SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

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Docket No. A-000048-24

LVNV FUNDING LLC,	:	**CIVIL ACTION**
Plaintiff-Respondent,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SPECIAL CIVIL PART, MERCER COUNTY
v.	:	
MIATTA KABA,	:	
Defendant-Appellant.	:	Trial Court Docket No. MER-DC-218-21
	:	Sat Below: HON. WILLIAM ANKLOWITZ, J.S.C.
	:	DATE: March 5, 2025

BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

This appeal arises from the trial court's Order (Da103) denying Defendant-Appellant Miatta Kaba's Motion to Vacate Default Judgment pursuant to *R.* 4:50-1(d) and *R.* 4:50-1(f).

Service by mail in the Special Civil Part pursuant to *R.* 6:2-3(d) requires "simultaneous" mailings of the summons and complaint "by both certified and ordinary mail." *R.* 6:2-3(d)(1). Here, the record shows that the certified mailing was not sent and Ms. Kaba certified that she did not receive the summons and complaint, therefore, service of process was never effected. Thus, vacatur of the default judgment is proper under *R.* 4:50-1(d).

Additionally, *R.* 4:50-1(f) is an equitable catchall provision that provides for relief under exceptional circumstances. As explained herein, this court has held that violations of remedial consumer protection statutes may give rise to such exceptional circumstances. Here, Plaintiff-Respondent LVNV Funding LLC violated the New Jersey Consumer Finance Licensing Act ("NJCFLA"), N.J.S.A. 17:11C-1 to -49, in the acquisition and collection of the alleged account upon which the Complaint and default judgment in this matter are based.

The NJCFLA unequivocally states that "[n]o person shall engage in business as a consumer lender or sales finance company without first obtaining

a license or licenses under this act." N.J.S.A. 17:11C-3(a). The NJCFLA determines that that any entity who violates the licensure provisions of the NJCFLA "*shall be guilty of a crime of the fourth degree*" and that "[a] contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, *shall be void and the lender shall have no right to collect or receive any principal, interest or charges*. . . ." N.J.S.A. 17:11C-33(b) (emphasis added).

It is undisputed that LVNV Funding LLC ("LVNV") was not licensed as a "sales finance company" pursuant to the NJCFLA when it attempted to take assignment of the Victoria's Secret credit account allegedly extended to Kaba by Comenity Bank. Thus, the alleged debt was void upon assignment to LVNV pursuant to N.J.S.A. 17:11C-33(b). Moreover, it is undisputed that the entities preceding LVNV in the chain of assignment were not licensed as either "consumer lender[s]" or "sales finance companies" as per N.J.S.A. 17:11C-3. Despite the foregoing, LVNV then initiated a collection lawsuit against Kaba to enforce the void debt.

LVNV later sought default judgment on the void debt and, on or about March 17, 2021, default judgment was entered against Kaba. However, as mentioned above, Kaba was never served with LVNV's Complaint. Moreover,

LVNV had no legal right to collect, enforce, or attempt to collect or enforce Kaba's alleged consumer debt.

In denying Kaba's motion to vacate, the trial court abused its discretion by ignoring the factual evidence on record showing that service under *R.* 6:2-3(d) was not effected and incorrectly emphasized the timeliness of the motion, rather than the interests of public policy explained herein and the broad remedial power of *R.* 4:50-1(d) and (f). Accordingly, the trial court Order denying Kaba's Motion to Vacate Default Judgment and Dismiss should be reversed.

PROCEDURAL HISTORY

LVNV initiated this action on January 18, 2021, by filing its collection Complaint against Kaba, demanding a judgment in the amount of $ $676.92, together with costs of suit. Compl. ¶¶ 1-4 (Da1). The Summons Mailed Notice entered on January 19, 2021, indicates that the Summons and Complaint were mailed on January 19, 2021. (Da3).

LVNV requested entry of default judgment on March 17, 2021; default judgment was entered against Kaba on March 23, 2021. (DA4; Da23).

Thereafter, LVNV applied for, and was granted, a writ of execution against Kaba's wages in July of 2021 (Da24-Da32), and a levy against Kaba's personal bank account in November of 2023 (Da33-Da38).

Thereafter, on March 4, 2024, and May 14, 2024, respectively, LVNV filed two Motions to Turnover Funds; the Motion were granted on March 22, 2024, and June 7, 2024 (Da45; Da52).

Kaba filed her to Motion to Vacate Default Judgment, to Vacate Orders to Turnover Funds, and to Dismiss the Complaint on July 15, 2024. (Da66).

On July 27, 2024, the trial court entered an Order denying Kaba's Motion. (Da103).

On September 5, 2024, Kaba filed her Notice of Appeal. (Da107).

