IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MUSLIM ADVOCATES, Plaintiff, v. **MARK ZUCKERBERG, *et al.,*** Defendants.	Civil Action No: 2021 CA 001114 B Judge: Anthony C. Epstein

CONSENT MOTION OF THE DISTRICT OF COLUMBIA FOR LEAVE TO FILE A BRIEF AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF

The District of Columbia moves for leave to file the attached brief as amicus curiae in support of plaintiff's opposition to defendants' motions to dismiss. This motion describes the District's interest in this case and discusses why this Court may benefit from hearing its views. Counsel for the defendants consent to this motion.

The District has a paramount interest in protecting its residents from unfair and deceptive trade practices. Pursuant to its authority to enforce the Consumer Protection Procedures Act ("CPPA"), D.C. Code § 28-3901 *et seq.*, the Office of the Attorney General has consistently sought to stop corporations from misleading District consumers about their goods and services. *See id.* § 28-3909(a). The Attorney General is also charged with representing consumers before administrative agencies and legislative bodies, with conducting consumer education programs, and with performing other duties necessary to protect the welfare of consumers. *See id.* § 28-3909(c)(1), (3), (5). Each of these efforts embrace the notion that consumers are entitled to truthful information about the goods and services they use and the risks associated with them.

The perspective of the District can help this Court resolve the important issues raised by this case. First, the District can offer the benefit of experience in interpreting the CPPA and in protecting District consumers from unfair and deceptive trade practices. Second, the District can highlight the consequences of immunizing defendants from District consumer protection law, including for future efforts to regulate similar technology companies.

For the foregoing reasons, the District requests leave to participate as amicus curiae in support of the plaintiff in these proceedings.

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

LOREN L. ALIKHAN
Solicitor General

/s/ Caroline S. Van Zile
CAROLINE S. VAN ZILE
Principal Deputy Solicitor General
Bar Number 1017942
Office of the Solicitor General

JIMMY R. ROCK
Assistant Deputy Attorney General
Public Advocacy Division

/s/ Benjamin M. Wiseman
BENJAMIN M. WISEMAN
Director, Office of Consumer Protection
Public Advocacy Division
Bar Number 1005442

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-5226
(202) 741-8949 (fax)
benjamin.wiseman@dc.gov

December 6, 2021

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MUSLIM ADVOCATES, Plaintiff, v. **MARK ZUCKERBERG, *et al.,*** Defendants.	Civil Action No: 2021 CA 001114 B Judge: Anthony C. Epstein

[PROPOSED] ORDER

Upon consideration of the District of Columbia's Consent Motion for Leave to File a Brief as Amicus Curiae in Support of Plaintiff, the parties' consent, and for good cause shown, it is on this _____ day of December, 2021,

ORDERED that the motion is **GRANTED**; and

FUTHER ORDERED that the District's Brief as Amicus Curiae in Support of Plaintiff is accepted for filing.

SO ORDERED.

_____
Judge Anthony C. Epstein
Superior Court of the District of Columbia

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

MUSLIM ADVOCATES, Plaintiff, v. **MARK ZUCKERBERG, *et al.,*** Defendants.	Civil Action No: 2021 CA 001114 B Judge: Anthony C. Epstein

BRIEF OF THE DISTRICT OF COLUMBIA AS AMICUS CURIAE IN SUPPORT OF PLAINTIFF

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INTRODUCTION AND INTEREST OF AMICUS CURIAE

The District of Columbia respectfully submits this brief as amicus curiae in support of plaintiff's opposition to defendants' motion to dismiss. The District's brief addresses the interpretation of the Consumer Protection Procedures Act ("CPPA"), D.C. Code § 3901 *et seq.*, and of Section 230 of the Communications Decency Act ("CDA"), 47 U.S.C. § 230. The District has a clear interest in the proper interpretation and application of its foremost consumer protection law.

