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)

BRIEF FOR APPELLEE

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RULE 26.1 CORPORATE DISCLOSURE STATEMENT

Pursuant to Rule of Appellate Procedure 26.1, Defendant-Appellee Sambazon, Inc. hereby states that it does not have a parent company, and that no publicly held corporation owns 10% or more of Defendant-Appellee Sambazon, Inc.'s stock.

RULE 28(a)(2) DISCLOSURE

Pursuant to Rule of Appellate Procedure 28(a)(2), Plaintiff-Appellant Corporate Accountability Lab has been and is represented by Kim Richman and Jennifer Church of Richman Law & Policy.

Defendant-Appellee Sambazon, Inc. is represented on appeal by Brian D. Koosed and Caitlin C. Blanche of Venable LLP. Defendant-Appellee Sambazon, Inc. was represented in the Superior Court by Brian D. Koosed, Caitlin C. Blanche, and Sarah A. Decker of K&L Gates LLP.

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Jurisdictional Statement

Defendant-Appellee Sambazon, Inc. ("Sambazon") agrees with Plaintiff-Appellant Corporate Accountability Lab ("CAL") that this Court has jurisdiction over CAL's appeal from the final order of the Superior Court (Judge Frost Matini), dated November 14, 2023 (the "Order"), which dismissed CAL's complaint, dated March 28, 2023 (the "Complaint"), as a matter of law on choice of law grounds.

Counter-Statement of the Issues

1. Did CAL waive its right to argue that no true conflict exists between: (a) California's Unfair Competition Law, Cal. Bus. & Prof. Code § 17200 *et seq.* (the "UCL"), on the one hand; and (b) the District of Columbia's Consumer Protection Procedures Act, D.C. Code § 28-3901 *et seq.* (the "CPPA"), on the other, by failing to dispute the existence of a true conflict between those two statutes below?
2. Notwithstanding CAL's waiver, did the Superior Court correctly find the existence of a true conflict between California's UCL and D.C.'s CPPA because, based on the allegations in the Complaint, CAL could pursue its claim under D.C.'s CPPA, but could not do so under California's UCL?
3. Did the Superior Court correctly find that, under this Court's precedent in, among others, *Washkoviak v. Sallie Mae*, 900 A.2d 168 (D.C. 2006),

California has the most significant relationship to this dispute, based on, among other things, the Complaint's explicit, repeated allegations that: (a) Sambazon is headquartered in California; (b) neither CAL nor Sambazon is a D.C. resident; and (c) CAL's claims sound in misrepresentation and false advertising?

4. Notwithstanding that the Superior Court's Order dismissing the Complaint should be affirmed on choice of law grounds, is the Complaint independently subject to dismissal for failure to state a claim and lack of standing under the CPPA?

Statement of the Case

Plaintiff-Appellant CAL is an Illinois non-profit; Defendant-Appellee Sambazon is a Delaware corporation that, as CAL repeatedly pled, is based in California. (App. 8, 17, Complt. ¶¶ 6, 53; Br., p. 9.)[1]

Sambazon sells the superfood açaí, a purple berry grown on the açaí palm tree in the Amazon rainforest. (*See* App. 8, 13, Complt. ¶¶ 6, 32.) Relying almost exclusively upon a 2021 Washington Post article about children harvesting açaí, CAL sued Sambazon under the CPPA for allegedly misleading statements on Sambazon's website about the sourcing of its açaí. (*See* App. 12–15, Complt. ¶¶ 23–46.)

Notably, CAL's Complaint did not include a single specific pled factual allegation that Sambazon's açaí is harvested by children. (*See* App. 6–20, Complt.) Instead, painting with the broadest brush possible, CAL speculated that Sambazon must use child labor because, in CAL's view—again, based almost exclusively on a single news article—the entire açaí industry does. (*See* App. 13–15, Complt. ¶¶ 31–46.) Therefore, according to CAL, all açaí products—including, in CAL's view, Sambazon's—are not "ethically sourced." (*See id.*)

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[1] All citations to "App. __" are to the Appendix that CAL filed accompanying its Opening Brief, dated April 22, 2024 (the "Br.").

On these grounds, CAL sought injunctive relief under the CPPA on behalf of D.C. consumers as both a non-profit (under D.C. Code § 28-3905(k)(1)(C)) and as a public-interest organization (under D.C. Code § 28-3905(k)(1)(D)).

Faced with a Complaint devoid of any specific pled factual basis against it, Sambazon moved to dismiss CAL's Complaint on three main grounds.

First, Sambazon argued that this Court's precedent requires undertaking a choice of law analysis here because there is a direct conflict between: (i) California's UCL, which precludes an organization like CAL from suing without alleging an injury in fact; and (ii) D.C.'s CPPA, which permits such a suit, without any allegation of injury in fact, so long as CAL adequately represents the interests of D.C. consumers who could themselves bring a CPPA claim. (*See* App. 32–34.)

Sambazon further argued that, in light of this direct conflict between California and D.C. law, D.C.'s choice of law rules, properly applied, require application of California law. (*See* App. 34–38.) Specifically, Sambazon noted that: (i) under this Court's choice of law precedent in the context of a false advertising case such as this one, the place of a plaintiff's injury is entitled to less weight than the place of a defendant's conduct; (ii) as CAL admitted, Sambazon is headquartered in California, making California the place of conduct here; and (iii) California's interests in governing corporations residing in California dwarf D.C.'s interest in policing a California corporation's website that is viewable in the District,

particularly where no party to the suit is a D.C. resident. (*See id.*) Further, applying California's UCL here, Sambazon argued that CAL's claim fails because CAL could not bring such a claim under the UCL as a matter of law. (*See id.*)

Second, Sambazon argued that, even if D.C. law applied (which it does not under this Court's precedent) and even viewing the Complaint's allegations in the light most favorable to CAL, CAL still failed to state a plausible claim under the CPPA because the Complaint relied on mere puffery and other statements that would not be misleading to a reasonable consumer as a matter of law, particularly in the absence of any pled facts that would suffice under the Supreme Court's precedents in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). (*See* App. 41–44, 346–47.)

Third, Sambazon argued that, even if D.C. law applied (and, again, it does not here), CAL's Complaint failed for lack of CPPA standing. (*See* App. 38–41, 346.)

The Superior Court granted Sambazon's motion to dismiss on the first ground, declining to address the second and third grounds for dismissal. (*See* App. 350–56 & 350 n. 1.) Because CAL did not dispute there was a "true conflict" between California's UCL and D.C.'s CPPA, the Superior Court only addressed CAL's arguments directed elsewhere in applying this Court's choice of law precedent—specifically, CAL's arguments that CAL alone chooses where to sue, and that D.C. law applies because CAL seeks to protect D.C. consumers. (*See* App. 351–53.)

Applying this Court's choice of law precedent and the modified governmental interest factors embodied in it, the Superior Court found that:

> [W]hen faced with (1) "the discounted value of the place of injury in cases, such as this one, involving claims of misrepresentation," *Washkoviak*, 900 A.2d at 182; (2) the lack of any allegation in the Complaint that the conduct of the Defendant that caused the alleged injury took place in the District as opposed to California; (3) the lack of any ties that either party has to the District; and (4) the determination, as a matter of law, that the parties' relationship is centered in California, the Court finds that Defendant has demonstrated that California law should apply to this case.

