF
CONSUMER ADVOCATES, INC.,**

Plaintiff,

v.

GEMINI TRUST COMPANY LLC,

Defendant.

Case No. 2024 CAB 003999

Judge Maribeth Raffinan

ORDER DENYING DEFENDANT’S MOTION TO COMPEL ARBITRATION

Before the Court is Defendant Gemini Trust Company, LLC’s *Motion to Compel Arbitration*, filed on February 14, 2025. On March 7, 2025, Plaintiff National Association of Consumer Advocates, Inc. (“NACA”), filed a *Memorandum in Opposition*. Defendant Gemini Trust Company, LLC (“Gemini”), filed a *Reply* on March 21, 2025. The Court held a hearing on Gemini’s *Motion to Compel Arbitration* on May 15, 2025.

For the reasons set forth below, the Court will deny Gemini’s *Motion*, lift the stay on discovery, vacate the remote status hearing, and set the matter for a remote scheduling conference in thirty days to permit the Parties sufficient time to confer about the appropriate next steps in this litigation.

I. BACKGROUND

On June 26, 2024, NACA initiated the instant litigation with its filing of a *Complaint*, alleging one count for relief under the D.C. Consumer Protection Procedures Act (“CPPA,” as codified at D.C. Code §§ 28-3901 *et seq.*). Compl. ¶¶ 3, 55-70. NACA alleged that Gemini, which operates a cryptocurrency trading platform, requires consumers to agree to a User Agreement that contains terms violative of the federal Electronic Funds Transfer Act (“EFTA”)

and related regulations as a condition of using its platform, *id.* ¶¶ 26-52, and that such violations of the EFTA and misrepresentations about Gemini and consumer’s rights thereunder constitute violations of D.C. Code § 28-3905(b)(2) and § 28-3894(e)(1), *id.* ¶ 67. NACA invoked D.C. Code § 28-3905(k)(1)(D)(i) as the basis for its standing to bring suit, *id.* ¶¶ 57, 61, alongside allegations explaining its status as a nonprofit consumer advocacy organization, *id.* ¶¶ 4, 7-9, 62, and asserting that it was “bring[ing] this action on behalf of all District of Columbia Gemini users who have been subject to Gemini’s unfair and deceptive trade practices[,]” *id.* ¶ 63.

After Gemini waived service of the summons, *see* Waiver of the Serv. of Summons (July 24, 2024), on August 14, 2024, Gemini removed the matter to the U.S. District Court for the District of Columbia, *see* Notice of Filing of Notice of Removal (Aug. 14, 2024) (initiating U.S. District Court case number 1:24-cv-02356). The U.S. District Court remanded the matter on December 2, 2024, after concluding that it lacked jurisdiction over the removed case because NACA did not satisfy the requirements for Article III standing. *See* Remand (cover sheet) (Dec. 2, 2024); *id.* at 6-14 (memorandum opinion dated November 18, 2024, granting NACA’s motion for remand) (Bates, J.). Thereafter, Gemini filed an *Answer* on January 21, 2025. The Parties subsequently indicated that Gemini intended to file a motion to compel arbitration and that a briefing schedule to resolve the motion in advance of all other events would be appropriate. *See* Joint Praecipe Requesting Scheduling Order (Feb. 5, 2025). The Court issued a scheduling order accordingly. *See* Feb. 6, 2025 Order.

On February 14, 2025, Gemini filed its *Motion to Compel Arbitration* alongside some 220 pages of exhibits in support. *See generally* Gemini Trust Co., LLC’s Mot. to Compel Arb. [hereinafter “Def.’s Mot.”]. NACA filed its *Memorandum in Opposition* on March 7, 2025. *See generally* Pl.’s Mem. in Opp’n to Def. Gemini Trust Co., LLC’s Mot. to Compel Arb.

[hereinafter “Pl.’s Opp’n”]. Gemini filed its *Reply* on March 21, 2025. *See generally* Gemini Trust Co., LLC’s Reply in Supp. of Mot. to Compel Arb. [hereinafter “Def.’s Reply”]. The Court granted Gemini’s unopposed motion to stay discovery pending resolution of its motion to compel arbitration. *See* Omnibus Order (March 24, 2025). The Court heard oral arguments at the May 15, 2025 remote motion hearing. Later that same day, NACA filed a *Notice of Errata* correcting a citation in its *Memorandum in Opposition* that its counsel identified as erroneous during oral argument. *See* Notice of Errata (May 15, 2025) (correcting *Morris v. Fort Myer Constr. Corp.*, 308 A.3d 73 (D.C. 2023), to *Osbourne v. Capital City Mortgage Corp.*, 727 A.2d 322, 325 (D.C. 1999), on page 9 of NACA’s *Memorandum in Opposition*).

