

**Form 1. Notice of Appeal Tax, Civil, Family Court - (Except Juvenile Cases), and Probate**

**SUPERIOR COURT OF THE DISTRICT OF COLUMBIA  
NOTICE OF APPEAL (\_\_\_\_ CROSS APPEAL)  
TAX, CIVIL, FAMILY COURT - (EXCEPT JUVENILE CASES), AND  
PROBATE**

Superior Court Case Caption: Animal Outlook v. American Heart Association, Inc.

Superior Court Case No.: 2022-CA-003830-B

A. Notice is given that (person appealing) Animal Outlook is appealing an order/judgment from the:

☐ Tax Division      ☒ Civil Division      ☐ Family Court      ☐ Probate Division

1. Date of entry of judgment or order appealed from (if more than one judgment or order appealed, list all):

Order filed on 4/2/2025 and entered on 4/7/2025 (Order attached as Attachment 1)

2. Filing date of any post-judgment motion: 4/7/2025

3. Date of entry of post-judgment order: There is no order yet.

4. Superior Court Judge: Honorable Julie Becker

5. Is the order final (*i.e.*, disposes of all claims and has been entered by a Superior Court Judge, not a Magistrate Judge)?      ☒ YES      ☐ NO

If no, state the basis for jurisdiction: \_\_\_\_\_

Has there been any other notice of appeal filed in this case:      ☐ YES ☒ NO

If so, list the other appeal numbers: \_\_\_\_\_

6. If this case was consolidated with another case in this court, list the parties' names and the Superior Court case number: \_\_\_\_\_

B. Type of Case: ☐ Civil I      ☒ Civil II      ☐ Landlord and Tenant      ☐ Neglect

☐ Termination of Parental Rights      ☐ Adoption      ☐ Guardianship      ☐ Mental Health

☐ Probate      ☐ Intervention      ☐ Domestic Relations      ☐ Mental Retardation

☐ Paternity & Child Support      ☐ Other: \_\_\_\_\_

C. Indicate Status of Case:      ☒ Paid      ☐ In Forma Pauperis      ☐ CCAN

Was counsel appointed in the trial court?      ☐ YES ☒ NO

**(COMPLETE REVERSE SIDE)**

- D.** Provide the names, addresses, and telephone numbers of all parties to be served. For persons represented by counsel, identify counsel and whom the counsel represents. For each person, state whether the person was a plaintiff or defendant in the Superior Court. \*Attach additional pages if necessary.

Name	Address	Party Status (Plaintiff, Defendant)	Telephone No.
_____	_____	_____	_____
_____	_____	_____	_____
_____	_____	_____	_____


- E.** Identify the portions of the transcript needed for appeal, including the date of the proceeding, the name of the Court Reporter (or state that the matter was recorded on tape if no Court Reporter was present), the courtroom number where the proceeding was held, and the date the transcript was ordered, or a motion was filed for preparation of the transcript. \*Attach additional pages if needed.

Date of Proceeding/Portion	Reporter/Courtroom No.	Date ordered
_____	_____	_____
_____	_____	_____
_____	_____	_____
_____	_____	_____

☐ Check this box if no transcript is needed for this appeal.

- F.** Person filing appeal: ☐ Plaintiff Pro Se ☐ Defendant Pro Se  
☐ Third Party/Intervenor ☐ Counsel for Plaintiff  
☐ Counsel for Defendant

**ATTACH A COPY OF THE ORDER, JUDGMENT OR DOCKET ENTRY FROM WHICH THIS APPEAL IS TAKEN**

_____		_____
Print Name of Appellant/Attorney	Signature	Bar No.

\_\_\_\_\_

Address

\_\_\_\_\_

Telephone Number

\*Appellant is responsible for ordering and paying the fee for transcript(s) in the Court Reporting and Recording Division, Room 5500. If appellant has been granted In Forma Pauperis status, or had an attorney appointed by the Family Court, *and* transcript is needed for this appeal, appellant must file a Motion for Transcript in Court Reporting and Recording Division, Room 5500. That office number is (202) 879-1009. If that motion is granted, transcript will be prepared at no cost to appellant.