(*See* App. 355–56.)

Applying California law, the Superior Court then found that California's UCL requires an organizational plaintiff like CAL to allege it has lost money or property as a result of Sambazon's false advertising in order to bring a UCL claim, and that CAL failed to allege such injury here. (*See* App. 356.) Accordingly, the Superior Court dismissed CAL's Complaint as a matter of law. (*See id.*)

This appeal followed. (App. 357.)

Statement of the Facts

A. Sambazon and its Fair Trade and Organic Certified Açaí

As CAL alleged in its Complaint and reiterates on appeal, Sambazon is a Delaware corporation with its headquarters in California that sells products made from the superfood açaí. (App. 8, 17, Complt. ¶¶ 6, 53.) Açaí grows on the açaí palm tree in the floodplains of the Amazon rainforest and has long been a staple of indigenous diets. It is low in naturally occurring sugars and, like blueberries, packed full of antioxidants that tackle free radicals. (*See* App. 48–50.) Açaí also contains fatty acids that support heart health, brain function, and healthy skin and hair. (*See* App. 50.)

Sambazon sells its açaí in more than 45 countries on five continents and is the first supplier of Fair Trade and Organic certified açaí. (*See* App. 67, 77.) Since its inception, Sambazon has endeavored to be a role model for the rest of the açaí industry, and global agribusiness generally. Even as a small, limited-revenue company, it has invested in, and committed to, Fair Trade practices through, among other things, pursuing environmental sustainability, fairly compensating its growers and investing in their local communities, and committing itself to identifying and remediating forced labor of all kinds, including child labor, from its açaí supply chain. (App. 29.)

As explained on Sambazon's website, including in the blog posts CAL cited in its Complaint: "Fair Trade is a global movement made up of a diverse network" and founded on the principles of respect for "human rights and fair working conditions," "the ecosystem and promotion of biodiversity, sustainable agriculture practices," and "local impact." (*See* App. 81.)

B. Original Defendant Ecocert USA and Its "Fair for Life" Certification

One of the pillars of Sambazon's robust ethical supply chain effort is its "Fair for Life" certifications through the international Ecocert group of companies based in France. (*See* App. 15, 17, Complt. ¶¶ 41–46, 55.) Ecocert's Fair for Life certification is available to entities that produce, process, or trade food products derived from wild plants. (*See* App. 95.)

Ecocert has certified Sambazon's açaí products as "Fair for Life"; Ecocert's Fair for Life logo thus appears on Sambazon's packaging. (App. 11–13, Complt. ¶¶ 23–30). Sambazon's Fair for Life certification requires "annual physical audits and ongoing monitoring of all Sambazon practices," separate and apart from Sambazon's own efforts to audit its supply chain. (*See* App. 81–82.)

Because of Sambazon's Fair for Life certification, CAL initially sued both Sambazon and Ecocert USA, an Indiana entity that is part of the larger international Ecocert group, below. (*See* App. 17–19, Complt. ¶¶ 53–55, 58, 66.) CAL later voluntarily dismissed Ecocert USA from this case. (App. 4.)

C. CAL

CAL is an Illinois non-profit with its headquarters in Chicago. (App. 17, Complt. ¶ 56.) According to its website, CAL endeavors to "develop new legal strategies" to "hold corporations accountable," including using "consumer protection laws [to] advance corporate accountability for human rights abuses."[2] (*See also* App. 10, Complt. ¶ 20 (containing similar allegations).)

D. The Complaint

CAL filed its Complaint against Sambazon and then-Defendant Ecocert USA in the Superior Court on or about March 28, 2023.

The allegations of purported misconduct in CAL's Complaint relied almost exclusively on a November 2021 article in the Washington Post discussing the açaí industry generally. (*See* App. 13–15, Complt. ¶¶ 31–46.) For example, among other things, the Washington Post article quotes CAL's executive director as saying that the açaí industry "is one of those situations where certifications [like Ecocert's Fair for Life certification] shouldn't be allowed."[3]

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[2] *About Us*, Corporate Accountability Lab, https://corpaccountabilitylab.org/our-mission *and Combating Forced Labor*, Corporate Accountability Lab, https://corpaccountabilitylab.org/combating-forced-labor (both last visited May 28, 2024).

[3] Terence McCoy, Small children are climbing 60-foot trees to harvest your açaí, *https://www.washingtonpost.com/world/2021/11/28/brazil-acai-child-labor/* (last visited May 22, 2024).

As to Sambazon, that same article merely states, citing two Brazilian açaí merchants, that "Sambazon buys fruit outside its registered network, exposing it to the *possibility* of purchasing fruit harvested by children." (*See id.* (emphasis added).)

CAL's Complaint contains no other allegation of improper labor practices by Sambazon, and nowhere alleges a single instance of Sambazon's açaí actually being harvested using child labor. (*See* App. 6–20, Complt.)

On these meager grounds, CAL alleged Sambazon and then-defendant Ecocert USA had violated the CPPA and sought injunctive relief accordingly. (*Id.*)

Standard of Review

Choice of law issues are normally treated as questions of law subject to *de novo* review. *Pietrangelo v. Wilmer Cutler Pickering Hale & Dorr, LLP*, 68 A.3d 697, 714 (D.C. 2013); *Washkoviak v. Sallie Mae*, 900 A.2d 168, 180 (D.C. 2006). The Superior Court's dismissal of a complaint for failure to state a claim is also reviewed *de novo*. *Bereston v. UHS of Delaware, Inc.*, 180 A.3d 95, 99–100 (D.C. 2018).

This Court has adopted the pleading standard set forth in *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544 (2007), and *Ashcroft v. Iqbal*, 556 U.S. 662 (2009). *See Bereston*, 180 A.3d at 99. Accordingly, a complaint must contain "sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Iqbal*,

556 U.S. at 678 (quoting *Twombly*, 550 U.S. at 570). "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements" are not sufficient, and a court is not required to accept a plaintiff's legal conclusions as true. *Id.* For a claim to be facially plausible, a plaintiff must "plead[] factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Bereston*, 180 A.3d at 99.

This "plausibility standard" thus "*asks for more than a sheer possibility* that a defendant has acted unlawfully . . . . Where a complaint pleads facts that are 'merely consistent with' a defendant's liability, it 'stops short of the line between possibility and plausibility of 'entitlement to relief.'" *Bereston*, 180 A.3d at 99 (emphasis added) (quoting *Iqbal*, 556 U.S. at 679).

Summary of Argument

This Court should affirm the Superior Court's Order dismissing CAL's Complaint as a matter of law.

As to choice of law, the Superior Court properly found that a true conflict exists between California's UCL and D.C.'s CPPA on the facts pled in the Complaint. Indeed, CAL *never* disputed the existence of a true conflict below, only now doing so for the first time on appeal. (*Compare* App. 333–36 (CAL's opposition on choice of law issues below), *with* Br., pp. 13–20.) CAL has thus waived any argument that no true conflict exists here. *See infra*, pp. 14–15.