The Office of the Attorney General is vested with the statutory authority to enforce the CPPA, in the name of the District, against "any person . . . engage[d] in an unfair or deceptive trade practice." D.C. Code § 28-3904; *see id.* § 28-3909(a), -3910. The District regularly relies on the CPPA to protect its residents from corporate deception, including by defendants. *See, e.g.*, Press Release, D.C. Off. of the Att'y Gen., *AG Racine Sues Facebook for Failing to Protect Millions of Users' Data* (Dec. 19, 2018) ("*AG Racine Sues Facebook*")[1]; *see also* Press Release, D.C. Off. of the Att'y Gen., *AG Racine Sues DoorDash for Deceiving District Consumers by Taking Tips from Food Delivery Workers* (Nov. 19, 2019)[2]; Press Release, D.C. Off. of the Att'y Gen., *AG Racine Announces Apple Will Pay $2.6M+ to District for Deceiving iPhone Users About Battery Problems and Throttling Performance* (Nov. 18, 2020).[3] Furthermore, the CPPA grants the Attorney General authority to perform a range of duties necessary to protect consumer welfare, including representing consumers before administrative agencies and legislative bodies and conducting consumer education programs. *See* D.C. Code § 28-3909(c)(1), (3), (5). Given its role

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1 *Available at* https://bit.ly/3cXDzHI.

2 *Available at* https://bit.ly/3lbsQ0T.

3 *Available at* https://bit.ly/31dvwEc.

in enforcing the CPPA and representing consumers in various fora, the District has a paramount interest in ensuring that Facebook and similar companies cannot evade accountability for misleading consumers about the nature of the goods and services they provide.[4]

In their motion to dismiss, defendants assert that they are exempt from the CPPA's prohibition on deceptive trade practices because Facebook offers its services "free of charge." Facebook Mot. to Dismiss 22. They also argue that Section 230 of the CDA immunizes them from any liability for their allegedly misleading statements about Facebook's platform and its policies for removing hate speech. Facebook Mot. to Dismiss 11; *see* Compl. 1. The District submits this amicus brief to clarify that neither the CPPA nor the CDA precludes defendants from incurring liability for deceptive trade practices.

The CPPA's prohibition on "unfair [and] deceptive trade practices," D.C. Code § 28-3904, extends to misrepresentations about consumer goods and services that are "s[old], lease[d] or transfer[red]." *Id.* § 28-3901(a)(6); *see id.* § 28-3904(a), (d), (e). As this Court has previously explained, Facebook's services "may qualify as business 'transactions' for purposes of the CPPA" because Facebook "provides a free online service to its users" while "allegedly collect[ing] and sell[ing]" users' personal data "to third parties." Order Den. Defs.' Mot. to Dismiss at 20, *District of Columbia v. Facebook, Inc.*, 2018 CA 008715 B (D.C. Super. Ct. May 31, 2019).[5] Abandoning this principle and limiting the CPPA's reach to fee-based transactions would contradict the statute's text, which plainly prohibits mispresentations about products that are "transferr[ed]," in addition to those that are "s[old]." D.C. Code § 28-3901(a)(6). This broad language, along with

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[4] Following the filing of this lawsuit, Facebook changed its name to Meta Platforms, Inc. Because their name remains "Facebook, Inc." on the docket, we continue to reference them as such in this brief.

[5] *Available at* https://bit.ly/3G0FLea.

the statutory command that the CPPA "be construed and applied liberally to promote its purpose" of "assur[ing] that a just mechanism exists to remedy *all* improper trade practices," *id.* § 28-3901(b)(1), (c) (emphasis added), confirms that the CPPA applies regardless of whether a consumer pays a fee. A contrary conclusion would exempt a large class of powerful technology companies from the District's foremost consumer protection law, starkly diminishing consumers' "right to truthful information" about many of the goods and services they use every day. *Id.* § 28-3901(c).

Nor does Section 230 of the CDA prevent plaintiff from asserting consumer protection claims against Facebook. Section 230 bars courts from treating interactive computer services like Facebook as the "publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). But the statute is inapposite where, as here, the cause of action arises from defendants *own* alleged affirmative deception of District consumers, rather than from statements made by third parties on Facebook's platform. Immunizing defendants from liability merely because their misleading statements addressed their content moderation policies would grant Facebook and other social media platforms unprecedented, unchecked power to deceive District consumers about the dangers of their goods and services.

