25-1782

IN THE UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

LAURENCE WOLF, DBA
LAURENCE WOLF PROPERTIES, individually,
and on behalf of a class of similarly-situated
persons and entities,

Plaintiff-Appellant,

v.

CITY OF DETROIT, MI
a municipal corporation,

Defendant-Appellee.

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF MICHIGAN

REPLY BRIEF OF APPELLANT LAURENCE WOLF

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I. PRELIMINARY STATMENT

The City has no real answer to Wolf's allegations of error on appeal regarding the issue of Article III standing. Nowhere in its briefing does the City address, let alone refute, Wolf's arguments that traceability of harm to the City exists even if MSHDA "agreed" to the City's "80/20" Policy—because at worst this makes MSHDA a co-bad actor, and well-established case law holds that injury can be fairly traced to more than one actor. *See e.g. Maron v Chief Fin Officer of Fla*, 136 F.4th 1322, 1331 (11th Cir. 2025) (discussing Article III standing in the context of a 5th Amendment Takings claim and ultimately holding that "standing is not defeated merely because the alleged injury can be fairly traced to the actions of both parties and non-parties."); *Haymarket Dupage, LLC v Village of Itasca*; 2024 U.S. Dist. LEXIS 33271, at *31 (ND Ill, Feb. 27, 2024)(A "plaintiff does not lack standing merely because the defendant is one of several persons who caused the harm") (*see* Doc.22, p. 62).

Moreover, the City fails to mount a meaningful defense of the District Court's wholly unsupported "finding" that MSHDA, not the City, "directed" the 80/20 Policy. On this point, this Court need only consider the testimony of Chelsea Neblett, the City employee responsible for the implementation of the 80/20 Policy:

> Q. The **policies** that are listed on page two of Exhibit 2, the 100 percent, **<u>the 80/20</u>** and the 50/50. Those were city policies, correct?
> A. Correct.
> Q. <u>They were not dictated by MSHDA</u>, correct?
> A. **<u>Correct</u>** (emphasis added). [Exhibit 1, hereto, March 27, 2025 Deposition Transcript Excerpt, Chelsea Neblett at p. 16.]

In fact, the City does not even begin to meaningfully address the issue of standing until late in its brief on appeal (Doc.25, p. 44). Instead, the City devotes about two-thirds of its brief engaged in misdirection and obfuscation, failing to directly address the controlling issue on appeal and leading the Court down a number of rabbit holes such as (by way of example): (a) the "Purpose of the Relief Acts (Doc. 25 p. 18);" (b) the City's purported broad discretion under the Relief Acts (Doc. 25 pp. 19-24); and (c) the City's suggestion that was somehow appropriate to enact its "80/20" Policy because a few other programs also incorporated restrictions—a/k/a the "everyone speeds" justification (Doc.25 pp. 30-32).[1]

While Wolf agrees that some of these issues may be germane to other aspects of this case should this Court remand it, these issues do not require this Court's consideration or analysis to answer the primary questions presented on appeal:

1. Did the District Court err as a matter of law when it held that Wolf did not have Article III standing to pursue his claims on behalf of himself and the Putative Class, finding that the harm inflicted was not "fairly traceable" to the City?
2. Is the harm alleged by Wolf on behalf of himself and others redressable by a favorable decision of the Court against the City?

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[1] These issues are irrelevant to the issue of standing presented here and are materially misleading out of context. For example, the "purpose of the Relief Acts issue" relates to whether or not the City's "80/20" Policy is preempted by federal law. *See* R. No. 50, Wolf's Motion for Partial Summary Disposition on the Issue of Obstacle Preemption. The City's discussion of its discretion under the Relief Acts and comparison to other CERA programs was briefed during the City's Defendant's Motion To Dismiss. *See* R. 28, R. 31, PageID.1109-1111; PageID.1124-1128; R. 41 PageID.1264-PageID.1265 (holding that Wolf had sufficiently alleged a property interest in awarded CERA funds).

Wolf asserts that under the governing authority discussed herein—including the *Turaani* case that both the District Court and the parties relied upon below—as well as the reasons stated in Wolf's Brief on Appeal (Doc.22), it is clear that the answer to this question is: Yes.

Regardless, despite the fact that the "80/20" Policy was the City's "brainchild" and the only possible beneficiary of this policy was the City,[2] when the City finally addresses the issue of standing, it just repeats some variation of its (erroneous) "traceability" theme that apparently influenced the District Court, to wit:

- The City did not control MSHDA's CERA program.
- The City did not control MSHDA's CERA funds.
- MSHDA chose to implement the City's "80/20" Policy.
- As such (as the District Court held) the City cannot be held responsible for the harm that befell Wolf and those similarly situated.

Using the lens of this flawed and misleading position, the City then attempts to minimize the evidence presented by Wolf (*see* City's Brief on Appeal, Doc.25 pp. 45-54 (§ II (A)-(H)) that shows, among other things, that (a) the implementation of the City's "80/20" Policy was spearheaded by the City in the MSHDA program (R. 65-3,

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[2] Logically, the "80/20" Policy could only benefit the City who created the policy solely to coerce enforcement of local rental ordinances that the City has been struggling for years to enforce. Clearly, neither MSHDA nor the HARAs benefitted from the policy. MSHDA received no benefit by "agreeing" to it. The HARAs were actually burdened by the policy—saddled with the task of implementing and enforcing it under circumstances where they would not have absent the City's directive. *See* Doc. 22, pp. 23-24, R. No. 64-6, PageID.2983; R. 64-6, PageID.2984-PageID.2985.

PageID.3041); (b) the City was deeply involved with MSHDA's CERA Program—to the extent that (c) the HARAs operationally did not distinguish between the programs (R. 64-7, PageID.2988); and (d) the "80/20" Policy was a directive by the City upon the HARAs to which they were required to adhere (R. 64-6, PageID.2983; R. 64-6, PageID.2984-PageID.2985).

However, the issue of Wolf's standing to sue the City simply does not turn on the City's control or purported lack thereof over MSHDA. Wolf's standing does not turn on whether or not the City received and/or controlled MSHDA's CERA Funds—and the City's attacks on Wolf's evidence necessarily dissolve under the correct legal premise: traceability of harm to the City exists because well-established case law holds that injury can be fairly traced to more than one actor and the City's actions are the "but for" cause of Wolf's injury.

Indeed, when viewed under the correct legal standard, the City's arguments can be seen for what they are: glaring red herrings designed to mislead. For example, the City commences its argument by asserting that "Plaintiff alleged that the City somehow forced MSHDA and/or the HARAs carrying out MSHDA's program to apply the City's 80/20 provisions." Doc.25 p. 44. This is not true. Wolf has not alleged that the City "forced" MSHDA to do anything—and indeed has argued that this circumstance, whether true or not, is irrelevant to the issue of standing.

