SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

CONSUMER FEDERATION OF AMERICA, on behalf of itself and the putative class, Plaintiff, v. META PLATFORMS, INC., d/b/a META Defendant.	Case No. 2026-CAB-002643 Judge Veronica M. Sanchez Civil 2 Calendar Next Event: Initial Scheduling Conference Date: July 31, 2026, 9:30 AM

DEFENDANT'S MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF ITS MOTION TO DISMISS

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INTRODUCTION

This case asks whether a plaintiff organization can—on behalf of consumers bound by a forum selection clause—haul Meta into D.C. Superior Court to answer for advertisements that Meta did not create, based on statements that Meta's own public disclosures contradict. It cannot for three independent reasons.

First, Plaintiff Consumer Federation of America ("CFA") lacks statutory standing. The CPPA authorizes public interest organizations to proceed only if the consumers they seek to represent are "capable of bringing suit in their own right." D.C. Code § 28-3905(k)(1)(D). Here, the relevant consumers agreed to Meta's Terms of Service, which require that disputes "be resolved exclusively" in California. The consumers therefore cannot sue "in their own right" in the District. Accordingly, this Court lacks jurisdiction and should dismiss under Rule 12(b)(1).

Second, Section 230 of the Communications Decency Act bars CFA's claim. The claim arises from alleged harm caused by advertisements created by third parties; CFA contends Meta should have moderated those advertisements differently and removed more from its platform. But decisions on how to monitor, moderate, or disseminate third-party content are at the core of publisher conduct protected by Section 230, which forecloses liability arising from those decisions. Nor does it matter that CFA styles this as a misrepresentation case. "As courts uniformly recognize, § 230 immunizes internet services for third-party content that they publish, including false statements, against causes of action of all kinds." *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019). Section 230's protections turn not on "the name of the cause of action" but on whether the duty the plaintiff seeks to impose "inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-02 (9th Cir. 2009). CFA's claim does precisely that. Because

this case is about what Meta does with third-party content, Section 230 bars it. As a result, even if the Court had jurisdiction, it should dismiss under Rule 12(b)(6).

Third, even if the Court rules that CFA's claim can proceed, it should dismiss the Complaint to the extent it relies on purported misrepresentations that are not actionable.

BACKGROUND

According to the Complaint, Meta operates Facebook, a free social platform used by billions of people to share content and communicate with others. Compl. ¶ 23.[1] Meta generates revenue by selling advertising placements to third-party advertisers, *id.* ¶ 24, and uses automated systems to determine which third-party ads to show users. *Id.* ¶¶ 28-30. It also maintains published policies addressing fraud, scams, and deceptive content, and reviews ads for compliance with those policies. *Id.* ¶¶ 24, 36-38, 43-47, 49-58. CFA does not allege that Meta has ever suggested this process is foolproof; to the contrary, Meta discloses that "[o]ur enforcement isn't perfect," that "both machines and people make mistakes," and that Meta's "review process may not detect all policy violations." *See id.* ¶ 25 & nn.11-13.[2]

CFA's claim concerns ads on Facebook that CFA says are scams. Those ads were created by third parties; CFA does not allege that Meta created any of them or contributed to their deceptiveness. *Id.* ¶¶ 24, 36-38, 43-47, 49-58. Instead, CFA alleges that Meta knows scam ads appear on Facebook, that it prioritizes revenue over enforcement, and that Meta's public statements about its efforts to combat scams have misled users. *Id.* ¶¶ 35, 39, 42, 48, 57.