# ATTACHMENT 1

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

**ANIMAL OUTLOOK,**

*Plaintiff,*

**v.**

**AMERICAN HEART ASSOCIATION,  
INC. and DOES, 1-20,**

*Defendants.*

**Case No. 2022-CA-003830-B**  
**Judge Danya A. Dayson**

**ORDER GRANTING MOTION TO DISMISS**

This matter comes before the Court on consideration of Defendant American Heart Association’s Motion to Dismiss Plaintiff’s First Amended Complaint, filed November 11, 2024. Plaintiff Animal Outlook filed an Opposition thereto on November 25, 2024, and Defendant filed a reply in support of its Motion to Dismiss on December 3, 2024. Accordingly, upon consideration of the Motion, Opposition, Reply, and the entire record herein, the Motion to Dismiss is granted as to the American Heart Association.

**BACKGROUND**

Plaintiff Animal Outlook filed its original Complaint in the Superior Court of the District of Columbia on August 24, 2022, alleging violations of the District of Columbia Consumer Protection Procedures Act (“DCCPPA”), D.C. Code § 28-304, *et seq.* Defendant American Heart Association (“AHA”) removed this case to the U.S. District Court for the District of Columbia on September 19, 2022, alleging diversity of citizenship. Def. Mot. at 4. Following removal, Defendant AHA filed a Motion to Dismiss, which was granted without prejudice on March 21,

2024. *Id.* Shortly thereafter, Plaintiff filed a Motion for Reconsideration, which was granted on June 20, 2024. The Court found that remand was mandatory pursuant to 28 U.S.C. § 1447(c), because the federal court lacked subject matter jurisdiction. Plaintiff Animal Outlook then filed an Amended Complaint in the Superior Court on October 29, 2024.

Defendant AHA is a national non-profit, charitable organization whose mission is to be a “relentless force for a world of longer, healthier lives.” Def. Mot. at 2. AHA has a “Heart Check Certification Program” that is “designed to help consumers make informed choices about the foods they purchase.” *Id.* Defendant AHA’s Heart-Check program is a “multi-step process in which fees are collected in exchange for licenses to use the Heart-Check mark on qualifying products and recipes.” *Id.* When the fees are received, the available packaging and any accompanying documents are reviewed to determine if the product qualifies against AHA’s Heart-Check criteria. *Id.* Plaintiff Animal Outlook is a national nonprofit animal advocacy organization whose mission is to “challenge the status quo of animal agribusiness through investigation, legal advocacy, corporate and food system reform, and to empower consumers to make more informed decisions about the consumption of animal products, including beef.” Am. Compl. ¶ 13.

Plaintiff alleges in its Amended Complaint that AHA’s Heart-Check Certification Program professes to guide consumers toward making nutritional choices, recommending products that are “heart healthy” by allowing manufacturers to affix the Check Mark on their products. Am. Compl. ¶ 1. Plaintiff alleges that AHA’s program constitutes false and deceptive advertising because AHA follows federal guidelines in deciding which products quality to display the Check Mark. Am. Compl. ¶ 66. It further alleges that the omission of any disclosure at or near the Mark that companies must pay a licensing fee is “materially deceptive and

misleading to consumers.” *Id.* at ¶ 7, 8, 9. Finally, Plaintiff argues that AHA’s program falsely claims that beef can be “heart healthy” when it is, “not, in fact, heart healthy.” *Id.* at ¶ 67.

On November 8, 2024, Defendant AHA filed the instant Motion to Dismiss Plaintiff’s First Amended Complaint, to which Plaintiff Animal Outlook filed an Opposition on November 25, 2024. On December 3, 2024, Defendant AHA filed its reply in support of its Motion.

### **LEGAL STANDARD**

A motion to dismiss under Rule 12 (b)(6) tests the legal sufficiency of a complaint. *Luna v. A.E. Eng’g Servs., LLC*, 938 A.2d 744, 748 (D.C. 2007). A complaint must satisfy the pleadings standards set forth in Super. Ct. Civ. R. 8 (a), which states that a complaint must contain a short and plain statement of Plaintiff’s claim that “puts the defendant on notice of the claim against him.” *Sarete, Inc. v. 1344 U St. Ltd. P ’ship*, 871 A.2d 480, 497 (D.C. 2005) (quoting *Scott v. District of Columbia*, 493 A.2d 319, 323 (D.C. 1985)); *Leonard v. District of Columbia*, 794 A.2d 618, 630 (D.C. 2002) (noting that “even under our liberal rules of pleading,” a party must adequately allege the elements of a cause of action to avoid dismissal).