Wolf's position, which the evidence supports, is that (1) the City implemented an unlawful policy that the City required to be imposed upon all CERA funds

distributed within the City (R. 64-6, PageID.2983; R. 64-6, PageID.2984-PageID.2985); (2) the City aggressively lobbied MSHDA to adopt its policy—in fact acknowledged that it needed MSHDA to get onboard with it for the policy to work City-wide (R. 64-5 PageID.2972; .R. 69, PageID.3138); (3) MSHDA tolerated the City's policy, allowing it to become part of MSHDA's CERA program through the HARAs that both the City and MSHDA used—though it expressed doubts regarding the policy and wanted to "revisit" it when it became apparent that the "80/20" Policy slowed distribution of CERA Funds (R. 68-2, PageID.3115); (4) the City's and MSHDA's CERA programs operated within the City simultaneously and were indistinguishable from each other—even from the HARAs perspective. *See* (R. 64-7, PageID.2988; R. 65-4, PageID.3044); and (5) the HARAs had no discretion regarding implementing the City's "80/20" Policy whether under the City's or MSHDA's programs. R. 64-6, PageID.2983; R. 64-6, PageID.2984-PageID.2985.

The reality here is that, regardless of whether MSHDA "agreed to" or merely tolerated it, it was the City's "80/20" Policy—this "brainchild"—of the City, that directly caused the harm experienced by Wolf and those Approved Landlords who are similarly situated.[3] Thus, Wolf satisfies the traceability standard for establishing Article

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[3] The City's continuing hostility to the term "Approved Landlords" is a bit histrionic. The term "Approved Landlord" is used to identify the members of the putative class—to distinguish those landlords whose CERA applications were actually approved and a sum certain of emergency relief funds expressly awarded, creating an enforceable property right in the awarded CERA Funds. *See e.g.* discussion at R. No. 31, PageID.1131; and R. 41 PageID.1264-PageID.1265 (determining that Plaintiff had

III standing against the City. This Court should reverse the District Court's Opinion and Order Dismissing Case for Lack of Standing (R. 69) and Judgment (R. 70).

II. THE DISTRICT COURT ERRED WHEN IT HELD WOLF DID NOT HAVE STANDING TO PURSUE CLAIMS AGAINS THE CITY.

The only way to justify the District Court's holding, and the City's flawed logic, is to ignore the overwhelming amount of well-established case law regarding traceability that likens this prong of the standing test to "but-for causation"—allowing for more than one cause of injury and more than one bad actor. As stated in *Manney v United States Dep't of Homeland Security*, 735 F Supp 3d 590 (ED Pa. 2024):

> **Conceptually, traceability is analogous to causation, and there can be more than one cause of an injury**. Certainly, the conduct of the employers was a contributing factor to Plaintiffs' misfortune, but it was the combination of the employers' alleged actions and the agency's response that gave rise to the current situation. [*Manney,* 735 F Supp 3d at p. 597. Emphasis added.]

The traceability requirement is "akin to but-for causation, not proximate causation," and "[t]here may be more than one but for cause of a loss." *Adam v. Barone*, 41 F.4th 230, 235 (3d Cir. 2022) (finding that the traceability requirement is satisfied when both Plaintiff's and Defendants' actions were but-for causes of Plaintiff's injury).

Furthermore, the "traceability requirement for Article III standing means that 'the plaintiff must demonstrate a causal nexus between the defendant's conduct and the injury.'" *Chevron Corp. v. Donziger*, 833 F.3d 74, 120 (2d Cir. 2016) (quoting *Rothstein v.*

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sufficiently alleged a property interest in awarded CERA funds).

UBS AG, 708 F.3d 82, 91 (2d Cir. 2013)). Indeed, "the fact that the defendant's conduct may be only an 'indirect[]' cause is 'not necessarily fatal to standing.'" *Id.* at 121 (quoting *Simon v. Eastern Kentucky Welfare Rights Organization*, 426 U.S. 26, 44, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)).

Indeed, a "defendant's conduct that injures a plaintiff but does so only after intervening conduct by another person, may suffice for Article III standing." *Donziger* at 121 (citing *Rothstein*, 708 F.3d at 92). "The traceability requirement focuses on whether the asserted injury could have been a consequence of the actions of the defendant rather than being attributable to the 'independent' acts of some other person not before the court." *Id.* (citing *Lujan v Defenders of Wildlife,* 504 US 555, 560; 112 S Ct 2130; 119 L Ed 2d 351 (1992); *see also Connecticut v American Electric Power Co*, 582 F3d 309, 345 (2nd Cir. 2009) (explaining that the traceability requirement "ensures that there is a genuine nexus between a plaintiff's injury and a defendant's alleged…conduct, and is in large part designed to ensure that the injury complained of is not the result of the independent action of some third party not before the court" (*rev'd on other grounds American Electric Power Co v Connecticut*, 564 US 410, 410; 131 S Ct 2527; 180 L Ed 2d 435, 435 (2011); quoting *Friends of the Earth, Inc. v. Gaston Copper Recycling Corp.*, 204 F.3d 149, 161-62 (4th Cir. 2000)).

Again, a "plaintiff can satisfy traceability by showing 'that the defendant's conduct is one among multiple causes' of the alleged injury." *Conservation L. Found., Inc. v. Academy Express, LLC*, 129 F.4th 78, 90 (1st Cir. 2025) (quoting 13A Wright & Miller's

Federal Practice & Procedure § 3531.5 (3d ed. 2008)). Moreover, proximate causation "is not a requirement of Article III standing, which requires only that the plaintiff's injury be fairly traceable to the defendant's conduct." *Webb v. Injured Workers Pharmacy, LLC*, 72 F.4th 365, 377 (1st Cir. 2023) (quoting *Lexmark Int'l, Inc. v. Static Control Components, Inc.*, 572 U.S. 118, 134 n.6, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014)).

Finally, in a "case with multiple alleged contributors to a cumulative harm," as alleged here, this court may find it helpful to engage in a counterfactual inquiry—asking whether the City's conduct alone—its dictate of the "80/20 Policy—is "a factual cause of a concrete and particularized portion of harm" outside of the other purported actions by MSHDA. *See Conservation L. Found.*, 129 F.4th at 90 (internal citation removed).

In this case, applying the "counterfactual," there is no question that "but-for" the City's policy, Wolf would have received payment in full of the approved and awarded CERA Funds. As initially discussed in Wolf's Brief on Appeal, and more further below, there is no question that the City's "80/20" Policy is the "but for" cause of Wolf's harm, and as such, is "fairly traceable" to the City for purposes of establishing Article III standing.