ARGUMENT

I. The CPPA's Prohibition On Unfair And Deceptive Trade Practices Applies Regardless Of Whether Businesses Charge Fees.

A. The CPPA applies to trade practices that relate to both the "sale" and "transfer" of consumer goods and services.

The CPPA "establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or received in the District of Columbia." D.C. Code § 28-3901(c). To that end, the statute prohibits "unfair or deceptive trade practice[s]," *id.* § 28-3904, including misrepresentations about the "uses," "benefits," "standard,"

or "quality" of a product, *id.* § 28-3904(a), (d). This prohibition on unfair trade practices is not limited to businesses that charge money for their goods or services. Rather, the statute specifically defines "trade practice" to include "any act which does or would . . . provide information about . . . a sale, lease or transfer, of consumer goods or services." *Id.* § 28-3901(a)(6). Facebook's provision of social media services constitutes both a "sale" and "transfer" of a consumer good or service under the CPPA.

As an initial matter, the service Facebook provides its users can qualify as a "sale" without any exchange of money. A "sale" is simply "a contract transferring . . . ownership of property from one person or corporate body to another for a price (as a sum of money *or any other consideration*)." *Sale*, Webster's Third New International Dictionary 2003 (3d ed. 2002) (emphasis added); *see Sell*, Merriam-Webster Online Dictionary (defining "sell" as "to give up (property) to another for something of value (such as money)").[6] Facebook users do not pay the company when they create a profile on the platform. Compl. ¶ 18. But they do give Facebook something else of value: their data. Compl. ¶ 18-21. As the District has explained elsewhere, Facebook earns tens of millions of dollars every year by collecting District users' data and selling advertising targeted at District consumers. D.C. Opp'n to Facebook's Mot. to Dismiss at 9, *Facebook, Inc.*, 2018 CA 008715 B (D.C. Super. Ct. Mar. 1, 2019).[7] Facebook users cannot join the platform without allowing Facebook to control their personal data and monitor their online activity, Compl. ¶ 19, which underscores the exchange of data for Facebook's products. *See* John M. Newman, *The Myth of Free*, 86 Geo. Wash. L. Rev. 513, 553-55 (2018) (describing how users of Facebook and other "free" products "pay with . . . their information"); Maurice E. Stucke &

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6 *Available at* https://bit.ly/3CVoMbb.

7 *Available at* https://adobe.ly/3xTpa9i.

Allen P. Grunes, Big Data and Competition Policy § 1.26 (2016) ("Consumers pay [for free services] with their personal data and privacy.").

But even if Facebook's data collection does not make this exchange a "sale," Facebook "transfer[s] . . . consumer goods or services" to its users. D.C. Code § 28-3901(a)(6). By definition, a "transfer" requires no exchange at all, much less a money payment. Rather, a transfer is a "conveyance of right, title, or interest . . . by sale, *gift*, or other process." *Transfer*, Webster's Third New International Dictionary 2427 (3d ed. 2002) (emphasis added); *see also Transfer*, New Oxford American Dictionary 1839 (3d ed. 2010) (defining a "transfer" as "an act of moving something . . . to another place"). Pursuant to the "basic principle" that no statutory provision should be "render[ed] . . . superfluous," *Thomas v. D.C. Dep't of Emp't Servs.*, 547 A.2d 1034, 1037 (D.C. 1988), the word "transfer" must be afforded its plain meaning independent of "sale." *Cf.* Kate Vlatch, *What's Old Is New Again: How State Attorneys General Can Reinvigorate UDAP Enforcement to Combat Crisis Pregnancy Center Deception*, 39 Colum. J. Gender & L. 140, 174-75 (2020) (highlighting state consumer protection laws that apply to the "furnishing" or "distribution" of services and thus "do[] not impose a financial element").