In determining whether a complaint sufficiently sets forth a claim, the court must construe the complaint in the light most favorable to the plaintiff and must take the facts alleged in the complaint as true. *Casco Marina Dev., L.L.C., v. District of Columbia Redevelopment Land Agency*, 834 A.2d 77, 81 (D.C. 2003). However, “the tenet that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions. Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice,” and “unadorned, the-defendant-unlawfully-harmed-me accusation[s]” also are insufficient. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009); *see also Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007) (“a plaintiff’s obligation to provide the ‘grounds’ of his ‘entitlement to

relief requires more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do.”)

Rather, “[t]o survive a motion to dismiss [under Rule 12 (b)(6)], a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a ‘probability requirement,’ but it asks for more than a sheer possibility that a defendant has acted unlawfully.” *Potomac Dev. Corp. v. District of Columbia*, 28 A.3d 531, 544 (D.C. 2011) (quoting *Ashcroft*, 556 U.S. at 678); *see also Bell Atl. Corp.*, 550 U.S. at 555 (“Factual allegations must be enough to raise a right to relief above the speculative level.”). Likewise, “[w]here 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.’” *Potomac Dev. Corp.*, 28 A.3d at 544. To survive a motion to dismiss under Rule 12 (b)(6), the District of Columbia Court of Appeals has made clear that a complaint must provide more than labels and conclusions, and that “a formulaic recitation of the elements of a cause of action will not do.” *Grayson v. AT&T Corp.*, 980 A.2d 1137, 1144 (D.C. 2009) (“a complaint [will not] suffice if it tenders ‘naked assertion[s]’ devoid of further factual enhancement.”) (citing *Bell Atl. Corp. v. Twombly*, 550 U.S. at 556).

### **ANALYSIS**

Plaintiff alleges that AHA’s Heart Check Certification Program violates multiple subsections of the District of Columbia Protection Procedures Act (“DCCPPA”), D.C. Code § 28-904, *et seq.* AHA allows purveyors of beef, after payment of a fee and certification, to display the AHA Mark on their products and market them as “heart healthy.” *See generally* Pl.’s Am.

Compl. Specifically, Plaintiff alleges that Defendant has engaged in deceptive trade practices by failing to disclose that certain meat purveyors are paying AHA for the right to affix the AHA Mark on their packaging, that Defendant falsely states that the AHA Mark is based upon its own scientific statements and recommendations, and that AHA falsely states that beef is “heart healthy” when it is, “not, in fact, heart healthy.” *Id.*

In its Motion to Dismiss, Defendant AHA argues that (1) Plaintiff lacks the requisite standing to bring this Complaint, because it does not have a sufficient nexus to the interests of the general public, (2) Defendant AHA is not a “merchant” as required under the DCCPPA, (3) the question of whether or not lean beef is heart healthy is a political question and therefore non-justiciable, and (4) that Plaintiff fails to state a claim upon which relief can be granted. Def. Mot. at 1.

I. Defendant American Heart Association is Not a Merchant Under the DCCPPA

The DCCPPA is a “comprehensive statute designed to provide procedures and remedies for a broad range of practices which injure consumers.” *Sundberg v. TTR Realty, LLC*, 109 A.3d 1123, 1129 (D.C. 2015) (internal citations omitted). The DCCPPA does not cover all consumer transactions, however, but instead only covers “trade practices arising out of consumer-merchant relationships.” *Id.* The DCCPPA defines a “merchant,” in relevant part, as a person who, in the ordinary course of business, sells or supplies consumer goods or services.” *Id.*; *see also* D.C. Code § 28-3901(a)(3).