STATEMENT OF FACTS

Sometime prior to the initiation of this action—and without a license under the NJCFLA to act as a "sales finance company"[1]—LVNV allegedly purchased a pool of defaulted consumer debts for a fraction of their face value, including Kaba's alleged credit account. The alleged chain of assignment prior to LVNV included unlicensed non-parties Sherman Originator III, LLC ("SO III") and Sherman Originator LLC ("SO").[2]

[1] ¶ 5 of the Certification of Felicia Richardson in Support of LVNV's Request for Entry of Default Judgment ("Richardson Cert.") states that LVNV acquired Kaba's alleged account on May 15, 2019 (Da16); however, LVNV's License Verification from the New Jersey Department of Banking and Insurance ("NJDOBI") states that LVNV was first licensed as of April 23, 2020. (Da65).
[2] ¶ 4 of the Richardson Cert. states that LVNV acquired Kaba's alleged account from SO, who allegedly acquired the account from SO III; however, neither SO nor SO III were licensed to engage in the "consumer loan business"

Thereafter, in attempts to collect the void debt, LVNV commenced a collection lawsuit against Kaba by filing its collection Complaint (Da1) in the Special Civil Part of the Mercer County Law Division on January 18, 2024. (Da1).

The Summons Mailed Notice in the trial court docket indicates that the Summons and Complaint were mailed to Kaba on or about January 19, 2021 (Da3); however, the tracking information available from a hotlink on the same docket indicates that the certified mail was never sent because the package was not delivered to the shipper, being the United States Postal Service ("USPS"). *See* Kaweblum Cert. ¶ 2 (Da57); screenshot of USPS tracking information of the certified mailing of LVNV's collection Complaint annexed as Exhibit A to the Kaweblum Cert. (Da62). Kaba's Certification in Support of her Motion to Vacate corroborates the USPS tracking information as Kaba certified to the facts that she did not receive LVNV's collection Complaint and had no knowledge of the proceedings against her until February of 2024 when her personal bank account was levied. *See* Kaba Cert. ¶¶ 7-8 (Da54). Thereafter, Kaba retained counsel and subsequently moved to vacate the default judgment (Da53).

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or act as "sales finance compan[ies]" as per N.J.S.A. 17:11C-3. *See* the Certification of Eliyahu Kaweblum, Esq., ¶ 3 (Da57).

In addition to defects in service, the default judgment obtained against Kaba stem from an action that LVNV had no right or authority to bring. By purchasing or otherwise taking assignment of the debt, LVNV, SO, and SO III, engaged in the "consumer loan business" as defined at N.J.S.A. 17:11C-2 and acted as "sales finance company[ies]" as defined at N.J.S.A. 17:16C-1(f). However, at the times relevant to this action, LVNV was not licensed as a "sales finance company" and SO and SO III were not licensed as either consumer lenders or as a sales finance companies at the time they took possession and assigned the alleged debt to LVNV. (Da57). As a result, the contract governing Kaba's alleged account was rendered void prior to the alleged acquisition by LVNV, pursuant to the NJCFLA at N.J.S.A. 17:11C-33(b), which states, in pertinent part, that a contract for a loan acquired in violation of the act "shall be void and the lender shall have no right to collect or receive any principal, interest or charges . . . ."

LEGAL ARGUMENT

POINT I. THE STANDARD OF REVIEW (Raised Below: T1; Da103-Da104)

R. 4:50-1 is "designed to reconcile the strong interests in finality of judgments and judicial efficiency with the equitable notion that courts should have authority to avoid an unjust result in any given case." *Mancini v. EDS ex rel. New Jersey Auto. Full Ins. Underwriting Ass'n*, 132 N.J. 330, 334 (1993)

(quoting *Baumann v. Marinaro*, 95 N.J. 380, 392 (1984) (internal quotation marks omitted)).

The standard is abuse of discretion and the trial court's factual findings are owed deference, *i.e.*, this Court "may not disturb judge-made fact findings 'unless . . . convinced they are so manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence as to offend the interests of justice.'" *LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 108 (App. Div. 2020) (quoting *Rova Farms Resort, Inc. v. Inv'rs Ins. Co.*, 65 N.J. 474, 484 (1974)).

"However, the opening of default judgments should be viewed with great liberality, and every reasonable ground for indulgence is tolerated to the end that a just result is reached. *Marder v. Realty Constr. Co.*, 84 N.J. Super. 313, 319 (App. Div. 1964) (citing *Foster v. New Albany Machine & Tool Co.*, 63 N.J. Super. 262 (App. Div. 1960)). For example, "[e]ven where a defendant admits liability, a reopening of the judgment for purposes of assessing damages is proper where the defendant provides a reasonable assertion to the effect that it is not liable for the amount of damages claimed by the plaintiff. *Id.* Thus, "[i]n weighing these circumstances, [the Court] cannot lose sight that a court's power to vacate a judgment is based on equitable principles." *DeAngelo*, 464 N.J. Super. at 109.

