

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
CIVIL DIVISION**

TRAVELERS UNITED, INC.	:	Case Number: 2024 CAB 5736
	:	
v.	:	Judge: Shana Frost Matini
	:	
BUDGET RENT A CAR	:	
SYSTEM, INC., <i>et al</i>	:	

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TRAVELERS UNITED, INC.	:	Case Number: 2024 CAB 5792
	:	
v.	:	Judge: Shana Frost Matini
	:	
AVIS RENT A CAR SYSTEM, LLC, <i>et al.</i>	:	

**ORDER**

Before the Court are the Motions to Dismiss or, In the Alternative, Motions to Compel Arbitration and Stay Proceedings, filed by Defendants Budget Rent A Car System, Inc. (“Budget”) (“Budget Mot.”) and Avis Rent A Car System, LLC (“Avis”) (“Avis Mot.”) (collectively, “Defendants”) on November 8, 2024. Plaintiff Travelers United Inc. filed its consolidated Opposition (“Opp.”) to the Motions on December 20, 2024, and Defendants filed their consolidated Reply on January 17, 2025. After reviewing the parties’ briefs, the record of this case, and the applicable law, for the reasons set forth herein, the Court grants the Defendants’ Motions and dismisses these consolidated matters.

**Background**

Plaintiff is a Delaware nonprofit public interest organization headquartered in the District of Columbia and Virginia. Budget Am. Compl. ¶ 11; Avis Am. Compl. ¶ 11. Defendants are incorporated in Delaware and headquartered in New Jersey, and regularly conduct business in the District, including by operating multiple vehicle rental locations within the District. Budget Am. Compl. ¶ 15; Avis Am. Compl. ¶ 15.

Plaintiff alleges that Defendants have “been systematically cheating Americans out of tens of millions of dollars each year by refusing to rent vehicles for the advertised price” while adding on mandatory “service fees” that can increase the cost of the rental by more than 10%. Budget Am. Compl. ¶¶ 1-2; Avis Am. Compl. ¶¶ 1-2. Plaintiff brings this matter on behalf of District of Columbia consumers who have rented vehicles with Defendants through their online booking interfaces. Budget Am. Compl. ¶ 69; Avis Am. Compl. ¶ 67.

Plaintiff asserts claims against Defendants for unfair and deceptive trade practices under the District of Columbia Consumer Protection Procedures Act (“CPPA”), D.C. Code §§ 28-3901 *et seq.* Budget Am. Compl. ¶¶ 65-78; Avis Am. Compl. ¶¶ 63-76. Specifically, Plaintiff claims that:

Because cost is a material fact to consumers deciding whether to book a rental car, [Defendants engage] in unfair and/or deceptive trade practices by “misrepresent[ing] . . . a material fact which has a tendency to mislead,” D.C. Code § 28–3904(e), “fail[ing] to state a material fact” and “such failure tends to mislead,” D.C. Code § 28–3904(f), “us[ing] innuendo or ambiguity as to a material fact, which has a tendency to mislead,” D.C. Code § 28–3904(f-1), and/or “mak[ing] false or misleading representations of fact concerning . . . the price in comparison to price of competitors or one’s own price at a past or future time,” D.C. Code § 28–3904(j) when [they] misrepresent[] the price of the rental and total cost to the consumer through drip and/or partitioned pricing and mislead[] consumers by representing the Junk Fees as a mandatory government charge.

Budget Am. Compl. ¶ 74; Avis Am. Compl. ¶ 72. Plaintiff seeks injunctive relief pursuant to D.C. Code § 28-3905(k)(2)(D), statutory damages pursuant to D.C. Code § 28-3905(k)(2)(A) “for each and every violation of the CPPA proven at trial;” punitive damages pursuant to D.C. Code § 28-3905(k)(2)(C); costs and attorney’s fees pursuant to D.C. Code § 28-3905(k)(2)(B); and “additional relief as may be necessary to restore to the consumers money, which was acquired by means of the [Defendants’] unlawful trade practices pursuant to D.C. Code § 28-3905(k)(2)(E).” Budget Am. Compl. ¶ 79; Avis Am. Compl. ¶ 77.