CFA brings this action under the Consumer Protection Procedures Act ("CPPA") as a "public interest organization" and on behalf of a putative class of all individuals in the District

[1] Meta accepts the Complaint's well-pleaded factual allegations as true solely for purposes of this motion.
[2] Documents that are incorporated into the Complaint, including Meta's Terms of Service, may be considered by the Court without converting this Motion to Dismiss into one for summary judgment. *See Tovar v. Regan Zambri Long, PLLC*, 321 A.3d 600, 609 (D.C. 2024).

who had a Facebook account, seeking damages and a permanent injunction. *Id.* ¶¶ 59-60, 72, 85-86. Each of the individuals CFA hopes to represent agreed to Meta's Terms of Service upon registering a Facebook account. Declaration of Michael Duffey ("Duffey Decl.") ¶¶ 4-5. Those Terms provide that Meta "make[s] no guarantees that [its Products] will always be safe, secure, or error-free," "do[es] not control or direct what people and others do or say," and is "not responsible for their actions or conduct (whether online or offline) *or any content they share* (including offensive, inappropriate, obscene, unlawful, and other objectionable content)." Duffey Decl. Ex. 1. They also require "that any claim … that arises out of or relates to these Terms or your access or use of the Meta Products shall be resolved exclusively in the U.S. District Court for the Northern District of California or a state court located in San Mateo County." *Id.*

LEGAL STANDARD

"Standing is a threshold jurisdictional question which must be addressed prior to and independently of the merits of a party's claim." *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 42-43 (D.C. 2015).[3] A challenge to a plaintiff's standing "is a challenge to the trial court's subject matter jurisdiction, and is properly assessed as a motion to dismiss under [Rule] 12(b)(1)." *Re'ese Adbarat Debre Selam Kidest Mariam Ethiopian Orthodox Tweahedo Church v. Habte*, 300 A.3d 784, 796 (D.C. 2023). Courts may "conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes concerning whether subject-matter jurisdiction exists." *Id.* The plaintiff bears the burden to establish standing. *See id.*

Rule 12(b)(6) requires that a complaint "contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Bell v. Weinstock, Friedman & Friedman, P.A.*, 341 A.3d 1, 9 (D.C. 2025). The allegations "must be enough to raise a right to relief above

[3] Unless otherwise indicated, internal citations and quotations are omitted and any emphasis is added.

the speculative level"—i.e., the standard "asks for more than a sheer possibility that a defendant has acted unlawfully," and facts "that are 'merely consistent' with a defendant's liability" do not plausibly state "entitlement to relief." *Bereston v. UHS of Delaware, Inc.*, 180 A.3d 95, 99 (D.C. 2018). Conclusory statements do not suffice. *See id.*

ARGUMENT

I. CFA Lacks Standing Under The CPPA

Public interest organizations suing on behalf of consumers under the CPPA must satisfy a three-part statutory standing test: (1) They must be "organized and operating, at least in part, on behalf of consumers"; (2) "the consumer or class of consumers must be capable of bringing suit in their own right"; and (3) "the public interest organization must have a sufficient nexus to the interest involved of the consumer or class … to adequately represent those interests." *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 183 (D.C. 2021) (citing D.C. Code § 28-3905(k)(1)(D)).[4] CFA lacks standing because the "class of consumers" CFA seeks to represent—"[a]ll individuals" in the District who had a Facebook account within the statute of limitations, Compl. ¶ 60—cannot sue "in their own right" in this Court because they all agreed to Meta's Terms of Service, which require that claims "be resolved exclusively" in California.

Courts applying the CPPA routinely hold that a public interest organization cannot proceed when the consumers it seeks to represent cannot sue in their own right—including, as relevant here, when the consumers are bound by a forum selection clause that directs disputes elsewhere. In *Travelers United, Inc. v. Hilton Domestic Operating Co.*, for example, the court dismissed a

[4] The Court of Appeals has held that this statutory standing test "modif[ies] Article III's doctrinal requirements," making the issue of whether a plaintiff satisfies the test a question of jurisdiction. *ALDF*, 258 A.3d at 183; *see also Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 662 (D.C. 2024) (holding that public interest organizational standing under the CPPA "raises a jurisdictional question that [courts] are not free to bypass").

