No. 23-CV-1020

In the

District of Columbia Court of Appeals

CORPORATE ACCOUNTABILITY LAB,

Appellant,

v.

SAMBAZON, INC.,

Appellee.

On Appeal from the Superior Court of the District of Columbia
Civil Division in Case 2023 CAB 1954 (Honorable Shana Frost Matini, Judge)

REPLY BRIEF FOR APPELLANT

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INTRODUCTION

This case concerns representations made in the District of Columbia, to residents of the District of Columbia, and with the intent that residents would act upon those representations and purchase products within the District of Columbia. The District's Consumer Protection Procedures Act (CPPA) is the nation's broadest consumer-protection statute, "applied liberally to promote its purpose," D.C. Code § 28-3901(c), and D.C. consumers have a right to rely upon being protected by that statute. Despite that, the Superior Court determined that California law should apply to this action, depriving District consumers of District protections.

Interpreting the CPPA, like all statutes, requires "taking into account their language; their context; their place in the overall statutory scheme; their evident legislative purpose; and the principle that statutes should not be construed to have irrational consequences." *J.P. v. District of Columbia*, 189 A.3d 212, 219 (D.C. 2018) (citing *Lopez-Ramirez v. U.S.*, 171 A.3d 169, 177 (D.C. 2017)). The Superior Court's decision must not stand. Courts in D.C. have recognized the District's strong public-policy interest in enforcing the CPPA for its own citizens.[1] Surrendering that interest

[1] *See, e.g.*, *Inst. for Truth in Mktg., Inc. v. Offroad*, No. 2023-CAB-000944, 2023 D.C. Super. LEXIS 39, at *10-11 (D.C. Super. Ct. Sept. 21, 2023) ("[T]he District has a strong interest in protecting District consumers through enforcement of the CPPA. Likewise, the Plaintiff has an interest in vindicating its rights conferred by the District's consumer protection laws, related to sales made to a District resident on an interactive site and which concluded by shipping merchandise to the District.") (personal jurisdiction); *Am. Inst. for Truth in Adver., Inc. v. Vitacommerce, Inc.*, No.

simply because a public interest organization is standing in for District consumers would override explicit legislative intent. The D.C. council, on the basis that individual consumers often lack the means to prosecute actions for misrepresentations, specifically empowered nonprofit organizations, like Plaintiff here, to represent consumer interests and granted those organizations "maximum standing" to do so. Comm. on Public Servs. and Consumer Affairs Memorandum on Bill 19-0581 (Nov. 18, 2012), at 2, 6 ("Alexander Report"). The Superior Court's decision effectively means that pursuing a CPPA claim through nonprofit representation will result in that claim no longer being afforded the CPPA's protection. That is not what the legislature intended.

The Superior Court dismissed the complaint of Plaintiff-Appellant Corporate Accountability Lab (CAL) against Defendant-Respondent Sambazon on the basis that choice of law principles required the application of California law rather than District law. In its opening brief, CAL argued that the choice of law finding was in error, and that none of the remaining arguments in the motion to dismiss—whether

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2017 CA 7342 B, 2018 D.C. Super. LEXIS 2, at *12-13 (D.C. Super. Ct. Apr. 11, 2018) ("Here, the District has a strong interest in enforcing the CPPA to protect its residents from deceptive pricing practices. Moreover, plaintiff has an interest in prosecuting its case in the District, which is where the alleged injuries occurred and where the relevant products were purchased and mailed.") (personal jurisdiction); *cf. John Doe Co. v. Consumer Fin. Prot. Bureau*, 235 F. Supp. 3d 194, 205 (D.D.C. 2017) ("But suffice it to say that the public has a strong interest in the vigorous enforcement of consumer protection laws.").

CAL's complaint stated a claim and whether CAL had standing—would have been a basis for dismissal either. Sambazon responds with four arguments. Point I of this Reply addresses Sambazon's arguments regarding the balance of the Restatement (Second) of Conflict of Laws Section 145 (1988) factors and whether there was a true conflict here. Point II addresses Sambazon's contentions that CAL's complaint failed to state a CPPA claim and that CAL lacked standing to bring that claim.

