IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO

Civil Action No. 1:24-cv-00812-DDD-KAS

NATIONAL ASSOCIATION OF INDUSTRIAL BANKERS, AMERICAN FINANCIAL SERVICES ASSOCIATION and AMERICAN FINTECH COUNCIL,

Plaintiff(s),

v.

PHIL WEISER, Attorney General of the State of Colorado, and MARTHA FULFORD, Administrator of the Colorado Uniform Consumer Credit Code,

Defendant(s),

DEFENDANTS' MOTION TO DISMISS

Pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), Defendants respectfully move to dismiss Plaintiffs' Complaint (Doc. 1).

D.C.COLO.LCIVR 7.1 CERTIFICATION

In accordance with D.C.COLO.LCivR 7.1 and DDD Civ. P.S. III(D), undersigned counsel conferred with Plaintiffs before filing this Motion. The parties agreed that the arguments Defendants raise, if accepted by the Court, cannot be corrected by an amended pleading. Plaintiffs oppose the relief requested.

INTRODUCTION

Colorado usury law protects Coloradans from predatory interest rates. But Colorado has faced repeated attempts by lenders to avoid those protections. For

example, EasyPay, a financial technology company, partnered with Utah-chartered TAB Bank to offer predatory loans to Colorado consumers. The loans went up to $5,000 and had rates as high as 199%. EasyPay and TAB Bank only stopped this predatory lending in Colorado after they entered into an agreement with Defendants.[1] Because Colorado had not yet opted out of DIDA, TAB Bank could point to federal law, claiming Colorado's rate caps were preempted and they could lend in Colorado under Utah law, which does not have a rate cap.

Federal law expressly permits states to opt out of DIDA so their interest rate laws will not be preempted by state-chartered banks. In 2023, Colorado's General Assembly passed this opt-out. Plaintiffs seek to deny Colorado the choice expressly provided by federal law. Their claims should be dismissed.

BACKGROUND

In 1980, Congress passed the Depository Institutions Deregulation and Monetary Control Act of 1980 ("DIDMCA"), which permits state-chartered banks to charge interest on a loan at the "rate allowed by the laws of the State . . . where the bank is located" (or a specified federal rate) and preempts contrary state rate limits. Doc. 25-1, at § 521 ("Section 521").

DIDMCA, however, expressly permits the States to opt out from its interest rate preemption provisions. *Id.* at § 525 ("Section 525"). Following a Section 525 opt-

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[1] Doc. 39-1, Fulford Decl. at ¶ 6.

out, a state's interest rate limits are resurrected.

In 2023, Colorado's General Assembly passed legislation ("Opt-Out") opting out of DIDMCA's interest rate preemption provisions. Doc. 25-2. Plaintiffs' Complaint contends that Colorado's Opt-Out violates the Supremacy Clause and the Dormant Commerce Clause. Doc. 1 at ¶¶ 71–79; and 81–85. This is incorrect. As a matter of law, Colorado's Opt-Out does only what Congress authorized in Section 525.

LEGAL STANDARD

"[T]o withstand a motion to dismiss, a complaint must contain enough allegations of fact 'to state a claim to relief that is plausible on its face.'" *Robbins v. Oklahoma*, 519 F.3d 1242, 1247 (10th Cir. 2008) (citation omitted). Plausibility requires the plaintiff to plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009).

ARGUMENT

I. Plaintiffs' Count One (Supremacy Clause) should be dismissed for failure to allege a conflict with federal law

In Count One of their Complaint, Plaintiffs allege that Colorado's Opt-Out directly conflicts with federal law and violates the Supremacy Clause. (Doc. 1 at ¶¶ 4; 51–52; 77; and 80.) This claim should be dismissed under Rule 12(b)(6) for failure to state a claim because there is no conflict as a matter of law.

A. Applicable standard and DDD Civ. P.S. III(D)(1)(a) identification

Under the Supremacy Clause, "federal law preempts contrary state law." *United States v. Supreme Court of New Mexico*, 839 F.3d 888, 917 (10th Cir. 2016). Colorado opted out of Section 521's express preemption as explicitly authorized by Congress in Section 525 and state law is not preempted when authorized by Congress. *See Rhodes v. Stewart*, 705 F.2d 159, 163 (6th Cir. 1983) ("Congress has not preempted an area [of law] wherein it has legislated when it expressly and concurrently authorizes the state legislatures to disregard or opt-out of such federal legislative area").