II. LEGAL STANDARD

The District of Columbia has adopted the Revised Uniform Arbitration Act (“RUAA”), as codified at D.C. Code §§ 16-4401 *et seq.* “A provision for mandatory binding arbitration within a consumer arbitration agreement is void and unenforceable except to the extent federal law provides for its enforceability.” D.C. Code § 16-4403(d). Under the Federal Arbitration Act (“FAA”), as codified at 9 U.S.C. §§ 1 *et seq.*, an arbitration clause is “valid, irrevocable, and enforceable, save upon such grounds as exist at law or in equity for the revocation of any contract” 9 U.S.C. § 2. Upon a motion presenting “an agreement to arbitrate and alleging another person’s refusal to arbitrate pursuant to the agreement,” D.C. Code § 16-4407(a), or a motion “alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate,” *id.* § 16-4407(b), the Court is required to “proceed summarily” and stay all related judicial proceedings, *id.* § 16-4407(a), (b), (e), with the only issue for decision being whether there is “an enforceable agreement to arbitrate,” *id.* § 16-4407(a), (b). “The court

may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.” *Id.* § 16-4407(d).

The Court of Appeals has explained:

In reviewing a decision to compel arbitration under the Federal Arbitration Act, we consider first whether the parties had an agreement to arbitrate the dispute. We make this determination based on ordinary state-law contract principles. The FAA does not require parties to arbitrate a dispute unless they have agreed to do so. If it is determined that the parties had a valid agreement to arbitrate, then we consider next whether the parties’ dispute falls within the scope of their agreement.

Bank of Am., N.A. v. District of Columbia, 80 A.3d 650, 667 (D.C. 2013) (citations omitted).

III. DISCUSSION

A. Parties’ Arguments

Gemini contends that NACA’s claims are subject to arbitration and accordingly requests an order compelling arbitration and staying all proceedings in Superior Court pending completion of arbitration. Def.’s Mot. 1, 21. Gemini first contends that the FAA and New York law applies to the determination of whether there is an agreement to arbitrate due to the User Agreement’s falling within 9 U.S.C. § 2, express incorporation of the FAA, and choice of law clause selecting New York law. *Id.* at 6-8. Gemini next contends that the User Agreement’s arbitration clause is valid and enforceable as to each of the users NACA purports to represent, *id.* at 8-9 (collecting cases enforcing the User Agreement), and that the User Agreement’s preclusion of any representative, class, or collective actions is also valid and enforceable, *id.* at 10. Gemini posits that it would be inappropriate for NACA, acting in a representative capacity on behalf of users of Gemini’s platform, to have more rights than the users in bringing suit. *Id.* at 10-12 (citing “long-settled maxim of common law that a party acting in a representative capacity acquires no greater legal rights than those held by the person they are representing” and “equally

well-settled” principle that “statutes in derogation of common law must be strictly construed”). As no individual user would be able to “bring an action” under the CPPA that would not be subject to arbitration, Gemini contends, NACA’s capacity must be similarly limited; and as NACA cannot identify “a consumer or class of consumers that could bring suit in their own right,” NACA’s claims cannot escape arbitration. *Id.* at 12.

Gemini further contends that to the extent that D.C. Code § 28-3905(k)(1)(D)(i) permits NACA to avoid arbitration and bring suit, such a result would conflict with, and must be preempted by, the FAA. Def.’s Mot. 13-15 (contending that the FAA “prohibits state law from displacing arbitration agreements through novel means” and discussing Supreme Court cases). Gemini also asserts that individual arbitration of claims does not impede the CPPA’s purposes because consumers can still vindicate their statutory rights in arbitration. *Id.* at 15-16.

Gemini concludes by contending that (1) the only issue before the Court is whether an arbitration agreement exists, *id.* at 16-18 (citing User Agreement’s clause delegating issue of whether claims are arbitrable to arbitrator); (2) NACA cannot simultaneously rely upon the User Agreement to its benefit and cherry-pick unfavorable clauses to repudiate, *id.* at 18-20; and (3) NACA’s claims fall within the scope of the arbitration agreement, *id.* at 20-21.