The notion that the CPPA "police[s] trade practices arising only out of consumer-merchant relationships," *Howard v. Riggs Nat'l Bank*, 432 A.2d 701, 709 (D.C. 1981), does not cabin the CPPA's reach to relationships between merchants and their *paying* customers. *See* Facebook Mot. to Dismiss 21 (contending that defendants do not have a "consumer-merchant relationship" with Facebook's users because they are not "paying a merchant for its services"). To the contrary, the Act's definition of "consumer" encompasses any "person who . . . does or *would* purchase, lease . . . or *receive* consumer goods or services . . . or does or would otherwise provide economic demand for a trade practice." D.C. Code § 28-3901(a)(2)(A) (emphases added). This definition

includes consumers who "receive" services, in addition to those who "purchase" or "lease" them. *Id.*; *see id.* § 28-3901(c) (highlighting that the CPPA "establishes an enforceable right to truthful information from merchants about consumer goods and services that are or would be purchased, leased, or *received*" (emphasis added)). And it also includes potential consumers who "would" receive goods and services, *id.* § 28-3901(a)(2)(A)—a provision that allows courts to apply the CPPA "whether or not [a merchant] entered a formal contractual relationship with [a consumer] or received money for the services," *Byrd v. Jackson*, 902 A.2d 778, 781 (D.C. 2006).

Nor does the "consumer-merchant relationship" require that merchants "personally sell" consumer goods and services to plaintiff. Facebook Mot. to Dismiss 22. As a result, even corporate officers can be held liable for deceptive practices, whether money was exchanged or not. The CPPA expansively defines "merchant" to include any "person . . . who in the ordinary course of business does or would sell, lease (to), or transfer, either directly or indirectly, consumer goods or services." D.C. Code § 28-3901(a)(3). As above, the statute explicitly defines merchants to include those who "transfer" consumer goods and services, in addition to those who "sell" or "lease" such products. *Id.* And the "merchant" in the "consumer-merchant" relationship does not have to "directly" sell or transfer goods or services to the consumer. *Id.*; *see Howard*, 432 A.2d at 709 (requiring only that a "merchant" be "connected with the 'supply' side of a consumer transaction" (quoting Report on Bill 1-253 before the Committee on Public Services and Consumer Affairs, Council of the District of Columbia, at 13 (Mar. 24, 1976))). Indeed, "merchant[s]" can include "corporate officers" who "participate in . . . deceptive trade practices under the CPPA," even if they are not the "direct supplier of goods or services to consumers." *District of Columbia v. Student Aid Ctr., Inc.*, No. 2016 CA 003788 B, 2016 WL 4410867, at *3-4 (D.C. Sup. Ct. Aug. 17, 2016); *see Cooper v. First Gov't Mortg. & Invs. Corp.*, 206 F. Supp. 2d 33, 36 (D.D.C. 2002).

In sum, the statute clarifies no fewer than four times that it applies to the "transfer," D.C. Code § 28-3901(a)(3), (6), and the "recei[pt]," *id.* § 28-3901(a)(2)(A), (c), of consumer goods and services, in addition to their sale and purchase. Ignoring these statutory distinctions in favor of defendants' proposed reading would render each of these references "superfluous" and directly contradict the Court of Appeals' instruction to "construe[] [the statute] so as to give effect to all of [its] provisions." *Thomas*, 547 A.2d at 1037.

B. Limiting the CPPA's protections to paying customers would severely curtail District consumers' right to truthful information about the goods and services they use.

In addition to misconstruing the statutory text, defendants' proposed reading of the CPPA would substantially shrink District consumers' "right to truthful information from merchants about consumer goods and services" they receive every day. D.C. Code § 28-3901(c). Nationally, around seven in ten U.S. adults use Facebook—many of whom visit the site several times a day. John Gramlich, *10 Facts About Americans and Facebook*, Pew Research Ctr. (June 1, 2021).[8] And the fact that District consumers do not pay Facebook fees for the services they receive does not lessen their need for truthful information about Facebook's product. As the District has alleged in ongoing litigation, Facebook has made "misleading and deceptive" representations "regarding consumer privacy" on the platform, among other things. D.C. Compl. at 16, *Facebook, Inc.*, 2018 CA 008715 B (D.C. Super. Ct. Dec. 19, 2018)[9]; *see also AG Racine Sues Facebook*, *supra*; Cecilia Kang, *Mark Zuckerberg Will Be Added to a Facebook Privacy Lawsuit*, N.Y. Times (Oct. 29, 2021).[10] And a number of state attorneys general, including the District's, have recently begun

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8 *Available at* https://pewrsr.ch/3p6TxoF.