When examining a trial court's exercise of discretionary authority, the trial court must be reversed "when the exercise of discretion was 'manifestly unjust' under the circumstances." *Newark Morning Ledger Co. v. N.J. Sports & Exposition Auth.*, 423 N.J. Super. 140, 174 (App. Div. 2011) (quoting *Union Cnty. Improvement Auth. v. Artaki, LLC*, 392 N.J. Super. 141, 149 App. Div. 2007)).

POINT II. THE TRIAL COURT ABUSED ITS DISCRETION IN RULING THAT THE DEFAULT JUDGMENT IS NOT VOID PURSUANT TO RULE 4:50-1(D) (Raised Below: T1; Da103-Da105)

Generally, a motion pursuant to Rule 4:50-1(d) ("the judgment or order is void") must be made within a reasonable time. *See R.* 4:50-2. What constitutes a 'reasonable time' under *R.* 4:50-2 is based on contextual analysis and this Court has ruled that motions to vacate pursuant to subsections (d) and (f) of *R.* 4:50-1 are not beholden to the one-year time limit in *R.* 4:50-2. *See Berger v. Paterson Veterans Taxi*, 244 N.J. Super. 200 (App. Div. 1990).

"An elementary and fundamental requirement of due process in any proceeding which is to be accorded finality is notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *O'Connor v. Altus*, 67 N.J. 106, 126 (1975) (quoting *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950)). Further, "[t]he requirements of the rules with

respect to service of process go to the jurisdiction of the court and must be strictly complied with. Any defects . . . are fatal and leave the court without jurisdiction and its judgment void." *Berger v. Paterson Veterans Taxi Serv.*, 244 N.J. Super. 200, 204 (App. Div. 1990) (internal quotation marks omitted) (quoting *Driscoll v. Burlington-Bristol Bridge Co.*, 8 N.J. 433, 493 (1952)).

R. 6:2-3(d) requires initial service in the Special Civil Part to be effected through mail. *R.* 6:2-3(d)(1) requires a plaintiff "to submit to the clerk the mailing addresses of the parties to be served" and that "[t]he clerk of the court **shall simultaneously mail such process by both certified and ordinary mail**."(emphasis added). Based on the foregoing, the presumption of effective service established by a mailing pursuant to *R.* 6:2-3(d) is based on the recognized "presumption that mail properly addressed, stamped, and posted was received by the party to whom it was addressed." *Ssi Med. Servs. v. HHS, Div. of Med. Assistance & Health Servs.*, 146 N.J. 614, 621 (1996) (citing *Bruce v. James P. Maclean Firm*, 238 N.J. Super. 501, 505 (Super. Ct. 1989), *aff'd o.b.*, 238 N.J.Super. 408, 570 (App.Div.1989); *Tower Mgmt. Corp. v. Podesta*, 226 N.J. Super. 300, 304 n.3 (App. Div. 1988); *Cwiklinski v. Burton*, 217 N.J. Super. 506, 509-510 (App. Div. 1987)). Thus, if evidence tending to disprove effective service is presented the presumption of effective service is eliminated from the case. *Jameson v. Great Atl. & Pac. Tea Co.*, 363 N.J.

Super. 419, 426-27 (App. Div. 2003) (citing *Ahn v. Kim*, 145 N.J. 423, 439 (1996); N.J.R.E. 301).

"[A]lthough *Rule* 6:2-3 authorizes service by mail, it does not preclude competent evidence to rebut the presumption of receipt." *Wiss & Bouregy, P.C. v. Bisceglie*, No. A-3228-15T3, 2017 N.J. Super. Unpub. LEXIS 619, at *12 (App. Div. Mar. 13, 2017). "It would not be '[c]onsistent with due process of law,' *see Rule* 6:2-3(d)(4), if, notwithstanding court mailing, neither delivery nor actual notice was accomplished—at least where the intended recipient did not affirmatively refuse delivery." *Id.* at *12-13. "[Defendant's] certification that [s]he did not receive the summons and complaint and was unaware of the lawsuit was sufficient . . . to create a genuine issue of fact as to whether due process was satisfied and service accomplished." *Id.* at *13. Further, "the absence of evidence establishing willful disregard of the court's process is an important consideration" in granting a motion to vacate default judgment under *R.* 4:50-1(d). *Davis v. DND/Fidoreo, Inc.*, 317 N.J. Super. 92, 100 (App. Div. 1998) (citing *Mancini*, 132 N.J. at 336).