CPPA action that a public interest organization brought on behalf of hotel customers bound by the defendant's forum selection clause, which required that "all suits" be filed in federal or state court in Virginia. *See* Declaration of Molly Jennings ("Jennings Decl."), Ex. 1, No. 2023-CAB-5813, slip op. at 14-15 (D.C. Super. Jan. 13, 2025).[5] Because those customers had agreed to the clause, they could not sue in the District, and the organization thus could not sue on their behalf. *See id.* at 9. The court underscored that the CPPA did not offer consumers a way around their binding contractual obligations; "were the Court 'to hold otherwise, a plaintiff could avoid a valid forum selection clause simply by having a representative nonparty file the action.'" *Id.* Other courts have held the same. *See Travelers United, Inc. v. Hyatt Hotels Corp.*, 2025 WL 2879315, at *8 (D.C. Super. Ct. May 21, 2025) (dismissing action because organizational plaintiff could "not bring an action on behalf of customers who are bound by these terms"); Jennings Decl. Ex. 2, *Travelers United, Inc. v. Budget Rent A Car / Avis Rent A Car*, No. 2024-CAB-5736, slip op. at 6 (D.C. Super. Ct. Feb. 10, 2025) (dismissing CPPA claim under Rule 12(b)(1) for similar reasons).[6]

This case is no different. CFA seeks to represent the interests of "[a]ll individuals in the District of Columbia who, within the applicable statute of limitations, had a Facebook account." Compl. ¶ 60. But every one of those individuals necessarily created a Facebook account and thereby agreed to Meta's Terms. Those Terms include a forum selection clause that requires any dispute between Meta and Facebook users "that arises out of or relates to these Terms or [their] access or use of the Meta Products shall be resolved exclusively in the U.S. District Court for the

[5] While the *Hilton* defendant's terms also included a class action waiver, the court dismissed the action solely on the basis of the forum selection clause designating Virginia courts. *Id.* at 15.

[6] *Hilton* and *Avis Rent A Car* are pending before the D.C. Court of Appeals and may create a controlling rule of law that public interest organizations are bound by any forum selection clauses that bind the consumers the organization seeks to represent under the CPPA. *See Travelers United, Inc. v. Hilton Domestic Operating Co.*, No. 25-CV-0079 (D.C. Jan. 23, 2025); *Travelers United, Inc. v. Avis Rent A Car System, Inc.*, No. 25-CV-0237 (D.C. Mar. 12, 2025).

Northern District of California or a state court located in San Mateo County." Duffey Decl. Ex. 1. That clause reaches contract- and non-contract claims alike; courts in the District have ruled that "[t]he term 'relating to' gives a forum-selection clause an 'expansive reach' to govern even claims that are not explicitly written into a contract." *Shah v. Guidehouse, LLP*, 2022 WL 741866, at *2 (D.D.C. Mar. 2, 2022). Indeed, other courts have interpreted Meta's forum selection clause "broadly" as "encompass[ing] all claims that have some possible relationship with the agreement." *Wise Guys I v. Meta Platforms, Inc.*, 2023 WL 8434452, at *2 (N.D. Tex. Dec. 4, 2023). The dispute here falls within the clause's broad language because the only alleged harm is that the "[c]onsumers were subject to targeted scam advertising" on Facebook. Compl. ¶ 84; *see also id.* ¶ 40 (alleging that Meta made misrepresentations in its Terms regarding its efforts to combat frauds and scams). Meta's forum selection clause therefore applies to claims on behalf of those consumers.