Here, Plaintiffs have failed to allege that Colorado's Opt-Out exceeded the authority granted in Section 525 or that there is a conflict between state and federal law. Count One should therefore be dismissed for failure to state a claim.

B. Colorado's Opt-Out does not exceed the authority granted by Section 525

Section 525 authorizes states to opt out of Section 521's preemption "with respect to loans made in such State." Doc. 25-1. Colorado's Opt-Out exercises this right and nothing more—expressing the General Assembly's intent to act "in accordance with" DIDMCA. The Opt-Out then conforms to DIDMCA's geographical scope by stating, twice, that the Opt-Out applies "in this state." C.R.S. § 5-13-106.[2]

[2] In its amicus brief, the Federal Deposit Insurance Corporation (FDIC) agrees, stating that Colorado's Opt-Out "satisfies Section 525's requirement that the law 'explicitly and by its terms' state that Colorado does not want Section 521 to apply to loans made in such State." Doc. 31 at 3.

Despite this symmetry, Plaintiffs allege that a conflict exists because Colorado's Opt-Out uses the term "consumer credit transaction" instead of "loan." (Doc. 1 at ¶¶ 3 and 51.) Plaintiffs are incorrect. Under Colorado's Uniform Consumer Credit Code ("UCCC"), the term "consumer credit transaction" simply encompasses the two types of consumer "loans" recognized under Colorado law—"consumer credit sales" and "consumer loans." A "consumer credit sale" is when a lender grants credit to a consumer for the purchase of goods or services. C.R.S. § 5-1-301(11). A "consumer loan" is when the lender grants credit to a consumer separate from a purchase. C.R.S. § 5-1-301(15) and (25). The term "consumer credit transaction" has nothing to do with the location of the transaction and whether it is made in Colorado.

To create a conflict, Plaintiffs cite to C.R.S. sec. 5-1-201, which states that the UCCC applies to consumer credit transactions made in this state. Colorado's Opt-Out does not reference or incorporate C.R.S. sec. 5-1-201 and does not seek to expand the scope of what Congress authorized in Section 525. Similarly, the definition of "consumer credit transaction" does not incorporate C.R.S. sec. 5-1-201 or otherwise reflect an intent to stray from the scope of Section 525.

Therefore, the Court need not reach the question of what "made in such State" means under Section 525——the parties disagree about the meaning of federal law but such a disagreement does not state a claim for conflict between state and federal law. Colorado acted as authorized by federal law and, accordingly, there is no conflict

between state and federal law. The Court need not break further ground to dismiss Plaintiffs' Count One.

C. Colorado's Opt-Out does not conflict with Section 525

Plaintiffs' argument that Colorado's Opt-Out conflicts with Section 525 is based on an incorrect understanding of Section 525's use of the phrase "made in such State." Plaintiffs allege that the Court should apply the National Bank Act's ("NBA") bank location test to interpret Section 525. This interpretation, however, conflicts with the plain text and structure of DIDMCA, ignores the FDIC's consistent statements that the interpretation does not apply to Section 525, and conflicts with case law. As discussed above, the Court need not decide the question of what "made in such state" means. Alternatively, the Court can hold that there is no conflict because Section 525 does not mean what Plaintiffs contend.

The NBA permits national backs to charge the interest rate permitted by the "laws of the State . . . where the bank is located." 12 U.S.C. § 85. The U.S. Supreme Court's decision in *Marquette National Bank of Minneapolis v. First of Omaha Service Corp.*, 439 U.S. 299 (1978), held that the NBA preempted the state law of the borrower's residence and permitted a national bank to lend at the higher rate permitted by its home state.

Section 525 serves a different purpose. Congress passed DIDMCA two years after *Marquette*, allowing state-chartered banks to charge the interest rate permitted by the laws of the state where the bank is located. But, to protect federalism principles,

Congress explicitly permitted the States to opt out under Section 525 for loans "made in such state." Section 525 does not use "located" and has no analog in the NBA. Nothing in the text of Section 525 indicates it does not apply to out of state banks and Plaintiffs concede it does. Doc 45 at pp 15-16.