ARGUMENT

I. The Superior Court erred in dismissing CAL's complaint based on choice of law (answering Respondent's Brief, Point I).

In its motion to dismiss, Sambazon argued that choice of law principles required the application of California law. (MTD 7-13; A32-38.) Superior Court agreed. (Order 2, 4-7; A230, A232-35.) In its opening brief on appeal, CAL argues that Superior Court's balancing of the Restatement factors was off, and that the analysis was not necessary in the first place because no true conflict exists. Sambazon responds, first, that the lower court balanced the Restatement factors correctly and that CAL's arguments otherwise were waived. (RB at 25-34.)[2] Sambazon responds, second, that the court below was right to find a true conflict between the laws of the District and of California (RB at 17-25), and again that

[2] Parenthetical references to "RB" are to Respondent's Brief.

CAL's claims otherwise were waived. (*Id.* at 14-17.) Sambazon is wrong. Superior Court erred in balancing the factors and in finding any true conflict.

A. The Superior Court erred in how it balanced the four Restatement factors, and CAL's arguments were not waived.

On appeal, Sambazon argues that the balance of the four Restatement factors shows that California law should apply. The factors are: (1) "the place where the injury occurred," (2) "the place where the conduct causing the injury occurred," (3) "the domicil[e], residence, nationality, place of incorporation and place of business of the parties," and (4) "the place where the relationship, if any, between the parties is centered." Restatement (Second) of Conflict of Laws § 145(2); *see also Washkoviak v. Sallie Mae*, 900 A.2d 168, 180 (D.C. 2006). There is no dispute that Factor One favors the District, while Factor Three favors neither side, since neither party is located in the District.[3] (Order 4-5; A232-33; *accord* RB at 25, 30.)

Sambazon contends, as it did below, that Factor Two was properly applied to favor California because California is its principal place of business, and the

[3] This analysis assumes that the relevant party for purposes of the analysis is Plaintiff CAL. Per its explicit statutory authorization, however, CAL is standing in the shoes of District of Columbia consumers. *See* D.C. Code § 28-3905(k)(1)(D); Alexander Report at 6; *Animal Legal Def. Fund v. Hormel Foods Corp.*, 258 A.3d 174, 183 (D.C. 2021) ("*Hormel*") (("public interest organizations are empowered to bring suits 'on behalf of the interests of a consumer or a class of consumers' without pursuing any independent interest of the organization or its members") (quoting D.C. Code § 28-2905(k)(1)(D))). D.C. consumers are located within the District, and viewing the advertisements in the District, and making purchasing decisions in the District. In that analysis, Factor Three shifts decidedly to favoring D.C. law.

complaint alleges only Sambazon's location in California. It also claims that CAL's arguments otherwise were waived. (RB at 25-29; MTD at 10-11; A35-36.)

But the relationship between the parties under Factor Four was not centered in California. Instead, that factor should have favored neither party. There was no center of their relationship, given the nature of the claim and of nonprofit public interest standing in the District. The Restatement and case law are clear that not every lawsuit involves two parties with a relevant relationship. The Restatement's commentary explains that this factor should apply only where "there is a relationship between the plaintiff and the defendant and when the injury was caused by an act done in the course of the relationship." Restatement § 145(2) cmt. (e). It offers examples: traveling on a train as a paying passenger, or agreeing to ride as a guest in another's car. *Id.* illus. 1, 2; *accord Am. Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 164 F. Supp. 3d 104, 110 (D.D.C. 2016). Case law also provides guidance. A customer of an insurance company and the insurance company itself have a relationship in the Fourth Factor sense, *see Krukas v. AARP, Inc.*, 376 F. Supp. 3d 1, 31 (D.D.C. 2019), and so does a customer renting a U-Haul and the U-Haul company, *see Margolis v. U-Haul Int'l, Inc.*, 818 F. Supp. 2d 91, 106 (D.D.C. 2011).

The nature of the claim here shows that there was no relationship between CAL and Sambazon within the meaning of the Fourth Factor. CAL's claim did not depend on *any* direct engagement between CAL and Sambazon. CAL and Sambazon

have no contract or business relationship. CAL has not purchased any Sambazon products or relied on Sambazon's misrepresentations like the plaintiffs in *Krukas* and *Margolis*. Nor do CAL and Sambazon have a direct noncommercial relationship, akin to the Restatement's example of agreeing to ride in another's car.