III. THE HARM EXPERIENCED BY WOLF AND THOSE SIMILARLY SITUATED IS DIRECTLY TRACEABLE TO THE CITY'S "80/20" POLICY AND THUS, TRACEABLE TO THE CITY.

Despite expressly recognizing that the "80/20" Policy was the City's "brainchild" that the City actually "lobbied" MSHDA to apply "to funding distributions for Detroit-based applicants" (R. 69, PageID.3138) the District Court, relying on *Turaani v. Wray,*

988 F3d 313, 315 (6th Cir. 2021), adopted virtually wholesale the City's erroneous argument that the City could not be held accountable for the harm caused by its "brainchild" because MSHDA purportedly made a "voluntary decision" to implement the City's "80/20" Policy. Here again is the crux of the District Court's Opinion:

> The State—not the City—ultimately used its discretion in making the independent, voluntary decision to implement the 80-20 requirement and require HARAs to apply it to Detroit-based applicants. That independent, voluntary, and discretionary decision by the State thus severs the causal chain for traceability purposes and deprives Wolf of Article III standing. See *Turaani*, 988 F.3d at 317. [R. 69 PageID.3138-3139.]

The District Court's reasoning is flawed and contravenes the applicable standards regarding traceability cited herein.

A. THE EVIDENCE DOES NOT SUPPORT THE DISTRICT COURT'S HOLDING THAT MSHDA "VOLUNTARILY AGREED" TO IMPLEMENT THE CITY'S "80/20" POLICY.

Initially, MSHDA made no "independent, voluntary decision to implement the 80-20 requirement and require HARAs to apply it to Detroit-based applicants." No evidence exists to support that statement. There is no evidence in the record that MSHDA "voluntarily agreed" to implement the City's "80/20" Policy. There is no directive from MSHDA ordering that the HARAs implement the City's "80/20" Policy. In fact, City representative, Chelsea Neblett admitted both that: (a) there was nothing in writing from MSHDA "agreeing" to the City's "80/20" Policy (*See* Add. Ex. 1 to Wolf's Brief on Appeal, Doc.22, p. 56.) and (b) that the City's "80/20" Policy was not dictated by MSHDA. *See* Exhibit 1, hereto.

Here, the evidence suggests that MSHDA took no position—and at best only tolerated the City's "80/20" requirement. As the City recognized in its memo dated May 13, 2021, for the "80/20" Policy to work MSHDA had to be on board. R. 64-5, PageID.2972. The evidence suggests that at the City's behest, MSHDA "got on board" by acquiescing to the City's Policy—by allowing the HARAs to "uniformly" implement the City's policy regardless of the Grantee as desired by the City.

MSHDA most assuredly did not dictate the City's "80/20" Policy but instead questioned it almost immediately upon its implementation as an impediment to efficient distribution of CERA funds. R. 68-2, PageID.3115.

B. The Evidence Does Not Support The District Court's Holding That MSHDA's Actions Were "Independent" of the City's.

Moreover, there is absolutely no basis for the District Court's "factual" finding that MSHDA's actions were "independent" of the City's actions—indeed, this is a factual impossibility as MSHDA's actions were directly connected to and based upon the City's actions via the City's mandate of its "80/20" Policy. Clearly there is a causal nexus between the City's "80/20" Policy and the harm alleged by Wolf. An instructive case is *Santiago v Tesla, Inc*, 2025 U.S. Dist. LEXIS 115246 (ND Ill, June 17, 2025)(Exhibit 2, hereto).

In *Santiago*, plaintiff alleged that a defect in his Tesla caused him to pay higher insurance premiums. Tesla argued the injury was not traceable to Tesla because the insurance companies were the ones that increased the premiums. The district court

held that traceability was satisfied, stating:

> Santiago's allegedly inflated insurance premiums are directly tied to Tesla's actions—**they are not the result of any "independent actor[]" who might have caused the same injury <u>without</u> Tesla's involvement**. *DH2*, 422 F.3d at 597. **Remove Tesla's defect from the equation and Santiago would never have paid inflated premiums**. That is enough to make his injury "fairly traceable" to Tesla. *Lujan*, 504 U.S. at 560-61. [*Santiago* at *10-11 (emphasis added).]

In this case, as in *Santiago*, Wolf's harm is not the result of any independent actor who might have caused the same injury <u>without</u> the City's involvement. Even if MSHDA "dictated" the 80/20 policy, it never would have done so without the City's actions. Remove the City's "80/20" Policy from the equation and Wolf would have received full payment of the CERA Funding awarded to him.

C. It is Irrelevant Whether MSHDA Allowed or Even "Agreed" to the City's unlawful "80/20" Policy Because Traceability Law Allows for More than One Bad Actor and The City's "80/20" Policy Is the Direct Cause of Wolf's Harm.

The root of the District Court's holding is that, under *Turaani,* MSHDA's "voluntary and independent" actions "dictated" the City's "80/20" Policy in its CERA program, breaking any traceability of harm to the City. R. 69 PageID.3138-3139.

Even if that were true (which it is not, as the City admits, *see* Exhibit 1, hereto), it is irrelevant whether MSHDA allowed or even "agreed" to the City's unlawful "80/20" Policy. This merely put MSDHA in the same position as the City—proponing the City's unlawful "80/20" Policy within its CERA program—which is the same as saying the City voluntarily and independently agreed to implement its own policy.

Under this theory, there are two bad actors—the City ***and*** MSHDA. But that does not mean that Plaintiff is required to sue both bad actors—and it does not obviate the fact that it is the City's policy that caused the harm, regardless of whether the City or MSHDA implemented it.

The City's arguments—adopted by the District Court—inherently assume that the "causal chain for traceability purposes" can only be traced to one source (MSHDA)—but this is not true. Here, arguably, the actions of the City, MSHDA, and the HARAs all combined to cause Plaintiff's injury—and case law cited above is clear that for purposes of the "traceability" prong of Article III standing, there may be more than one cause of injury, and more than one "bad actor" can be held responsible.

While the City now seeks to distance itself from the unlawful impact of its "80/20" Policy, trying to spread responsibility to everyone from MSHDA to the HARAs, it is not disputed that the City the "80/20" Policy was the City's "brainchild" with the only beneficiary of that policy being the City.

The City's conduct—its mandate of the "80/20" Policy upon the HARAs operating in the City—is the most direct cause of the harm alleged by Plaintiff and thus his injury is directly traceable to the City. Simply put, absent the City's "80/20" Policy, the Approved Landlords would have received payment in full of the CERA Funding that was awarded to them under the Relief Acts—just like every other Approved Landlord throughout Michigan did when not subjected to the City's "80/20" Policy. Thus, even if *arguendo* MSHDA "voluntarily agreed" to the City's "80/20" Policy, the

"but-for" causation of Wolf's harm is still directly traceable to the City's actions: "but for" the City's dictate of its "80/20" Policy that required the HARAs to implement the policy for all CERA programs operating in the City (regardless of grantee), Wolf would have received 100% of his award, and he wouldn't have been injured.

