SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

NATIONAL ASSOCIATION OF CONSUMER ADVOCATES, Plaintiff, v. RENTGROW, INC., and YARDI SYSTEMS, INC. Defendants.	Case No. 2024-CAB-006253 Judge Leslie A. Meek Next Court Date: Feb. 26, 2026 at 9:00 A.M. Event: Remote Mediation Session

PLAINTIFF'S MEMORANDUM OF LAW IN OPPOSITION TO RENTGROW, INC.'S MOTION TO DISMISS

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INTRODUCTION

Plaintiff National Association of Consumer Advocates, Inc. ("NACA") alleges that Defendant RentGrow Inc. ("RentGrow") violates the Consumer Protection Procedures Act ("CPPA"), D.C. Code §§ 28-3901–13, based on deceptive and unfair conduct related to RentGrow's tenant screening services (the "Service"). As alleged in the Complaint, "RentGrow's Service generates reports based improperly on inaccurate and/or biased information, which negatively impacts individuals in the District who need a RentGrow report to obtain housing." (Compl. ¶ 2.) These inaccurate reports contrast with RentGrow's representations that it—

- "prepares tenant screening reports for property owners and managers who use the information to make ***informed*** decisions about rental applications" (*id.* ¶ 45 (emphasis added in pleading));
- will provide its Services in "a professional, good, workmanlike manner consistent with industry standards" (*id.* ¶ 48);
- will comply "with all laws directly applicable to RentGrow's performance of [its agreement with DCHA]" (*id.*); and
- must comply with the Fair Credit Reporting Act ("FCRA") 15 U.S.C. § 1681 *et seq.*, "which requires RentGrow to maintain certain accuracy and data correction procedures" (*id.*).

This contrast forms the basis for this public-interest CPPA action.

"[S]ince 2018, RentGrow has contracted with the D.C. Housing Authority ('DCHA') to provide its Service to landlords participating in the District's Housing Choice Voucher Program ('HCVP')," intended to help "low- and moderate-income residents find and afford housing by providing vouchers to allow participants to pay rent in privately owned properties around the city." (*Id.* ¶ 1.) This contract arrangement means that "a potential tenant's eligibility for housing under the HCVP is often dependent on data that RentGrow provides in its reports, and RentGrow's Service is critical for individuals who need affordable housing in the District." (*Id.*) RentGrow's

reports are generated using artificial intelligence, such as Automated Decision-Making ("ADM") systems. (*Id.* ¶ 21.)[1] RentGrow "purchases credit data from vendors such as Experian, Equifax, and TransUnion, and utilizes public records compiled by companies like LexisNexis." (*Id.* ¶ 24.) "These companies' information is notoriously inaccurate, having reported error rates in their consumer data of not less than 13 percent, affecting more than 10 million people." (*Id.* ¶ 25.) Despite RentGrow's reliance on third-party data with high rates of inaccuracies, "[o]nly in 'rare instances' does a human actually review" the information in reports "for any inconsistent or nonreportable information." (*Id.* ¶ 28 n.21.) The inaccurate data that RentGrow's ADM systems do not catch "reflect racial bias" (*id.* ¶ 34), which is why the Federal Trade Commission ("FTC") "recommends rigorous testing of algorithms to prevent these disparate impacts" (*id.* ¶ 97).

RentGrow's Motion to Dismiss ("MTD") mischaracterizes the conduct at issue and application of the CPPA. RentGrow invokes the District Court's remand decision, *see Nat'l Ass'n of Consumer Advocs. v. RentGrow, Inc.*, No. 24-3218, 2025 U.S. Dist. LEXIS 94421 (D.D.C. May 16, 2025) ("Remand Decision"), arguing that "NACA persuaded a federal court to order remand only by narrowing its claims, and those narrowed claims are not viable." (MTD at 2.) But NACA never narrowed its claims; instead, RentGrow chose to present the allegations as more expansive than they are in an attempt to manufacture federal jurisdiction. Regardless of how RentGrow frames the Complaint, NACA has statutory standing to pursue this action, NACA has plausibly alleged a CPPA violation, and there is no preemption issue. RentGrow's motion should be denied.

LEGAL STANDARD

On a motion to dismiss under 12(b)(6), "the Court must accept all allegations within the

[1] As used in the Complaint, ADM systems refer to any "tool, software, system, process, function, program, method, model, and/or formula designed with or using computation to automate, analyze, aid, augment, and/or replace government decisions, judgments, and/or policy implementation." (Compl. ¶ 21.)

complaint as true and view all facts and draw all reasonable inferences in the plaintiff's favor." *GMO Free USA v. Nestle Purina Petcare Co.*, No. 2020 CA 002775 B, 2021 D.C. Super. LEXIS 8, at *3-4 (Apr. 6, 2021) (Higashi, J.) (citations omitted). The "plaintiff [is] the master of the claim." *Caterpillar, Inc. v. Williams*, 482 U.S. 386, 392 (1987).

ARGUMENT

I. The CPPA Applies to RentGrow's Services.

The CPPA "is a comprehensive statute designed to provide procedures and remedies for a broad spectrum of practices which injure consumers." *Snowder v. District of Columbia*, 949 A.2d 590, 598 (D.C. 2008) (citation omitted). "[T]he statute should be read broadly to assure that th[ose] purposes are carried out." *Modern Mgmt. Co. v. Wilson*, 997 A.2d 37, 62 (D.C. 2010). RentGrow argues that it "does not conduct 'consumer transactions' and is not a 'merchant' or a 'consumer credit service organization'" and, therefore, should be exempt from the CPPA's coverage. (MTD at 6.) This is incorrect under applicable precedent.