Additionally, Meta's forum selection clause is enforceable. Forum selection clauses are "'prima facie valid and [will] be enforced unless enforcement is shown by the resisting party to be unreasonable under the circumstances.'" *Forrest v. Verizon Commc'ns, Inc.*, 805 A.2d 1007, 1010 (D.C. 2002). When individuals sign up for Facebook today, a hyperlink to Meta's Terms appears in bold blue font on the sign-up screen, and the forum selection clause therein appears in a paragraph titled "Disputes."[7] *See* Duffey Decl. Ex. 1, 2. Prior iterations of the sign-up process and Terms were similarly clear. *See* Duffey Decl. ¶ 10. That is enough to put users on reasonable notice, as *Forrest* requires, *see* 805 A.2d at 1010 (noting that "the validity of a forum selection clause … depends on whether the existence of the clause was reasonably communicated to the

[7] In addition to presenting users with the Terms at account sign-up, Meta provides users with notice of material changes to its Terms. For example, in advance of the January 1, 2025 effective date for the current version of the Terms, Meta provided notice to users via the Facebook app and website and via email. Duffey Decl. ¶ 8.

plaintiff" and rejecting specific requirements such as the use of a "scroll box"). Indeed, D.C. courts have enforced similar hyperlinked notices. *See, e.g.*, Jennings Decl. Ex. 1, *Hilton*, No. 2023-CAB-5813, slip op. at 11; *Selden v. Airbnb, Inc.*, 4 F.4th 148, 152 (D.C. Cir. 2021). And courts around the country have uniformly upheld Meta's forum selection clause. *See, e.g.*, *Davis v. Meta Platforms, Inc.*, 2023 WL 4670491, at *14 (E.D. Tex. July 20, 2023) (collecting cases).

Enforcing the forum selection clause also serves the District's public policy. "Forum selection clauses enhance contractual and economic predictability, while conserving judicial resources and benefitting commercial entities as well as consumers." *Forrest*, 805 A.2d at 1015. By contrast, allowing the CPPA to serve as an end-run around contractual obligations would undermine the public interest. "[A] party resisting enforcement of a forum-selection clause must … show[] that a public policy of the selected forum is different from, and contravened by, the law of the alternative forum." *Billard v. Angrick*, 220 F. Supp. 3d 132, 140 (D.D.C. 2016). CFA cannot do so here; remedies would still be available in California to the consumers CFA claims to represent. Nor does it matter that the precise remedies available might differ. As Judge Matini ruled recently in a CPPA case, the availability of "different or less favorable" remedies in the selected forum did not allow a plaintiff to "'transcend the high hurdle facing the opponent of a forum selection clause' on the question of public policy." *Hyatt*, 2025 WL 2879315, at *6 (quoting *Billard*, 220 F. Supp. 3d at 140). Accordingly, this Court lacks jurisdiction and should dismiss CFA's claim under Rule 12(b)(1).

II. Section 230 Bars CFA's Claim

Even if the Court had jurisdiction, it should dismiss under Rule 12(b)(6) because Section 230 bars CFA's claim. Section 230 provides that "[n]o provider or user of an interactive computer service shall be treated as the publisher or speaker of any information provided by another information content provider," 47 U.S.C. § 230(c)(1), and prohibits liability "under any State or

local law that is inconsistent with this section," *id.* § 230(e)(3). "As courts uniformly recognize, § 230 immunizes internet services for third-party content that they publish, including false statements, against causes of action of all kinds." *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267 (D.C. Cir. 2019). Section 230's protections apply to any cause of action where the "duty" a claim seeks to impose on a defendant—such as the duty to monitor or remove third-party content—"inherently requires the court to treat the defendant as the 'publisher or speaker' of content provided by another." *Barnes v. Yahoo!, Inc.*, 570 F.3d 1096, 1101-1102 (9th Cir. 2009). "This rule prevents plaintiffs from using 'artful pleading' to state their claims only in terms of the [defendant's] own actions, when the underlying basis for liability is unlawful third-party content." *Daniel v. Armslist, LLC*, 926 N.W.2d 710, 724 (Wis. 2019).