Plaintiffs attempt to conflate the NBA's bank location test, Section 521, and even the later-enacted Riegle-Neal Act and related guidance with Section 525's use of the term "made in such state," despite the FDIC consistently making clear that the bank location test does not apply to Section 525. The bank location test, involving analysis of three non-ministerial functions, assumes both states have opted in and has no application where a state has opted out. The FDIC has made clear that FDIC General Counsel's Opinion 11 and related guidance that are "patterned after the equivalent regulations applicable to national banks … would not apply with respect to loans made in a State that has elected to override [section 521]." 85 Fed. Reg. 44146, 44147–48 and 44153 (July 22, 2020).The FDIC rejected Plaintiffs' position as far back as 1988. FDIC Interpretive Letter, 1988 WL 583093, at *1 ("You have suggested that section 525 should be read to be congruent with section 521—i.e., that the State where the loan is made must be the same, as a matter of law, as the State where the bank is located . . . I am unable to agree with your interpretation of section 525. Section 525 uses plain language. . . . [which] differs considerably from that of section 521.").[3]

[3] Further, Plaintiffs' reliance on a 1983 FDIC interpretive letter patterned on the NBA in its Preliminary Injunction Reply (Doc. 45 at 8) has no application here because of Colorado's Opt-Out. *See* 85 Fed. Reg. 44146, 44147–48.

The FDIC's test, that under Section 525, loans are made in a state if either the borrower or lender enters into the transaction in that state, effectuates the text of Section 525 and its structural relationship with Section 521. As the FDIC asserted in its amicus brief, the Tenth Circuit, interpreting federal law, has held that where a borrower is in one state and the lender is in another, the loan is made in the state of the borrower's physical location, so that the borrower's state may regulate the loan. *Quik Payday, Inc. v. Stork*, 549 F.3d 1302, 1308 (10th Cir. 2008).[4] Plaintiffs contend that a borrower's location is irrelevant to determining where a loan is made for purposes of Section 525, stating that only banks can make loans, not borrowers. Doc. 45 at 4–6. But a bank cannot make a loan without a borrower and Plaintiffs attempt to dismiss the inherently bilateral nature of a loan.. *See, e.g.*, 12 U.SC. § 1757(5) ("A Federal credit union . . . shall have power . . . to make loans . . . and extend lines of credit *to its members* . . . and to participate with other credit unions . . . in making loans *to credit union members* . . . ." (emphasis added)); BLACK'S LAW DICTIONARY (11th ed. 2019) (defining "loan" as "[a] thing lent *for the borrower's temporary use*; esp., a sum of money lent at interest . . . ." (emphasis added)).

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[4] Although Plaintiffs cite *Jessup v. Pulaski Bank* in their Preliminary Injunction Motion, the case is distinguishable. Doc. 24 at 14. The Eight Circuit was applying a different statute that does not present the same federalism concerns as Section 525. The court applied an OCC letter without substantial analysis of the statutory terms at issue and the reliance on the letter and the bank location test may present perverse results. Doc 38-1 at pp 15-16.

The Court would break new ground by adopting Plaintiffs' bank location test to interpret Section 525 to create a conflict where none exists. The Court need not interpret Section 525 "made in such state" to dismiss Count One, because Colorado's Opt-Out does not exceed the authority granted by Congress in Section 525 to opt out. But the Court can reject Plaintiffs' interpretation, which violates the plain text, case law, and the FDIC's consistent interpretation, and dismiss Count One because there is no conflict between state and federal law, so Plaintiffs fail to state a claim.

II. Plaintiffs' Count One (Supremacy Clause) should be dismissed because the Supremacy Clause does not create a cause of action

In Count One of their Complaint, Plaintiffs allege that Colorado's Opt-Out violates the Supremacy Clause. (Doc. 1 at ¶¶ 72–73; and 80.) This claim should be dismissed under Rule 12(b)(6) for failure to state a claim because the Supremacy Clause does not create a cause of action permitting Plaintiffs to sue for injunctive relief.

A. Applicable standard and DDD Civ. P.S. III(D)(1)(a) identification

"The Supremacy Clause is not the source of any federal rights, and certainly does not create a cause of action." *Armstrong v. Exceptional Child Center, Inc.*, 575 U.S. 320, 324–25 (2015) (cleaned up). The Supremacy Clause merely "creates a rule of decision: Courts . . . must not give effect to state laws that conflict with federal laws." *Id.* at 324. Even federal courts exercising their equitable powers cannot entertain a claim under the Supremacy Clause unless Congress has evinced an intent

to permit private enforcement. *Id.* at 328. Thus, Plaintiffs "cannot, by invoking [the court's] equitable powers, circumvent Congress's exclusion of private enforcement" because private enforcement creates the "risk of inconsistent interpretations and misincentives…." *Id.* at 328–29. This limitation exists because Congress enjoys "broad discretion over the manner of implementing its enumerated powers" and Congress need not authorize private actors to enforce its laws. *Id.* at 325-26. Thus, absent Congressional intent, there is no private right under the Supremacy Clause to sue to enjoin preempted state laws. *Id.*

Here, Congress intended to foreclose claims like Plaintiffs' and Count One should be dismissed.