First, RentGrow's Service is a "consumer transaction." The "CPPA recognizes explicitly that the 'goods and services' involved in a consumer transaction may concern 'any and all parts of the economic output of society, . . . includ[ing] consumer credit, franchises, business opportunities, real estate transactions, and consumer services of all types.'" *Julian Ford v. ChartOne, Inc.*, 908 A.2d 72, 83 (D.C. 2006) (citing D.C. Code § 28-3901(a)(7).) In *Julian Ford*, even though the plaintiff's attorney had made a request to the hospital contracting the defendant's services, for purposes of the CPPA, it was the plaintiff "who provided the 'economic demand" for the purchase of [the] medical records." *Id.* at 77, 82. Similarly, D.C. consumers create an "'economic demand' for the purchase of" RentGrow's Service by landlords and property managers who use it to screen tenants. *Id.* at 82. (*See* Compl. ¶ 2 n.4 (referencing Schedule A of the DCHA contract, which lists

fee schedule for RentGrow's Services, evincing economic demand).) A consumer transaction occurs when a defendant "receives something of very significant value in return for the use of its" services. *District of Columbia v. Meta Platforms, Inc.*, No. 2023-CAB-6550, 2024 D.C. Super. LEXIS 27, at *49-50 (Sept. 9, 2024) (Kravitz, J.). RentGrow receives payment from landlords and managers who pay for its Service as a result of consumer demand for housing. (Compl. ¶ 1.)

RentGrow cites *McDowell v. CGI Fed. Inc.*, No. 15-1157, 2017 U.S. Dist. LEXIS 83635 (D.D.C. June 1, 2017). (*See* MTD at 7.) But that case is distinguishable. In *McDowell v. CGI Fed. Inc.*, the plaintiff sued a company that provided "back-office services" for the State Department and the "product" in question was a passport, which is a "political document," rather than a "good" under the CPPA. *McDowell*, 2017 U.S. Dist. LEXIS 83635, at *2, 9-10. NACA is alleging that RentGrow is misleading consumers about its tenant screening Services—decidedly within the definition of services covered by the CPPA. *See* D.C. Code 28-3901(a)(7) ("'goods and services' means any and all parts of the economic output of society, at any stage or related or necessary point in the economic process, and includes consumer credit, [], real estate transactions, and consumer services of all types."). RentGrow is also providing more than "back-office services," as evidenced by the fact that a consumer whose tenant application gets denied due to a RentGrow report is directed to contact RentGrow's dispute process. (Compl. ¶ 57.)

Second, the CPPA defines a "merchant" as "a person . . . who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods ***or services,*** or a person who in the ordinary course of business does ***or would supply*** the goods or ***services which are or would be the subject matter of a trade practice***." D.C. Code § 28-3901(a)(3).[2] A "'trade practice' means any act which does or would create, alter, repair, furnish,

[2] Under the CPPA, a "'person' means an individual, firm, corporation, partnership, cooperative, association, or any other organization, legal entity, or group of individuals however organized." D.C. Code § 28-3901(a)(1).

make available, provide information about, or, directly or indirectly, solicit or offer for or effectuate, a sale, lease or transfer, of consumer goods or services." *Id.* § 28-3901(a)(6). The CPPA also applies in the landlord-tenant context. *See id.* §§ 28-3901(e), 28-3905(k)(6). RentGrow is on the supply-side of "trade practices arising from landlord-tenant relations"[3] because its Service is used "by landlords and property managers and owners evaluating low-income consumers' eligibility for safe and affordable housing under the District's HCVP program." (Compl. ¶ 23.) RentGrow's substantial connection to the denial of housing opportunities by landlords to tenants in the District "establish[es] a 'connection with' the trade practice in question." *McMullen v. Synchrony Bank*, 164 F. Supp. 3d 77, 92 (D.D.C. 2016). Importantly, the screening reports generated by RentGrow affect the eligibility of tenants. (*See, e.g.*, Compl. ¶ 56.) Analogously, in *May v. River East at Grandview*, the defendant was found to be a merchant in part due to its role in "controlling the eligibility of homebuyers." 322 A.3d 557, 569 (D.C. 2024).

RentGrow argues that it is "not liable under the CPPA if it 'sells nothing to' consumers and consumers 'obtain nothing from' the defendant." (MTD at 8 (citing *In re G-Fees Antitrust Litig.*, 584 F. Supp. 2d 26, 43 (D.D.C. 2008)).) But again, this is just not true. In *District of Columbia v. Meta Platforms, Inc.*, the CPPA applied to a defendant who offered a "free" service, *see* 2024 D.C. Super. LEXIS 27, at *49-50—meaning it does not matter whether RentGrow "sells" its service directly to consumers. (And as noted above, RentGrow does charge fees for its Service. (*See* Compl. ¶ 2 n.4 (Schedule A of the DCHA contract lists a fee schedule for RentGrow's Services).) *See Harrington v. New Residential Investment Corp*. No. 2021 CA 001684 B, 2023 D.C. Super. LEXIS 41, at *11 (July 25, 2023) (Williams, J.) (finding that defendants were merchants under the CPPA because they "provided services that directly benefited [plaintiff] and

[3] *See* D.C. Code § 28-3905(k)(6).

which were necessary to maintain the mortgage.").