In opposition, NACA first emphasizes that it never agreed to, and is thus not bound by, the User Agreement—and such lack of an agreement precludes any action to force NACA into an arbitration to which it never agreed. Pl.’s Opp’n 2-3; *see also id.* at 20-21 (contending User Agreement’s delegation clause is not applicable as NACA never agreed to the clause). NACA next contends that in any event, it is not bound by the User Agreement because the basis for its claims is statutory, not contractual, namely, that the CPPA creates an independent statutory enforcement authority that is not derivative of the individual users’ rights. *Id.* at 4-9; *see also id.*

at 9-11 (contending Gemini’s equitable estoppel argument fails because in bringing suit, NACA is not relying upon the User Agreement in an attempt to enforce its provisions). NACA then contends that the User Agreement’s prohibition against representative actions does not preclude its suit because (1) a clause waiving substantive rights of a non-party to an agreement is unenforceable, *i.e.*, individual users could not have waived NACA’s right, under the CPPA, to bring an enforcement action, *id.* at 12-14; (2) accepting Gemini’s arguments would extinguish one of the CPPA’s statutory enforcement mechanism and representative actions altogether, contrary to case law indicating that enforceable arbitration clauses merely send actions to a different forum and do not extinguish substantive rights, *id.* at 14-16; and (3) the text of the CPPA does not support Gemini’s arguments, *id.* at 16-18 (asserting individual users still can “bring an action” under the CPPA, even if such claims would be subject to arbitration, and that the CPPA does not provide that public interest organizations inherit the limits on individual consumers’ claims).

As to possible preemption by the FAA, NACA contends that the CPPA’s authorization of public interest organizations to bring enforcement actions does not “actually conflict” with the FAA. *Id.* at 18-20 (asserting actual conflict exists only where relevant state law “specifically disfavors arbitration,” but CPPA’s text and legislative history plainly do not indicate unique targeting and disfavor of arbitration).

NACA concludes by contending that should the Court find that NACA is bound by the User Agreement, the User Agreement is unenforceable because it is both procedurally and substantively unconscionable. *Id.* at 22-23.

In reply, Gemini reiterates that (1) NACA is standing in the shoes of consumers who are bound by the arbitration agreements, Def.’s Reply 2-5; and (2) the FAA preempts the CPPA’s

authorization of representative suits by public interest organizations because such authorization creates a real, practical conflict with the FAA that must be resolved in favor of the FAA and arbitration, *id.* at 5-7.

B. Whether the User Agreement is Binding on NACA

For Gemini's *Motion* to be granted, there must be a valid agreement to arbitrate between the Parties. *See, e.g., Bank of Am.*, 80 A.3d at 667. Under the RUAA, a mandatory binding arbitration clause in a consumer arbitration agreement—such as in Gemini's User Agreement—is unenforceable except to the extent that federal law permits its enforcement. D.C. Code § 16-4403(d). Thus, the FAA is the governing law as to whether the User Agreement's arbitration clause is enforceable. *See* 9 U.S.C. § 2 ("A written provision in . . . a contract evidencing a transaction involving commerce to settle by arbitration a controversy thereafter arising out of such contract or transaction . . . shall be valid, irrevocable, and enforceable, save upon grounds as exist at law or in equity for the revocation of any contract . . ."). Issues concerning who the User Agreement binds, however, are governed by "ordinary state-law principles." *Bank of Am.*, 80 A.3d at 667; *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 943 (1995). If the User Agreement is binding and applicable, then the User Agreement's choice-of-law clause requires application of New York law and the FAA to interpret the provisions of the agreement. *See, e.g., Prisco v. Stroup*, 3 A.3d 316, 319 (D.C. 2010) (applying choice of law as mandated in agreement's choice-of-law clause). All other procedural issues are governed by District of Columbia law as the law of the forum. *Olivarius v. Stanley J. Sarnoff Endowment for Cardiovascular Sci., Inc.*, 858 A.2d 457, 463 (D.C. 2004).

Here, NACA is not a party to the User Agreement, and the record does not show any intent on NACA's part to be bound by the User Agreement. Thus, it appears that Gemini's