9 *Available at* https://bit.ly/3lrYKpY.

10 *Available at* https://nyti.ms/3o2LPfG.

investigating the extent to which Facebook executives knew of Instagram's harmful effects on children, especially teenage girls. *See* Cat Zakrzewski, *Coalition of State Attorneys General Opens Investigation into Instagram's Impact on Children and Teens*, Wash. Post (Nov. 18, 2021)[11]; *see also* Mayo Clinic, *Teens and Social Media Use: What's the Impact?* (describing studies that link high levels of social media use with symptoms of depression and anxiety).[12] Limiting the CPPA's reach to fee-based transactions would stymie such efforts to demand truthful information from Facebook about the nature of its products.

Facebook is not the only company that offers its product at no cost in exchange for users' personal information. *See* Newman, *supra*, at 553. When individuals create profiles on various "free" internet platforms, those platforms can gather data about their users' demographics, interests, search histories, physical locations, and even their health-related data—information which they can in turn sell to advertisers. *See, e.g.*, Stacy-Ann Elvy, *Commodifying Consumer Data in the Era of the Internet of Things*, 59 B.C. L. Rev. 423, 426-27 (2018); Brian X. Chen, *The Battle for Digital Privacy Is Reshaping the Internet*, N.Y. Times (Sept. 21, 2021).[13] This model of advertising "powered the growth of Facebook, Google and Twitter, which offered their search and social networking services to people without charge." Chen, *supra*; *see also* D.C. Opp'n to Facebook Mot. to Dismiss, *supra*, at 9 (highlighting the immense revenue Facebook earns from selling advertising). And this approach is no longer limited to technology giants like Facebook and Google—services ranging from antivirus and personal finance apps to email servers collect

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11 *Available at* https://wapo.st/3FZ3xan.

12 *Available at* https://mayocl.in/3rwL1Cj (last visited Dec. 6, 2021).

13 *Available at* https://nyti.ms/3o8Nn8l.

and sell user data while offering their services ostensibly for free. *See* Rani Molla, *Why Your Free Software Is Never Free*, Vox (Jan. 29, 2020).[14]

Exempting this entire business model from statutory liability would contradict the Council's purpose to "assure that a just mechanism exists to remedy *all* improper trade practices," to "deter the continuing use of such practices," D.C. Code § 28-3901(b)(1) (emphasis added), and to "promote . . . fair business practices throughout the community," *id.* § 28-3901(b)(2). *See also Dist. Cablevision Ltd. P'ship v. Bassin*, 828 A.2d 714, 722-23 (D.C. 2003) (emphasizing that the CPPA is a "comprehensive statute designed to provide procedures and remedies for a broad range of practices which injure consumers" (quoting *Atwater v. D.C. Dep't of Consumer & Regul. Affs.*, 566 A.2d 462, 465 (D.C. 1989))). Drawing on the CPPA's expansive definition of "consumer" and "merchant," as well as the Council's instruction to "construe[] and appl[y] [the CPPA] liberally to promote its purpose," D.C. Code § 28-3901(c), this Court should reject Facebook's argument that only paying customers are protected by the CPPA.

II. The Communications Decency Act Does Not Immunize Defendants From Liability For Their Own Alleged Misrepresentations.

Section 230 of the Communications Decency Act prevents a website operator like Facebook from being treated as the "publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). The statute thus bars plaintiffs from bringing defamation and other tort actions against interactive computer services that would more properly be asserted against the individual who posted such tortious content in the first place. By contrast, Section 230 does *not* provide businesses with sweeping immunity for their own affirmative, unlawful misrepresentations about the nature of their goods and services.