Third, RentGrow contends that it is an exempted "consumer reporting agency" under D.C. Code § 28-4601(2)(D)(viii). (MTD at 8.) But NACA's CPPA claim does not rely solely on "violations of Chapter 46 of the D.C. Code." (*Id.*) The Complaint lists other ways RentGrow is liable under the CPPA, such as deceiving consumers by misrepresenting qualities about its Service and benefiting from an inherently unfair Service that contributes to different forms of discrimination. (*E.g.*, Compl. ¶¶ 31, 62-63, 73-81.)

II. The CPPA Provides NACA With Statutory Standing.

NACA's Complaint sufficiently establishes statutory standing under D.C. Code § 28-3905(k)(1)(D), the CPPA's "private attorney general" provision for public interest organizations.

A. NACA Brings Its Lawsuit on Behalf of D.C. Consumers.

RentGrow misconstrues arguments NACA made in the remand context to argue that NACA disclaimed its standing under D.C. Code § 28–3905(k)(1)(D). (MTD at 9.) But NACA's argument was that RentGrow's liability doesn't depend on a specific consumer (or a NACA member) having standing, which is not the same as saying no consumer would have standing. Anyway, RentGrow misunderstands NACA's basis for statutory standing, subsection (k)(1)(D) (*see* Compl. ¶ 68), which enables public interest organizations to stand in the shoes of D.C. consumers and bring any action that a D.C. consumer could bring under subsection 28-3905(A).

RentGrow cites and attempts (but fails) to distinguish the seminal decision *Animal Legal Defense Fund v. Hormel Foods Corp.*, 258 A.3d 174 (D.C. 2021). (MTD at 10.) The Court of Appeals, in *Animal Legal Defense Fund*, held that (k)(1)(D) does not require Article III injury, *i.e.*, that the D.C. Council when it amended the CPPA in 2012 "retained Article III restrictions in (k)(1)(C) suits [] but carved out the subset of nonprofits that are public interest organizations as to whom those restrictions do not apply in (k)(1)(D)." *Id.* at 184-85. The *Animal Legal Defense Fund*

checklist for bringing suit under (k)(1)(D) is as follows: An organization must "check three boxes: (1) it must be a public interest organization, (2) it must identify 'a consumer or a class of consumers' that could bring suit in their own right, and (3) it must have a 'sufficient nexus' to those consumers' interests 'to adequately' represent them." *Id.* at 185 (citation omitted). NACA meets all three factors.

First, NACA has pleaded that it is a public interest organization that "serves as a voice for consumers in the ongoing struggle to curb unfair or abusive business practices that harm consumers." (Compl. ¶ 10.) In fact, RentGrow implicitly concedes this point. (*See* MTD at 12 ("NACA—indeed, any public interest organization").)

Second, NACA has identified a class of consumers— "the general public of the District of Columbia." (Compl. ¶ 69.) *Animal Legal Defense Fund* holds that identifying "D.C. consumers who are targeted, and have been or will be misled" by deceptive advertising practices is sufficient to assert (k)(1)(D) standing. 258 A.3d at 186. This definition tracks with NACA's pleading, which states that it "is a nonprofit, public interest organization that brings these [CPPA] claims on behalf of the general public of D.C. consumers." (Compl. ¶ 89.) Additionally, in *Center for Inquiry v. Walmart, Inc.*, another case cited by RentGrow (MTD at 9-11), the court found that the plaintiff "adequately identif[ed] the class of consumers it seeks to represent as District of Columbia customers" when the complaint stated that plaintiff "brought suit 'on behalf of the general public,'" which is the same language used by NACA here. 283 A.3d 109, at 116 (D.C. 2022). (*See* Compl. ¶ 89.). The next part of the second (k)(1)(D) factor is that the "class of consumers" must be able to "bring suit in their own right." *Animal Legal Defense Fund*, 258 A.3d at 185. Here, "the general public of D.C. consumers" meets that requirement. (Compl. ¶ 89.) In *Earth Island Institute v. Coca-Cola Company*, the Court of Appeals reversed a decision dismissing a CPPA claim brought

under subsection (k)(1)(D), stating that "[defendant] [] argues that [plaintiff] has simply not adequately identified any such consumers who could be deceived by the statements. We disagree. [Plaintiff] has identified a group of consumers that it alleges are likely to be deceived by [defendant's] misrepresentations: 'the general public of the District of Columbia.'" 321 A.3d 654, 662 (D.C. 2024). Again, this is the same exact language NACA pleads here. (Compl. ¶ 89.) RentGrow preemptively attempts to distinguish *Earth Island Institute* by arguing that the Court of Appeals' decision rested on the fact that the defendant's "pervasive presence" extended "the scope of that group of consumers" "to the general public." (MTD at 10-11.) But this argument is unavailing. The next sentence of that decision states, "[i]t is only somewhat more expansive than the consumer class in ALDF, which was 'D.C. consumers who are targeted, and have been or will be misled, by Hormel's Natural Choice ads.'" *Earth Island Inst.*, 321 A.3d at 662 (citation omitted). Hormel's Natural Choice products are objectively not as ubiquitous as Coca-Cola products, which shows that a company's place in the cultural zeitgeist is irrelevant to analyzing CPPA claims. If in arguendo, we accept RentGrow's position of what facts allow the general public to be a class of consumers, the fact that RentGrow is in contract with the DCHA (Compl. ¶ 1) in and of itself could be a fact that extends the scope of consumers to the general public of DC.