Motion to Compel Arbitration should be denied because “[t]he FAA does not require parties to arbitrate a dispute unless they have agreed to do so.” *Bank of Am.*, 80 A.3d at 667 (citing *Volt Info. Scis., Inc. v. Bd. of Trustees of Leland Stanford Junior Univ.*, 489 U.S. 468, 478 (1989)). The Court’s inquiry cannot end there, however, as the nature of NACA’s role and standing in bringing suit may still require the Court to compel arbitration. If NACA’s role in bringing its claims is purely to stand in place of individual consumers who are party to the agreement, then it would appear that NACA is required to go to arbitration because individual consumers who agree to arbitrate should not be permitted to evade the consequences of their own contractual obligations by assigning (and funneling) their claims to a representative who brings a judicial suit premised on the individual users’ rights under the User Agreement. See *Leroy Adventures, Inc. v. Cafritz Harbour Grp.*, 640 A.2d 193, 199 (D.C. 1994) (assignee of contractual rights stands in same position as assignor, “deriving the same but no greater rights and remedies than those possessed by assignor”); *Int’l Ribbon Mills, Ltd. v. Arjan Ribbons, Inc.*, 325 N.E.2d 137, 139 (N.Y. 1975) (“It is elementary ancient law that an assignee never stands in any better position than his assignor. He is subject to all the equities and burdens which attach to the property assigned because he receives no more and can do no more than his assignor.”); cf. also *Epic Sys. Corp. v. Lewis*, 584 U.S. 497, 502-03, 508-10 (2018) (explaining that the FAA requires courts to enforce arbitration agreements by their terms, including terms requiring individualized arbitration proceedings); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 341-44 (2011) (explaining that the FAA preempts use of “generally applicable contract defenses” or other “state-law rules” to interfere “with fundamental attributes of arbitration”). On the other hand, if NACA’s role goes beyond merely standing in the place of individual consumers, then NACA cannot be said to be a mere representative who is bound by the User Agreement. Cf. *Gen. Tel.*

Co. v. Equal Emp. Opportunity Comm'n, 446 U.S. 318, 323 (1980) (holding Equal Employment Opportunity Commission was not required to meet requirements of Fed. R. Civ. P. 23 where it brought an enforcement action in its own name and pursuant to statutory authority to vindicate public interest). Thus, the Court must turn to how NACA was able to bring its suit in the first place: the CPPA's "public interest organization" clause, D.C. Code § 28-3905(k)(1)(D)(i).

"The CPPA was enacted to assure that a just mechanism exists to remedy all improper trade practices." *Grayson v. AT&T Corp.*, 15 A.3d 219, 239 (D.C. 2011) (internal quotation marks and footnote omitted). In providing for a private right of action under the CPPA, D.C. Code § 28-3905(k)(1), the D.C. Council enumerated a list of parties eligible to bring suit:

(A) A consumer may bring an action seeking relief from the use of a trade practice in violation of a law of the District.

(B) An individual may, on behalf of that individual, or on behalf of both the individual and the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District when that trade practice involves consumer goods or services that the individual purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

(C) A nonprofit organization may, on behalf of itself or any of its members, or on any such behalf and on behalf of the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District

(D)

(i) Subject to sub-subparagraph (ii) of this subparagraph, a public interest organization may, *on behalf of the interests of a consumer or a class of consumers*, bring an action seeking relief from the use by any person of a trade practice in violation of a law of the District *if the consumer or class could bring an action under subparagraph (A) of this paragraph for relief from such use by such person of such trade practice*.

(ii) An action brought under sub-subparagraph (i) of this subparagraph shall be dismissed if the court determines that 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)(A)-(D) (emphases added). Each enumerated category of plaintiffs sets forth a different basis for standing, as evidenced by the plain text of each enumerated category and buttressed by the “basic principle” that a statute must be read to give effect to each and every provision, “not rendering any provision superfluous,” *Grayson*, 15 A.3d at 238 (quoting *Tangoren v. Stephenson*, 977 A.2d 357, 360 n.12 (D.C. 2009)), and cases explaining the contours of standing under the CPPA. *See, e.g., Nides v. DVC Indus., Inc.*, 334 A.3d 1134, 1137-38 (D.C. 2025) (discussing incorporation of the “civil rights tradition” of “tester standing” with addition of D.C. Code § 28-3905(k)(1)(B)); *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 182-84 (D.C. 2021) (discussing 2012 amendments to CPPA adding in D.C. Code § 28-3905(k)(1)(C) and (D)).

Animal Legal Defense Fund v. Hormel Foods Corp., 258 A.3d 174 (D.C. 2012), is instructive on the exact contours of NACA’s standing under D.C. Code § 28-3905(k)(1)(D). In that case, the Court of Appeals held that the D.C. Council’s addition of subsection (k)(1)(D) was intended to modify—if not outright displace—Article III standing requirements and confer “maximum standing” on the subset of nonprofit organizations that satisfy the three requirements embedded in the subsection. *Animal Legal Def. Fund*, 258 A.3d at 183-85. In doing so, the Court of Appeals expressly noted that the subsection “excised the requirement that the suit be brought on behalf of the [nonprofit] organization or its members,” as otherwise required under D.C. Code § 28-3905(k)(1)(C), and “empowered” such organizations “to bring suits ‘on behalf of the interests of a consumer or a class of consumers’ *without pursuing any independent interest or the organization or its members*,” *id.* at 182-83 & n.5 (emphasis added); *see also id.* at 183 (citing definition of “public interest organization” in D.C. Code § 28-3901(a)(15)). Thus,