Indeed, this is the point of the District's liberal standing rules for nonprofit and public interest organizations. D.C. Code Section 28-3905(k)(1)(D) explicitly provides public interest organizations standing to sue on behalf of District consumers even in the absence of a direct relationship with the defendant. The only required relationship is that the interests of the organization and the interests of the consumers it seeks to protect be aligned. But it disclaims any need for a relationship with the defendant. *See id*.; *Hormel*, 258 A.3d at 183.

D.C. Code Section 28-3905(k)(1)(C), similarly, does not require any relationship with the defendant within the meaning of the Factor Four. That statute permits a nonprofit to bring an action on behalf of itself, its members, or "the general public," but unlike (k)(1)(D), Subsection (C) does retain Article III standing requirements and, thus, an obligation to show injury (at a minimum, statutory injury). *See Hormel*, 258 A.3d at 185. This, however, can be accomplished without a relationship to a defendant. Organizational standing allows public interest organizations to obtain Article III standing via expending resources to combat bad conduct within their ambit. *See, e.g.*, *D.C. Appleseed Ctr. for Law & Justice, Inc. v.*

D.C. Dep't of Ins., 54 A.3d 1188, 1205-10 (D.C. 2012); *see generally Havens Realty Corp. v. Coleman*, 455 U.S. 363 (1982).

CAL brought suit under both subsections, asserting standing but no direct relationship with Defendant. Sambazon argues on appeal that since CAL seeks to vindicate the rights of District consumers, it is necessarily asserting a relationship. (RB at 31-32.) But that is not so. Neither subsection requires a relationship between CAL and Sambazon, and CAL does not plead that it has any relationship with Sambazon such as is contemplated by the Restatement factors. CAL's desire to protect consumers is its strategic objective, not an agreement, contract, or other form of entanglement with Sambazon. There was no relationship.

Sambazon also points to *Washkoviak v. Sallie Mae*, noting that the court in that matter applied Factor Four in a case involving misrepresentations to the public. (RB at 31.) But *Washkoviak* is inapposite because there was a clear relationship between the plaintiff and defendant there: that of a lender and borrower. *Washkoviak,* 900 A.2d 168, 172-73 (D.C. 2006). Indeed, "*Washkoviak* found the relationship 'centered' in Wisconsin based on case law specific to borrower/lender relationships." *Levine v. Am. Psychological Ass'n (In re APA Assessment Fee Litig.)*, 766 F.3d 39, 54 (D.C. Cir. 2014) (quoting *Washkoviak*, 900 A.2d at 181).

Nor was this issue waived. (*Cf.* RB at 14-15, 31.) In its complaint, CAL asserted that the CPPA permits suit regardless of whether a consumer was misled,

that CAL is a public interest organization and so may act on behalf of the public under these statutes, and that CAL can bring such an action based only on a sufficient nexus to District consumers. (Compl. ¶¶ 15-16, A9-10.) In the papers below, CAL objected to Sambazon's choice of law argument by pointing to (k)(1)(D) and how bringing a claim under that statute made cases like *Margolis*—involving direct contacts and a commercial relationship—inapposite. The parties' arguments clearly apprised the lower court, which both reached and addressed the issue in its decision. (Order 5-6; A233-34 (noting that "defendant asserts that the relationship between the parties is centered in California" but finding, erroneously, that the parties had a relationship "centered" where Sambazon was "located and made business decisions").)

Sambazon next argues that Superior Court rightly found that where the conduct causing the injury occurred (Factor Two) favors California, since Sambazon claims that California is where it produces its advertising materials. Sambazon also argues that CAL has conceded and waived any argument that Sambazon might produce the advertisements it sends into the District somewhere other than California. (RB at 28.)

CAL has neither conceded nor waived this point. In responding to Sambazon's argument that the "alleged misconduct took place in California," CAL answered that "the fact th[at] Sambazon may create the deceptive advertisements in California is

immaterial." (Opp. 8; A334.) But this reference to where Sambazon "may" create the materials was in service of CAL's argument in the very next line: that these issues were appropriate for summary judgment, not a motion on the pleadings, because discovery could change the analysis. (*Id.*) The implication was not that Sambazon's characterization must be right, but that Sambazon's bid to end the case through a motion to dismiss was ill-timed. At this stage, it is impossible to know with sufficient certainty where the advertisements were created.

