SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

GEORGE W. MURGATROYD III,	*	
Plaintiff	*	**Case No. 2025-CAB-005368**
v.	*	
	*	**Hon. Robert Okun**
AMERICAN ACADEMY OF CHILD AND,	*	
ADOLESCENT PSYCHIATRY, et al.	*	
Defendants	*	

ORDER

The following motions are pending before the Court: 1) Motion to Dismiss by Defendant The American Academy of Child and Adolescent Psychiatry ("AACAP") Pursuant to Rule 12(B)(6) and the D.C. Anti-SLAPP Act ("AACAP's Motion to Dismiss"), filed on November 7, 2025; 2) Motion of Defendant Elsevier, Inc. ("Elsevier") to Dismiss Plaintiff's Amended Complaint Pursuant to Rule 12(b)(6) and the D.C. Anti-SLAPP Act ("Elsevier's Motion to Dismiss"), filed on November 24, 2025; 3) Defendant AACAP's Motion to Strike Plaintiff's Declaration and Exhibits ("AACAP's Motion to Strike"), filed on December 23, 2025; and 4) the Plaintiff's Motion for Permission to File a Second Amended Complaint ("Plaintiff's Motion to Amend"), filed on January 9, 2026. For the reasons set forth below, AACAP's Motion to Strike will be denied, the Plaintiff's Motion to Amend will be denied, AACAP's Motion to Dismiss will be granted, and Elsevier's Motion to Dismiss will be granted.

PROCEDURAL HISTORY

On August 13, 2025, the Plaintiff, in his capacity as a private attorney general acting on behalf of the general public, filed his initial Complaint against the Defendants, alleging that they had violated the Consumer Protection and Procedures Act ("CPPA") through their publication, distribution and continued sale of a "fraudulent scientific article that has misled physicians, consumers, and institutions for over two decades and continues to endanger adolescent mental

health and public trust in scientific integrity." Compl. at 1-2. More specifically, the Plaintiff alleged that the Defendants had violated D.C. Code §§ 28-3904(e) and (f) through their distribution of the article entitled "Efficacy of Paroxetine in the Treatment of Adolescent Major Depression: A Randomized Controlled Trial," by Keller, *et al.* ("Keller article"), which was published in the July 2001 issue of the *Journal of the American Academy of Child and Adolescent Psychiatry* ("JAACAP"). Compl. at 2. The JAACAP is owned by AACAP, and distributed by Elsevier. Compl. at ¶¶ 4-5. The Plaintiff asserted in his Complaint that he recently purchased a copy of the Keller article for $41. Compl. at ¶ 3. The Complaint requested that the Court issue a declaratory judgment that the Keller article is a materially deceptive scientific publication within the meaning of the CPPA; a permanent injunction compelling retraction of the article from JAACAP and Elsevier databases, and all affiliated distribution channels; an order requiring the Defendants to publish a corrective notice in the JAACAP, on its website, and in all databases where the article is hosted; and reasonable attorneys' fees and costs. Compl. at 13.

On September 8, 2025, the Plaintiff filed his First Amended Complaint ("FAC"), largely making the same factual allegations, seeking the same relief, and for the first time claiming that the Defendants' practices also violated D.C. Code §§ 28-3904(a), (d) and (h). FAC at 16. The FAC also stated that the Plaintiff had recently purchased a copy of the Keller article from the JAACAP website for $41.50 and a copy from Elsevier's ScienceDirect website for $33.39 and that he made these purchases as a "consumer seeking access to the scientific record." FAC at ¶ 3.

On November 7, 2025, AACAP filed its Motion to Dismiss. In its Motion, AACAP argued that the case should be dismissed under Rule 12(b)(6) because the Plaintiff lacked standing to bring the case, the Keller article is not a "consumer good" under the CPPA, and the claim was barred by the applicable statute of limitations. AACAP also sought dismissal under the District of Columbia

Anti-SLAPP Act, D.C. Code § 16-5501 *et seq.*, because the FAC arose out of "an act in furtherance of the right of advocacy on issues of public interest," and the Plaintiff could not demonstrate a likelihood of success on the merits of his CPPA claim. Mot. at 1.