contrary to Gemini’s arguments, the “on behalf clause” of D.C. Code § 28-3905(k)(1)(D) confers standing on NACA to bring suit not as a mere representative of the individual users of Gemini’s platform, but as a “nonprofit ‘organized and operating,’ at least in part, ‘for the purpose of promoting interests or rights of consumers,’” *id.* at 185 (quoting D.C. Code § 28-3901(a)(15)). Furthermore, a careful reading of the enumerated categories of eligible plaintiffs indicates that subsection (k)(1)(D) is the only category that permits suit “on behalf *of the interests*” of consumers, as opposed to the stricter “on behalf of that individual” or “on behalf of itself or any of its members” language in the other subsections. *See* D.C. Code § 28-3905(k)(1)(A) (limiting standing to consumer); *id.* 28-3905(k)(1)(B) (limiting tester standing such that claims must involve individual to purchase or receive consumer goods); *id.* 28-3905(k)(1)(C) (limiting associational standing to claim of nonprofit or nonprofit’s members). If the D.C. Council intended subsection (k)(1)(D) to confer standing in a more limited representational capacity, the D.C. Council could have easily selected the language available in the immediately adjacent subprovisions in enacting subsection (k)(1)(D). *See also Animal Legal Def. Fund*, 258 A.3d at 184 (“[W]here the legislature implements a significant change in language, as it did when it created (k)(1)(D), courts presume a significant change in meaning.”). In other words, the CPPA confers standing on NACA to litigate on behalf of consumer interests generally such that NACA is not standing in the shoes of individual users of Gemini’s platform and need not map its claims onto the claims of individual users that, if brought by those users on their own, would be subject to the User Agreement’s arbitration clause. *See also id.* at 186 (noting organizations “routinely have multiple purposes at once, some subservient to others,” but that the D.C. Council intended subsection (k)(1)(D) to be satisfied where “promoting the interests of consumers” is a “part,” but not necessarily the “exclusive or even primary,” purpose of the organization bringing suit).

As to Gemini’s arguments concerning subsection (k)(1)(D)(i)’s requirement that NACA must be able to identify a consumer or class of consumers who “could bring an action” in their own right, the Court is unpersuaded by Gemini’s assertion that a consumer with a claim that is subject to arbitration would not be able to “bring an action” within the meaning of the CPPA. Once a consumer suffers injury arising from a CPPA violation, the CPPA authorizes the consumer to bring suit in the Superior Court. D.C. Code § 28-3905(k)(1)(A), (2); *see also Roberts v. Advanced Bldg. Design, Inc.*, No. 23-CV-0898, 2025 D.C. App. LEXIS 210, at *7-9 (D.C. July 24, 2025). The mere existence of an arbitration clause that governs the consumer’s claim does not automatically and absolutely preclude the consumer from bringing suit; to the contrary, as with any other contractual right, arbitration can be waived by choice or conduct of the other party to the transaction or agreement (*i.e.*, the merchant) who is otherwise entitled to invoke arbitration. *See, e.g., BDO USA, LLP v. Jia-Sabota*, 283 A.3d 699, 704-06 (D.C. 2022); *cf. Morgan v. Sundance, Inc.*, 596 U.S. 411, 417-19 (2022) (discussing waiver analysis in federal forum). Here, the individual consumers or class of consumers NACA identifies are the users of Gemini’s platform who were subjected to unlawful trade practices as a consequence of being forced to agree to the User Agreement as a condition of using Gemini’s platform. *See* Compl. ¶¶ 27-38, 63, 67. Each of the individual users, or all of them collectively, could have filed suits in Superior Court, whereupon it would be incumbent upon Gemini to move to compel arbitration pursuant to the User Agreement or litigate the claims in Superior Court.¹ As such, NACA’s

¹ In addition, the Court notes that the RUAA does not compel dismissal of a Superior Court action where arbitration is properly invoked. Instead, the RUAA merely provides that “[i]f the court orders arbitration, the court, on just terms, *shall stay any judicial proceeding* that involves a claim subject to the arbitration.” D.C. Code § 16-4407(f) (emphasis added). Thus, the Superior Court’s subject-matter jurisdiction over the underlying claim remains undisturbed, *i.e.*, the claim would still be able to proceed in Superior Court if no party invokes the exclusive forum-selection clause that is the agreement to arbitrate. *See Viking River Cruises, Inc. v.*

identification of the individual users who are parties to the User Agreement satisfies the second requirement of subsection (k)(1)(D)(i), namely, that the individual users “could bring an action” “seeking relief from the use of an unlawful trade practice in violation of a law of the District.” D.C. Code §§ 28-3905(k)(1)(A), (D)(i). To accept Gemini’s arguments to the contrary would improperly collapse the standing inquiry with the arbitrability inquiry, *cf. Grayson*, 15 A.3d at 229 (“Standing is a threshold jurisdictional question which must be addressed prior to an independent of the merits of a party’s claims.” (quoting *Bochese v. Town of Ponce Inlet*, 405 F.3d 964, 974 (11th Cir. 2005))), and read in additional limitations and procedural considerations that do not exist in the text of the CPPA.