Even if it had not waived the argument, however (and CAL did waive it), CAL's argument still fails on the merits. As this Court has recognized, a legal rule that exonerates a defendant is entitled to the same weight in the choice of law analysis as one that imposes liability. So too here, CAL cannot side-step the standing requirements of California's UCL simply by pleading this action under D.C.'s CPPA, particularly when *nothing* in the CPPA's case law, text, or legislative history reflects an intent to abrogate D.C.'s traditional choice of law analysis in the CPPA context. *See infra*, pp. 16–23. Nor does CAL's invocation of organizational standing under California law—in an effort to turn the true conflict between D.C. and California law here into a false one—hold up. *See infra*, pp. 23–25.

Finally, upon correctly concluding that a true conflict existed, the Superior Court properly applied this Court's precedent—and the modified governmental interest analysis embodied in it—to find that California has the most significant relationship to this dispute, which is premised, at bottom, on alleged misrepresentations by Sambazon. *See infra*, pp. 25–34.

Because the Superior Court correctly dismissed CAL's Complaint on choice of law grounds, this Court, like the Superior Court below, need not address Sambazon's other bases for dismissal. (*See* App. 350 n. 1.) Nevertheless, if the Court is inclined to do so, those separate grounds independently support dismissal of CAL's Complaint as a matter of law. *See infra*, pp. 34–41.

Argument

I. The Superior Court Correctly Dismissed CAL's Complaint on Choice of Law Grounds.

The Order should be affirmed in the first instance because the Superior Court correctly found that California's UCL applies here, not D.C.'s CPPA. (*See* App. 350–56.) Specifically, and as set forth below, the Superior Court correctly applied this Court's precedent, first determining whether a "true conflict" existed between California and D.C. law. (*See* App. 351–53.) Finding that "the District of Columbia would allow a nonprofit to bring the instant claim . . . whereas California would not," the Superior Court found such a "true conflict" existed. (App. 353, citing *Pietrangelo*, 68 A.3d at 714 (finding a true conflict existed where Massachusetts law permitted a claim against the defendant law firm, but D.C. law did not).)

The Superior Court then correctly proceeded to apply this Court's "modified governmental interest factors" to determine whether California or D.C. had the most significant relationship to the dispute, and found California did. (App. 353–56.) Because California law applied, and CAL could not maintain its suit under California's UCL, the Superior Court thus dismissed the Complaint. (*Id.*)

In response to the Superior Court's well-reasoned analysis—which merely applied established and long-standing precedent from this Court—CAL throws the proverbial kitchen sink in its Brief, to no avail. As set forth below, the Superior Court got it right, and each of CAL's arguments to the contrary fail.

A. CAL never disputed that a "true conflict" between California and D.C. law exists below; it has thus waived that argument on appeal.

Initially, CAL devotes a substantial portion of its Brief to arguing that no "true conflict" exists between California's UCL and D.C.'s CPPA. (*See* Br., pp. 13–20.) CAL *never* raised this argument below, however. (*See* App. 333–36.) CAL has thus waived the argument here.

It "is a well established principle of appellate review that arguments not made at trial may not be raised for the first time on appeal." *D.C. v. Califano*, 647 A.2d 761, 765 (D.C. 1994). Instead, D.C. courts "rely on parties, particularly when they are represented by counsel, to preserve the arguments that may bring them relief and press them on appeal." *Nawaz v. Bloom Residential, LLC*, 308 A.3d 1215, 1231 (D.C. 2024). This Court thus regularly rejects arguments raised for the first time on appeal. *See, e.g.*, *Rayner v. Yale Steam Laundry Condo. Ass'n*, 289 A.3d 387, 401 n. 46 (D.C. 2023) (declining to consider appellant's argument that he was entitled to amend as a matter of course because it was "not raised below"); *Nawaz*, 308 A.3d at 1231 (declining to consider damages as a potential basis for reversal because appellant "never identified damages as a contested issue" either below or on appeal); *Stone v. Landis Const. Co.*, 120 A.3d 1287, 1291 n. 8 (D.C. 2015) (noting appellant's statutory CPPA argument was raised for the first time on appeal).

This Court deviates from this principle "only in exceptional situations and when necessary to prevent a clear miscarriage of justice apparent from the record." *Thornton v. Norwest Bank of Minnesota*, 860 A.2d 838, 842 (D.C. 2004). There is nothing exceptional about the situation here. Sambazon moved to dismiss, explicitly arguing, in a separate header in its motion, that "***California and D.C. consumer protections laws conflict***" and explaining why. (App. 33–34 (emphasis in original).)

In response, CAL had every opportunity to argue, as it does now on appeal, that: (i) D.C.'s CPPA does not conflict with California's UCL; or (ii) CAL has standing under California's UCL. (*See* Br., pp. 13–20.) CAL never made either argument below, instead arguing only that: (i) it has the right to choose the forum for its suit; (ii) any choice of law analysis had to wait for summary judgment; and (iii) the cases on which Sambazon relied were inapplicable. (App. 333–36.)

In sum, at no point did CAL dispute below that a true conflict exists between California's UCL and D.C.'s CPPA based on the facts pled in the Complaint. CAL cannot raise it now, for the first time on appeal. *Supra*, p. 14 (collecting cases).[4]

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[4] CAL's reliance on this Court's decision in *Charlton v. Mond* to avoid waiver is sorely misplaced. (*See* Br., p. 14 n. 3.) In *Charlton*, this Court held that defendant had not waived his personal jurisdiction defense by filing a motion to dismiss on that ground, then filing a counterclaim against the plaintiff when his motion to dismiss was denied. *Charlton v. Mond*, 987 A.2d 436, 440–41 (D.C. 2010). Here, by contrast, CAL simply failed to dispute the existence of a true conflict *at all* below. *Charlton* thus provides no help to CAL here.

B. Even if not waived, CAL's argument fails because there is a "true conflict" between California's UCL and D.C.'s CPPA here.

Even if CAL had not waived the argument (and CAL did), CAL's challenge to the existence of a true conflict still fails on the merits.

At the outset, and as the Superior Court acknowledged, both the CPPA and the UCL permit representative claims for injunctive relief against a party allegedly engaged in misleading advertising. (App. 352, *comparing* D.C. Code §§ 28-3904–05, *with* Cal. Bus. & Prof. Code §§ 17200, 17203.) But *only* the CPPA grants such standing to an organization that has not, itself, been injured. (App. 352, citing D.C. Code §§ 28-3905(k)(1)(C)–(D).) The UCL, by contrast, does not. (App. 352, citing Cal. Bus. & Prof. Code §§ 17203–204 and related case law confirming California's UCL only permits representative claims by a claimant who "*has suffered injury in fact and has lost money or property*") (emphasis added).)

Faced with a Complaint that fails to allege CAL lost any money or property, or was otherwise injured by Sambazon, the Superior Court correctly concluded that D.C.'s CPPA would permit CAL to bring its suit, while California's UCL would not. (App. 353.) This is the quintessential "true conflict," as this Court and other D.C. courts have repeatedly acknowledged. *See Pietrangelo*, 68 A.3d at 714 (finding true conflict because Massachusetts's consumer protection law permitted plaintiff's claim, but D.C.'s CPPA did not); *Iron Vine Sec., LLC v. Cygnacom Sols., Inc.*, 274 A.3d 328, 349–50 (D.C. 2022) (finding true conflict between D.C. law and Virginia

law on conspiracy); *Washkoviak*, 900 A.2d at 180 (implicitly recognizing true conflict between Wisconsin law and D.C.'s CPPA); *In re APA Assessment Fee Litigation*, 766 F.3d 39, 53 (D.C. Cir. 2014) (finding true conflict between California's UCL that permitted plaintiff's claim, and D.C.'s CPPA that did not); *Krukas v. AARP*, 376 F. Supp. 3d 1, 28 (D.D.C. 2019) (finding true conflict between Florida and Louisiana law, which would bar plaintiff's claim, and D.C.'s CPPA, which would not); *Margolis v. U-Haul Int'l*, 818 F. Supp. 2d 91, 101 (D.D.C. 2011) (finding true conflict because D.C.'s CPPA permits "a representative action for injunctive relief," while Maryland's consumer protection law did not).