On November 24, 2025, the Plaintiff filed his Opposition to AACAP's Motion to Dismiss. In his Opposition, the Plaintiff argued that the case should not be dismissed pursuant to the Anti-SLAPP Act because it was not covered by the Anti-SLAPP Act and, even if it were, he was likely to prevail on the merits of his CPPA claim. The Plaintiff also asserted that he had standing to bring the claim, the Keller article is a consumer good under the CPPA, and that the claim was not barred by the statute of limitations.

Acknowledging he mistakenly cited Section 28-3905(k)(1)(A) when he meant to cite Section 28-3905(k)(1)(B) to show he has standing to bring the claim, the Plaintiff requested leave of Court to amend his Complaint to fix the mistaken citation and to add a supporting paragraph explaining the basis for his standing to bring the claim. In support of his Opposition, the Plaintiff submitted a sworn declaration on December 5, 2025 in which he stated that he purchased the Keller article on August 25, 2025, prior to filing his first Amended Complaint, for use in a book he was writing concerning the Keller article. The Plaintiff also stated in his declaration that "[t]he purpose of my purchase was personal. I wanted to read it again . . . to verify my research for use in my book and find out if I was missing anything or needed anything for my amended complaint." Decl. at ¶ 19. The Plaintiff further stated in his declaration that he made a second purchase of the Keller article on September 8, 2025 that "was also personal use." Decl. at ¶ 21.

On December 5, 2025, AACAP filed its Reply to the Plaintiff's Opposition. In its Reply, AACAP reiterated some of its earlier arguments and also argued that the Plaintiff lacked "tester" standing under Section 28-3905(k)(1)(B), because he failed to plausibly allege that he purchased

the Keller article "in order to test or evaluate it" in a way that would expose new information about its "qualities pertaining to use for personal, household, or family purposes," citing *Nides v. DVC Industries*, *Inc.*, 334 A.3d 1134, 1139 (D.C. 2025).

Meanwhile, Elsevier also challenged the sufficiency of the Plaintiff's Complaint. More specifically, on November 24, 2025, Elsevier filed its Motion to Dismiss, in which it adopted the standing, statute of limitations, and Anti-SLAPP arguments raised by AACAP, and asserted that Elsevier's First Amendment rights would be violated if the Court granted the Plaintiff the relief he sought in his Complaint.

On December 8, 2025, the Plaintiff filed his Opposition to Elsevier's Motion to Dismiss, arguing that enforcement of his Complaint would not violate the First Amendment and reasserting the arguments he made in response to AACAP's challenges to the Complaint based on standing, the statute of limitations, and the Anti-SLAPP Act.

On December 11, 2025, Elsevier filed its Reply, reiterating its First Amendment argument.

On December 23, 2025, AACAP filed its Motion to Strike. In its Motion to Strike, AACAP requested that the Court strike the Declaration and Exhibits filed by the Plaintiff in support of his Opposition to the Motion to Dismiss because they were filed after AACAP had filed its Reply and because they were irrelevant and inadmissible.

On January 5, 2026, the Plaintiff filed his Opposition, stating that the exhibits were timely, relevant and admissible.

This Court conducted an Initial Scheduling Conference in this case on January 8, 2026. At this hearing, the Plaintiff requested leave to file a second amended complaint to more clearly show that he has standing to raise the claims in the Complaint on behalf of the general public. The Plaintiff filed his Motion to Amend the next day, on January 9, 2026. In his Motion to Amend, the

Plaintiff asserted that the amendment would correct a scrivener's error when he cited the wrong subsection of the CPPA, and would clarify the basis of his standing to bring the Complaint. With respect to the second point, the Plaintiff proposed that the Complaint be amended to add a new fourth paragraph to the Complaint, which stated in relevant part that the Plaintiff read the purchased Keller article to evaluate whether it had been corrected or had an addendum indicating that Paxil (an antidepressant medication) may not be safe for adolescent depression, and whether it contained any reliable clinical science. This proposed paragraph also stated that the article was "evaluated for quality and found lacking." Pl. Mot. at 5.