Therefore, NACA’s claim, brought under the CPPA’s “public interest organization” standing provision, is not subject to arbitration as premised on the applicability of the User Agreement’s arbitration clause: (1) NACA is not a party to the User Agreement, thus precluding the User Agreement’s arbitration clause from being directly applicable to NACA’s CPPA claim; and (2) NACA is not bringing suit as a mere representative or assignee of the individual users who are party to the User Agreement, but rather in its own right on behalf of consumer interests generally, thus precluding any potential basis, premised on the User Agreement, requiring indirect application of the User Agreement’s arbitration clause to NACA’s claim. In view, however, of the Supreme Court’s decisions setting forth the scope of preemption by the FAA,

Moriana, 596 U.S. 639, 653 (2022) (“[A]n arbitration agreement is a specialized kind of forum-selection clause that posits not only the situs of suit but also the procedure to be used in resolving the dispute. An arbitration agreement thus does not alter or abridge substantive rights; it mere changes how those rights will be processed. And so we have said that by agreeing to arbitrate a statutory claim, a party does not forgo the substantive rights afforded by the statute; it only submits to their resolution in an arbitral forum.” (internal citations, quotation marks, and original brackets and ellipsis omitted)); *King Carpentry, Inc. v. 1345 K St. SE, LLC*, 262 A.3d 1105, 1109 (D.C. 2021) (“Absent a forum selection clause, a plaintiff is free to sue wherever they can satisfy the requisite jurisdictional requirements.”).

see, e.g., *Concepcion*, 563 U.S. at 341 (noting state laws outright prohibiting “arbitration of a particular type of claim” are preempted by the FAA, “[b]ut the inquiry becomes more complex when a doctrine normally thought to be generally applicable . . . is alleged to have been applied in a fashion that disfavors arbitration”), the Court must address one final inquiry in resolving Gemini’s *Motion*: whether the CPPA’s authorization of “public interest organization” standing conflicts with the FAA.

C. Conflict with the FAA

The Court finds that there is no conflict between the CPPA’s “public interest organization” standing and the FAA. In *Equal Employment Opportunity Commission v. Waffle House, Inc.*, 543 U.S. 279 (2002), the Supreme Court addressed “whether an agreement between an employer and an employee to arbitrate employment-related disputes bars the Equal Employment Opportunity Commission (EEOC) from pursuing victim-specific judicial relief . . . in an enforcement action alleging that the employer has violated Title I of the Americans with Disabilities Act of 1990” 543 U.S. at 282. In holding that the arbitration agreement did not bar the EEOC’s enforcement action and pursuit of relief, the Supreme Court explained:

The FAA provides for stays of proceedings in federal district courts when an issue in the proceeding is referable to arbitration, and for orders compelling arbitration when one party has failed or refused to comply with an arbitration agreement. See 9 U.S.C. §§ 3 and 4. We have read these provisions to “manifest a ‘liberal federal policy favoring arbitration agreements.’” *Gilmer* [*v. Interstate/Johnson Lane Corp.*, 500 U.S. 20, 25 (1991) (quoting *Moses H. Cone Mem’l Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 24 (1983)).] Absent some ambiguity in the agreement, however, it is the language of the contract that defines the scope of disputes subject to arbitration. See *Mastrobuono v. Shearson Lehman Hutton, inc.*, 514 U.S. 52, 57 (1995) (“The FAA’s proarbitration policy does not operate without regard to the wishes of the contracting parties”). For nothing in the statute authorizes a court to compel arbitration of any issues, or by any parties, that are not already covered in the agreement. The FAA does not mention

enforcement by public agencies; it ensures the enforceability of private agreements to arbitrate, but otherwise does not purport to place any restriction on a nonparty's choice of a judicial forum.