This was entirely correct, and this factor should have favored neither side. Without CAL's supposed concession, nothing beyond Sambazon's headquarters being in California indicates where the relevant advertisements were created or from where they reached the District. Sambazon is a big company doing business internationally and likely makes decisions in many jurisdictions. CAL does not have a sufficient level of detail on Sambazon's operations, in the absence of discovery, as CAL noted for the Superior Court. Until the evidence is received, the factor favors no one, which is why choice of law analysis is "better suited to resolution on motions for summary judgment," after an opportunity for discovery. *Jones v. Lattimer*, 29 F. Supp. 3d 5, 10 n.3 (D.D.C. 2014) (quoting *La Reunion Aerienne v. Socialist People's Libyan Arab Jamahiriya*, 477 F. Supp. 2d 131, 137 (D.D.C. 2007)).

Of the Four Factors, one favored the District while the remaining three favored neither party. In that situation, the forum jurisdiction's law should apply.

Even if the Restatement factors were simply split as to which law should be favored, the forum jurisdiction takes the tie. *See Washkoviak*, 900 A.2d at 182.

B. There was no true conflict here, and CAL's argument was preserved for this Court's review.

Superior Court applied the Restatement factors because it found that a true conflict existed between the laws of California and the District. It concluded that District law would permit CAL to bring the instant suit where California law would not, and that California and the District have equally strong governmental interests in seeing their laws applied. (Order 4; A353.) On appeal, Sambazon contends that CAL did not plead that it could have obtained organizational standing in California and (yet again) that its arguments are unpreserved or waived. (RB at 14-15, 23-25.)

There was no true conflict here, first, because CAL pled facts sufficient to show that it could have brought this claim in California under that state's Unfair Competition Law (UCL). *See Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 714 (D.C. 2013) (holding that no true conflict exists if both jurisdiction's laws would produce identical outcomes). Certainly, the complaint was not drafted with an eye toward satisfying the UCL, because CAL brought the claim, by statutory right, under the CPPA. But public interest organizations in California can establish UCL standing by showing that, in furtherance of their preexisting mission, they incurred an "identifiable trifle" of "costs to respond to perceived unfair competition." *See Cal. Med. Ass'n v. Aetna Health Inc.*, 14 Cal. 5th 1075, 1078, 1082

(Cal. 2023). CAL's complaint alleges facts showing it expended at least a "trifle" of resources, and in fact quite a bit more: CAL investigated Sambazon's policies, products, and representations, and it addressed disputes surrounding Sambazon's "Fair for Life" certification. (Compl. ¶¶ 23-30, 32 n.15; A11-13.) This is ultimately an inference to be drawn from the pleadings, but a complaint is sufficient if it "permit[s] inferences to be drawn . . . that indicate that these elements exist." *Gordon v. Dist. of Columbia*, 309 A.3d 543, 551 (D.C. 2024) (quoting *Chamberlain v. Am. Honda Fin. Corp.*, 931 A.2d 1018, 1023 (D.C. 2007)) (ellipses in original). Here, inferences drawn from the complaint show that CAL expended resources in a manner that would satisfy the UCL.

Second, the application of District law here would advance the interests of the District far more than applying California law would advance that state's interests. (*Cf.* RB at 17-23.) Sambazon argues that, because the CPPA and the UCL are aimed toward different harms, they are inherently in conflict with each other. (*Id.* at 17-19.) And Sambazon rightly notes that an exemption from liability is entitled to the same weight as a creation of liability. (*Id*. at 18.) But as the Restatement makes clear, the fact that two states' statutes disagree about the limits of liability does not mean they share an equal interest in those laws' application in a particular case. That depends on the purpose behind those laws. A court must "discern the purpose" of the two rules, and it is "[f]requently . . . more difficult to discern the purpose of a rule

denying liability than of a rule which imposes it." Restatement (Second) of Conflict of Laws § 145, cmt. c. When two states' laws are aimed at protecting different parties from different bad conduct, they do not share the same interest in all applications of those laws—it depends on whether the case at hand involves those parties and conduct. *See id.*, illus. 1, 2.