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[14] *Available at* https://bit.ly/3rfscDc.

Congress passed Section 230 of the CDA with the "specific purpose[]" of overruling *Stratton Oakmont, Inc. v. Prodigy Services Co.*, 1995 WL 323710 (N.Y. Sup. Ct. May 24, 1995), "and any other similar decisions which have treated . . . providers and users [of an interactive computer service] as publishers or speakers of content that is not their own." H.R. Rep. No. 104-458, at 194 (1996) (Conf. Rep.). In *Stratton Oakmont*, a New York court concluded that Prodigy—an early internet platform—was liable for anonymous defamatory messages posted on its online bulletin board. *See Stratton Oakmont, Inc.*, 1995 WL 323710, at *5; *see also* Danielle Keats Citron & Benjamin Wittes, *The Internet Will Not Break: Denying Bad Samaritans § 230 Immunity*, 86 Fordham L. Rev. 401, 404-05 (2017). Addressing the threat of such litigation, Section 230 was designed to protect interactive computer services like Prodigy from the burden of tort claims that would be more properly asserted against the individual tortfeasor. *See, e.g.*, *Doe v. Internet Brands, Inc.*, 824 F.3d 846, 851 (9th Cir. 2016) (emphasizing that a suit "clear[ly]" barred by Section 230 "is a defamation action founded on the hosting of defamatory third-party content"). By immunizing internet platforms from liability for their users' defamatory statements, Section 230 "promote[d] the continued development of the Internet." *Lemmon v. Snap, Inc.*, 995 F.3d 1085, 1090 (9th Cir. 2021) (quoting *HomeAway.com, Inc. v. City of Santa Monica*, 918 F.3d 676, 681 (9th Cir. 2019)).

But the statute was not designed as a general grant of immunity for companies like Facebook. Section 230 only prevents providers of interactive computer services from being treated as the "publisher or speaker of any information provided by another information content provider." 47 U.S.C. § 230(c)(1). As such, the statute grants immunity when "(i) [the defendant] is a provider or user of an interactive computer service, (ii) the information for which [the plaintiff] seeks to hold [the defendant] liable was information provided by another information content provider, and

(iii) the complaint seeks to hold [the defendant] liable as the publisher or speaker of that information." *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1268 (D.C. Cir. 2019) (alteration in original) (quoting *Klayman v. Zuckerberg*, 753 F.3d 1354, 1357 (D.C. Cir. 2014)).

Defendants' conduct at issue here is not, however, "information provided by another information content provider." *Id.* (quoting *Klayman*, 753 F.3d at 1357). Rather than asserting that Facebook is liable for speech posted by third parties, plaintiff alleges that Facebook and its executives violated the CPPA through their own misrepresentations about the platform's content moderation policies. *See* Compl. 3 (highlighting "[t]he failure of Facebook and its senior executives to abide by their promises to the public"). To the extent that third-party speech is at all relevant to plaintiff's suit, it is merely as evidence of whether Facebook's statements are in fact misleading or deceptive. And as many courts have recognized, Section 230 does not preclude interactive computer service providers from "direct[] liab[ility] for [their] *own* tortious conduct." *McDonald v. LG Elecs. USA, Inc.*, 219 F. Supp. 3d 533, 538 (D. Md. 2016) (emphasis added); *see also Lemmon*, 995 F.3d at 1091 (concluding that the CDA did not protect Snap from liability for its design decisions); *Internet Brands, Inc.*, 824 F.3d at 851 (same with respect to platform's failure to warn a consumer).