Waffle House, 534 U.S. at 289. The Supreme Court went on to reject the analysis of the decision below that sought to evaluate the “‘competing policies’ implemented by the ADA and the FAA” in determining whether the EEOC’s action was barred, expressly noting that the EEOC possessed independent statutory authority to bring suit and was not subject to the control or consent of the aggrieved employee in prosecuting suits:

If it were true that the EEOC could prosecute its claim only with [the employee’s] consent, or if its prayer for relief could be dictated by [the employee], the [court of appeals’s] analysis might be persuasive. But once a charge is filed, the exact opposite is true under the statute—the EEOC is in command of the process. The EEOC has exclusive jurisdiction over the claim for 180 days. During that time, the employee must obtain a right-to-sue letter from the agency before prosecuting the claim. If, however, the EEOC files suit on its own, the employee has no independent cause of action, although the employee may intervene in the EEOC’s suit. In fact, the EEOC takes the position that it may pursue a claim on the employee’s behalf even after the employee has disavowed any desire to seek relief. The statute clearly makes the EEOC the master of its own case and confers on the agency the authority to evaluate the strength of the public interest at stake. Absent textual support for a contrary view, it is the public agency’s province—not that of the court—to determine whether public resources should be committed to the recovery of victim-specific relief. And if the agency makes that determination, the statutory text unambiguously authorizes it to proceed in a judicial forum.

Id. at 291-92 (internal citations omitted); *see also id.* at 294 (“[T]he proarbitration policy goals of the FAA do not require the agency to relinquish its statutory authority if it has not agreed to do so.”). As such,

The compromise solution reached by the Court of Appeals turns what is effectively a forum selection clause into a waiver of a nonparty’s statutory remedies. But if the federal policy favoring arbitration trumps the plain language of Title VII and the contract, the EEOC should be barred from pursuing any claim outside the arbitral forum. If not, then the statutory language is clear; the EEOC

has the authority to pursue victim-specific relief regardless of the forum that the employer and employee have chosen to resolve their disputes. Rather than attempt to split the difference, we are persuaded that, pursuant to Title VII and the ADA, whenever the EEOC chooses from among the many charges filed each year to bring an enforcement action in a particular case, the agency may be seeking to vindicate the public interest, not simply provide make-whole relief for the employee, even when it pursues entirely victim-specific relief. To hold otherwise would undermine the detailed enforcement scheme created by Congress simply to give greater effect to an agreement between private parties that does not even contemplate the EEOC's statutory function.

Id. at 295-96 (footnotes omitted).

Here, NACA is sufficiently analogous to the EEOC in *Waffle House*. NACA is not a party to the User Agreement. Although NACA is not a government agency and not otherwise bringing suit on behalf of the government,² NACA's ability to bring suit is authorized by the CPPA and not subject to the control or consent of individual consumers in its evaluation of the interests at stake, determination on whether to bring suit, and prosecution of a CPPA claim. And in determining to bring suit under the CPPA's "public interest organization" standing provision, NACA is "seeking to vindicate the public interest, not simply provide make-whole relief" for the aggrieved individual consumers. *Id.* at 296. To accept Gemini's arguments and read the FAA as

² The CPPA's purposes indicate that the private cause of action is part of a larger framework, involving not only the government, but also private actors, to "assure that a just mechanism exists to remedy all improper trade practices and deter the continuing use of such practices" and "promote, through effective enforcement, fair business practices throughout the community." D.C. Code § 28-3901(b)(1), (2); *see also Grayson*, 15 A.3d at 239-43. As such, it appears that representative actions under the CPPA are purely extensions of the private right of action and not some sort of *qui tam* action where the representative plaintiff "sues as an agent or proxy of the State." *Viking River Cruises*, 596 U.S. at 645 (internal quotation marks omitted); *see also id.* at 644 n.1 (citing *Vermont Agency of Nat. Res. v. United States ex rel. Stevens*, 529 U.S. 765, 768 n.1 & 774-75 (2000)); *see also District of Columbia v. ExxonMobil Oil Corp.*, 172 A.3d 412, 424-25 & n.18 (D.C. 2017) (discussing *qui tam* statutes in context of government interests at stake when statutes are violated); *id.* at 172 A.3d at 442-46 (Easterly, J., dissenting) (explaining that mere enactment of a civil statute does not automatically confer a sovereign interest for the government to claim standing to sue to affirmatively enforce the statute against other parties).

preempting such suits under the CPPA would “turn[] what is effectively a forum selection clause into a waiver of a nonparty’s statutory remedies”—a proposition the Supreme Court squarely rejected in *Waffle House*. *Id.* at 295.