Section 230's "broad" protections require "dismissal if (i) [the defendant] is a 'provider or user of an interactive computer service,' (ii) the information for which [the plaintiff] seeks to hold [the defendant] liable was 'information provided by another information content provider,' and (iii) the complaint seeks to hold [the defendant] liable as the 'publisher or speaker' of that information." *Marshall's Locksmith Serv.*, 925 F.3d at 1267-1268. All three prongs are satisfied here.

A. Meta Provides Interactive Computer Services

The first prong is satisfied because, as courts uniformly recognize and as the Complaint admits (*see* Compl. ¶¶ 11, 23), Facebook is "an interactive computer service"—i.e., "a service that provides information to 'multiple users' by giving them 'computer access … to a computer server,' namely the servers that host its social networking website." *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014) (quoting 47 U.S.C. § 230(f)(2)).

B. CFA Seeks To Hold Meta Liable For Information Provided By Third Parties

The second prong is satisfied because CFA does not plausibly allege Meta was "responsible, in whole or in part, for the creation or development of" any unlawful content in the third-party ads. 47 U.S.C. § 230(f)(3). Instead, third parties—not Meta—"created" the allegedly "offensive content" on Facebook. *Bennett v. Google, LLC*, 882 F.3d 1163, 1167 (D.C. Cir. 2018). Because CFA seeks to hold Meta liable for the alleged harm caused by these "third party advertisements" that appear in Facebook users' feeds, not from anything Meta created "in whole or in part," the second prong is satisfied. *See, e.g.*, Compl. ¶ 24.

CFA cannot proceed on a material contribution theory to save its claim. Under Section 230, a defendant "develops" content only by creating it itself or by "materially contributing" to "the unlawfulness of content." *Calise v. Meta Platforms, Inc.*, 103 F.4th 732, 744 (9th Cir. 2024). The "crucial distinction" is "between, on the one hand, taking actions (traditional to publishers) that are necessary to the display of unwelcome and actionable content"—which Section 230 protects—"and, on the other hand, responsibility for what makes the displayed content illegal or actionable." *Dyroff v. Ultimate Software Grp., Inc.*, 934 F.3d 1093, 1099 (9th Cir. 2019). Thus, "a website does not create or develop content when it merely provides a neutral means by which third parties can post information of their own independent choosing online." *Marshall's Locksmith Serv.*, 925 F.3d at 1270-1271. That includes, for example, algorithms that "suggest specific keywords to advertisers," *Goddard v. Google, Inc.*, 640 F. Supp. 2d 1193, 1197 (N.D. Cal. 2009), or that filter or target content to users, because those are tools "meant to facilitate the communication and content of others" and are "not content in and of themselves," *Doe v. Grindr Inc.*, 128 F.4th 1148, 1153 (9th Cir. 2025).

CFA falls well short of alleging material contribution. CFA does not allege that Meta contributed to the third-party ads at all, much less to what made them unlawful. Instead, it seeks

to hold Meta liable for providing content-neutral ad tools that third parties used to disseminate their own allegedly fraudulent content. *See, e.g.*, Compl. ¶ 53 (claiming Meta helps scammers "direct[]" their "scam advertisements" to consumers), ¶ 81 (claiming Meta is "actively helping bad actors target users"). Those are, at most, "third-party abuses" of Meta's content-neutral tools, *Doe 1 v. Twitter, Inc.*, 148 F.4th 635, 646 (9th Cir. 2025)—i.e., allegations that third parties "used 'features and functions'" of Meta that were "meant to facilitate the communication and content of others" to disseminate harmful content, *Grindr*, 128 F.4th at 1153. As another court has held, "Meta's 'solicitation' and 'assistance' efforts [to third-party advertisers] are, on their face, neutral. They are allegedly used for unlawful purposes, but that does not result from Meta's efforts." *Calise*, 103 F.4th at 745.