RentGrow argues that NACA does not have statutory standing because this action is not brought on behalf of "any specific consumers," which is "fatal to [NACA's] § 28–3905(k)(1)(D) claim." (MTD at 5, 9.) That is wholly incorrect. RentGrow states that "this is not a case that could be brought on behalf of the general public" because "[n]ot 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." *(Id.* at 10.)[4] By this logic, a

[4] NACA notes that the Complaint cites sources which show that consumers have been denied housing opportunities because of inaccurate RentGrow reports. (*See* Compl. ¶ 23 n. 12; ¶ 26 n.17-18).

company can mislead consumers as long as not every single member of the public personally purchased a good or used a service. RentGrow further argues that "NACA has not identified a single consumer actually screened by RentGrow or denied housing as a result of RentGrow's alleged conduct." (MTD at 10.) Contrary to these assertions, the CPPA covers "unfair or deceptive trade practice[s], ***whether or not any consumer is in fact misled."*** D.C. Code § 28-3904 (emphasis added) (*see also* Compl. ¶ 65.). As explained *infra* § II.B, NACA has a nexus to consumers.

B. NACA Has an Adequate Nexus to Consumers.

As explained *supra* § II.A, NACA has met the three factors for bringing suit under (k)(1)(D). RentGrow again tries to downplay the analogous positions of NACA and the organizational plaintiff in *Animal Legal Defense Fund v. Hormel Foods Corp*. (MTD at 10.) The CPPA claim in *Animal Legal Defense Fund* concerned deceptively labeled meat products. The plaintiff organization's nexus requirement was met because that plaintiff had "long sought to ensure that meat-eating consumers have 'accurate information about factory farming conditions and practices' so they can make more informed decisions about meat consumption." 258 A.3d at 187. The court saw the lawsuit as a continuation of that plaintiff's "decades-long history of advocacy and legal action designed to promote consumers' interest in 'truth in meat and poultry advertising.'" *Id*. NACA is a national nonprofit association with a long history of being "committed to representing consumers' interests" and "serv[ing] as a voice for consumers in the ongoing struggle to curb unfair or abusive business practices that harm consumers." (Compl. ¶¶ 4, 10). "NACA specifically advocates for the protection of consumer rights in the improper use and dissemination of inaccurate consumer reports." (*Id.* ¶ 11). While NACA's consumer advocacy work involves "advocating against consumer abuses [] federally," it also does work "locally in this District" as its "principal place of business is in Washington, D.C." (Compl. ¶¶ 9, 10.) NACA's work of protecting "consumer rights in the improper use and dissemination of inaccurate consumer

reports" is directly related to the facts of this case and to D.C. consumers. (*Id.* ¶¶ 2, 4, 11.) RentGrow asserts that NACA's description of itself is a "legal conclusion couched as a factual allegation" (MTD at 12), apparently because NACA's description of itself is too general (*see id.* at 11). But RentGrow's opinion on NACA's description of itself does not convert that factual description into a legal conclusion. NACA's (accurate) description of its work tracks the pleadings found sufficient in *Animal Legal Defense Fund*, *Center for Inquiry*, and other cases. Even if the pleading somehow described NACA's work inaccurately, that would present an issue of fact, which cannot appropriately be resolved at the pleadings stage. *See Jones v. Exec. Office of the President*, 167 F. Supp. 2d 10, 12 (D.D.C. 2001).

RentGrow acknowledges that the "nexus" requirement "'functions to ensure that an organization has a sufficient stake in the action to pursue it with the requisite zeal and concreteness.'" (MTD at 11 (quoting *Ctr. for Inquiry*, 283 A.3d, at 115).) NACA's history of submitting amicus briefs on behalf of consumers in cases concerning inaccurate credit reports,[5] and in CPPA cases, *see, e.g.*, *Grayson v. AT&T Corp.*, 15 A.3d 219 (D.C. 2011), illustrates NACA's sufficient stake in any action concerning credit report issues and consumer deception issues generally. Not only are NACA's allegations sufficient to establish a "nexus" here, NACA's extensive public record showcases its commitment to protecting consumers, especially regarding credit report issues, and its connection to this District and its laws. RentGrow misleadingly cites the Remand Decision for the proposition that "plaintiff's complaint does not provide any information about how plaintiff relates to the D.C. consumers on whose behalf it acts." (MTD at 12 (citing Remand Decision at *13).) But the very next sentence by the District Court states,

[5] For examples of NACA's work in this capacity, *see Freeman v. Ocwen Loan Servicing, LLC*, 113 F.4th 701 (7th Cir. 2024); *Denan v. Trans Union LLC*, 959 F.3d 290 (7th Cir. 2020); *Zabriskie v. Fannie Mae*, 940 F.3d 1022 (9th Cir. 2019); *Pedro v. Equifax, Inc.*, 868 F.3d 1275 (11th Cir. 2017).