Here, the CPPA and the UCL have a key difference in purpose: the CPPA is forward-looking, prophylactic, and intends broadly to empower nongovernment organizations as private prosecutors, while the UCL is meant to address harms already suffered. *Compare* CPPA § 28-3905(k)(1)(D) *with* UCL § 17204. This case is exactly the kind of prophylactic action that the CPPA intends to facilitate. *See* Alexander Report at 4, 6. The District's interest is, therefore, high. To that point, the Council has been clear that the CPPA was intended to ensure "maximum standing for public interest organizations," *see* Alexander Report at 6, and that the statute should be "applied liberally to promote its purpose." D.C. Code § 28-3901(c). The Council explicitly sought to remove any "chilling effect" on public interest organizational standing and to encourage such lawsuits to protect District consumers. Alexander Report at 2.

In contrast, California's interest would not be advanced by applying its law here, since CAL is not seeking to make already harmed consumers whole. Moreover, California's purpose in limiting the UCL to existing harms was to cut down on

frivolous lawsuits, not to protect corporations from precautionary or forward-looking consumer protections. *See, e.g.*, *Californians for Disability Rights v. Mervyn's, LLC*, 39 Cal. 4th 223, 228-29 (Cal. 2006). Though this matter is in dispute, it is certainly not frivolous. As such, only the District has a strong interest in the application of its law here.

These arguments were not waived. (*Cf.* RB at 14-15.) The facts showing CAL could have established UCL standing in California are all in the complaint. (Compl. ¶¶ 23-30, 32 n.15; A11-13.) As for the differing purposes of the laws, CAL argued in its papers that Sambazon's assertion of a true conflict was baseless. CAL asserted that, unlike the District, California did "not afford the CPPA's broad public-interest standing" and so it was not the appropriate location to bring this claim. (Opp. 7, 7 n.1; A333.) In the absence of discovery showing California's law should govern, CAL argued, the District was the appropriate forum. (*Id.* at 8.) The Superior Court was apprised of and directly addressed this issue, evaluating the relative level of interest the District and California had in the matter. (Order 4; A353.)

In the alternative, this Court should remand for CAL to amend its complaint to address the lack of true conflict. CAL requested amendment if any portion of the pleading were found insufficient. (Opp. 15; A341.) Because the complaint was not drafted toward a discussion of California law, amendment would be fruitful; more

could be said both on CAL's organizational standing and on the different purposes of the CPPA and the UCL.

* * *

The Superior Court erred in applying the Restatement factors, which should have favored the application of District law. Additionally, the lower court was wrong to find a true conflict on the facts of this case.

II. The complaint stated a CPPA claim and CAL had standing to bring that claim (answering Respondent's Brief, Point II).

CAL's opening brief demonstrates that neither of Sambazon's other claims on the motion to dismiss—that CAL failed to state a claim (MTD at 13-16, 16-19; A38-41, A41-44; RB at 35-39) or that it lacked standing (RB at 39-41)—warranted dismissal. Sambazon responds that CAL did fail to state a claim, because (1) the challenged statements were "mere puffery," (2) CAL never pleaded what "ethical" means to the average District consumer, (3) the statements were not a guarantee that their supply chain was entirely free of child labor, and (4) CAL has not pointed to any specific incident of child labor. (RB at 35-39.) These are insufficient grounds for upholding dismissal.

CAL's complaint stated a claim under the CPPA. Sambazon contends that the misrepresentations CAL identified in its complaint were mere "puffery." (RB at 35-36.) But puffery refers to matters of subjective assertions, often of quality, like "bald statements of [a product's] superiority." *See, e.g.*, *Hoyte v. Yum! Brands, Inc.*, 489 F.