Nor would holding Facebook and its executives accountable for their misrepresentations require this Court to treat them as "publisher[s] or speaker[s]" of hate speech. *Marshall's Locksmith Serv. Inc.*, 925 F.3d at 1268 (quoting *Klayman*, 753 F.3d at 1357). In *Lemmon v. Snap, Inc.*, for example, the Ninth Circuit concluded that a negligent-design cause of action did not require the Court to treat Snap as a "publisher" or "speaker" because it imposed on defendants the specific "duty to exercise due care in supplying products that do not present an unreasonable risk

of injury or harm to the public"—a duty that "differ[ed] markedly" from those of publishers under the CDA. 995 F.3d at 1092 (citation omitted). Similarly here, the CPPA's provisions, which require Facebook to make truthful statements to its consumers about the nature of its services, diverge substantially from any responsibility it has as a publisher of third-party content. And the mere fact that defendants' alleged misrepresentations concerned Facebook's content moderation does not transform this into a suit that treats Facebook as a "publisher or speaker"—especially where "[p]ublishing activity is a but-for cause of just about everything [such platforms] are involved in." *Internet Brands, Inc.*, 824 F.3d at 853; *see Barnes v. Yahoo! Inc.*, 570 F.3d 1096, 1107 (9th Cir. 2009) (concluding that Yahoo could be liable in contract for breaking its "promise to take down third-party content from its website" even if Section 230 precluded liability for failing to take down the same content).

Not only would defendants' proposed reading contravene the scope of Section 230 immunity established by Congress, but it would also grant Facebook and similar online platforms license to dupe District consumers in a way that no other businesses can—merely because their platforms are located online. Companies that operate physical businesses in the District are prohibited from "represent[ing] that [their] goods or services are of particular . . . quality, grade, style, or model, if in fact they are of another," for example. D.C. Code § 28-3904(d). Meanwhile, under defendants' reading of Section 230, Facebook and other social media platforms could wilfully deceive their users about the nature of their products. And they are asking the court to adopt this theory at the very moment that governments and non-profit organizations have begun to shed light on Facebook's misleading statements about the harmful effects of social media on children, *see* Zakrzewski, *supra*, the prevalence of hate speech on such platforms, and the privacy risks created by their data-sharing policies, *see AG Racine Sues Facebook*, *supra*. *See also*

GLAAD, Social Media Safety Index 6 (explaining that social media platforms such as Facebook are "effectively unsafe" for certain LQBTQ users, given "the prevalence and intensity of hate speech and harassment")[15]; Amnesty Int'l, Surveillance Giants: How The Business Model of Google and Facebook Threatens Human Rights 5 (noting the "unprecedented" "assault on the right to privacy" by Facebook and Google).[16] Congress, which passed Section 230 so that platforms could more freely "restrict access to sexually explicit material online," Citron & Wittes, *supra*, at 403, did not intend such an absurd result.

CONCLUSION

This Court should deny defendants' motion to dismiss.

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15 *Available at* https://bit.ly/3nZwegY (last visited Dec. 6, 2021).

16 *Available at* https://bit.ly/3FRL67i (last visited Dec. 6, 2021).

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

LOREN L. ALIKHAN
Solicitor General

/s/ Caroline S. Van Zile
CAROLINE S. VAN ZILE*
Principal Deputy Solicitor General
Bar Number 1017942
Office of the Solicitor General

JIMMY R. ROCK
Assistant Deputy Attorney General
Public Advocacy Division

/s/ Benjamin M. Wiseman
BENJAMIN M. WISEMAN
Director, Office of Consumer Protection
Public Advocacy Division
Bar Number 1005442

Office of the Attorney General
400 6th Street, NW, Suite 8100
Washington, D.C. 20001
(202) 724-5226
(202) 741-8949 (fax)
benjamin.wiseman@dc.gov

December 6, 2021

* The undersigned would like to thank law clerk Norah Rast for her invaluable assistance in authoring this brief.

12-I(a) CERTIFICATION

On Thursday, November 18, 2021, counsel for the District of Columbia sought consent from opposing counsel to file this brief as amicus curiae. Consent was obtained.

/s/ Benjamin M. Wiseman
BENJAMIN M. WISEMAN

CERTIFICATE OF SERVICE

I hereby certify that on December 6, 2021 this brief was served via CaseFileXpress to all counsel of record.

/s/ Benjamin M. Wiseman
BENJAMIN M. WISEMAN