CFA's allegations that Meta was on notice that certain ads on its platforms were fraudulent (Compl. ¶¶ 36-38) do not alter that conclusion. "[I]t is 'well established that notice of the unlawful nature of the information provided is not enough to make it the service provider's own speech.'" *Marshall's Locksmith Serv.*, 925 F.3d at 1269. That principle was central to Congress's intent in enacting Section 230, because "liability upon notice [would] reinforce[] service providers' incentives to restrict speech and abstain from self-regulation." *Zeran v. Am. Online, Inc.*, 129 F.3d 327, 333 (4th Cir. 1997). In other words, even if Meta knew the content was unlawful, that would be irrelevant to Section 230's applicability; the content would still have been created by third parties, satisfying Section 230's second prong. *Marshall's Locksmith Serv.*, 925 F.3d at 1268.

C. CFA Seeks To Impose Liability On Meta As A Publisher

Section 230's third prong is satisfied because CFA's claim "inherently requires" the Court to treat Meta "as the 'publisher or speaker' of content provided by another." *Barnes*, 570 F.3d at 1102 (quoting 47 U.S.C. § 230(c)(1)). Section 230's definition of "what it means to treat a website operator as the publisher" is "capacious," *Force v. Facebook, Inc.*, 934 F.3d 53, 65 (2d Cir. 2019),

and includes "'deciding whether to publish, withdraw, postpone or alter content' provided by third parties." *M.P. by & through Pinckney v. Meta Platforms Inc.*, 127 F.4th 516, 525 (4th Cir. 2025).

Such publisher activity is central to CFA's theories. CFA says Meta should be held liable for "allow[ing] a significant amount of known scam advertising to appear on Facebook." Compl. ¶ 81. The Complaint appends "several (non-exhaustive) examples of scam advertisements that should have been caught by Meta's internal review system," but instead appeared on Facebook. *Id.* ¶¶ 58, 84. And CFA alleges that Meta's activities caused harm because D.C. users "were subject to targeted scam advertising" created by third parties. *Id.* ¶ 58. In other words, CFA says Meta had a duty to remove these third-party advertisements but published them instead. That theory confirms that CFA's claim "necessarily implicate[s]" Meta's "role as a publisher of third-party [user] content," because "discharging the alleged duty" to remove allegedly fraudulent third-party ads would "require [Meta] to monitor third-party content." *Grindr*, 128 F.4th at 1153. In other words, CFA seeks to hold Meta liable for "monitoring" or "screening" content in a way unsatisfactory to CFA, and for failing to "delet[e]" the at-issue advertisements to CFA's liking. *Doe v. MySpace, Inc.*, 528 F.3d 413, 420 (5th Cir. 2008). That "duty cuts to the core of Meta's role as a publisher," *Doe (K.B.) v. Backpage.com, LLC*, 768 F. Supp. 3d 1057, 1065 (N.D. Cal. 2025), because "the very essence of publishing is making the decision whether to print or retract a given piece of content," *Klayman*, 753 F.3d at 1359.

CFA cannot escape this conclusion by styling its claim as one for misrepresentation. Again, "courts uniformly recognize[] § 230 immunizes … against causes of action of all kinds," *Marshall's Locksmith Serv.*, 925 F.3d at 1267, and are wary of "artful skirting" of the statute's protections, *Kimzey v. Yelp! Inc.*, 836 F.3d 1263, 1266 (9th Cir. 2016). In *Grindr*, for example, the plaintiff alleged that the defendant "negligently misrepresented that the App was designed to

create a safe and secure environment for all its users." 128 F.4th at 1152. The court affirmed dismissal under Section 230. *Id.* at 1154.

The same is warranted here. However CFA chooses to style its claim, it is "inextricably linked to [Meta's] alleged failure to edit, monitor, or remove the offensive content." *Herrick v. Grindr LLC*, 765 F. App'x 586, 591 (2d Cir. 2019). The statements CFA places at issue relate to the steps Meta has taken or may take to address scam advertisements on its platform. *See* Compl. ¶¶ 39, 40, 42. CFA cites, for example, Meta's statements that it "aggressively fights frauds and scams" and is "taking steps to address the proliferation of scam advertisements on its platforms." *Id.* ¶ 39. But the only measure of whether those statements were misleading is what Meta actually *did* with the alleged third-party scam advertisements—whether it removed enough of them, or whether it acted quickly or effectively enough.