Supp. 2d 24, 30 (D.D.C. 2007) (quoting *Am. Italian Pasta Co. v. New World Pasta Co.*, 371 F.3d 387, 391 (8th Cir. 2004)). On the other hand, representations about "manufacturing practices," the "environmental impact" of such practices, "general representations" about an industry and a company's "efforts to counter the negative effects of the industry," and "the goals for the company going forward" are not puffery and cannot be dismissed at the pleadings stage. *Earth Island Inst. v. BlueTriton Brands*, No. 2021 CA 003027 B, 2022 D.C. Super. LEXIS 11, *11-14 (D.C. Sup. Ct. June 7, 2022) (denying motion to dismiss similar claims); *see also*, *Pearson v. Soo Chung*, 961 A.2d 1067, 1076-77 (D.C. 2008) (defining puffery as "the exaggerations reasonably to be expected of a seller as to the degree of quality of his product, the truth or falsity of which cannot be precisely determined" (quoting *Tietsworth v. Harley-Davidson, Inc.*, 270 Wis. 2d 146, 196 (Wis. 2004)).

The statements CAL complains of are not statements of subjective quality but of the social and environmental impacts of Sambazon's business, and of Sambazon's claimed plans and practices. These included claims that Sambazon had created "our own responsibly managed supply chain" overseeing any berry "from the moment it is wild harvested" to "the palm of your hand" (Compl. ¶¶ 10, 26; A8, A12); assertions that "all Sambazon products are ethically sourced" (Compl. ¶ 23; A11); promises that "[e]very time" consumers purchase Sambazon berries they are helping drive "Fair Wages & Labor Practices" (Compl. ¶ 24; A11); and that Sambazon's Fair

for Life certification means it follows rigorous standards for human rights and "ensuring no child/slave labor occurs." (Compl. ¶¶ 27-28; A12-13). These are not claims that Sambazon's açai berries are the tastiest, or generic statements of Sambazon's goodwill. An average consumer would not think to disregard all this as so much advertising-speak.

Sambazon also objects that CAL never pleaded what consumers specifically understand "ethical sourcing" to mean. (RB at 36.) But CAL specifically pled that District consumers would view Sambazon's claim of being "ethically sourced" as misleading if they knew child labor was involved (Compl. ¶ 52; A17), *i.e.*, that ethical sourcing cannot involve child labor. No more is required at the pleadings stage—Plaintiff's fact allegations are taken as true. Yet CAL went further than that, citing a study showing 75% of consumers would not buy from brands they knew were employing child labor, even if those consumers were already customers of the brand, and to a study showing that 60% of American consumers would stop using a product with trafficked or forced labor in its supply chain. (Compl. ¶¶ 48-51; A16.) And frankly, the issue is *child labor*. Common sense tells us that child labor is an ethical concern most District consumers are likely to share. Nor is it an answer that Sambazon discusses its purportedly "ethical sourcing practices" in greater detail on its website. (RB at 36.) There is no indication in the statements CAL complains of that consumers are supposed to understand that Sambazon is using some unusual or

technical definition of "ethical," as opposed to how consumers ordinarily use the word. Moreover, any issue with pleading what District consumers understand to be ethical with regard to child labor could be easily solved by amendment.

Sambazon next argues that no consumer would reasonably believe that Sambazon had eradicated all child labor from all aspects of its supply chain (as if child labor were an expected part of *any* supply chain), noting that the Fair for Life program does not make that promise.[4] (RB at 37-38.) But Sambazon is making big, unqualified assurances: "all Sambazon products," "every time," "each time," "every step of [the product's] journey," "our guarantee," "no child/slave labor." (Compl. ¶¶ 10, 23-26, 28; A8, A11-13.) These are not assertions of merely doing the best one can in a difficult industry, but of Sambazon having established full supervision over its supply chain to guarantee how the açai farmers on the ground are treated. It would not be "illogical, implausible, or fanciful" for a consumer to believe that. *Ctr. For*

[4] CAL's Complaint does allege that Fair For Life's stated standards for certification require that "no children are employed as workers." (Compl. ¶ 7; A8.) Consumers would, thus, expect that Sambazon is not only trying its best to follow this standard but has implemented practices reasonably to ensure this standard is met. The issue is that on-the-ground investigations have revealed that Sambazon does not actually inquire about the use of child labor (*see id*. ¶ 40; A14-15), and Fair For Life rarely conducts supply-chain audits, and when it does, "gives advance notice of its audits to community leaders, meaning any child labor can be easily hidden from the few and far between checks that do occur." (*Id*. ¶¶ 42-43; A15.) This discrepancy between what consumers are told and what actually occurs is the basis of CAL's lawsuit.