Defendants seek to dismiss the claims brought against them, arguing that Plaintiff lacks statutory standing insofar as every District consumer Plaintiff intends to represent agreed to resolve disputes with Defendants through individual arbitration and waived the right to join a class action by accepting Defendants' Rental Terms and Conditions ("Terms and Conditions"); that Plaintiff has failed to state a cognizable claim under the CPPA; and that Plaintiff has not set forth any allegations about the consumer class it purports to represent or complied with the requirements of Rule 23 and 23-I. *See generally* Budget Mot.; Avis Mot. Defendants also argue that Plaintiff, in seeking to sue on behalf of individuals who are bound to arbitrate, must arbitrate its claims as well. Budget Mot. at 2; Avis Mot. at 2.

### **Standard of Review**

"Standing is a threshold jurisdictional question which must be addressed prior to and independently of the merits of a party's claim." *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 42-43 (D.C. 2015). Generally, a party raises a challenge to standing by way of a motion to dismiss challenging the court's subject matter jurisdiction pursuant to Superior Court Civil Rule 12(b)(1). *Id.*

Subject matter jurisdiction "concerns the court's authority to adjudicate the type of controversy presented by the case under consideration." *In re J.W.*, 837 A.2d 40, 44 (D.C. 2003) (citations and quotations omitted). Moreover, "no presumptions of truthfulness adhere to the allegations of the complaint." *Heard v. Johnson*, 810 A.2d 871, 878 (D.C. 2002). A challenge to subject matter jurisdiction "may occur at any stage of the proceedings and [the] plaintiff bears the burden of proof that jurisdiction does in fact exist." *Id.* (citation omitted). In a "factual" attack under a Rule 12(b)(1) motion, "matters outside the pleadings such as testimony and affidavits are considered." *Id.*

## Analysis

Defendants seek to dismiss these consolidated matters pursuant to Superior Court Civil Rule 12(b)(1), arguing that any consumer class that Plaintiff seeks to represent is subject to binding individual arbitration agreements and class action waivers, Budget Mot. at 6-10; Avis Mot. at 6-10, and any interpretation of the CPPA that would allow Plaintiff's suit to continue before this Court is preempted by the Federal Arbitration Act ("FAA"). Budget Mot. at 10-11; Avis Mot. at 10-11. In the alternative, and should the Court conclude that Plaintiff has standing to sue on behalf of District of Columbia consumers, Defendants request that the Court compel Plaintiff's claims to individual arbitration. Budget Mot. at 12-13; Avis Mot. at 12-13.<sup>1</sup>

Plaintiff argues that a representative action does not have to take the form of a class action under Rule 23, Opp. at 6-7, and that Plaintiff has standing under the CPPA to bring this suit. *Id.* at 7-8. Plaintiff also argues that it cannot be compelled to arbitration because Plaintiff is not a party to Defendants' Terms and Conditions and has never consented to be bound by them, *id.* at 14, and that Defendants have not established "that all consumers are bound to arbitrate their claims against Defendants," because Defendants have attached "only the 2023 [Terms and

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<sup>1</sup> Defendants also argue that Plaintiff's claims should be dismissed pursuant to Rule 12(b)(6), arguing that the claims are deficient under Rule 23, because Plaintiff fails to plead any class allegations, fails to identify "any class members because all consumers are bound to arbitration," and because the Plaintiff is "not typical of a class whose members are bound to arbitrate." Budget Mot. at 13-15; Avis Mot. at 13-15. Defendants further argue that Plaintiff fails to plausibly allege a violation of the CPPA because "Defendants' vehicle reservation processes provide accurate information that would not mislead a reasonable consumer." Budget Mot. at 16; Avis Mot. at 16.

For its part, Plaintiff argues that it plausibly alleges a CPPA claim because "Defendants violate the CPPA by advertising rental prices that are impossible for consumers to actually book." Opp. at 8. Plaintiff claims that Defendants violate D.C. Code § 28-3904(h) by advertising cars for rent without the intent to rent them at the advertised price, *id.* at 8-10, and that Defendants employ junk fee practices that violate D.C. Code § 28-3904(e), (f), (f-1), and (j), *id.* at 10-12. Plaintiff further argues that it "brings these actions on behalf of itself, and seeks to force Defendants to return the fees charged to consumers pursuant to [D.C. Code] § 28-3905(k)(2)(E)." *Id.* at 12.