"[t]here is no evidence proffered by plaintiff or defendants that D.C. consumers pay dues to plaintiff, vote on plaintiff's leadership, or otherwise guide plaintiff's operation in a manner indicative of a 'traditional membership association.'" Remand Decision at 13. With this context, it's clear that the District Court was discussing Defendants lack of evidence to establish Article III standing and ***not*** whether NACA meets the "nexus" requirement under the CPPA.

III. NACA Plausibly Alleges a Violation of the CPPA.

RentGrow's conduct violates both the "deceptive" and the "unfair" prong of the CPPA. *See* D.C. Code § 28-3904. "In construing the term 'unfair or deceptive trade practice' due consideration and weight shall be given to the interpretation by the Federal Trade Commission and the federal courts of [these terms] as employed in [the FTC Act]." D.C. Code § 28-3901(d). (*See* Compl. ¶ 70.) When analyzing the FTC Act, federal courts define "deceptive" to encompass an "act or practice" that entails 1) "a representation, omission, or practice," 2) "that is 'likely to mislead consumers acting reasonably under the circumstances,'" and 3) "the representation, omission, or practice is material." *FTC v. Am. Home Servicing Ctr., LLC*, No. 8:18-cv-00597, 2019 U.S. Dist. LEXIS 240470, at *13 (C.D. Cal. Aug. 23, 2019) (citation omitted). "Unfairness" includes a "trade practice as one resulting in a substantial injury to the consumer that is not outweighed by countervailing benefits to consumers or competition and that is not reasonably avoidable by the consumer." (Compl. ¶ 71.) "[T]he FTC has said repeatedly that new technologies such as AI are not exempt from its rules and can constitute an unfair trade practice." (*Id.* ¶ 73.)

A. RentGrow's Conduct Deceives Consumers.

NACA alleges that "[o]n its public website, RentGrow states that it 'prepares tenant screening reports for property owners and managers who use the information to make informed decisions about rental applications.'" (*Id.* ¶ 45.) RentGrow also tells consumers that "its Service must comply with the FCRA." (*Id.* ¶ 48.) Additionally, RentGrow's publicly available corporate

documents, such as its contract with the DCHA, warrant "that it will provide its services in 'a professional, good, workmanlike manner consistent with industry standards'" among other representations. (*Id.*) RentGrow (like many a defendant called upon to defend its promises) argues that these statements are mere "puffery," upon which no reasonable D.C. consumer could rely. (MTD at 13-14.) But whether a statement can be dismissed as "puffery" is a question of fact that is left for the jury to decide. *Earth Island Inst.*, 321 A.3d at 666-67 (collecting cases).

Moreover, the statements identified by NACA are "specific" claims about RentGrow's service, not "the generalized claims which constitute mere puffery." *Hackman v. Safeway, Inc.*, No. 2021 CA 003987 B, 2022 D.C. Super. LEXIS 31, at *11-12 (July 26, 2022) (Dayson, J.). "Puffery is a legal doctrine that posits some statements are of a type that no reasonable consumer would rely upon them." *Earth Island Inst.*, 321 A.3d at 666. NACA alleges that the specific statements are misleading because—

- "without adequate processes in place to confirm the accuracy of information provided via its Service or processes to correct any inaccuracies or biases within its tenant screening reports, RentGrow cannot truthfully claim that its tenant screening reports enable property owners and managers to make informed decisions about rental applicants"; and

- because "RentGrow does not maintain or use a defined audit program," it relies "on inaccurate information and insufficient auditing and correction practices to market and generate its automated tenant screening reports," in violation of the FCRA.

(Compl. ¶¶ 47, 51-52.) *See* D.C. Code § 28-3904(e) ("tendency to mislead")..

RentGrow's reliance upon faulty ADM systems is a "material fact" that RentGrow fails to state to those using its Service. *See* D.C. Code § 28-3904(f). "[T]he thrust of the D.C. CPPA is much more liberal than common law fraud claims—no proof of intent is required by the alleging party. "Plaintiff must only establish that defendant made a misrepresentation—affirmative or implied—to prevail on the Section 28-3904(e) claim." *Beck v. Test Masters Educ. Servs.*, 994 F.

Supp. 2d 90, 96 (D.D.C. 2013) (citation omitted). Under Section 28-3904(f), a "plaintiff need not prove intentional failure to disclose in order to prevail, but must prove only that defendant failed to disclose a material fact. Further, the disclosure need not be required for plaintiff to successfully prove the claim. The proper inquiry is whether the material omissions had the tendency to mislead." *Id.* (citations omitted). NACA has well pleaded those requirements. *See also Search v. Uber Technologies, Inc.*, 128 F. Supp. 3d 222, 236-37 (D.D.C. 2015) (denying motion to dismiss CPPA claim concerning misrepresentations about screening service.)

Finally, RentGrow contends that its statements are directed only to other merchants, mainly the DCHA (*see* MTD at 14)—despite elsewhere arguing that it is ***not*** a "merchant" under the CPPA (*id.* at 7-8). RentGrow now contends that the CPPA does not "supply merchants with a private cause of action against other merchants" (MTD at 14 (quoting *Adam A. Weschler & Son, Inc. v. Klank*, 561 A.2d 1003, 1005 (D.C. 1989)))—meaning, necessarily, that RentGrow contends it ***is*** a "merchant" under the CPPA. Regardless, RentGrow's statements are directed at D.C. consumers (*see* Compl. ¶¶ 45, 48, 55), and can mislead D.C. consumers, and thus, are actionable.