B. *<u>The Federal Deposit Insurance Act does not create a private right of action for Plaintiffs to sue alleging preemption by Section 525</u>*

Because Plaintiffs cannot sustain a private right of action under the Supremacy Clause, Plaintiffs can only challenge the opt out under the FDIA in equity[5]. This claim likewise fails.

When determining if Congress intended to foreclose Plaintiffs' claim in equity, courts consider: (1) whether Congress provided a remedy against the state because

[5] In their Reply, Plaintiffs conflate Section 521 preempting contrary state rate caps with a federal right under the FDIA but fail to engage in any analysis under *Armstrong*. Doc. 45 at 2–3; *see also Safe Streets Alliance v. Hickenlooper,* 859 F.3d 865, 902 (10th Cir. 2017) ("We must 'interpret the statute Congress has passed to determine whether it displays an intent to create not just a private right but also a private remedy'" (quoting *Alexander v. Sandoval*, 532 U.S. 275, 286 (2001)).

"the express provision of one method of enforcing a substantive rule suggests that Congress intended to preclude others", and (2) whether there is a statutory framework that is so "complex" and "judgment laden" that it is "judicially unadministrable." *Armstrong*, 575 U.S. at 328 (cleaned up).

First, Congress provided a remedy by creating the FDIC to enforce and administer the FDIA. Under the FDIA, the FDIC exists to insure deposits of banks and savings associations. 12 U.S.C. § 1811(a). Its powers broadly include the ability to sue "in any court of law or equity, State or Federal" and also to prescribe "such rules and regulations as it may deem necessary to carry out the provisions" of the FDIA. 12 U.S.C. § 1819. This authority specifically includes the ability to take action to ensure that the contours of federal law are clear, including provisions that preempt state law. See 12 C.F.R. § 331.1 – 331.4; *California v. Fed. Deposit Ins. Corp.*, 584 F. Supp. 3d 834, 840 (N.D. Cal. 2022).

By creating this structure and vesting power with the FDIC, Congress foreclosed actions by private parties such as Plaintiffs. Indeed, when Congress did vest private parties with the right to sue regarding interest rates, it limited those claims to actions by borrowers to recover excess charges. 12 U.S.C. § 1831d(b). In other places, where it might seem a private action would exist, Congress removed any doubt and expressly prohibited it. *Id.* § 1831g(d).

Second, the FDIA evinces Congressional intent for a single, coherent standard articulated by the governmental regulator that regulates the entire banking system.

See Vill. of Old Mill Creek v. Star, 2017 WL 3008289, at *8 (N.D. Ill. July 14, 2017), *aff'd sub nom. Elec. Power Supply Ass'n v. Star*, 904 F.3d 518 (7th Cir. 2018) (as ground for finding against existence of equitable claim under Federal Power Act, "a coherent regulatory policy for interstate electricity markets is a desirable outcome, and it is one that private suits undermine"). This centralized system with substantial authority and discretion vested with the FDIC ensures that private litigants will not create "inconsistent interpretations and misincentives" in the banking system.

In sum, Congress did not create a private right of action for Plaintiffs' claim under the Supremacy Clause and Plaintiffs cannot even sustain their claim in equity. Count One should be dismissed for failure to state a claim.

III. Plaintiffs' Count Two (Dormant Commerce Clause) should be dismissed because Congress authorized Colorado's Opt-Out

With Section 525, Congress authorized states to opt out of Section 521 preemption. Colorado's Opt-Out is wholly congruent and identical with the opt-out authorized by Section 525. This symmetry is fatal to Plaintiffs' Count Two because state laws that are authorized by Congress do not violate the Dormant Commerce Clause as a matter of law. Plaintiffs' Count Two should therefore be dismissed for failure to state a claim.