D. *TURAANI V. WRAY* SUPPORTS WOLF'S TRACEABILITY ARGUMENTS.

In *Turaani v. Wray,* 988 F3d 313, 315 (6th Cir. 2021), this Court held that the plaintiff lacked standing because there was "no traceable harm" to the government because the FBI left discretion to complete the sale with the gun dealer and that "[a]n indirect theory of traceability requires that the government cajole, coerce, command." *Id.* p. 316 (*citing Crawford v. U.S. Dep't of Treasury,* 868 F.3d 438, 457 (6th Cir. 2017)).

Wolf has already discussed this case at length in his initial Brief on Appeal, arguing that the issue of standing in this case turns on whether or not the HARAs—not MSHDA—as the agents of the City and MSHDA could have independently chosen to "opt out" of the City's "80/20" Policy (the short answer to that is: No, the HARAs could not have opted out of the City's "80/20" Policy). *See* Wolf's Brief on Appeal, Doc.22 pp. 40-42.

Based upon Wolf's additional arguments made herein, MSHDA's purported "voluntarily" and "independent" decision to adopt the City's "80/20" Policy changes nothing under the *Turaani* analysis. Again, MSHDA stands in the shoes of the City as a second bad actor—it is irrelevant whether or not MSHDA voluntarily agreed to anything because in this case there can be no meaningful "independent choice"

between the two equally-positioned bad actors. Thus, the *Turaani* case, when properly reasoned and applied here, supports Wolf's standing to pursue claims against the City.

IV. THE DISTRICT COURT ERRED BY APPLYING THE WRONG EVIDENTIARY STANDARD.

Finally, the District Court erred because it used wrong evidentiary standard to assess traceability.

The evidence required to sustain Article III standing corresponds "with the manner and degree of evidence required at the successive stages of the litigation." *Lujan*, 504 U.S. at 561. At trial, for example, controverted facts must be "supported adequately by the evidence[.]" *Id.* **But at summary judgment, it is enough that a plaintiff has "set forth by affidavit or other evidence specific facts**" supporting each element. *Id.* (internal quotation marks omitted); *see also McKay v. Federspiel*, 823 F.3d 862, 867 (6th Cir. 2016). As discussed above, Wolf has presented evidence of specific facts that support the traceability element of Article III standing.

The District Court erred as a matter of law when it summarily dismissed this evidence and concluded that MSHDA "dictated" the City's 80/20 Policy, which purportedly destroyed any chain of causation back to the City. As discussed above, there is no evidence that MSHDA "dictated" the 80/20 policy. Alternatively, at the very least, there are genuine issues of material fact as to whether MSHDA "dictated" the 80/20 policy. Here, the District Court essentially granted summary judgment in favor of the City without properly considering Wolf's evidence.

V. WOLF'S HARM IS REDRESSABLE BY THE CITY.[4]

The City offers very little in response to Wolf's redressability argument outside of repeating its flawed reasoning that was adopted by the District Court, to wit: "because Wolf's applications were processed under the MSHDA program with MSHDA's funds, the City didn't have any control over the disposition of these funds. ECF No. 66, PageID.3058. An order directing the City to disburse to Wolf the allegedly owed 20% would therefore fail to redress his injury." R. 69, PageID.3152- PageID.3153. The City concerns itself with not being able to "compel any party or non-party" to disburse the wrongfully escrowed funds to Wolf and others. Doc.25, p. 63.

But again, that is simply untrue and not the law.

Redressability is the likelihood that the requested relief will redress the alleged injury. *Nader v. Blackwell*, 545 F.3d 459, 471 (6th Cir. 2008). Here, Wolf asserts that the City, by and through its "80/20" Policy caused its HARAs to wrongfully seize and escrow 20% of awarded CERA Funds from Wolf and those similarly situated in violation of the Fifth Amendment. If Wolf proves this claim against the City, then just compensation in the form of the monetary value of the 20% will redress the injury.

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Dated: March 7, 2026

[4] Wolf more fully addresses the issue of redressability in his initial Brief on Appeal. *See* Doc.22 pp. 42-49.

CERTIFICATE OF COMPLIANCE UNDER FRAP 32(g)

Pursuant to FRAP 32 (a)(7)(B)(ii) and FRAP 32(g)(1), Plaintiff's counsel states that the foregoing Brief of Appellant Laurence Wolf contains no more than 6500 words. Specifically, the Brief contains 4315 countable words as defined under FRAP 32(f).

Counsel relied on the word count function of its word processing system to calculate word count as permitted by FRAP 32(g).

/s/ Jamie Warrow
Jamie Warrow

CERTIFICATE OF SERVICE

I hereby certify that on March 7, 2026 I filed the foregoing document with the ECF filing system which provides service to all counsel of record.

/s/ Jamie Warrow
Jamie Warrow

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FOR THE SIXTH CIRCUIT

LAURENCE WOLF, DBA
LAURENCE WOLF PROPERTIES, individually,
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ON APPEAL FROM THE UNITED STATES DISTRICT COURT
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ADDENDUM TO
REPLY BRIEF OF APPELLANT LAURENCE WOLF

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ADDITIONAL EXHIBITS

Add. Ex.	Description
Add. Ex. 1	March 27, 2025 Deposition Transcript Excerpt, Chelsea Neblett, p. 16.
Add. Ex. 2	*Santiago v Tesla, Inc*, 2025 U.S. Dist. LEXIS 115246 (ND Ill, June 17, 2025)

4927-5670-7221, v. 1

EXHIBIT – 1

In The Matter Of:

Laurence Wolf Properties v.
City of Detroit

Chelsea Neblett
March 27, 2025

Original File NEBLETT_250327.txt

Min-U-Script® with Word Index

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1 A. If there was a certificate of compliance and if it met the
2 policy, correct.
3 Q. Right. But what I'm saying is, if absent the city's
4 policies, because these weren't MSHDA or Treasury
5 policies, correct?
6 A. Correct. But Treasury allowed for recipients --
7 Q. I understand that you want to tell your story, but just
8 try and answer my questions and then you'll have plenty of
9 opportunity to do that. The policies that are listed on
10 page two of Exhibit 2, the 100 percent, the 80/20 and the
11 50/50. Those were city policies, correct?
12 A. Correct.
13 Q. They were not dictated by MSHDA, correct?
14 A. Correct.
15 Q. They were not dictated by the Treasury Department.
16 A. Correct, but Treasury allows for grantees to develop their
17 own program.
18 Q. I know, but listen to my question. It wasn't dictated?
19 A. Correct.
20 Q. Okay. And somebody other than us will decide whether they
21 were allowed to do this or not, but my point is that the
22 policies on -- if the city had not implemented the
23 policies on page two of Exhibit 2, 100 percent of whatever
24 was approved for the tenant would have been released to
25 the landlord under the CERA program?