To avoid the existence of a true conflict here—and therefore obviate the need to analyze the governmental interest factors that were fatal to CAL's Complaint below—CAL makes two arguments for the first time on appeal. Neither has merit.

1. CAL's policy argument is wrong and has no basis in the CPPA's case law, text, or legislative history.

For its first argument to avoid the existence of a true conflict—which, again, CAL never raised below—CAL argues that the CPPA "is prophylactic, designed to address potentially harmful conduct, and ongoing conduct," while the UCL only "seeks to remedy direct harms after they occur." (Br., pp. 15, 17.) Because, according to CAL, the UCL and CPPA serve different purposes, California has no interest in having its law applied here, so no conflict between the two State's laws exists. (*Id.*) This argument is wrong, both logically and legally.

First, logically speaking, CAL's argument makes little sense. If, as CAL claims, the CPPA and the UCL are designed to address different harms—through, among other things, different standing rules for different plaintiffs—that only underscores that the CPPA and the UCL *do*, in fact, conflict in this particular case. Thus, CAL's argument implicitly concedes the existence of a conflict here—even if CAL won't admit as much—because applying California's UCL yields a different result than D.C.'s CPPA, just as the Superior Court found. (App. 352–53.); *see also* Br., p. 12 (acknowledging "[a] 'true conflict' arises when the two jurisdictions' laws are different and would produce different results in the case at bar.").

Indeed, this is precisely why this Court and others have repeatedly recognized that a State's rule immunizing liability (like the UCL's standing rule here) is entitled to the same weight in the choice of law analysis as a rule creating liability (like the CPPA's). *See, e.g.*, *Jones v. Clinch*, 73 A.3d 80, 82–83 (D.C. 2013) (affirming dismissal of CPPA claim because Maryland had a greater interest in the litigation, even though Maryland law exempted defendants from liability); *Pietrangelo*, 68 A.3d at 714 (recognizing that a conflict existed where Massachusetts law imposed liability and D.C. law did not); *see also In re APA Assessment Fee Litig.*, 766 F.3d at 53 (interpreting *Pietrangelo* "to recognize that a rule of non-liability—reflecting a legislative purpose to protect defendants from litigation—can be owed the same consideration in the choice of law process as is a rule which imposes liability")

(citing Restatement (Second) of Conflict of Laws § 145 cmt. c) (internal quotations omitted); *Amer. Nat'l Ins. Co. v. JPMorgan Chase & Co.*, 164 F. Supp. 3d 104, 109 (D.D.C. 2016) (rejecting plaintiff's argument that, because New York law immunized defendant, New York had no interest in having its law applied, finding that New York had "a significant governmental interest" in "protect[ing] its residents" from "liability for actions that New York does not consider tortious").

Second, and setting aside its logical flaws, there is no legal support for CAL's argument. At bottom, CAL argues that, by bringing a claim under the CPPA, a public-interest organization like CAL can exempt itself from the traditional choice of law analysis that would otherwise apply to any other claim under D.C. law. (Br., pp. 15–17.) This, according to CAL, is the necessary consequence of the D.C. Council's 2012 amendments to the CPPA, which effected "maximum standing" for public interest organizations like CAL. (Br., pp. 15–16.) But CAL cites *no* legal support for this argument. Nor could it. CAL's argument cannot be squared with either the existing case law under the CPPA, or its text and legislative history.

Case Law: As noted, both before and after the 2012 amendments to the CPPA, this Court and others have repeatedly found that a true conflict exists between the CPPA and the laws of other States where a plaintiff could bring a claim under the CPPA but could not under the foreign States' laws (or vice versa). For example, in *Jones v. Clinch*, this Court found the laws of Maryland and D.C. were "in conflict":

> [B]ecause in Maryland, unlike the District of Columbia, appellant could not bring a consumer protection suit against appellees. As the [lower] court explained in its order: There is a conflict in the consumer protection laws. Maryland law exempts doctors from its consumer protection law, whereas the District has no such exemption.

Jones, 73 A.3d at 82 (internal citations omitted); *see also Pietrangelo*, 68 A.3d at 714 (reaching same conclusion where Massachusetts law permitted claim and D.C. law did not).

Similarly, in *Margolis v. U-Haul Int'l., Inc.*, a D.C. federal court found that a true conflict existed because the plaintiff could bring "a representative action for injunctive relief" under the CPPA—just like the one CAL sought to bring below—but could not do so under Maryland law. *Margolis*, 818 F. Supp. 2d at 101. Multiple other D.C. federal courts have reached the same conclusion. *In re APA Assessment Fee Litig.*, 766 F.3d at 53; *Krukas*, 376 F. Supp. 3d at 28.

These cases belie CAL's suggestion that another State (here, California) has no interest in having its law applied to a particular dispute because it would preclude liability where another State's law (here, D.C.'s) would impose it. Indeed, this Court and others have repeatedly recognized that California's interest here—regulating the conduct of companies at home there—is a substantial governmental interest. *See, e.g.*, *Washkoviak*, 900 A.2d at 180–81 ("Wisconsin has a powerful interest in protecting its residents from fraud and misrepresentation, while the District of

Columbia has *an equally strong interest in ensuring that its corporate citizens refrain from fraudulent activities*.") (emphasis added); *Shaw v. Marriott Int'l, Inc.*, 605 F.3d 1039, 1045-46 (D.C. Cir. 2010) (affirming dismissal of CPPA claim because D.C.'s "interest does not outweigh the interest of Maryland in ensuring corporations domiciled there do not mislead consumers").

Simply put, if CAL's argument were adopted, then it would necessarily call into question this Court's decisions in *Pietrangelo* and *Jones*, which held that D.C. and Maryland, respectively, had the greater interest in having their laws applied, even though in both cases those laws exonerated the defendant. *Pietrangelo*, 68 A.3d at 714 and *Jones*, 73 A.3d at 82. And it would similarly call into question all of the other cases that applied D.C.'s normal choice of law analysis to putative CPPA claims, often finding that the claims were barred by the laws of another State. *Supra*, pp. 16–17. In short, CAL's argument is simply not D.C. law. This Court should decline CAL's invitation to make it so.

The CPPA's Text and 2012 Amendments: Contrary to CAL's suggestion in its Brief, neither the 2012 amendments to the CPPA, nor the CPPA's text and legislative history generally, eliminate the need for a choice of law analysis here, or otherwise dictate a different result. (*See* Br., pp. 14–17.)