A. *Applicable standard and DDD Civ. P.S. III(D)(1)(a) identification*

The Constitution's Commerce Clause gives Congress the power "to regulate commerce ... among the several States." U.S. Const. art. I, § 8, cl. 3. "Although the

Commerce Clause is by its text an affirmative grant of power to Congress to regulate interstate . . . commerce, the Clause has long been recognized as a self-executing limitation on the power of the States to enact laws imposing substantial burdens on such commerce." *S.-Cent. Timber Dev., Inc. v. Wunnicke*, 467 U.S. 82, 87 (1984). This implied restraint upon the states is often referred to as the "dormant" Commerce Clause. *See American Target Advertising, Inc. v. Giani*, 199 F.3d 1241, 1254 (10th Cir. 2000).

While the Dormant Commerce Clause can restrict state law, Congress may act to authorize states to "regulate the commerce in a manner which would otherwise not be permissible." *S.-Cent. Timber Dev., Inc.*, 467 U.S. at 87. Accordingly, "where Congress has spoken and state or local governments take actions that are specifically authorized by Congress, those actions are not subject to the Commerce Clause even if [they] interfere[ ] with interstate commerce." *Owner Operator Independent Drivers Ass'n, Inc. v. Pennsylvania Turnpike Comm'n*, 934 F.3d 283, 291 (3d Cir. 2019) (cleaned up). "When Congress has struck the balance it deems appropriate, the courts are no longer needed to prevent States from burdening commerce, and it matters not that the courts would invalidate the state tax or regulation under the Commerce Clause in the absence of congressional action." *Northwest.\ Airlines, Inc. v. County of Kent, Mich.*, 510 U.S. 355, 373 n.20 (1994).

Here, Plaintiffs Count Two fails because the conduct that Plaintiffs identify as a basis for their Dormant Commerce Clause claim is authorized by Congress.

B. *Congress authorized states to opt out*

With Section 525, Congress has authorized each state to pass a law providing that they do not want the preemption in Section 521 to apply to loans made in that state. As set forth in Section I(B), *supra*, Colorado's Opt-Out is identical to the opt-out authorized by Section 525.

As an element of their Dormant Commerce Clause claim, Plaintiffs take a contrary view, incorrectly asserting that Colorado's Opt-Out conflicts with the scope of Section 525. Because this assertion fails as a matter of law, see Section I(C), *supra*, Plaintiffs Claim Two should be dismissed.

IV. Plaintiffs' Count Two (Dormant Commerce Clause) should be dismissed for failure to plead facts establishing a discriminatory state law

Plaintiffs' Dormant Commerce Clause claim should also be dismissed for failure to state a claim because Plaintiffs have failed to plead facts identifying a law that discriminates against interstate commerce.

A. *Applicable standard and Civ. P.S. III(D)(1)(a) identification*

State laws only "offend the Commerce Clause when they seek to 'build up domestic commerce' through 'burdens upon the industry and business of other States,' regardless of whether Congress has spoken." *National Pork Producers Council v. Ross*, 598 U.S. 356, 369 (2023). "[A]bsent discrimination, a State may exclude from its territory, or prohibit the sale therein of any articles which, in its judgment, fairly exercised, are prejudicial to the interests of its citizens." *Id.* "This antidiscrimination

principle lies at the 'very core' of … dormant Commerce Clause jurisprudence." *Id.* "[T]he Commerce Clause prohibits the enforcement of state laws driven by economic protectionism—that is, regulatory measures designed to benefit in-state economic interests by burdening out-of-state competitors." *Id.* If a state law does not discriminate, Plaintiffs must show that the "burden" on interstate commerce is "clearly excessive" in relation to the local putative benefits. *Id.* at 377.

Here, Plaintiffs assert that Colorado's Opt-Out violates the Dormant Commerce Clause because it conflicts with the Section 525's opt-out. But the claim fails because Plaintiffs have not plead the required discriminatory impact on interstate commerce.

B. Plaintiffs have failed to plead the required discriminatory impact on interstate commerce

Plaintiffs' complaint alleges that the opt out "subjects out-of-state banks to inconsistent obligations across states and would impede the flow of commerce" relying on *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. 573, 583 (1986). Doc. 1 at ¶¶ 82, 85. Plaintiffs then conclude that the Opt-Out's "burden on commerce plainly exceeds the putative local benefits it presumably was enacted to confer on Coloradans." *Id.* at ¶ 85. It also alleges that the Opt-Out will reduce "access to credit" and "curtail lending", which presumably will cut into corporate profits. *Id.* at ¶ 64. Finally, they allege that the Opt-Out will create compliance costs for Plaintiffs and increase interest rates for consumers. *Id.* at ¶¶ 69-70.