As explained herein, this Court finds that Plaintiff lacks standing; "having found a lack of standing," this court "lacks jurisdiction." *Animal Legal Defense Fund v. Hormel Foods Corp.*, 258 A.3d 174, 191 (D.C. 2021) (citation omitted). "Without jurisdiction the court cannot proceed at all in any cause, and the only function remaining to the court is that of announcing the fact and dismissing the cause." *Id.* (internal quotations and citations omitted). Thus, this Court may not consider the parties' arguments under Rule 12(b)(6).

Conditions] and no prior versions.” *Id.* at 15. Plaintiff also contends that during her deposition, Defendants’ employee Sarah Korybski “was unable to identify any foundational facts” about how long the arbitration clause was in effect in her deposition. *Id.*

Plaintiff also argues that the arbitration provision does not apply to District consumer claims because their claims “are expressly excluded from arbitration” because they “fall within the jurisdiction of small claims courts.” *Opp.* at 18. Plaintiff further contends that “even if every aggrieved D.C. consumer were required to arbitrate ... each still retains their right to bring CPPA claims against Defendants, creating the class of aggrieved consumers that are needed for Travelers’ CPPA standing.” *Id.* at 19. Finally, Plaintiff argues that the FAA does not preempt the CPPA. *Id.* at 20.

In response, Defendants argue that Ms. Korybski’s deposition testimony “only reaffirmed that Defendants’ [Terms and Conditions] validly bind all relevant D.C. customers to individual arbitration,” *Reply* at 2, and that the small claims exception “further reinforces [Plaintiff’s] lack of standing because Plaintiff seeks relief here that would be prohibited in [the Small Claims and Conciliation Branch]: monetary disgorgement damages over \$10,000 and an injunction.” *Id.*

Defendants further contend that Plaintiff lacks standing under the CPPA because all relevant District of Columbia consumers are bound to individually arbitrate, and the small claims exception is irrelevant insofar as Plaintiff seeks injunctive relief and damages in excess of \$10,000—both forms of relief that are unavailable in the Small Claims and Conciliation Branch of the Superior Court. *Reply* at 6-8.

#### **A. The Arbitration Clause Applies to Plaintiff**

Plaintiff argues that because it is not a party to the Terms and Conditions, it cannot be compelled to arbitrate. *Opp.* at 14. The Court disagrees.

While the Council of the District of Columbia “intended public interest organizations bringing suit under” D.C. Code § 28-3905(k)(1)(D) “to be free from any requirement to demonstrate their own Article III standing,” *Animal Legal Def. Fund*, 258 A.3d at 184, public interest organizations still are required to meet a statutory test outlined in that code provision. Specifically, Section 28-3905(k)(1)(D) provides that: (1) the section “applies only to those nonprofits organized and operating, at least in part, on behalf of consumers; (2) the consumer or class of consumers must be capable of bringing suit in their own right; and (3) the public interest organization must have a ‘sufficient nexus to the interest involved of the consumer or class ... to adequately represent those interests.’” *Animal Legal Def. Fund*, 258 A.3d at 183 (quoting D.C. Code § 28-3905(k)(1)(D)).

As such, if the consumers Plaintiff intends to represent are precluded from suing in their own right, Plaintiff also is unable to proceed with the instant action under D.C. Code § 28-3905(k)(1)(D). Here, the Court finds that the fact that the Plaintiff itself was not a signatory to the documents setting forth an agreed-to method of dispute resolution—arbitration—does not render the arbitration clause unenforceable against the Plaintiff. Otherwise, this would create a situation where plaintiffs could avoid honoring an agreement to arbitrate their disputes by allowing a non-signatory to bring a representative action. *Cf. Net2phone, Inc. v. Superior Court*, 109 Cal. App. 4<sup>th</sup> 593, 589 (2003) (noting, in the context of a forum selection clause, a plaintiff can avoid an agreed-to provision establishing the manner in which disputes were to be resolved between the parties to the agreement “simply by having a representative nonparty file the action”). The Court cannot allow this result.