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1 A. Correct. So long as it met the other Treasury guidelines
2 in terms of length of assistance, amount, timeline, et
3 cetera.
4 Q. Income eligibility, the whole nine yards.
5 A. Yes.
6 Q. But I'm talking about this policy that you said applies
7 once there's been an approval for a tenant, right?
8 A. Uh-hum?
9 Q. Yes?
10 A. Yes.
11 Q. Okay. Did you ever talk to anybody at the Treasury
12 Department, the U.S. Treasury Department about the city's
13 Cera program?
14 A. I did not.
15 Q. Do you know if anybody at the city had a point of contact
16 at the U.S. Treasury Department?
17 A. The city is required to submit certain information to
18 Treasury as a part of reporting. And so the Grants Office
19 was that entity that submitted the information.
20 Q. Okay. Do you know a person at the Grants Office that you
21 could list for me that would have been involved in that
22 activity?
23 A. Yes, Terri Daniels.
24 Q. Terri Daniels, okay. Do you know what her job is?
25 A. She recently was just promoted. She was the director of

18

1 the Office of Grants Accounting. I'm not sure what her
2 current title is.
3 Q. Okay. Would you agree with me that the reporting that
4 city made to Treasury was only in connection with the
5 Detroit program?
6 A. Correct, the city was responsible, yes, for reporting
7 regarding the 28,000,000.
8 Q. So the city did not provide reporting to Treasury or MSHDA
9 regarding the MSHDA programs?
10 A. MSHDA was responsible for reporting to Treasury for the
11 MSHDA program. We used one portal, the MSHDA portal, for
12 ease of access for residents and so MSHDA had information
13 pertaining to applications and things of that nature from
14 the city of Detroit.
15 Q. Right. But you'd agree with me that the reports that the
16 city, the Grant Department sent to the Treasury, have
17 detailed narratives about the city program.
18 A. Correct.
19 Q. And they also have financial information about how much
20 the city has received, how much has been spent, how much
21 remains, that sort of thing, correct?
22 A. Correct.
23 Q. But the city didn't do that type of reporting for the
24 MSHDA program.
25 A. No, the city would not report on behalf of a different

19

1 grantee.
2 Q. Do you know whether the HARAs provided, HARAs under the
3 MSHDA program provided that type of information to MSHDA
4 for transmittal to the Treasury Department?
5 A. I do not. I do not. I'm not sure if they would have
6 provided it to HAND who provided it to the MSHDA or if
7 they would have provided it directly.
8 Q. All right. What kind of reporting -- I want to, for now,
9 limit this to the Detroit program which was part of CERA
10 too, the $28,000,000 program.
11 A. Uh-hum.
12 Q. You have to say yes.
13 A. Oh. Yes, sorry.
14 Q. Okay. Even after 35 years, I still do it, so don't worry
15 about it.
16 A. No problem, thank you for the reminder.
17 Q. Okay. So what kind of reporting did the city receive from
18 the HARAs with respect to the City of Detroit program?
19 A. So the City of Detroit received from the HARAs a few
20 different things. So Financial Status Reports, we
21 commonly refer to this as FSRs. We received quarterly
22 reports as well as documentation that substantiates the
23 Financial Service Reports. We also used, as I had
24 referenced, a portal that kept track of applications and
25 where those applications were in processing status and

EXHIBIT – 2

Neutral
As of: February 26, 2026 5:43 PM Z

Santiago v. Tesla, Inc.

United States District Court for the Northern District of Illinois, Eastern Division

June 17, 2025, Decided; June 17, 2025, Filed

Case No. 23 CV 2891

Reporter
2025 U.S. Dist. LEXIS 115246 *; 2025 LX 103056; 2025 WL 1696444

JOSHUA SANTIAGO, individually and on behalf of others similarly situated, Plaintiff, v. TESLA, INC., a Delaware Corporation, Defendant.

Prior History: *Santiago v. Tesla, Inc., 757 F. Supp. 3d 831, 2024 U.S. Dist. LEXIS 213003 (Nov. 22, 2024)*

Core Terms

advertize, unfair practice, insurance premium, warn, collide, traceable, motion to dismiss, premium, second amended complaint, inflate, deceptive practices, unfair act, causation, proximate, misrepresent, deceptive, drive

Counsel: **[*1]** For Joshua Santiago, Plaintiff: Andrew T. Heldut, McGuire Law, P.C., Chicago, IL; Eugene Y. Turin, Mcguire Law, P.C., Chicago, IL.

For Tesla, Inc., Defendant: Livia McCammon Kiser, LEAD ATTORNEY, King and Spalding LLP, Chicago, IL; Susan Marie Clare, John Franklin Sacha, Jr., LEAD ATTORNEYS, PRO HAC VICE, King & Spalding LLP, Atlanta, GA; Tatum Ellis, King & Spalding, Chicago, IL.

Judges: Georgia N. Alexakis, United States District Judge.

Opinion by: Georgia N. Alexakis

Opinion

MEMORANDUM OPINION AND ORDER

Plaintiff Joshua Santiago brings this putative class action complaint against defendant Tesla, Inc. based on an alleged defect in his 2020 Tesla Model 3. In November 2024, the Court granted in part and denied in part Tesla's motion to dismiss Santiago's first amended complaint. [44]. After the Court granted him leave to amend, Santiago filed a second amended complaint with new allegations related to his unfair practices claim under the Illinois Consumer Fraud and Deceptive Business Practices Act ("ICFA"). [48]. Tesla now moves to dismiss Count II of Santiago's second amended complaint. [53]. For the reasons discussed below, the Court grants Tesla's motion.

LEGAL STANDARDS

Article III of the U.S. Constitution limits federal courts to adjudication of "Cases" **[*2]** and "Controversies." *U.S. Const. art. III, § 2*. "Standing to bring and maintain a suit is an essential component of this case-or-controversy requirement." *Scherr v. Marriott Int'l, Inc., 703 F.3d 1069, 1073 (7th Cir. 2013)*. To establish he has standing, Santiago must allege (1) he has suffered an "injury in fact," (2) there is a "causal connection between the injury and the conduct complained of," and (3) "it must be likely, as opposed to merely speculative, that the injury will be

redressed by a favorable decision." *Lujan v. Defs. of Wildlife, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992)* (cleaned up). To establish causation, "the injury has to be 'fairly traceable to the challenged action of the defendant, and not the result of the independent action of some third party not before the court." *Id. at 560* (cleaned up) (quoting *Simon v. Eastern Ky. Welfare Rights Org., 426 U.S. 26, 41-42, 96 S. Ct. 1917, 48 L. Ed. 2d 450 (1976)*). In determining whether standing exists, the Court takes all well-pleaded allegations of the complaint as true unless they are refuted in a defendant's affidavit. *See* *Tamburo v. Dworkin, 601 F.3d 693, 700 (7th Cir. 2010)*.