Section 230 bars that inquiry. In *Ynfante v. Google LLC*, for example, the court dismissed on Section 230 grounds a false advertising claim based on a statement that users "should feel confident that ads are not fraudulent or misleading" because the claim was "fundamentally premised on Google's actions related to publishing the scam advertisement." 2023 WL 3791652, at *3 (S.D.N.Y. 2023); *see also*, *e.g.*, *Glazer v. Meta Platforms, Inc.*, 2025 WL 2958810, at *4, *6 (D. Md. Oct. 17, 2025) (dismissing a misrepresentation claim on Section 230 grounds because the claim "sought to hold Meta responsible for … deciding whether to publish, withdraw, postpone or alter content"); *Bogard v. TikTok Inc.*, 2025 WL 604972, at *18 (N.D. Cal. Feb. 24, 2025) (dismissing a misrepresentation claim on Section 230 grounds because "fulfillment of the duty Plaintiffs say Defendants undertook in making the alleged representations would necessarily require Defendants to change how they moderate content posted by third parties"). So too here. The only way Meta could have fulfilled the duty CFA says Meta undertook in making the alleged

"misrepresentations" is by moderating third-party ads differently. Any liability would therefore "be premised on second-guessing of Facebook's 'decisions relating to the monitoring, screening, and deletion of [third-party] content from its network.'" *In re Facebook, Inc.*, 625 S.W.3d 80, 93 (Tex. 2021) (quoting *Green v. Am. Online (AOL)*, 318 F.3d 465, 471 (3d Cir. 2003)). That "inherently requires" the Court to treat Meta "as the 'publisher or speaker' of content provided by another." *Barnes*, 570 F.3d at 1102. The third and final prong of Section 230 is satisfied.[8]

Because "Section 230 provides Meta immunity from [CFA's] claim[], amending of the Complaint would be futile," and dismissal should be with prejudice. *Glazer*, 2025 WL 2958810, at *10 n.9.

III. To The Extent CFA's Claim Is Not Barred, The Court Should Dismiss It In Part

At a minimum, the Court should dismiss in part because certain of the statements on which CFA's claim relies are not actionable misrepresentations.

First, CFA's claim must be dismissed to the extent it relies on "statements that are plucked from their broader messages." *Earth Island Inst. v. Coca-Cola Co.*, 321 A.3d 654, 672 (D.C. 2024). CFA's attacks on Meta's Terms and Community Standards are illustrative. The Terms that CFA relies on[9] state that Meta "*may* take appropriate action based on our assessment that *may* include

[8] CFA's theory is nothing like the breach of contract claim in *Barnes v. Yahoo!, Inc.*, which the court found fell outside Section 230 because the contractual promise was "clear and well defined … sufficient to give rise to a traditional contract supported by consideration." 570 F.3d 1096, 1108 (9th Cir. 2009); *see also Calise*, 103 F.4th at 743 (similarly allowing a contract claim to proceed because of the "enforceable promise" that was alleged). Courts have recognized the distinction between those cases—where a contractual duty exists independent of the defendant's role as publisher—and cases alleging more generally that a company misrepresented how it "appl[ies] its general rules regarding what content it will publish." *Murphy v. Twitter, Inc.*, 60 Cal. App. 5th 12, 29 (2021) (distinguishing *Barnes*). Indeed, *Barnes* recognized this distinction by holding that "a general monitoring policy, or even an attempt to help a particular person, on the part of an interactive computer service such as Yahoo does not suffice for contract liability." 570 F.3d at 1108. CFA's allegations here do not implicate contractual promises like those at issue in *Barnes*.