For example, CAL relies heavily on the Alexander Report in its Brief. (Br., pp. 15–16 & Addendum A.) But as that report makes clear, the CPPA's 2012 amendments sought to address this Court's decision in *Grayson v. AT&T Corp.*, 15 A.3d 219 (D.C. 2011), which was both clear, and limited: the Council's prior iteration of the CPPA did not evince a "clear or explicit intent . . . to disturb or override" the traditional requirement that a plaintiff satisfy Article III constitutional standing. 15 A.3d at 241–42. Accordingly, *Grayson* said ***nothing*** about conflicts of law or choice of law analysis. *See generally Grayson*, 15 A.3d 219.[5]

Nor does CAL cite ***anything*** in the Alexander Report, or the balance of the CPPA's text or legislative history, suggesting that the D.C. Council intended to alter—let alone outright eliminate, as CAL apparently suggests—D.C.'s traditional choice of law analysis, either for purposes of CPPA claims generally, or claims brought by non-profits or public interest organizations under §§ 28-3905(k)(1)(C) or (k)(1)(D) specifically. (*See* Br., Addendum A.)

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[5] Significantly, this Court in *Grayson* specifically noted that California's UCL initially eliminated the constitutional standing requirement of injury in fact, only to add that requirement back to the UCL as part of a 2004 referendum. *Grayson*, 15 A.3d at 241 & n. 63. That is the exact same requirement that creates the true conflict of law identified by the Superior Court below, and which CAL attempts to side-step by way of its new arguments on appeal.

As this Court stated in *Grayson*, "we do not speculate and infer that the Council sought to eliminate" traditional legal requirements; instead, the Council must speak clearly in doing so. *Grayson*, 15 A.3d at 244–45. There is no indication at all that the Council intended to eliminate choice of law analysis in the CPPA context here. This Court should therefore reject CAL's implicit request to effectively revise the CPPA in favor of a new statutory scheme.[6]

2. CAL's resort to California organizational standing also fails.

Aside from its policy argument, CAL also argues for the first time on appeal that it has organizational standing under California's UCL, such that any conflict between D.C.'s CPPA and the UCL is a "false" one eliminating the need for a choice of law analysis. (Br., pp. 17-20.) CAL waived this argument by failing to raise it below (*supra*, pp. 14–15), but it also fails on the merits.

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[6] Lest CAL argue otherwise, it is not uncommon for legislatures to specify that conflict of law principles should not apply in a particular situation. For example, New York and Delaware have both adopted statutes that permit their laws to be invoked for business transactions, without regard to conflict of law principles and regardless of any contacts with New York or Delaware. *See* N.Y. Gen. Oblig. Law § 5-1401 (permitting any contract for an amount over $250,000 to choose New York law as its governing law, "whether or not such contract . . . bears a reasonable relation to [New York]"); Del. Code tit. 6 & 2708 (permitting any contract to choose to be governed by Delaware law "without regard to principles of conflict of laws"). So too could the Council amend the CPPA here to state that it applies "without regard to principles of conflict of laws." But the Council has not done so yet, and this Court should not make such a significant amendment to the CPPA, simply upon CAL's request, without the Council evincing an affirmative legislative intent to do so.

Initially, as the Superior Court correctly determined, CAL fails to plead an injury in fact to *itself*, as required under California law. (*See* App. 356 ("In applying California law, the Court finds that Plaintiff has failed to allege that it has lost money or property . . . .").)

Further, CAL mischaracterizes "organizational standing" under the UCL as a separate theory that California courts allow "relatively liberally." (Br., p. 18.) But even in the cases CAL cites (*see* Br., p. 19.), the plaintiffs-organizations had standing under the UCL because they sufficiently alleged injury in fact *to themselves*. *See, e.g.*, *Animal Legal Def. Fund v. LT Napa Partners LLC*, 234 Cal. App. 4th 1270, 1279–80, 1284 (2015) (finding plaintiff had UCL standing because it "contend[ed] it suffered injury-in-fact" based on a declaration from plaintiff's executive director); *S. California Hous. Rts. Ctr. v. Los Feliz Towers Homeowners Ass'n*, 426 F. Supp. 2d 1061, 1069 (C.D. Cal. 2005) ("[T]he Housing Rights Center has standing because it presents evidence of actual injury . . . .").

Here, by contrast, CAL did not allege a similar theory of injury to itself, either in its Complaint or during the motion to dismiss briefing below, arguing throughout only that it brought this case on behalf of D.C. consumers. (S*ee* Br., p. 18; *see also* App. 11, 18, Complt. ¶¶ 21, 62.) CAL's argument that it would have "organizational standing" under California's UCL is based solely on assertions CAL *did not* make in the Complaint, or at any time before the Superior Court below, and are otherwise

wholly speculative arguments created for appeal. Accordingly, and contrary to CAL's claim, CAL lacks standing under the UCL, just as the Superior Court correctly found below.

In sum, D.C.'s CPPA permits CAL to sue without an injury in fact, while California's UCL does not. (App. 352.) The "two jurisdictions' interests" in applying their laws "therefore are equally strong," creating a true conflict. *In re APA Assessment Fee Lit.*, 766 F.3d at 53 (citing *Washkoviak*, 900 A.2d at 181). Because CAL waived any arguments otherwise, and because CAL's arguments are wrong in any event, the Superior Court's finding of a true conflict—like its finding, discussed below, that California law applies—should be affirmed.

C. The Superior Court correctly applied this Court's substantial relationship factors to find that California law applies here.

Because there is a true conflict between California and D.C. law, the Superior Court properly conducted a most significant relationship analysis to determine whether California or D.C. law should apply. *See Pietrangelo*, 68 A.3d at 714. This Court uses four factors from the Restatement (Second) Conflict of Laws § 145 for that analysis: "a) The place where the injury occurred; b) The place where the conduct causing the injury occurred; c) The domicile, residence, nationality, place of incorporation and place of business of the parties; and d) The place where the relationship is centered." *Id.* (citations omitted).

Below, the Superior Court canvassed the relevant case law and the allegations in CAL's Complaint, ultimately concluding that these factors show California has the most significant relationship to this dispute. (App. 353–56.) CAL's challenge to the Superior Court's findings on appeal are unavailing, waived, or both.

Factor 1 (Place of Injury): The Superior Court found that the first Restatement factor (place of injury) weighed in favor of D.C. law, because CAL asserted that the alleged injuries to consumers occurred in the District. (App. 353–54.) CAL does not challenge this ruling on appeal. As to this Restatement factor, Sambazon notes only that, as this Court has noted and the Superior Court held, this factor "is less significant in the case of fraudulent misrepresentations" such as CAL's suit. *See Washkoviak*, 900 A.2d at 182 (noting "the discounted value of the place of injury" in such cases); *see also* App. 354 (same).

Factor 2 (Place of Conduct Causing Injury): The Superior Court held that the second Restatement factor—the place of conduct causing the injury—weighed in favor of California law. (App. 354.) Specifically, the Superior Court found that: (i) the Complaint "focuses on [] alleged deceptive marketing representations"; (ii) in misrepresentation cases, the place of conduct is "where the defendant set its 'practices and policies'"; (iii) given CAL's allegation that Sambazon "is a company based in California," CAL's argument below—that it was immaterial, for choice of law purposes, where Sambazon creates its advertisements (App. 334.)—"essentially

concedes that [Sambazon] creates its advertising materials in California"; and (iv) the Complaint contains "no assertions" alleging a different location where Sambazon creates its advertisements. (App. 354, citing *Margolis* and *Washkoviak*.)