On January 16, 2026, AACAP filed its Opposition to the Plaintiff's Motion. In its Opposition, AACAP stated that it did not oppose the correction of the scrivener's error but that the Motion to Amend should not be granted because it would be futile since the Plaintiff's proposed Second Amended Complaint still failed to establish that he had standing to bring the complaint, nor did it address the other flaws identified by AACAP.

On January 17, 2026, the Plaintiff filed his Reply, arguing that it would not be futile to amend his complaint because the Second Amended Complaint showed he had standing to bring the case. More specifically, the Second Amended Complaint showed that he did "evaluate" the Keller article and therefore had tester standing under Subsection 3905(k)(1)(B).

On January 21, 2026, Elsevier filed its Opposition to the Plaintiff's Motion to Amend. In its Opposition, Elsevier argued that the Plaintiff's proposed amendments did not show he had tester standing because he had not alleged he purchased the Keller article in order to evaluate it and, according to proposed Paragraph Four, he did not undertake that evaluation until *after* he had filed the Complaint.

On January 26, 2026, the Plaintiff filed his Reply, arguing that he purchased the Keller article for several complementary purposes, including for his personal research purposes and to see if the article was "as bad as he remembered." Therefore, the Plaintiff claimed he was acting simultaneously as a consumer using the article for personal purposes and as a tester/evaluator on behalf of the general public.

The Plaintiff attached to his Reply a revised version of his Second Amended Complaint ("SAC"). In this version, the Plaintiff added the following sentence to paragraph 3 of the Complaint: "Plaintiff's first purchase of the Keller article was made with the intent to evaluate the article for the purpose of Plaintiff's personal informational use, including for his forthcoming book on Study 329."[1] SAC at ¶ 3.

Finally, on February 3, 2026, Elsevier filed its Sur-Reply, asserting that the Plaintiff's latest version of his SAC did not cure his lack of standing and, to the contrary, showed that he purchased the Keller article for his personal use in writing a book.

ANALYSIS

I. AACAP's Motion to Strike

Under Rule 12(f), "[t]he court may strike from a pleading an insufficient defense or any redundant, immaterial impertinent, or scandalous matter[]" upon a "motion made by a party either before responding to the pleading or, if a response is not allowed, within 21 days after being served with the pleading." Super. Ct. Civ. R. 12(f)(2). Pleadings, as set out in Rule 7, include a complaint; a third-party complaint; an answer to a complaint, counterclaim, crossclaim, or a third party complaint; and a reply to an answer as ordered by the court. Super. Ct. Civ. R. 7(a); *see A.S Johnson*

[1] Study 329 is the focus of the Keller article. *See* Compl. at 2.

Co. v. Atlantic Masonry Co., 693 A.2d 1117, 1120 (D.C. 1997) (explaining that a motion or a response to a motion would not be considered a pleading).

In this case, the Declaration and Exhibits that AACAP seeks to strike were not filed as part of a pleading but instead were filed as a response to a motion. Therefore, Rule 12(f) does not apply, and the Court will deny AACAP's Motion to Strike. *See A.S Johnson Co.*, 693 A.2d at 1120.

II. Plaintiff's Motion to Amend

Leave to amend a complaint is within the discretion of the trial court and should be permitted "freely when justice so requires." Super. Ct. Civ. R. 15(a). When evaluating a motion for leave to amend a complaint, the court should weigh the following factors: (1) the number of requests to amend; (2) the length of time that the case has been pending; (3) the presence of bad faith or dilatory reasons for the request; (4) the merit of the proffered amended pleading; and (5) any prejudice to the non-moving party. *See Crowley v. North Am. Telecomm. Ass'n*, 691 A.2d 1169, 1174 (D.C. 1997); *see generally Pannell v. District of Columbia*, 829 A.2d 474, 477 (D.C. 2003) (noting the "virtual presumption" in favor of granting a motion to amend "unless there are sound reasons for denying it"). "[I]n the absence of bad faith or undue delay and the related prejudice it causes the defendant, trial courts should not deny motions to amend (or their functional equivalent) unless the plaintiff cannot allege additional facts sufficient to state a plausible claim for relief." *Bare v. Rainforest All., Inc.*, 336 A.3d 619, 627 (D.C. 2025).