[9] CFA misquotes the Terms. The Complaint alleges the Terms state that Meta "will take appropriate action" upon learning of potentially violating content, Compl. ¶ 40, while the version they cite says "may," Compl. ¶ 40 n.35.

removing content, removing or restricting access to certain features, disabling an account, or contacting law enforcement," Compl. ¶ 40 n.35. The Community Standards also provide that Meta "*may* remove content [i]nvolving fraud/scam that have been reported by a trusted entity," *id.* ¶¶ 26 n.14, 41 nn.36-37. Moreover, other language in these policies makes clear that Meta does *not* promise perfect enforcement against potentially violating content. The Terms are explicit that Meta "make[s] no guarantees that [its Products] will always be safe, secure, or error-free," "do[es] not control or direct what people and others do or say," and is "not responsible for their actions or conduct (whether online or offline) or any content they share (including offensive, inappropriate, obscene, unlawful, and other objectionable content)." *Id.* ¶ 40 n.35. Similarly, the allegedly misleading Meta blog post quoted in the Complaint does not merely state that Meta has already done "extensive work" to combat scams on Facebook; Meta also describes that work as "ongoing" and aimed at, rather than fully eliminating scams, "help[ing] protect people on our apps." *Id.* ¶¶ 39 n.32, 48 n.42. This language "makes clear that Facebook [does] *not* promise to safeguard" the platform. *Damner v. Facebook, Inc.*, 2020 WL 7862706, at *7 (N.D. Cal. Dec. 31, 2020); *accord Young v. Meta Platforms, Inc.*, 2025 WL 2930979, at *2-3 (N.D. Cal. Oct. 15, 2025) (similar). When "viewed in their full context[,]" these statements—at the very least—do not plausibly constitute an unfair or deceptive trade practice, and the portion of CFA's claim based on them must be dismissed. *Earth Island Inst.*, 321 A.3d at 672.[10]

Second, alleged misrepresentations are not actionable where they were not made in connection with the "sale, lease, or transfer" of Facebook. The CPPA applies only to misrepresentations connected to "trade practices," D.C. Code § 28-3904, defined as "any act which

[10] In addition to the examples discussed here, other statements in the Complaint that are not plausibly unfair or deceptive trade practices are plucked from Meta's Transparency Center, Advertising Standards, and Scam Prevention Hub. *See* Compl. ¶¶ 25 nn.11-13, 39 n.33. Full copies of the URLs cited in the Complaint are attached to the Jennings Declaration as Exs. 3-11.

does or would create, alter, repair, furnish, 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*." D.C. Code § 28-3901(a)(6). But—even assuming, *arguendo*, that the use of Facebook pursuant to a free license constitutes a "sale, lease, or transfer"—CFA challenges at least one statement that has only, at most, an attenuated connection to such use. The Complaint identifies as misleading an alleged press statement that a Meta employee gave to Reuters, Compl. ¶ 39 & n.34—a statement that is not alleged to have appeared on the Facebook app or anywhere else that users were likely to encounter it in connection with their use of the platform. Other courts have dismissed consumer-protection claims based on similar statements to the press or investment analysts because "[a] reasonable consumer would not be familiar with or rely upon," such statements. *Sanchez v. Walmart Inc.*, 733 F. Supp. 3d 653, 669 (N.D. Ill. 2024); *see also In re Syngenta AG MIR 162 Corn Litig.*, 131 F. Supp. 3d 1177, 1226 (D. Kan. 2015) (dismissing Lanham Act claim based on earnings call statements where "the plaintiff had not alleged sufficient facts to satisfy the requirements that the statements be made for the purpose of influencing customers and be sufficiently disseminated"). The Court should dismiss the Complaint to the extent that it relies on such statements.

CONCLUSION

For the foregoing reasons, the Complaint should be dismissed with prejudice.

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**pro hac vice* status pending

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