The Superior Court's findings on this second Restatement factor were correct on the law and on the facts pled in CAL's Complaint.

On the law, the Restatement makes clear that "the place of injury does not play so important a role for choice of law purposes in the case of false advertising. *Instead, the principal location of the defendant's conduct is the contact that will usually be given the greatest weight*." *See* Restatement (Second) Conflict of Laws § 145, cmt. f (emphasis added). This is exactly why this Court noted, in *Washkoviak*, "the discounted value of the place of injury" in the choice of law analysis "in cases such as this one" alleging false advertising under the CPPA. *Washkoviak*, 900 A.2d at 182. Numerous other cases are in accord. *See, e.g.*, *Krukas*, 376 F. Supp. 3d at 30; *Margolis*, 818 F. Supp. 2d at 104–05.

On the facts, the Superior Court applied this well-established law to the pled facts in CAL's Complaint, which *only* allege that Sambazon is headquartered in California. (App. 8, 17, Complt. ¶¶ 6, 53.) As the Superior Court noted, the Complaint contains "no assertions . . . alleging otherwise." (App. 354.) Nor did CAL allege, either below or at bar, a different location for where Sambazon sets its policies and practices. (*See* App. 333–36; Br., p. 8.) The Superior Court thus rightly

concluded, based on CAL's only pled factual allegations, that California was the place where the conduct causing injury occurred, and that the second Restatement factor thus weighed in favor of California law. (App. 354–56.)

On appeal, CAL argues that this straightforward finding by the Superior Court was error for two main reasons. Neither holds water.

First, CAL argues that it "made no [] concession" below about where Sambazon sets its policies and practices or created the allegedly misleading advertisements at issue. (Br., pp. 22–23.)

Initially, this argument was waived. *Supra*, pp. 14–15 (collecting cases). Sambazon repeatedly argued in its motion to dismiss that California is "where Sambazon is headquartered" and where Sambazon creates "the content on its globally accessible website and product packaging." (App. 33, 35.) CAL *never* disputed Sambazon's assertions in response. (App. 333–36.) Instead, CAL simply argued, as the Superior Court noted, that "the fact the [sic] Sambazon may create the deceptive advertisements in California is immaterial." (App. 334, 354.)

CAL had every right to make that purely legal argument below and can challenge the Superior Court's (proper) rejection of it on appeal. But CAL cannot now argue—for the first time on appeal, based on pure speculation—that Sambazon's ads are created somewhere besides California. For this reason alone, CAL's argument should be rejected as waived. *Supra*, pp. 14–15 (collecting cases).

In any event, CAL's argument is also wrong on the merits. Again, CAL's Complaint repeatedly pled that Sambazon is headquartered in California. (App. 8, 17, Complt. ¶¶ 6, 53.) Indeed, as the Superior Court noted, the Complaint contains "no assertions" supporting an inference that Sambazon sets its policies and practices anywhere besides California. (App. 354.) CAL's belated challenge to this point is thus belied by its own Complaint. *See In re APA Assessment Fee Litig.*, 766 F.3d at 54 (affirming finding that the second Restatement factor weighed in favor of D.C. law because plaintiff alleged defendants' principal place of business was in D.C., noting "neither side has suggested any other location where the conduct may have occurred" and rejecting plaintiff's argument that "defendants' use of a website to convey information should alter the analysis").

Second, and relatedly, CAL suggests it needs discovery to determine where Sambazon sets its policies and practices. (Br., pp. 22–23.) But this argument, though at least raised below, also falls short. All of the key facts necessary for the choice of law analysis here are pled in CAL's Complaint. Indeed, notwithstanding the conclusory and speculative assertions in its Brief, CAL identifies no other location where Sambazon might set its policies, and no actual facts that it claims are missing. It thus fails to explain how a lengthy discovery process would yield a different result under the Restatement factors and this Court's choice of law analysis. *See id.*

Accordingly, and for all these reasons, the Superior Court correctly held that the second Restatement factor weighs in favor of California law, and that determination was proper at the pleadings stage. *See, e.g.*, *Felder v. WMATA*, 174 F. Supp. 3d 524, 528–32 (D.D.C. 2016) (dismissing Virginia Wrongful Death Act claim at pleading stage because choice of law rules favored applying D.C. law); *Ass'n of Merger Dealers, LLC v. Tosco Corp.*, 167 F. Supp. 2d 65, 75 (D.D.C. 2001) (same, finding Maryland law did not permit standing at the pleading stage).

Factor 3 (Domicile of Parties): The Superior Court held that this third Restatement factor did not weigh in favor of any particular law because neither of the parties is a resident of D.C. (App. 354.) CAL does not challenge this portion of the Superior Court's ruling on appeal. (*See* Br.)

Sambazon, however, notes that its home state is California, while CAL's is Illinois. (App. 17, 354.) Thus, when choosing between D.C. and California law, this factor weighs, if anything, in favor of applying California law because, unlike D.C., California is the domicile of at least one of the parties here (Sambazon).

Factor 4 (Place of Relationship): The Superior Court held this fourth and final Restatement factor favors applying California law because "where the gravamen of the plaintiff's complaint is misrepresentation and false advertising," the parties' relationship is centered "where the defendant organization was located and made business decisions," which is California. (App. 354–55, citing *Krukas*.)

On appeal, CAL does not dispute that the fourth factor, if applied, weighs in favor of California law. (*See* Br., pp. 23–25.) Instead, CAL argues that the Superior Court erred "in applying this factor at all" because, according to CAL, the fourth factor only applies where there is a "preexisting relationship" between the parties. (Br., pp. 24–25.) Yet again, CAL waived this argument by failing to raise it below. *Supra*, pp. 14–15. In any event, CAL's argument is also wrong on the merits.

For starters, this Court has previously applied the fourth Restatement factor in *Washkoviak*, a CPPA case involving similar claims of false advertising directed towards members of the public. *Washkoviak*, 900 A.2d at 173, 182 (noting that, in the lender-borrower context, the parties' relationship is centered where "the property securing the loans are located"). CAL's argument that the fourth Restatement factor does not apply where, as here, a plaintiff alleges misrepresentations directed at the public thus implicitly fails under this Court's precedent.

Nor does CAL's argument make much sense, practically. For example, CAL argues the fourth Restatement factor applies where "wronged consumers" had "some kind of preexisting financial relationship with defendant," which, according to CAL, "was not the case here." (Br., pp. 24–25.) But the whole basis for CAL's purported standing under the CPPA is that CAL seeks to bring this case on behalf of "wronged consumers" in the District. (App. 18, Complt. ¶ 62; Br., pp. 23–25, 28–31.)

Essentially, CAL's argument again amounts to a request that this Court create another bespoke rule for non-profits and public interest organizations—that they can bring a CPPA claim on behalf of "wronged consumers" in the District, but the action can't be treated like an action on behalf of those "wronged consumers" for purposes of the fourth Restatement factor used in this Court's choice of law precedent. Again, there is no basis for such an approach. *Supra*, p. 31. Nor does CAL offer such a basis in its Brief. (*See* Br.) This Court should again decline to create brand-new law solely to save CAL from the Superior Court's proper dismissal of its Complaint.