B. RentGrow's Practices Are Unfair.

RentGrow argues that NACA is attempting to "shoehorn alleged violations of federal or local laws into an 'unfair practice'." (MTD at 14.) But no shoehorn is needed; under applicable precedent, violations of law ***are*** unfair practices.

1. NACA Adequately Pleads the Elements of the Unfairness Claim.

NACA has plausibly alleged unfair practices, as RentGrow represents its Service as reliable for making critical housing decisions, despite knowing that its service is prone to inaccuracies and bias. (Compl. ¶ 30.) Contrary to RentGrow's assertions, NACA ***has not*** brought any claims under FCRA or the Human Rights Act, D.C. Code §§ 2-1401.01–2-1431.08 ("DC HRA").

NACA's Complaint makes detailed allegations that RentGrow engages in unfair trade

practices. Although the Court give only "due consideration and weight" to the FTC's interpretation of what constitutes an unfair trade practice, D.C. Code § 28-3901(d), the FTC Act's three-prong test is instructive: a practice is unfair if there is (1) a substantial injury to the consumer (2) that is not reasonably avoidable or (3) outweighed by countervailing benefits to consumers. 15 U.S.C. § 45(n). Specifically, the FTC Act contemplates unfair or deceptive practices that "cause or are ***likely to cause*** reasonably foreseeable injury within the United States." *Id.* § 45(a)(4)(a)(i). This understanding of unfairness is readily satisfied by NACA's allegation that RentGrow "failed to implement sufficient testing, auditing, evaluation, or other quality control procedures to mitigate the risks of inaccuracies or biases within its Service—procedures that are standard under leading AI and ADM risk management standards." (Compl. ¶ 93.) These failures are likely to injure DC residents substantially by depriving them of housing. (*E.g.*, *id.* ¶ 57.) RentGrow does this despite knowing that consumers lack reasonably accessible means to challenge the inaccuracies of the reports generated by its Service (*id.* ¶ 94), making the injuries far from "reasonably avoidable." In addition, the data sources incorporated into RentGrow's ADM system risk systemic inequalities in access to crucial services. (*Id.* ¶ 99.) RentGrow protests that NACA's complaint does not precisely track the FTC Act's three-prong balancing test or lay out the (supposed) countervailing benefits of RentGrow's failure to ensure the accuracy of its data. (MTD at 16-17.) "Those are not, however, required elements of the claim; rather, courts are simply directed to give 'due consideration and weight' to the [FTC's] interpretation." *Scott v. Apple Inc.*, 757 F. Supp. 3d 1, 15 (D.D.C. Nov. 6, 2024) (holding that plaintiffs need not adhere to FTC's three-factor test to state CPPA unfair trade practices claim). NACA has no obligation to hypothesize benefits of RentGrow's provision of inaccurate data.

RentGrow also objects that NACA does not detail specific examples of District residents

being denied housing as a result of RentGrow's faulty tenant reports. (MTD at 17.) But the law requires no such pleading. A violation of the CPPA occurs "whether or not any consumer is fact misled, deceived or damaged thereby." D.C. Code § 28-3904. The Act is "construed and applied liberally" and establishes a consumer's "right to truthful information [] about consumer goods and services" received in the District of Columbia. D.C. Code § 28-3901(c). The right is to truthful information; the unfairness occurs when RentGrow's practices enter the D.C. marketplace.

RentGrow cherry-picks from the Complaint and ignores allegations to claim that "nowhere in the Complaint are there allegations that RentGrow itself provided inaccurate or biased data." (MTD at 17.) But NACA plainly alleges that "RentGrow purchases credit data from vendors such as Experian, Equifax, and TransUnion, and utilizes public records compiled by companies like LexisNexis," data that are "notoriously inaccurate having reported error rates in their consumer data of not less than 13 percent." (Compl. ¶¶ 24-25.) These errors include "conflating data from multiple unrelated people within one consumer profile; duplicate data entries; and out-of-date credit, housing, and/or other data." (*Id.* ¶ 25.) NACA cites RentGrow's admissions that it sources information primarily from TransUnion Background Data Solutions ("TUBDS"), and testimony that it relies entirely on TUBDS to verify information—despite "tens of millions of dollars in penalties" faced by TUBDS for "reporting inaccurate and incomplete information on prospective tenants to [] landlords." (*Id.* ¶¶ 26-27.) These data have been criticized for bias and adverse impacts on communities of color. (*Id.* ¶ 27.) NACA specifically alleges that RentGrow neither inquires about the limitations of the datasets that it receives nor adequately remedies "inaccuracies, omissions, and biases it identifies within those datasets." (*Id.* ¶ 28.) These allegations are more than sufficient to state a plausible claim that RentGrow harmed consumers by utilizing inaccurate and biased data without adequate safeguards, despite its promise to do otherwise.

Finally, although RentGrow claims to struggle to identify facts that "support NACA's [] assertion that RentGrow 'uses AI and ADM systems'" (MTD at 17), those allegations come from RentGrow's ***own*** admissions that its automated screening tool utilizes a form of artificial intelligence or of automated decision making:

- Compl. ¶ 2 n.4 cites the DCHA contract. That contract contains references to "software," a term referenced in the definition of ADM. *See id.* ¶ 21.