In this case, most of the factors weigh in the Plaintiff's favor. This is only the Plaintiff's first request to amend his Complaint,[2] the case has been pending for a little more than half a year and the Court has not yet even entered a scheduling order in the case, the request has not been made in bad faith or for dilatory reasons, and the Defendants would not be prejudiced if the request

[2] While this would be the Plaintiff's second amended complaint, it is only his first request to amend because his First Amended Complaint was filed as a matter of course pursuant to Superior Court Rule of Civil Procedure 15(a).

were granted. Nonetheless, as more fully set forth below, the fourth factor dooms the Plaintiff's request because, even if the Court were to grant the request, the Plaintiff still would lack standing to bring the case. Thus, after more fully explaining why the Plaintiff still lacks standing, the Court will deny the Plaintiff's Motion to Amend.

"Standing is a threshold jurisdictional question which must be addressed prior to and independently of the merits of a party's claims." *UMC Dev., LLC v. District of Columbia*, 120 A.3d 37, 42 (D.C. 2015) (citation and internal quotation marks omitted). Moreover, a defect in standing is "a defect in subject matter jurisdiction." *Id.* at 43. Thus, "a challenge to a plaintiff's standing is properly raised as a challenge to the court's subject matter jurisdiction via a motion to dismiss under Super. Ct. Civ. R. 12(b)(1)." *Id.*

Unlike motions to dismiss for failure to state a claim under Rule 12(b)(6), where the trial court must take the matters alleged in the complaint as true and look only to the complaint and the exhibits attached to or referenced in the complaint, the trial court's jurisdictional inquiry under Rule 12(b)(1) "may extend beyond the facts pled in the complaint." *Id.* Indeed, when, as here, a defendant makes a factual attack on the plaintiff's standing to bring the case, the trial court may "conduct an independent review of the evidence submitted by the parties, including affidavits, to resolve factual disputes concerning whether subject-matter jurisdiction exists." *Id.*; *see also Matthews v. Automated Bus. Sys. & Serv., Inc.*, 558 A.2d 1175, 1179-80 (D.C. 1989) ("[T]he determination of jurisdictional facts is [generally] a matter for the court . . . and the court has broad discretion in determining how to proceed in finding such facts, including basing its decision on affidavits."). Further, although the Court of Appeals has suggested that a trial court should not resolve factual disputes about standing without holding an evidentiary hearing, it has "never questioned . . . a trial court's consideration of facts outside the pleadings that are undisputed by the

plaintiff." *UMC Dev., LLC*, 120 A.3d at 43. (upholding dismissal for lack of standing without evidentiary hearing). Ultimately, if the plaintiff's standing "does not adequately appear from all materials of record, the complaint must be dismissed." *Id.* at 44.

Under D.C. Code § 28-3905(k)(1)(B), "an individual may, on behalf of that individual, or on behalf of both the individual and the general public, bring an action seeking relief from the use of a trade practice in violation of a law of the District when that trade practice involves consumer goods or services that the individual purchased or received in order to test or evaluate qualities pertaining to use for personal, household, or family purposes." The Court of Appeals has described a person who brings such an action as having "tester standing." *Nides*, 334 A.3d at 1138. The D.C. Council added the "tester standing" provision to the CPPA in 2012, and it was "intended to authorize consumers who act as product or service testers . . . to bring an action on their own behalf, for the good or service they purchased or received *for the purpose of testing it*." *Id.* (emphasis in original).