To survive a *Rule 12(b)(6)* motion to dismiss, a complaint must contain a "short and plain statement of the claim showing that the pleader is entitled to relief." *Fed. R. Civ. P. 8(a)(2)*. A complaint need only contain factual allegations that, accepted as true, are sufficient to "state a claim to relief that is plausible on its face." *Ashcroft v. Iqbal, 556 U.S. 662, 678, 129 S. Ct. 1937, 173 L. Ed. 2d 868 (2009)* (citing *Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007)*). A claim is plausible "when the plaintiff pleads factual **[*3]** content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Id.* (citing *Twombly, 550 U.S. at 556*). The allegations "must be enough to raise a right to relief above the speculative level." *Twombly, 550 U.S. at 555*.

At the pleading stage, the Court must "accept all well-pleaded factual allegations as true and view them in the light most favorable to the plaintiff." *Lavalais v. Vill. of Melrose Park, 734 F.3d 629, 632 (7th Cir. 2013)*. But "allegations in the form of legal conclusions are insufficient." *McReynolds v. Merrill Lynch & Co., 694 F.3d 873, 885 (7th Cir. 2012)*. "Threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice." *Iqbal, 556 U.S. at 678*.

BACKGROUND

The Court assumes familiarity with the facts of this case as outlined in its November 22, 2024 order. *See* [44]. In November 2024, the Court granted in part and denied in part Tesla's motion to dismiss Santiago's first amended complaint. *See generally id.* Specifically, the Court determined that Santiago had stated an ICFA claim to the extent he alleged that Tesla engaged in an omission-based deceptive practice by failing to warn buyers about the false collision warning defect in its cars. *Id.* at 13-17. However, the Court dismissed Santiago's ICFA claim based on an unfair practice. *Id.* at 18-22. Relying on *Camasta v. Jos. A. Bank Clothiers, Inc., 761 F.3d 732, 737 (7th Cir. 2014)*, the Court **[*4]** held that the false advertising Santiago alleged as part of his unfair practices claim was "entirely grounded" in his claim that Tesla engaged in deceptive practices. [44] at 19. As a result, and pursuant to *Camasta*, the Court declined to analyze that portion of Santiago's ICFA claim under the lower pleading threshold for an unfair act. *Id.* The Court also declined to find Santiago stated an unfair practices claim based on Santiago's inflated insurance premiums because Santiago had not alleged the factors required by *F.T.C. v. Sperry & Hutchinson Co., 405 U.S. 233, 244 n.5, 92 S. Ct. 898, 31 L. Ed. 2d 170 (1972)* (the "*Sperry* factors").

Santiago filed a second amended complaint in December 2024. [48]. Count I of the second amended complaint brings the same omission-based deceptive practices claim the Court previously found sufficient to state an ICFA claim. *Id.* ¶¶ 45-52. Count II brings an unfair practices ICFA claim, this time focusing exclusively on Tesla's actions with respect to Santiago's insurance premiums. *Id.* ¶¶ 53-61. Specifically, Count II alleges that Tesla engaged in an unfair practice when it "advertised that its Tesla Insurance product would provide Plaintiff and the other Tesla Insurance Subclass members reduced insurance premiums based on their actual driving behavior," **[*5]** even though Tesla knew its vehicles had the false collision warning defect and that Santiago would pay higher premiums as a result. *Id.* ¶ 57. Count II further alleges that this "imposed a lack of meaningful choice on [Santiago] as [Tesla] exclusively advertised its Tesla Insurance product as the sole product that could utilize the sensors on its vehicles to provide driving-behavior based insurance ...." *Id.* ¶ 58.

Santiago alleges several additional facts to support these assertions. For example, he alleges that "[w]hile information about the exact number of false collision warnings is within [Tesla's] sole custody and control, [his] premiums have consistently increased due to false collision warnings he experienced." *Id.* ¶ 32. He further alleges

that "because of false collision warnings, [he] paid $319.45 in insurance premiums to Tesla Insurance in August 2024 when he was assigned a Safety Score of 67" and that "[i]n October 2024, when he did not experience any false collision warnings, his insurance premium went down to $175.70 with a Safety Score increasing to 85." *Id.* ¶ 34.

Now before the Court is Tesla's motion to dismiss Count II of Santiago's second amended complaint. [53].

DISCUSSION [*6]

Tesla first argues that Santiago lacks Article III standing to pursue Count II. *See id.* at 5-7. In the alternative, Tesla argues that Count II fails to state a claim on the merits. *See id.* at 8-14. If the Court were to reject both these arguments, Tesla asks the Court to stay Count II under *Colorado River Water Conservation District v. United States, 424 U.S. 800, 96 S. Ct. 1236, 47 L. Ed. 2d 483 (1976)*, pending resolution of a related action in a California court. [53] at 14-15. Because the Court dismisses Count II on the merits, it does not reach whether Count II should be stayed pursuant to *Colorado River*.

A. Santiago Has Article III Standing to Pursue Count II.

Tesla argues that the injury Santiago experienced in Count II is not "fairly traceable" to Tesla because a separate subsidiary named Tesla Insurance Services ("TIS") charges Santiago premiums and otherwise administers his car insurance. [53] at 1, 5-6. Because TIS and not Tesla charges him premiums, Tesla maintains that Santiago's injury "hinges on the decisions of [an] independent actor[]." *Id.* at 6 (quoting *DH2, Inc. v. SEC, 422 F.3d 591, 597 (7th Cir. 2005)*).

This argument is unpersuasive. Santiago alleges he was injured in Count II because he was overcharged insurance premiums based on his Tesla's false collision warnings. That injury is "fairly traceable" to Tesla's conduct: Although Tesla may not **[*7]** have sold insurance directly to Santiago, Santiago alleges that Tesla sold vehicles knowing that they had the allegedly defective collision warning system and knowing that the alleged defect would lead to higher insurance premiums, yet all the while "exclusively" "advertis[ing] that its Tesla Insurance product would provide Plaintiff and the other Tesla Insurance Subclass members reduced insurance premiums based on their actual driving behavior." [48] ¶¶ 57-58; *see also id.* ¶¶ 59-61.