To the extent the arbitration clause binds all customers—a fact which Plaintiff disputes—it would also be applicable to the Plaintiff here. Likewise, the Terms and Conditions also would

also serve to prohibit the Plaintiff from bringing this action on behalf of a class and would require each aggrieved individual to arbitrate their own claim. Thus, the Court addresses Plaintiff's arguments that the arbitration clause does not bind all customers, and that Plaintiff's action is not arbitrable under the small claims court exception. *See Jahanbein v. The Ndidi Condo. Unit Owners Ass'n, Inc.*, 85 A.3d 824, 827 (D.C. 2014) (noting that "claims are subject to arbitration so long as: (1) the parties have entered into an arbitration agreement, and (2) the parties' underlying dispute falls within the agreement" with doubts to be resolved in favor of arbitration.).

### **B. The Arbitration Clause Binds Defendants' Customers<sup>2</sup>**

Plaintiff argues that (1) Defendants provided "only the 2023 [Terms and Conditions] and no prior versions" while "the applicable limitations period extend[s] back to at least 2021," Opp. at 15; (2) Ms. Korybski "was unable to identify any foundational facts to support her self-serving conclusion" that "all consumers 'since 2021' had agreed to arbitration," *id.*; (3) Ms. Korybski "could not testify to when the arbitration clauses were updated...or when the online user interfaces were updated to require consumers to affirmatively check a box (purportedly) consenting to the" Terms and Conditions, *id.* at 16; and that (4) Ms. Korybski's "clear lack of personal knowledge[] and (at best) inconsistent testimony at deposition[] certainly do not establish such uniform consent across millions of consumers transactions." *Id.* at 17.

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<sup>2</sup> Plaintiff argues that "the burden of proof remains squarely with Defendants" because Plaintiff "properly has CPPA standing to bring these claims" and that "nothing about the arbitration clause...impacts Travelers' CPPA standing." Opp. at 13 n.9. Standing and subject matter jurisdiction are distinct jurisdictional requirements, and this Court may dismiss an action where either requirement is lacking. *See Moms Against Mercury v. FDA*, 483 F.3d 824, 826 (D.C. Cir. 2007) (noting that court may dismiss the matter where either standing or subject matter jurisdiction are lacking). Here, Plaintiff's standing under the CPPA and the impact of the arbitration clause on the Court's jurisdiction are at issue, and the burden remains with the Plaintiff to demonstrate both. *See Nat'l Cmty. Reinvestment Coalition v. NCUA*, 290 F. Supp. 2d 124, 131 (D.D.C. 2003) (citation omitted) (noting that "[t]he plaintiff bears the burden of establishing standing."); *Masour v. Suliman*, 816 F. Supp. 2d 77, 80 (D.D.C. 2011) (citation omitted) (noting that "[t]he plaintiff bears the burden of demonstrating subject matter jurisdiction.").

Here, Plaintiff does not necessarily dispute Ms. Korybski's testimony with any evidence to counter her factual conclusions, but simply seeks to cast doubt on its veracity by attempting to draw factual inferences which are not supported by the record. Ms. Korybski testified that the arbitration clause was added to the Terms and Conditions in 2016, Opp. Ex. A at 65:14-16; that the only change to the Terms and Conditions since 2016 has been a change of Defendants' address, *id.* at 65:21-66:2; and that while she did not know when the checkboxes requiring customers to agree to the Terms and Conditions were added to Defendants' websites, an internal email notes that "the checkbox was there in 2015 at least for Avis and Budget." *Id.* at 142:1-5.

The Court finds that Ms. Korybski's undisputed testimony and the supporting email sufficiently demonstrate that for the applicable statute of limitations period,<sup>3</sup> customers who rented vehicles on Defendants' websites had to agree to the Terms and Conditions which contained the current arbitration clause. Thus, the Terms and Conditions are binding on the individuals Plaintiff would seek to represent.