Weighing the Restatement Factors:

As the Superior Court noted, assessing the four Restatement factors does not end the choice of law analysis; instead, "the weight of a particular state's contacts must be measured on a qualitative rather than quantitative scale." (App. 355, quoting *Washkoviak*, 900 A.2d at 181.) The Superior Court conducted that qualitative analysis, carefully weighed the four Restatement factors, and concluded as follows:

> Thus, when faced with (1) "the discounted value of the place of injury in cases, such as this one, involving claims of misrepresentation," *Washkoviak*, 900 A.2d at 182; (2) the lack of any allegation in the Complaint that the conduct of [Sambazon] that caused the alleged injury took place in the District as opposed to California; (3) the lack of any ties that either party has to the District; and (4) the determination, as a matter of law, that the parties' relationship is centered in California, the Court finds that

> [Sambazon] has demonstrated that California law should apply to this case.

(*See* App. 355–56.)

This analysis was correct as a matter of law and supported by ample precedent. For example, in *Margolis*, the court found Maryland law applied instead of the CPPA because, among other things, plaintiff was "not a resident of the District" and sought "to address injuries allegedly caused by a corporation which is neither incorporated nor headquartered in the District." *Margolis*, 818 F. Supp. 2d at 102 (alteration modified).

So too here. As in *Margolis*, none of the parties here is a D.C. resident. And, as the Superior Court held, Sambazon's allegedly misleading statements occurred in California, where Sambazon is headquartered. (App. 354.) Indeed, CAL *nowhere* pled any conduct by Sambazon specifically targeting District consumers, as compared to Sambazon's worldwide customers generally. *See also Shaw*, 605 F.3d at 1045 (holding plaintiff could not "state a claim under the CPPA" where "[n]either party has a domicile, residence, place of incorporation, or principal place of business in Washington" and "the relationship between them is not centered in the District").

California, by contrast, has substantial reasons for having its law applied, compared to D.C., because D.C.'s interests in regulating products within the District *"are less than"* California's interests in regulating

allegedly misleading statements being made by a corporation headquartered in its state. *See Krukas*, 376 F. Supp. 3d at 31 (noting other states' interest "in regulating third-parties involved in the sale[s] . . . within their states . . . are less than that [of the] third-party's place of incorporation and place of business").

For all these reasons, California has a stronger governmental interest than D.C. in applying its laws to this dispute. The Superior Court thus correctly found that the UCL, not the CPPA, applies here. (App. 355–56.) Accordingly, it properly dismissed CAL's Complaint because CAL lacks standing to bring a representative claim under the UCL. (App. 356.) Because the Superior Court got it right on the pled facts and the law, its Order should be affirmed in all respects.

II. Alternatively, the Complaint Should Be Dismissed For Failure to State a Claim and Lack of CPPA Standing.

Because the Superior Court correctly dismissed CAL's Complaint on choice of law grounds, the Court need not address the other bases for dismissal that Sambazon argued below, namely failure to state a claim and lack of standing under the CPPA. (*See* App. 38–44, 350 n. 1.) Alternatively, if necessary, the Court can remand those issues to the Superior Court for determination in the first instance. Because CAL argued the points in its Brief, however, Sambazon briefly responds by noting that, if the Court is inclined to address them, both failure to state a claim and lack of CPPA standing provide independent bases for dismissing CAL's Complaint.

A. CAL's Complaint fails to state a claim under the CPPA.

As noted, this Court has adopted the pleading standard set forth in *Twombly*, and *Iqbal*. *See Ctr. for Inquiry v. Walmart, Inc.*, 283 A.3d 109, 117 (D.C. 2022). Whether a CPPA claim lies depends on whether the plaintiff has pled sufficient facts to show the complained-of conduct, "viewed and understood by a reasonable consumer," would be misleading. *Pearson v. Chung*, 961 A.2d 1067, 1075 (D.C. 2008). Accordingly, this Court and others have dismissed CPPA claims as a matter of law that, viewed in context and not in isolation, merely point to statements that are not misleading to a reasonable consumer, or are mere puffery. *See, e.g.*, *Floyd v. Bank of Am. Corp.*, 70 A.3d 246, 256–57 (D.C. 2013); *see also Alicke v. MCI Commc'ns Corp.*, 111 F.3d 909, 912 (D.C. Cir. 1997) (dismissing CPPA claim because defendant's "billing practices could not mislead a reasonable customer"); *Whiting v. AARP*, 701 F. Supp. 2d 21, 30 (D.D.C. 2010) (dismissing CPPA claim because "none of the 'misrepresentations' that the plaintiff alleges are sufficient to establish a violation of the CPPA under the reasonable consumer standard").

Here, cutting through the Complaint's bluster and generalizations, CAL nowhere pleads any actionable misrepresentations by Sambazon, whether about "ethical sourcing," child labor, or otherwise. Initially, nearly all of the allegedly misleading statements that CAL identifies in its Brief—"Sambazon cares for the people it works with," "you're . . . directly giving back to family farmers," "we

believe in transparency," "you can feel good knowing you are helping the Amazon" (Br., pp. 32–33 (cleaned up))—are puffery. *See Pearson*, 961 A.2d at 1075 (noting the "phrase 'quality satisfaction guaranteed'. . . is a classic example of commercial 'puffery' on which no reasonable person would rely"); *see also Nat. Consumers League v. Wal-Mart Stores, Inc.*, No. 2015 CA 007731 B, 2016 WL 4080541, at *5–7, n. 8–9 (D.C. Super. July 22, 2016) (dismissing CPPA claim based on seller's statement that "[w]e . . . expect [our suppliers] to prohibit the use of child labor" as puffery "represent[ing] the goals and aspirations of Retailer").

CAL's other allegations fare no better. For example, CAL pled that Sambazon represents "all of its products are 'ethically sourced.'" (App. 7.) But CAL nowhere pled what a reasonable District consumer would even understand "ethically sourced" to mean, let alone how those statements are false or misleading to such a consumer. Indeed, Sambazon's website pages, cited by CAL throughout its Complaint and incorporated by reference therein, expressly describe Sambazon's ethical sourcing processes.[7] The Complaint nowhere alleged those statements are inaccurate. (*See* App. 6–20.)

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[7] *E.g.*, (App. 54–55, Ex. A to MTD (explaining that its "Certified Organic and Fair Trade Açaí is hand harvested by local farmers that minimize our impact on the local eco-system," "[t]ransported by riverboat," "checked for quality, color, consistency and aroma directly on our dock," and "processed at two of the most advanced, eco-friendly Açaí processing plants in the world".).

Further, CAL's allegations about Sambazon's statements on child labor are not misleading as a matter of law when actually read in context. For example, in its Complaint, CAL pled, without citation, that Sambazon "*guarantees* that its products are free from child labor." (App. 6 (emphasis added).) But Sambazon's website and product packaging say no such thing.

CAL cited only two sources in its Complaint for its allegation that Sambazon misleadingly markets its products as "ethically sourced" because they are made without child labor: (i) Sambazon's statement that its products are Fair for Life certified (the accuracy of which CAL did not dispute); and (ii) a 2019 blog post on Sambazon's website that CAL claims shows Sambazon's Fair for Life "certification means that it is 'ensur[ing] no child/slave labor occurs.'" (App. 13, citing App. 80–88.)