Tesla argues that causation cannot arise from the defect itself because that "would mean that the gravamen of [Santiago's] unfair practices claim is the same allegedly deceptive conduct (failing to disclose the purported defect) that is the basis of his ICFA deceptive practices claim in Count I."[1] *Id.* But this argument conflates the Article III standing inquiry with whether Santiago has stated an unfair practices claim on the merits. *See Taylor v. McCament, 875 F.3d 849, 855 (7th Cir. 2017)*. "Although federal standing often turns on the nature and source of the claim asserted, it in no way depends on the merits of the claim." *ASARCO Inc. v. Kadish, 490 U.S. 605, 624, 109 S. Ct. 2037, 104 L. Ed. 2d 696 (1989)* (cleaned up) (quoting *Warth v. Seldin, 422 U.S. 490, 500, 95 S. Ct. 2197, 45 L. Ed. 2d 343 (1975)*). Here, whether the allegations supporting Santiago's unfair practices claim overlap with his deceptive practices claim **[*8]** makes no difference because Article III only requires that Santiago's injury be "fairly traceable" to Tesla's challenged conduct. *Lujan, 504 U.S. at 560-61*. For the reasons already discussed, Santiago's allegations suffice.

Santiago's citation to *Bennett v. Spear* further supports this conclusion. *520 U.S. 154, 168, 117 S. Ct. 1154, 137 L. Ed. 2d 281 (1997)*. There, the Fish and Wildlife Service ("the Service") issued a biological opinion which

[1] As Tesla correctly points out (and as discussed in this Court's previous order, *see* [44] at 19), a plaintiff cannot avoid *Rule 9(b)*'s heightened pleading requirement by "adding language of unfairness" to a deceptive practices claim. ***Camasta v. Jos. A. Bank Clothiers, Inc., 761 F.3d 732, 737 (7th Cir. 2014)***.

recommended maintaining minimum water levels on certain lakes and reservoirs in California and Oregon. Id. at 159. Plaintiffs who lived in those areas then sued the Service claiming they would be adversely affected by the reduction in water supply. Id. at 168. The Service moved to dismiss on standing grounds, arguing that plaintiffs' injury was not "fairly traceable" to the Service's biological opinion because the Bureau of Reclamation—not the Service—"retains ultimate responsibility for determining whether and how a proposed action shall go forward." *Id.* The Supreme Court disagreed. Although it acknowledged that an injury cannot be "the result of the independent action of some third party not before the court," it found that Article III does not exclude injuries that are "produced by determinative or coercive effect upon the action of someone else." *Id.* (cleaned up) **[*9]** (quoting Lujan, 504 U.S. at 560-61).

Tesla attempts to distinguish *Bennett* by arguing that such a '"determinative or coercive effect' does not exist here because [Santiago] alleges no facts about the relationship between Tesla, Inc. and TIS, never explains how the alleged advertisements impact TIS's premium calculations, and does not allege that Tesla, Inc. exerts any control over TIS's handling of insurance premiums." [55] at 2-3. The Court disagrees that any more detailed allegations are required. Santiago clearly alleges that "[d]ue to [his Tesla's] false collision warnings ... [his] monthly insurance premium[s] have increased since when he first enrolled in Tesla Insurance because his 'Safety Score' (the score generated by Tesla based on driving habits) has decreased as the collision warnings were reported as unsafe driving events." [48] ¶ 30. This allegation sufficiently establishes a causal relationship between Tesla's actions (its manufacturing of the defect and knowing sale of vehicles containing it) and Santiago's injury (paying inflated insurance premiums) for purposes of the Article III standing inquiry.

The cases Tesla cites to support its standing argument are distinguishable. In DH2, a mutual fund investor claimed **[*10]** the SEC injured it by promulgating a rule that would cause the mutual funds in which it invested to use fair value pricing of securities, which plaintiff said would cost it money. 422 F.3d at 596. The Seventh Circuit said plaintiff had not established causation under Article III because the mutual funds had "quite broad" discretion to use fair value pricing anyway, making the alleged economic harm attributable to the SEC "only generalized and conjectural." Id. at 596-97. Likewise, in *Beckman v. Chicago Bears Football Club, Inc.*, plaintiff challenged a Chicago Bears policy prohibiting fans from wearing opposing team apparel to certain experiences for season ticket holders. No. 17 C 4551, 2018 U.S. Dist. LEXIS 55140, 2018 WL 1561719, at *4 (N.D. Ill. Mar. 30, 2018). The Court found plaintiff lacked **standing** to sue the NFL because it had not **established** the NFL had any say over the challenged **policy**. *See* 2018 U.S. Dist. LEXIS 55140, [WL] at *5 (plaintiff "must do more than show general association with the NFL to show **traceability**"). Here, in contrast to DH2 and Beckman, Santiago's allegedly inflated insurance premiums are directly tied to Tesla's actions—they are not the result of any "independent actor[]" who might have caused the same injury without Tesla's involvement. DH2, 422 F.3d at 597. Remove Tesla's defect from the equation and Santiago would never have paid inflated **[*11]** premiums. That is enough to make his injury "fairly traceable" to Tesla. Lujan, 504 U.S. at 560-61.

B. Santiago Has Not Stated an Unfair Practices Claim Under the ICFA.

Tesla argues in the alternative that Count II should be dismissed because Santiago has not fixed the defects the Court identified with his unfair practices ICFA claim. [53] at 7-13. On this point, the Court agrees with Tesla.

Before diving any deeper, one point of clarification: Santiago's second amended complaint does not allege that the unfair act constituting his ICFA claim is the act of charging him inflated insurance premiums.[2] This is consistent with Tesla's contention, as discussed above, that TIS and not Tesla administers Tesla's insurance program. *See supra* at 5; *see also* [53] at 1, 5-6. Instead, the unfair act Santiago alleges is that Tesla "advertised that its Tesla Insurance product would provide [Santiago] and the other Tesla Insurance Subclass members reduced insurance

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[2] This point was not evident from the allegations in Santiago's first amended complaint. *See* [14] ¶ 23 (Santiago's first amended complaint noting that "*Defendant* offers its own driving-behavior based insurance that adjusts vehicle owners['] premiums based on the driving data collected by its vehicles") (emphasis added).

premiums based on their actual driving behavior," when in fact Tesla knew they would pay inflated premiums because of the defect. [48] ¶ 57; *see also id.* ¶ 59 (Tesla's "*conduct of actively advertising* its Tesla Insurance product on the same website as where it advertised **[*12]** the collision warning features of its Tesla Vehicles while omitting any facts about the False Collision Warning Defect ... was unscrupulous and unethical") (emphasis added).