These allegations fail to state a Dormant Commerce Clause claim. It is not sufficient to allege that a law will make a company less profitable. *National Pork Producers*, 598 U.S. at 369 (affirming dismissal for failure to state a claim under the balancing test where district court held "there is no burden on interstate commerce merely because it is less profitable than a preferred method of operation"). The Dormant Commerce Clause does not protect profits. *Id.*; *Quik Payday, Inc. v. Stork*, 549 F.3d at 1310 (requiring licensure by lenders did not impose excessive burden on commerce in relation to local interest in protecting consumers).

Plaintiffs must allege that the law is discriminatory but fail to do so. This is because the Opt-Out is nondiscriminatory. In-state and out-of-state banks are subject to the same interest rate cap for loans made in Colorado.

Further, Plaintiffs do not satisfy the balancing test. Plaintiffs must allege that the burdens on interstate commerce are "clearly excessive" in relation to the local putative benefits. However, the alleged burdens are not cognizable. The Dormant Commerce Clause "neither protects the profits of any particular business, nor the right to do business in any particular manner." *Energy and Environment Legal Institute v. Epel*, 43 F. Supp. 3d 1171, 1180 (2014). It does not protect against rising prices. *Exxon Corp. v. Governor of Maryland*, 437 U.S. 117, 128 (1978). Finally, Plaintiffs have no allegations supporting their conclusion that the burdens are "plainly excessive" of the opt outs benefits. Indeed, Plaintiffs "presume" the benefits

exist, but do not discuss them, weigh them, or show how the burdens are "clearly excessive" of them. This does not state a claim.

Finally, Plaintiffs reliance on *Brown-Forman* (Doc. 1 at ¶ 84-85), which dealt with a discriminatory law that attempted to lower prices in New York at the expense of other states, is misplaced. *Brown-Forman Distillers Corp. v. New York State Liquor Authority*, 476 U.S. at 580. Thus, it was a state law driven by "economic protectionism." *Id.* Here, the Opt-Out is driven by consumer protection and is nondiscriminatory. Accordingly, the Dormant Commerce Clause claim should be dismissed.

V. Plaintiffs lack standing because their alleged injury is based on a misconstruction of Section 525

Because Plaintiffs' injury allegations stem from a misconstruction of Colorado's Opt-Out and Section 525, both Counts should be dismissed pursuant to Rule 12(b)(1) because the Court lacks subject matter jurisdiction and Plaintiffs have failed to allege injury.

A. *Applicable standard and DDD Civ. P.S. III(D)(1)(a) identification*

Both Counts One and Two should be dismissed for lack of standing because Plaintiffs' injury is based on a misconstruction of Section 525. To establish standing, a plaintiff must prove they have "suffered an injury . . . fairly traceable to the challenged conduct . . . that is likely to be redressed by a favorable judicial decision." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016). To establish injury in fact, the

plaintiff must show that they suffered "an invasion of a legally protected interest" that is "concrete and particularized" and "actual or imminent". *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992).

Plaintiffs do not challenge Colorado's *ability* to opt out via Section 525. Doc. 1 at ¶ 2. Rather, Plaintiffs claim that Colorado *exceeded* its authority by defining when a loan is "made in" Colorado more broadly than they believe Congress intended. Doc. 1 at ¶ 3. To show standing, Plaintiffs must therefore prove that their claimed injuries are "fairly traceable" to the loans Colorado seeks to regulate by exceeding what Plaintiffs believe DIDMCA permits. *Spokeo, Inc. v. Robins*, 578 U.S. at 338. Plaintiffs have not met that burden.

Plaintiffs allege they will suffer four injuries if Colorado's Opt-Out is permitted to take effect: (1) compliance costs; (2) losing customer and client goodwill; (3) losing revenue; and (4) consumer lawsuits. Doc. 1 at ¶ 13. But Plaintiffs may suffer those losses anyway because Plaintiffs concede that the Opt Out applies to some category of loans made by out of state banks. Doc. 25 at 10-11.

CONCLUSION

The Court should dismiss Plaintiffs' Complaint.

Dated this 13th day of May, 2024.

PHILIP J. WEISER
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CERTIFICATE OF TYPE-VOLUME COMPLIANCE

Defendants hereby certify that the foregoing pleading complies with the type-volume limitation set forth in Judge Domenico's Practice Standard III(A)(1).

/s/ *Nikolai N. Frant*

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CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of May, 2024, I electronically filed the foregoing with the Clerk of the Court using the CM/EFC system which will send notification of such filing to the following email Addresses:

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