- Compl. ¶ 26 n.17 cites *McIntyre v. RentGrow, Inc.*, No. 18-cv-12141, 2021 U.S. Dist. LEXIS 157939, at *3 (D. Mass. July 16, 2021). In *McIntyre*, a fact accepted at the summary judgment stage is that RentGrow "applies a filtering process to the data provided" by third parties. *Id.* at *24. A subsequent decision clarified that RentGrow did not "independently spot-check" this filtered data. *McIntyre v. RentGrow, Inc.*, 34 F.4th 87, 98 (1st Cir. 2022). This shows that the filtering process is automated.

- Compl. ¶ 28 n.21 cites *Grant v. RentGrow, Inc.*, No. SA-21-CV-1172, 2023 U.S. Dist. LEXIS 158173, at *51–52 (W.D. Tex. Sept. 6, 2023), where a fact accepted at the summary judgment stage is that RentGrow's Service rarely involves "human review." Testimony in *Grant* also established that "[RentGrow] uses an automated filtering algorithm to examine submitted information." *Id.* at *51.

- Compl. ¶ 48 n.39 cites a "ScreeningWorks Pro Proposal" submitted by RentGrow's parent company, which references "automated recommendations."

2. NACA Has Not Brought Any FCRA or DC HRA Claim.

RentGrow contests NACA's unfairness claim by refuting phantom FCRA and DC HRA claims that NACA did not bring—attempting to "inject[] a federal question into an action that asserts what is a plainly state-law claim." *Caterpillar*, 482 U.S. at. 399. To be clear: NACA's complaint analogizes to the FCRA and DC HRA to illustrate the harms to consumers associated with RentGrow's use of inaccurate data and automated decision-making technology. But NACA brings its claim under the CPPA, which (like the FTC Act after which it is modeled) is designed to be flexible to accommodate changes in business misconduct and technology. Indeed, *American Financial Service Assoc. v. FTC*, 767 F.2d 957 (D.C. Cir. 1985), a case RentGrow cites (MTD at

16), explains why unfairness statutes can never exhaustively list possible violations: "It is impossible to frame definitions which embrace all unfair practices. There is no limit to human inventiveness in this field. Even if all known unfair practices were specifically defined and prohibited, it would be at once necessary to begin over again." *Id.* at 966 (quoting House Conference Report). NACA's Complaint analogizes to harms cognizable under the FCRA and DC HRA as a means of articulating why these harms merit the intervention of judicial relief, not as any side attempt to allege claims under those statutes.

NACA alleges that "RentGrow's failure to implement reasonable auditing and correction procedures, as well as its misrepresentations of compliance with requirements ***with which one reasonably expects the service to comply***, are violations of D.C. Code § 28-3904." (Compl. ¶ 48 n.39 (emphasis added in pleading).) This misrepresentation does not create a federal claim. *See E.M. v. Shady Grove Reprod. Sci. Ctr. P.C.*, 496 F. Supp. 3d 338, 415-16 (D.D.C. 2020) (allowing misrepresentation claim regarding HIPAA compliance to proceed without HIPAA claim).

As to the Complaint's reference to laws other than the CPPA, such as the FCRA and HRA, RentGrow contends that "a violation of some other law 'itself' is not 'automatically a violation of the CPPA'" (MTD at 15 (citing *District of Columbia v. Wash. Hebrew Congregation, Inc*., 2022 D.C. Super. LEXIS 88, at *13 (Sept. 13, 2022) (Irving Jr., J.)).) But as *Washington Hebrew* actually holds, to "succeed on claim under the CPPA, Plaintiff must allege that ***a law is violated in the context of a consumer transaction***." 2022 D.C. Super. LEXIS 88, at *10 (emphasis added). NACA's claim ***is*** situated in the context of a consumer transaction. And the CPPA's enumeration of statutes in § 28-3904—the violation of which constitutes a CPPA violation—is not exhaustive. *See Atwater v. District of Columbia Department of Consumer & Regulatory Affairs,* 566 A.2d 462, 466 (D.C. 1989) ("§ 28-3904 makes a host of consumer trade practices unlawful, its list of such

practice was not designed to be exclusive."); *see also Osbourne v. Capital City Mortgage Corp.*, 727 A.2d 332, 325 (D.C. 1999); *Mann v. Bahi*, 251 F. Supp.3d 112, 121 (D.D.C. 2017).

Finally, RentGrow cites *Gomez v. Independent Management, Inc.*, 967 A.2d 1276 (D.C. 2009), to assert that "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.'" (MTD at 15). But *Gomez* "holds no such thing." *Mann*, 251 F. Supp.3d at 121 (rejecting argument that *Gomez* stands for proposition that only acts enumerated in section 28-3904 can be enforced through CPPA).