### **C. Plaintiff Lacks Standing**

Alternatively, Plaintiff argues that the arbitration provision included in the Terms and Conditions does not apply to its claims because "claims that fall within the jurisdiction of small claims courts are expressly excluded from arbitration." Opp. at 18. Plaintiff contends that the Superior Court's Small Claims and Conciliation Branch has jurisdiction over this matter, because "many consumers ... were charged Junk Fees significantly below \$10,000." *Id.*; *see also* D.C. Code § 11-1321 ("The Small Claims and Conciliation Branch has exclusive jurisdiction of any action within the jurisdiction of the Superior Court which is only for the recovery of money, if

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<sup>3</sup> "Claims for CPPA violations ... carry a statute of limitations of three years." *Comer v. Wells Fargo Bank, N.A.*, 108 A.3d 364, 369 n.7 (D.C. 2015) (citing D.C. Code § 12-301(8)).



the amount in controversy does not exceed \$10,000, exclusive of interest, attorney fees, protest fees, and costs.”).

The arbitration clauses in Defendants’ Terms and Conditions provide:

[A]ll disputes between you and [Defendants] arising out of, relating to or in connection with your rental of a vehicle from [Defendants] and the Rental Agreement shall be exclusively adjudicated by binding arbitration ...

Disputes and claims that are within the scope of a small claims court’s authority, as well as disputes and claims regarding personal injury and/or damage to or loss of a vehicle related to your [] rental, are exempt from the foregoing dispute resolution provision.

Budget Mot. Ex. 11 § 6 (emphasis omitted); Avis Mot. Ex. 11 § 6 (emphasis omitted).

While Small Claims and Conciliation Branch actions are excluded from arbitration under the Terms and Conditions, Plaintiff seeks remedies outside the jurisdiction of the Small Claims Branch. Specifically, Plaintiff seeks injunctive relief, Budget Am. Compl. ¶ 79(a), (b); Avis Am. Compl. ¶ 77(a), (b); damages “for each and every” CPPA violation, Budget Am. Compl. ¶ 79(c); Avis Am. Compl. ¶ 77(c); and punitive damages, Budget Am. Compl. ¶ 79(d); Avis Am. Compl. ¶ 77(d), exceeding the jurisdiction of the Small Claims and Conciliation Branch. *See* D.C. Code § 11-1321 (noting the Small Claim and Conciliation Branch’s jurisdiction is “only for the recovery of money, if the amount in controversy does not exceed \$10,000, exclusive of interest, attorney fees, protest fees, and costs”); *see also Pourbabai v. Bednarek*, 250 A.3d 1090, 1096 (D.C. 2021) (noting that where plaintiffs were “collectively” seeking more than \$10,000 in damages against the defendant by way of treble damages, there was no bar to jurisdiction of the matter in the Civil Actions Branch). Thus, given the nature of the relief that Plaintiff has sought, jurisdiction may not lie with the Small Claims and Conciliation Branch, and the individual

consumers must seek redress of their claims for relief as currently asserted by way of arbitration.<sup>4</sup>

### **Conclusion**

Accordingly, the Court finds that District consumers who used Defendants' websites to rent vehicles agreed to waive a representative action, to arbitrate their claims individually, or to file an individual action in the Small Claims and Conciliation Branch. As such, because both Plaintiff and the consumers Plaintiff intends to represent are precluded from bringing their claims before this Court, the Plaintiff lacks standing to proceed with the instant action under D.C. Code § 28-3905(k)(1)(D). Therefore, because Plaintiff lacks standing, "the [C]ourt lacks jurisdiction," *Animal Legal Def. Fund*, 258 A.3d at 191 (citing *UMC Dev.*, 120 A.3d at 43), and must dismiss this action.


Accordingly, for the reasons set forth above, it is this 10<sup>th</sup> day of February 2025, hereby:

**ORDERED** that Defendants' Motions to Dismiss or, in the Alternative, to Compel Arbitration and Stay Proceedings are **GRANTED**; and it is further

**ORDERED** that the February 21, 2025 scheduling conferences are **VACATED**; and it is further

**ORDERED** that these matters are **DISMISSED** and the cases are **CLOSED**.

**SO ORDERED.**



Judge Shana Frost Matini  
Superior Court of the District of Columbia

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<sup>4</sup> While generally a court should stay a matter pending the outcome of arbitration rather than dismiss the case outright, *see, e.g., Keeton v. Wells Fargo Corp.*, 987 A.2d 1118, 1123 (D.C. 2010), because the Terms and Conditions waive a representative action, this particular Plaintiff may not bring this action and a stay in this matter would be futile.