In support of its assertion that it is not a merchant, Defendant AHA cites to *Howard v. Riggs Nat'l Bank*, 432 A.2d 701 (D.C. 1981). In *Howard*, the court held that an individual or entity who recommends another’s goods or services, but who is not otherwise connected with the supply side of a consumer transaction, is not a merchant who may be pursued under the

DCCPPA. *Id.* at 708-10. In *Howard*, when the plaintiff argued that this language could include a disinterested party like *Riggs Bank* who recommended to the plaintiff the offending “merchant,” the Court pointed to the Committee Report, which states that a “‘merchant’ is only a person on the ‘supply side’ of a consumer transaction.” *Id.* at 708. In accordance with this legislative history, the Court concluded that “merchant” meant a person “connected with the ‘supply’ side of a consumer transaction,” and that Riggs Bank was not so connected. *Id.*

Further, the Court in *Dahlgren*, granted the Cellular Telecommunication & Internet Association’s (“CTIA”) motion to dismiss, concluding that Defendant was not a merchant under the DCCPPA. *Dahlgren v. Audiovox Communs. Corp.*, 2002 CA 007884 (July 8, 2010). While not controlling, the Court finds the analysis in *Dahlgreen* both persuasive and factually applicable. The Court reasoned that while the defendant was technically “connected with” the “supply side” of the transaction, “in that, according to the complaint, it acts as the research arm of the manufacturer defendants...coordinates and disseminates their statements to the public...and directly makes representations in the media about the subject that ‘materially impact the point of sale’ the defendant could still not be considered a “merchant” under the DCCPPA. *Id.* at 39. In so finding, the Court concluded that because the defendant had not manufactured or sold the products at issue, or in any way controlled any sale of the products, to find that the DCCPPA applied to such a defendant would be “unduly stretching the reach of the CPPA.” *Id.* at 42.

The Court concludes that “connected with the supply side” under the DCCPPA refers to an individual or entity who is the seller or provider of services, one who controls the sale or provision of services to the consumer, or one who is “further along the supply chain.” *Williams v. The Purdue Pharma Co.*, 297 F. Supp. 2d 171 (D.D.C. 2003). In this case, the Court agrees

with Defendant AHA that it cannot properly be considered a merchant under the DCCPPA. The AHA “does not sell food products (including beef),” nor “benefit from the sales,” and “once the administrative fee is paid for the consideration process, AHA does not obtain any further payments, in any other manner, from the food companies who seek the license.” Def. Mot. at 7. Further, Defendant’s certification process is entirely divorced from the actual manufacturing or sale of these products. It is not alleged that AHA manufactured or sold any beef products. Nor is it alleged to have exercised any control over the actual sale of the beef products. As proffered by Defendant, AHA’s certification of a product “is not conditioned upon or connected to whether the product is ever even sold to a consumer.” Def. Mot. at 10-11. Participation with AHA is entirely voluntary and does not in any way affect a beef purveyor’s ability to otherwise sell its products to consumers. While the AHA is “connected with” the product, insofar as it permits certified manufacturers to affix the Check Mark on its packaging, the Court cannot conclude that this level of involvement in the supply chain was that of a “merchant,” as contemplated by DCCPPA’s legislative history and accompanying caselaw.

Accordingly, because Defendant AHA is not involved in the manufacturing or sale of products and cannot acutely be considered “further along the supply chain” in any manner, the Court must conclude that the AHA is not a “merchant” within the meaning of the DCCPPA. *See* 432 A.2d at 708. To find otherwise would impermissibly stretch the meaning of the term. Therefore, because Plaintiff Animal Outlook has not sufficiently alleged that Defendant AHA is a merchant under the statute, the Motion to Dismiss is granted.

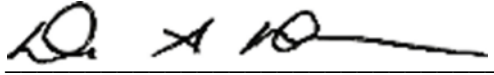
### **CONCLUSION**

Accordingly, it is, this 2<sup>nd</sup> day of April, 2025, hereby

**ORDERED** that Defendant’s Motion to Dismiss is **GRANTED**; and it is

**FURTHER ORDERED** that the American Heart Association shall be **STRIKEN** as a defendant in the above captioned matter.

**SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Danya A. Dayson', is written over a horizontal line.

Danya A. Dayson  
Associate Judge, Superior Court of the District of Columbia

# ATTACHMENT 2

**Attachment 2**

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