IV. FCRA Does Not Preempt NACA's CPPA Claim.

States enjoy broad latitude to regulate consumer protection,[6] including use of consumer data for tenant screening. FCRA's narrow preemption of state law concerning consumer reporting does not reach NACA's claim. *See* 87 Fed. Reg. 41042 ("States may pass laws addressing the furnishing and reporting of rental information. A [s]tate law prohibiting a consumer reporting agency from including information (or certain types of information) about a consumer's eviction, rental arrears, or arrests on a consumer report would generally not be preempted under section 1681t(b)(1)."). The unfair practices identified in NACA's complaint and prohibited by the CPPA are well within the power of the states to regulate, notwithstanding FCRA. *See, e.g.*, *Abuan v. City of Fife*, No. C12-5069, 2012 U.S. Dist. LEXIS 171254, at *6-7 (W.D. Wash. Dec. 3, 2012) (finding that FCRA preempts only actions based on reporting of inaccurate information, not failure to provide adequate procedures before reporting). As set forth below, neither FCRA provision highlighted by RentGrow undermines NACA's well-pleaded claim.

[6] *See, e.g.*, *Cipollone v. Liggett Group, Inc.*, 505 U.S. 504, 516 (1992) ("Consideration of issues arising under the Supremacy Clause 'starts with the assumption that the historic police powers of the States [are] not to be superseded by . . . Federal Act unless that [is] the clear and manifest purpose of Congress.'" (citation omitted).

A. Subsection 1681h(e) Does Not Preempt NACA's CPPA Claim.

RentGrow protests that negligence claims are preempted by subsection 1681h(e). But NACA's CPPA claim is not a negligence cause of action; it is a statutory consumer protection claim arising from unfair trade practices. As a statutory claim, it is unaffected by subsection 1681h(e). *See Carlson v. Trans Union, LLC*, 259 F. Supp. 2d 517, 521 (N.D. Tex. 2003) (holding that the preemptive effect of subsection 1681h(e) "applies only to torts," not "statutory law"). RentGrow seeks to blur this distinction, invoking various cases in which FCRA was held to preempt ***tort***—not statutory consumer protection—claims. (*E.g.*, MTD 19 (citing *Young v. Equifax Credit Info. Servs., Inc.*, 294 F.3d 631 (5th Cir. 2002) (affirming summary judgment because defamation claim preempted).) None of these cases is relevant to a CPPA unfairness claim. *Spitzer v. Trans Union LLC*, for example, provides dicta from a case in which the plaintiffs "failed to argue and thus appear[ed] to have abandoned their state and common law claims." 140 F. Supp. 2d 562, 566 (E.D.N.C. 2000), *aff'd*, 3 F. App'x 54 (4th Cir. 2001). As this is not a negligence claim, RentGrow's argument about NACA needing to show malice (MTD at 19) is irrelevant.

Even if NACA's claim could be recast as a common law negligence count (which it cannot), NACA alleges that RentGrow made use "knowingly"—not merely with the lack of requisite care—of "flawed third-party information." (Compl. ¶ 32.) As the court explained in *Gordon v. Greenpoint Credit*, "Under [] § 1681h(e), causes of action sounding in defamation or negligence are preempted ***unless the false information was furnished with malice or willful intent to injure the consumer***," which in *Gordon* included the plaintiff's claim that the defendant "failed to undertake the required investigation to correct [an] error ***either knowingly or with reckless disregard for the truth***." 266 F. Supp. 2d 1007, 1013 (S.D. Iowa 2003) (emphasis added). Because NACA alleges knowing violations, any "negligence" claim in its complaint—though there is none to begin with—could "not [be] preempted by § 1681h(e)." *Id.*

B. Section 1681t Does Not Preempt NACA's CPPA Claim.

RentGrow's effort to squeeze NACA's CPPA claim into subsection 1681t also fails. Both courts and the Consumer Financial Protection Bureau ("CFPB"), the agency vested with authority to interpret and issue regulations under the FCRA, *see* 76 Fed. Reg. 79308-12, have construed preemption under subsection 1681t narrowly. *See, e.g.*, 87 Fed. Reg. 41042 (explaining that "[t]he term 'with respect to'" in § 1681t(b)(5) "indicates that Congress intended these provisions to have a narrow sweep"); *Gottman v. Comcast Corp.*, No. 2:17-2648, 2018 U.S. Dist. LEXIS 29756, at *13-14 (E.D. Cal. Feb. 23, 2018) (holding that California statute requiring users of credit reports to verify accuracy was not preempted). NACA alleges RentGrow does not implement adequate safeguards in its use of consumer data, especially given that it has reason to believe that the data contain inaccuracies and may perpetuate systemic biases. (Compl. ¶ 30.) FCRA is silent about data perpetuating systemic bias. The rules that FCRA does contain about reasonable procedures to ensure maximum accuracy of data, *see* 15 U.S.C. §§ 1681b, 1681e(b), are not on subsection 1681t's enumerated list of FCRA provisions that preempt state law. And although subsection 1681t does address the timing of dispute procedures, NACA's Complaint does not suggest that the CPPA requires—or that RentGrow violated—a specific schedule for resolving disputes. Instead, the Complaint demonstrates how consumers suffer harm when they are denied housing and are blocked from similar housing opportunities for thirty days or more as they wait for a problem caused by inadequately maintained databases to be resolved. (*See, e.g.*, Compl. ¶ 57.)

CONCLUSION

RentGrow's motion should be denied in its entirety. In the event the Court is inclined to grant any portion of the motion to dismiss, NACA respectfully requests leave to amend.

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Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed electronically on July 18, 2025. Notice of this filing will be sent to the following Parties by operation of the Court's electronic filing system to all counsel of record.

/s/ Kim E. Richman
Kim E. Richman
Attorney for Plaintiff