But, read in its full context, the blog post states—accurately—that "[t]he human rights areas covered [by Fair for Life certification] include . . . ensuring no child/slave labor occurs[.]" (App. 82.) The post also includes a link to www.fairforlife.org, from which the full Fair for Life Standard—set by Ecocert—can be accessed. That Standard, in turn, sets forth "Criteria" for certification, including as to child labor, but nowhere suggests certification "guarantees" those criterion are satisfied. (App. 27, 89–205.) Indeed, the Standard's "Guidance" expressly notes what a company should do "[i]f child labour is found." (*Id.*)

In short, no reasonable District consumer, reading Sambazon's statements on its website in context along with the linked Fair for Life Standard, would understand the general statement "ethically sourced" as a strict guarantee that no child has ever had, or could have, any involvement on any farm that Sambazon may have purchased from throughout its history.

Further, even if CAL had fairly pled that Sambazon claims it has permanently eradicated child labor from its supply chain (and CAL did not so plead), CAL's claim would still fail. To be sure, CAL baldly alleged that Sambazon's "Fair for Life açaí Products are made using . . . hazardous child labor." (App. 19.) But the Complaint did not plead a single *fact* to support that conclusory allegation such as, by way of example only, actually alleging a single instance of child labor in Sambazon's supply chain. Instead, at most, CAL relied on a Washington Post article that, when read in context, merely reported that perceived "gaps in the certification system to combat child labor" may expose Sambazon "to *the possibility* of purchasing fruit harvested by children." (App. 13–15, Complt. ¶ 40 (emphasis added).)

The speculative inferences CAL sought to draw in its Complaint—based on a generalized Washington Post article, with no further pled facts—are not the kind of well-pled factual allegations that state a plausible CPPA claim under this Court's pleading standard. *See, e.g.*, *Potomac Dev. Corp. v. D.C.*, 28 A.3d 531, 550 (D.C. 2011) (dismissing taking claim because appellants "pled 'facts that are merely

consistent with a defendant's liability,' and they 'stop[ped] short of the line between possibility and plausibility of entitlement to relief'"); *see also Cannon v. Wells Fargo Bank, N.A.*, 926 F. Supp. 2d 152, 174–75 (D.D.C. 2013) (dismissing various CPPA claims "for failing to 'state a claim to relief that is plausible on its face'").

B. CAL's Complaint fails for lack of standing under the CPPA.

CAL's Complaint also fails for lack of standing under the CPPA. In its Complaint, CAL invoked both CPPA § 28-3905(k)(1)(C) and CPPA § 28-3905(k)(1)(D). (App. 18, Complt. ¶ 62.)

The former allows a nonprofit to sue for violation of the CPPA "on behalf of itself . . . and . . . the general public[.]" D.C. Code § 28-3905(k)(1)(C). But the 2012 amendments to the CPPA did not eliminate Article III standing requirements as to non-profits suing under (k)(1)(C). *Animal Legal Defense Fund v. Hormel Foods Corp.*, 258 A.3d 174, 184–85 (D.C. 2021) ("[T]he [D.C.] Council ultimately retained Article III restrictions in (k)(1)(C) suits."). CAL must therefore plead "a concrete injury *even in* the context of a statutory violation." *Clean Label Project Found. v. Garden of Life, LLC*, No. 20-3229 (RC), 2021 WL 4318099, at *5 (D.D.C. Sept. 23, 2021) (emphasis in original); *see also Mann v. Bahi,* 251 F. Supp. 3d 112, 119 (D.D.C. 2017) ("D.C. law is clear that the CPPA is meant to extend as far as Article III's requirements will permit—but it can go no further than that.") (citing *Floyd v. Bank of Am. Corp.*, 70 A.3d 246, 251–52 (D.C. 2013)).

Here, the Complaint is utterly devoid of allegations showing that CAL, itself, has suffered an injury in fact. To the contrary, CAL claims to know the facts without which, according to CAL, Sambazon's statements are allegedly misleading to consumers; thus, CAL could not, itself, have been misled by Sambazon. (*See generally* App. 6–20.) Accordingly, CAL cannot establish it has Article III standing to bring a CPPA claim as a nonprofit under § 28-3905(k)(1)(C). *See UMC Dev., LLC v. D.C.*, 120 A.3d 37, 43 (D.C. 2015) ("The plaintiff bears the burden to establish standing.").

Unlike (k)(1)(C) standing, a public interest organization can bring suit on behalf of District consumers under CPPA § 28-3905(k)(1)(D) without showing injury in fact to itself, *but only if* "the consumer or class could bring an action" under the CPPA. D.C. Code § 28-3905(k)(1)(D). As this Court has noted, these statutory standing requirements alleviate a public interest organization from "any requirement to demonstrate *[its] own* Article III standing." *Hormel*, 258 A.3d at 184 (emphasis added). But even if it need not plead its own injury, a public interest organization like CAL still must, among other things, "identify 'a consumer or a class of consumers' that could bring suit in their own right." *Id.* at 185.

D.C. courts have consistently held that to bring suit under the CPPA, a consumer must have suffered a concrete injury in fact. *See, e.g.*, *Little v. SunTrust Bank*, 204 A.3d 1272, 1275 (D.C. 2019) (holding that individual plaintiffs lacked

standing to bring CPPA claim where they had "not alleged any particularized or concrete injury in *fact*") (emphasis added). It necessarily follows that a public interest organization like CAL must plead facts sufficient to show that the ***consumers*** whose interests it claims to represent have suffered a concrete injury. Yet CAL has not done so here.

Specifically, CAL does not plead that a single District consumer actually read any of the complained-of statements by Sambazon, let alone was misled by them. (*See generally* App. 6–20.) Instead, CAL nakedly asserts that consumers, generally, "care deeply about exploitative labor practices," desire "transparency from food producers," and "would stop buying from brands that they believe are unethical." (App. 16, Complt. ¶¶ 48–50 (citations omitted).) These generalized allegations—wholly unspecific to any District consumer or to any conduct by Sambazon—fall far short of the requisite showing that a District consumer has suffered "a concrete and particularized injury," "fairly traceable to [Sambazon's] challenged conduct," and which is "likely to be redressed by a [] judicial decision" in CAL's favor. *See Little*, 204 A.3d at 1274 (citation omitted).

Accordingly, CAL has not established that it has statutory standing as a public interest organization under § 28-3905(k)(1)(D). For this reason, too, the Complaint fails even under D.C.'s CPPA.

Conclusion

At bottom, the Superior Court properly applied long-standing precedent from this Court to find that D.C. law's traditional choice of law principles mandate application of California law and, accordingly, dismissal of CAL's Complaint against Sambazon.

CAL identifies no real error with the Superior Court's analysis or reasoning, instead engaging in special pleading, asking this Court to create new rules under the CPPA in order to salvage CAL's Complaint. This Court should decline CAL's invitation to make new, bespoke rules for the CPPA that the D.C. Council has not made itself. The Superior Court's Order dismissing CAL's Complaint and closing this case should therefore be affirmed. Alternatively, CAL's Complaint should be dismissed on either of the independent bases for dismissal that the Superior Court declined to address below.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was delivered this 3rd day of June, 2024, through the Court's CM/ECF system and by electronic mail to:

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