Santiago's amended unfair practices claim still falls short. First, as discussed in the Court's November 2024 order, *Camasta* teaches that where an unfair practices claim "sounds in fraud," plaintiffs cannot avoid *Rule 9(b)*'s heightened pleading requirement by "add[ing] language of unfairness" so that the claim is analyzed as an unfair act. *761 F.3d at 739*; *see also Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co., 631 F.3d 436, 446-47 (7th Cir. 2011)* (finding that an ICFA unfair practices claim that "sounds in fraud" is subject to *Rule 9(b)*). Here, even though Santiago labels his claim as an "unfair act," his allegations as to Tesla's insurance-related false advertising still "sound[] in fraud." *See, e.g.*, [48] ¶ 54 (Santiago alleging that, "*[i]n addition to being deceptive*, [Tesla's] conduct also constitutes an 'unfair practice' under the ICFA"); *id.* ¶¶ 57, 59 (describing Tesla's unfair practice in terms of deceptive advertising). Therefore, based on the Seventh Circuit's unambiguous directions in *Camasta* and *Pirelli*, the Court will apply *Rule 9(b)* to Santiago's Count II claim regarding Tesla insurance.[3]

Santiago's allegations **[*13]** do not allege the "who, what, when, where, and how of the fraud" required under *Rule 9(b)*. *Camasta, 761 F.3d at 737* (quoting *AnchorBank, FSB v. Hofer, 649 F.3d 610, 615 (7th Cir. 2011)*). Instead of pointing to a particular advertisement or communication, he only generally alleges that Tesla "advertised" that its insurance program would reduce his premiums. [48] ¶ 57. He does not allege when, where, or how this advertisement reached Santiago, and such barebones allegations of deceptive conduct fall short under *Rule 9(b)*. *See Uni*Quality, Inc. v. Infotronx, Inc., 974 F.2d 918, 923 (7th Cir. 1992)* (*Rule 9(b)* requires that a plaintiff state "the identity of the person making the misrepresentation, the time, place, and content of the misrepresentation, and the method by which the misrepresentation was communicated"); *see also Camasta, 761 F.3d at 737* (concluding that plaintiff failed to meet *Rule 9(b)* where he only alleged that an advertisement said merchandise was being offered at "sale prices" and was "on sale" but offered no other details about the misrepresentation).

Even if Santiago had satisfied *Rule 9(b)*, Count II falls short for a second, independent reason: Santiago fails to allege that Tesla's insurance-related advertising caused his injury for purposes of the ICFA. To state a claim under the ICFA, the plaintiff must show its injury was proximately caused by defendant's actions. *Tri-Plex Tech. Servs., Ltd. v. Jon-Don, LLC, 2024 IL 129183, 476 Ill.Dec. 694, 702, 241 N.E.3d 454 (2024)*. "Proximate causation **[*14]** is not a requirement of Article III standing, which requires only that the plaintiff's injury be fairly traceable to the defendant's conduct." *Lexmark Int'l, Inc. v. Static Control Components, Inc., 572 U.S. 118, 134 n.6, 134 S. Ct. 1377, 188 L. Ed. 2d 392 (2014)*; *see also Bennett, 520 U.S. at 168-69* (distinguishing injury that is "fairly traceable" from "injury as to which the defendant's actions are the very last step in the chain of causation"). Here, although Santiago's injury is fairly traceable to Tesla's conduct sufficient to satisfy Article III, he must separately show that Tesla's advertisement was a proximate cause of his injury. *Id.*

"In order to establish the element of proximate causation [under the ICFA], a plaintiff must prove that it was actually deceived by the misrepresentation." *Tri-Plex Tech. Servs., 476 Ill.Dec. at 702*. "If the plaintiff has neither seen nor heard a deceptive statement, it cannot have relied on the statement and, consequently, cannot prove that the statement was the proximate cause of its injury." *Id.*; *see also De Bouse v. Bayer, 235 Ill.2d 544, 922 N.E.2d 309, 337 Ill. Dec. 186 (2009)* ("If a consumer has neither seen nor heard [the allegedly fraudulent advertisement], then she cannot have relied on the statement and, consequently, cannot prove proximate cause.").

Unlike the allegations supporting his omission-based deceptive practices claim, Santiago does not say that he relied on or was otherwise influenced by Tesla's **[*15]** advertisement when deciding to purchase Tesla insurance.

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[3] As stated in its previous order, the Court recognizes some ambiguity between *Camasta* and the Seventh Circuit's later decision in ***Benson v. Fannie May Confections Brands, Inc., 944 F.3d 639, 647 (7th Cir. 2019)***. However, even if the Court's interpretation of *Camasta* is mistaken, the Court would reach the same outcome because Santiago does not adequately allege that Tesla's insurance-related advertising caused his injury. *See infra* at 11-13.

Compare [48] ¶ 50 (alleging that he "reasonably relied" on Tesla's advertisements related to the safety of Tesla vehicles "in choosing to purchase" his Tesla), *with id.* ¶ 61 (alleging only generally that he paid increased insurance premiums "[a]s a direct and proximate result of Defendant's unfair conduct"). Santiago does allege that Tesla's "conduct in selling its vehicles" with the defect injured him by inflating his premiums, but as discussed above, the alleged "unfair act" is Tesla's advertising of its insurance program, not the sale of defective vehicles. *Id.* ¶ 60. Because Santiago in no way alleges that the advertising itself caused his injury, he has failed to state an ICFA unfair practices claim. *See* *Gurrola v. Ford Motor Co., No. 23-CV-3438, 774 F. Supp. 3d 959, 2025 U.S. Dist. LEXIS 49028, 2025 WL 843666, at *16 (N.D. Ill. Mar. 18, 2025)* ("The complaint does not allege that the [plaintiffs] ever saw the statement in question, so the complaint fails to state a claim."); *Garland v. Child.'s Place, Inc., No. 23 C 4899, 2024 U.S. Dist. LEXIS 59395, 2024 WL 1376353, at *6 (N.D. Ill. Apr. 1, 2024)* (plaintiffs "cannot premise their ICFA claims on these statements because they did not read or otherwise become aware of either statement before making their purchases").

The Court therefore grants Tesla's motion to dismiss Count II of Santiago's second amended complaint.

CONCLUSION

For the **[*16]** foregoing reasons, the Court denies Tesla's motion to dismiss Count II for lack of Article III standing but grants Tesla's motion to dismiss Count II for failure to state a claim with prejudice. Because Santiago has already had two opportunities to amend his complaint, *see* [14]; [48], the Court will not allow him another opportunity to replead.

Tesla has until 7/8/25 to answer Count I of Santiago's second amended complaint. [53] at 1. The stay on discovery imposed by the district court previously assigned to this matter [17] is lifted. The parties are directed to appear on 7/15/25 at 9:30 a.m. for a status hearing to discuss next steps in the case, including a timeline for fact discovery or settlement discussions if there is mutual interest for such discussions.

/s/ Georgia N. Alexakis

Georgia N. Alexakis

United States District Judge

Date: 6/17/25

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