However, in order for a person to have "tester standing" to bring an action under Subsection (k)(1)(B), the complaint must plausibly allege that the plaintiff purchased the product or service "in order to test or evaluate it," meaning that the tester must "intend to actually do something with the *purchased product or service* itself that could expose new information about its "qualities pertaining to use for personal, household, or family purposes." *Id.* at 1139 (emphasis in original). The Court of Appeals further explained that this interpretation of the CPPA is consistent with the "information-revealing purpose of tester standing; that is, to determine . . . whether products or services are what they claim to be." *Id.* (citing Committee Report at 5).

In this case, whether the Court takes the allegations in the SAC as true or whether it considers the declarations and exhibits filed separate and apart from the SAC, the result is the

same—namely, the Motion to Amend will be denied because the filing of the SAC would be futile in light of the fact that the Plaintiff has not established that he has standing to file the SAC.

The Court reaches that conclusion for two reasons. First, the Plaintiff has not established or plausibly alleged that he purchased the Keller article for the purpose of testing or evaluating its qualities for personal, household or family purposes. Second, the Plaintiff has not established or plausibly alleged that the Keller article is a consumer good under the CPPA.

With respect to the first reason, even though the Plaintiff states in the caption of his SAC that he is filing the complaint as a private attorney general on behalf of the general public, the allegations in the SAC say otherwise. Indeed, in Paragraph 3 of the SAC, he explicitly states that his purchase of the Keller article "was made with the intent to evaluate the article for the purpose of Plaintiff's *personal informational use* (emphasis added), including for his forthcoming book," a far cry from the allegation in the caption that he is bringing the case as a private attorney general on behalf of the general public. Likewise, when examining the declarations that the Plaintiff has submitted in response to the Defendants' motions to dismiss, it seems clear that the Plaintiff purchased the Keller article for his own use in writing a book, rather than as a private attorney general on behalf of the general public. *See*, *e.g.*, Dec. 4, 2025 Decl. at ¶ 19 ("I bought a copy [of the Keller article] on August 25, 2025. The purpose of my purchase was personal."); *id.* at ¶ 21 (Plaintiff made second purchase of Keller article on September 8, 2025, which "was also personal use."). Thus, the Plaintiff has failed to establish or plausibly allege that he purchased the Keller article for the purpose of testing or evaluating it on behalf of the general public, rather than for his own use in writing a book.

Moreover, even if the Court were to assume, contrary to the caption in the SAC, that the Plaintiff brought the action on his own behalf rather than on behalf of the general public, he still

has not established that he purchased the Keller article for the purpose of testing or evaluating its qualities for personal, household or family purposes. Indeed, the Plaintiff did not state that he purchased the Keller article to test or evaluate it in either his initial Complaint, where he simply stated "[a]s a consumer, he recently purchased a copy of the Keller article," Compl. at ¶ 3, or in his FAC, where he stated he purchased the article "[a]s a consumer seeking access to the scientific record." FAC at ¶ 3. It was not until he filed his SAC when he first stated that the Keller article was "evaluated for quality and found lacking." SAC at ¶ 4. It thus appears that the Plaintiff did not purchase the Keller article for the purpose of testing or evaluating it, but added that reason as a post hoc rationale to satisfy the standing requirements set forth in Subsection 3905(k)(1)(B).

Finally, even if the Court were to assume that the Plaintiff purchased the Keller article for the purpose of testing or evaluating it, the Plaintiff nonetheless lacks standing to file the SAC because he has not established or even plausibly alleged that the Keller article is a "consumer good or service" under the CPPA. Under Subsection 28-3901(a)(2), when the word "consumer" is used as an adjective, as it is when describing "consumer" goods and services, it describes anything, without exception, that:

(i) A person does or would purchase, lease (as lessee), or receive and normally use for personal, household, or family purposes; or

(ii) A person described in § 28-3905(k)(1)(B) or (C) purchases or receives in order to test or evaluate qualities pertaining to use for personal, household, or family purposes.