In their filings and at oral argument, the Parties make much about *Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022). In that case, the Supreme Court considered whether the FAA preempted California law, arising from California judicial precedents, that “invalidates contractual waivers of the right to assert representative claims under California’s Labor Code Private Attorneys General Act of 2004” (“PAGA”), 596 U.S. at 643. The plaintiff there had brought suit under the PAGA, asserting a claim that her former employer had failed to pay her final wages as required by the California Labor Code, *id.* at 647, alongside a wide variety of other Labor Code violations related to other employees, *id.* The employer moved to compel arbitration of the plaintiff’s “individual” claim, *i.e.*, “the claim that arose from the violation she suffered,” and to dismiss the other, “representative” or “non-individual” claims. *Id.* at 648. The California courts, applying California precedent holding that “categorical waivers of PAGA standing” and “agreements to separately arbitrate or litigate” “individual” PAGA claims were “contrary to state policy,” denied the employer’s motion to compel in its entirety. *Id.* at 648-49. The Supreme Court concluded that there was a conflict between the FAA and California law only as to California’s prohibition on “division of PAGA actions into individual and non-individual claims through an agreement to arbitrate.” *Id.* at 662. In holding so, the Supreme Court discussed the permissible structure and configuration of claims brought in a “representative action” under the PAGA, *id.* at 648-49; *see also id.* at 653-54 (noting PAGA actions are *qui tam* actions representing the State’s claims “on a representative basis, not an individual cause of action”), concluded that the FAA did not “mandate the enforcement of waivers of representative

capacity as a categorical rule,” *id.* at 657-59, and emphasized that California law’s prohibition on claim-splitting effectively “impos[ed] an expansive rule of joinder in the arbitral context [that] would defeat the ability of parties to control which claims are subject to arbitration,” *id.* at 660-62. As such, the employer was entitled to compel arbitration of the “individual” claim. *Id.* at 662. As to the “representative” or “non-individual” claims, the Supreme Court concluded that dismissal for lack of standing was appropriate because the PAGA withheld statutory standing for plaintiffs who are “no different from a member of the general public,” and the “par[ing] away” of the “individual” claim rendered the plaintiff indistinguishable from a member of the general public. *Id.* at 663.

Viking River Cruises, however, is not apposite to NACA’s claims here. First and foremost, unlike the parties in *Viking River Cruises*, NACA is not a party to the User Agreement and has not otherwise manifested any intent to be bound by the User Agreement. *See id.* at 651 (“And that right would not be a right to arbitrate based on an *agreement* if generally applicable law could be used to coercively impose arbitration in contravention of the first principle of our FAA jurisprudence: that arbitration is strictly a matter of consent.” (internal quotation marks and brackets omitted)). And second, the CPPA’s conferral of standing to public interest organizations to bring suit under D.C. Code § 28-3905(k)(1)(D) is not predicated on a distinction between “individual” or “non-individual” claims nor premised on bringing suit on the behalf of the District of Columbia or any individual consumer. *See supra* Part III-B. And third, the CPPA’s “public interest organization” standing is a type of standing that is even more expansive than the PAGA’s conferral of standing as discussed in *Viking River Cruises*. *See also Animal Legal Def. Fund*, 258 A.3d at 184 (quoting D.C. Council Committee Report explaining that D.C.

Code § 28-3905(k)(1)(D) would confer standing beyond scope of subprovisions (k)(1)(A) through (C), prior D.C. court decisions, and prior federal court decisions).

Therefore, the Court must conclude that there is no conflict between the FAA and the CPPA. The FAA was not intended to displace judicial tribunals as a forum for any possible challenge, however direct or incidental, to the substance of private agreements between private parties and the lawfulness of conduct arising thereunder. Where a nonparty to an agreement with an arbitration clause is exercising its right to bring suit to enforce a statutory remedy that touches upon the agreement, the FAA does not command that the nonparty be compelled to go to arbitration. Thus, Gemini's *Motion to Compel Arbitration* must be denied because "there is no enforceable agreement" to arbitrate. D.C. Code § 16-4407(c); *Bank of Am.*, 80 A.3d at 667. The Court's decision here constitutes "a final decision" pursuant to D.C. Code § 16-4407(e).

ACCORDINGLY, it is by the Court this 7th day of August, 2025, hereby

ORDERED that Defendant Gemini Trust Company, LLC's *Motion to Compel Arbitration*, filed on February 14, 2025, is **DENIED**; and it is further

ORDERED that the stay on discovery entered on March 24, 2025, is **LIFTED**; and it is further

ORDERED that August 14, 2025 remote status hearing is **VACATED**; and it is further

ORDERED that a **remote** scheduling conference is set for September 19, 2025, at 9:30 a.m., in Courtroom 519.³



Judge Maribeth Raffinan

³ Courtroom 519 is accessible at <<https://dccourts.webex.com/meet/ctb519>> or by dialing (202) 860-2110 (local) or (844) 992-4726 and entering meeting ID number 129 705 0412. As all Parties are represented by counsel, counsel are encouraged to confer and submit a praecipe requesting a scheduling order in lieu of appearing for the scheduling conference.

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