Inquiry, Inc. v. Walmart, Inc., 283 A.3d 109, 120 (D.C. 2022) (quoting *Bell v. Publix Super Mkts., Inc.*, 982 F.3d 468, 493 (7th Cir. 2020)).

As CAL alleged in its complaint, those representations were false. Sambazon answers that CAL has failed to specify an incident of child labor in its supply chain. (RB at 38-39.) At this stage, however, the falsity is not whether CAL has pleaded a specific incident of child labor; the falsity is that Sambazon claims total control over its supply chain and maximally promises that this ensures ethical products, when Sambazon does not have that control it promises. (*See generally* Compl. ¶¶ 39-40; A14-15.) Sambazon makes its promises in an industry where child labor is so rife the State Department has described the whole business as overrun. (*Id.* ¶ 35; A14.) That is the problem: promising consumers a level of protection and certainty that does not exist.

It is also worth noting that the question of whether these statements are material and misleading is more appropriate for a finder of fact. *See Saucier v. Countrywide Home Loans*, 64 A.3d 428, 445 (D.C. 2013); *Earth Island Inst.*, 2022 D.C. Super. LEXIS 11 at *13 (citing *id.* at 445). More information will be revealed in discovery, including specific incidents of child labor; CAL's arguments regarding Sambazon's statements are not so obviously without foundation that they should be dispensed with at the pleadings stage.

CAL had standing to bring this claim under D.C. Code Sections 28-3905(k)(1)(D) and (C). For subsection D, Sambazon asserts that standing requires CAL to have identified a class of consumers who could bring an action, including pleading that those consumers had suffered an injury-in-fact. (RB at 40-41.) Not so. This was precisely the point of the Council's 2012 amendments to the CPPA: to clarify, in light of *Grayson v. AT&T Corp.*, that a public interest plaintiff need not suffer injury-in-fact. *See Hormel*, 258 A.3d at 182-83 (citing *Grayson*, 15 A.3d 219 (D.C. 2011). A public interest organization "adequately identif[ies]" the class of consumers under subsection D by alleging that it seeks to represent District consumers "to whom [the defendant] markets [the] products" and alleges that the defendant "violate[d] D.C. customers' enforceable right to truthful information from merchants." *Ctr. for Inquiry*, 283 A.3d at 116. CAL's complaint contains such allegations. (*See* Compl. ¶¶ 16-22, 54, 56, 62; A10-11, A17, A18.) Moreover, the CPPA explicitly permits liability "whether or not any consumer is in fact misled, deceived, or damaged" by the deceptive trade practice. D.C. Code § 28-3904.

Regarding section 28-3905(k)(1)(C) of the CPPA, Sambazon argues that CAL needed to plead Article III standing by showing an injury-in-fact but failed to do so. (RB at 39-40.) As discussed above, however, the complaint contained sufficient factual allegations to permit the inference that CAL expended resources to investigate and oppose Sambazon's misrepresentations outside of this lawsuit. (*See*

Compl. ¶¶ 23-30, 32 n.5; A11-13; *see also supra* §I.B.) Such expenditure of resources establishes injury-in-fact for standing purposes. *See D.C. Appleseed Ctr.*, 54 A.3d at 1209. Indeed, at the motion to dismiss stage, even a "scanty" description of the diverted resources would suffice. *See Equal Rights Ctr. v. Props. Int'l*, 110 A.3d 599, 605 (D.C. 2015).

* * *

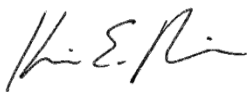
In sum, CAL properly pled a CPPA claim and had standing to bring that claim per sections 28-3905(k)(1)(D) and (C).

CONCLUSION

Plaintiff-Appellant CAL asks the Court to reverse the decision of Superior Court dismissing its action and to remand for further proceedings applying District law, or in the alternative, with instructions to permit CAL to amend its complaint, or in further alternative, to allow for discovery on issues of standing under California law to demonstrate lack of true conflict.

Date: June 26, 2024

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 June 26, 2024. 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:

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