Here, the Plaintiff argues that the Keller article is a consumer good or service that is used for personal, household or family purposes, but it seems like a very large linguistic stretch to argue that the Keller article is the good or service that a consumer would use. Rather, it makes much more linguistic sense to say that the subject of the Keller article, Paxil, is the good or service that a consumer would use. Although the Court of Appeals has not addressed this issue, other courts

have addressed the analogous issue of whether a reference guide or a book is a "product" for purposes of product liability law, and those courts have consistently found that such publications do not constitute "products." *See, e.g., Winter v. G.P. Putnam's Sons*, 938 F.2d 1033, 1034 (9th Cir. 1991) (reference guide was not a "product" for product liability purposes, noting that product liability focuses on tangible items, such as tires, automobiles and insecticides, not the ideas and expressions contained in a book); *Garcia v. Kusan, Inc.*, , 655 N.E.2d 1290, 1294 (Mass. App. 1995) (product guide not a "product" for strict liability or warranty purposes); *Walter v. Bauer*, 439 N.Y.S.2d 821, 823 (1981), *aff'd in part & rev'd in part on other grounds*, 451 N.Y.S.2d (1982) (student injured doing science project described in textbook could not sue publisher of textbook because textbook was not a product for purposes of product liability law).

As the Ninth Circuit noted in *Winter*, "[a] book containing Shakespeare's sonnets consists of two parts, the material and print therein, and the ideas and expression thereof. The first may be a product, but the second is not." So, too, with the Keller article. While the subject of the article, Paxil, undoubtedly is a consumer good, the article about the consumer good is not. Therefore, the Plaintiff has not established that he has standing for the additional reason that he has not established or plausibly alleged that the Keller article is a consumer good or service under the CPPA.

In sum, because the filing of the Plaintiff's Second Amended Complaint would be futile, the Plaintiff's Motion to Amend will be denied.[3]

III. Defendants' Motions to Dismiss

The Court will not repeat its above-stated analysis other than to say that the FAC suffers from the same fatal defect as the SAC—namely, the Plaintiff has not established or plausibly

[3] The Court will deny the Plaintiff's Motion without an evidentiary hearing because there is no factual dispute that needs to be resolved through such a hearing. Rather, based on the Court's review of the SAC and the declarations filed by the Plaintiff himself, it is clear that the Plaintiff lacks standing to file the SAC. *See, e.g., UMC Dev., LLC*, 120 A.3d at 43 (upholding dismissal of complaint for lack of standing without an evidentiary hearing).

alleged that he has standing. Therefore, the Court will grant the motions to dismiss filed by AACAP and Elsevier for lack of standing.[4] Further, because the Court is dismissing the FAC for lack of standing, the Court will dismiss the FAC without prejudice. *See UMC Dev., LLC*, 120 A.3d at 48 ("Where a litigant lacks standing to pursue his claims, the defect is one of subject matter jurisdiction. Such defects may only result in a dismissal without prejudice.").

Accordingly, it is this 24th day of March 2026 hereby

ORDERED that the Plaintiff's Motion for Permission to File a Second Amended Complaint is **DENIED**; it is further

ORDERED that Defendant AACAP's Motion to Strike Plaintiff's Declaration and Exhibits is **DENIED**; it is further

ORDERED that the Motion to Dismiss by Defendant AACAP Pursuant to Rule 12(B)(6) and the D.C. Anti-SLAPP Act is **GRANTED**; and it is further

ORDERED that the Motion of Defendant Elsevier to Dismiss Plaintiff's Amended Complaint pursuant to Rule 12(b)(6) and the D.C. Anti-SLAPP Act is **GRANTED**; and it is further

ORDERED that the Plaintiff's First Amended Complaint is **DISMISSED WITHOUT PREJUDICE**.

Judge Robert Okun
Superior Court for the District of Columbia

Copies to:

George W. Murgatroyd III
Plaintiff

[4] Because the Court is dismissing the FAC for lack of subject matter jurisdiction based on the Plaintiff's lack of standing, it will not address the Defendants' other arguments for dismissal of the FAC. *See UMC Dev., LLC*, 120 A.3d at 48 (a court that lacks subject matter jurisdiction may not rule on the merits of the underlying claims).

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