In the case at bar, Kaba was not served with the Summons and Complaint. Kaba should not have had to bear the burden of rebutting the presumption of service established by *R.* 6:2-3(d) because the presumption was never established. The evidence on record before the Court indicates that the

rules governing service of process by mail in the Special Civil Part were not complied with. The Court's records indicate that the certified mailing was never sent.[3] The failure to send simultaneous mailing in accordance with *R.* 6:2-3(d)(1) is a 'fatal defect' leaving the trial court without jurisdiction over Kaba. *See Berger*, 244 N.J. Super. at 204 (App. Div. 1990) ((quoting *Driscoll*, 8 N.J. at 493). Indeed, "a judgment obtained through defective service of process is "absolutely void" and enforcement of the same "would violate the Due Process Clause." *Garza v. Paone*, 44 N.J. Super. 553, 557 (App. Div. 1957); *Berger*, 244 N.J. Super. at 205 (citing *Peralta v. Heights Med. Ctr., Inc.*, 485 U.S. 80, 85 (1988)).

In denying Kaba's Motion, the trial court reasoned:

> Service by mail is permitted by Rule 6:2-3(d). In fact, the initial service must be by mail through the clerk's office. *R.* 6:2-3(d)(1). Effective service is when the regular mail is not returned and the certified mail has either been claimed or is returned with a marking to indicate that service at the given address was good service. The way the rule is written is to identify markings that show ineffective service, such as certified mail returned with a stamp that says the addressee is not known. *R.* 6:2-3(d)(4).
> The constitutionality of service by mail has been litigated. The process, as set out in Rule 6:2-3(d), was upheld in the Appellate Division. *N.J. Dist. Court Assoc. v. N.J. Supreme Court*, 205 N.J. Super. 582 (Law

[3] *See* Kaweblum Cert. ¶ 2 (Da57); screenshot of USPS tracking information of the certified mailing of LVNV's collection Complaint annexed as Exhibit A to the Kaweblum Cert. (Da62).

Div. 1985), *aff'd o.b.* 208 N.J. Super. 527 (App. Div. 1986).

Neither the certified nor regular mail were returned. That is presumptive good service . . . . Defendant has not provided any evidence of address to rebut the presumption of good service. At oral argument, the defense clarified that the address of service was defendant's address at the time of service. As such, service was proper.

The court reviewed electronic mail markings on the post office website. The certified mail had a tracking number generated, but no further information. Electronic markings from the post office are not reliable. *E.g. Ravenscroft v. Derroisne*, 473 N.J. Super. 278, 281-2 (Law Div. 2021). No certification or testimony from anyone at the post office to explain what the markings on the website mean was proposed. Pursuant to *R.* 4:50-1 and 2 defendant's motion had to have been filed within a reasonable amount of time. The judgment was entered on March 23, 2021. There were 1247 days from the time of mailing of the complaint to the time the motion was made. Defendant had 35 days, plus the extra days for mailing, to file an answer and default was entered on March 1, 2021. As such, defendant is 1206 days out of time to file an answer. Defendant's motion was filed 139 days after the first levy on defendant's bank account of $444.57 on February 1, 2024, and 58 days after the second levy of $509.60 on April 22, 2024.

Although there could be some credit given to defendant in that defendant's motion was filed just 12 days after the second motion to turnover funds was granted, the fact that both motions to turnover were unopposed shows disregard on defendant's part. Although there is probably a fair inference that the defendant's delay was conscious or even intentional, that aside, the delay was far too long to find diligence or concern on defendant's part that could excuse the delay.

Since the judgment, there were two orders to turnover funds levied on bank accounts. There were entered on

> March 22, 2024, and June 7, 2024. The notice to debtor on the earlier levy was filed in eCourts on March 7, 2024, and shows the levy to have been from February 1, 2024. Defendant had good service and undeniably actual notice of a pending case. As such, the request to dismiss for insufficient service is denied.

July 22, 2024 Order at 2-3 (Da104-Da105). The trial court effectively reasoned that because a mailing that had never been sent was not returned, service of process was effective. That reasoning is not consistent with *R.* 6:2-3(d) or constitutional due process and places Kaba in a position that is logically impossible to overcome. The trial court cited *Ravenscroft* for the proposition that "[e]lectronic markings from the post office are not reliable," however, the cited portion of *Ravenscroft* does not reflect the reasoning employed by the trial court. In fact, the cited portion of *Ravenscroft* explains that the electronic tracking information was consistent with the marking on the mailing, but that the postal delivery worker likely made the incorrect marking on the envelope when delivering the mailing, *to wit*, *Ravenscroft* contradicts the trial court here.

> Plaintiff argues that since the USPS tracking information shows that notice was left and that mail was returned unclaimed, service was proper. Since the mail was returned to the clerk, the labels on the mail pieces and the event codes on the USPS tracking website can be compared. *See R.* 1:6-6 (properly submitted evidence on a motion can be considered). The event codes for "attempted/notice left" are defined in USPS Publication 97 to mean, "[s]can of the package

> at the final delivery address but delivery not made due to no recipient available, unsafe to leave unattended, etc. Notice left includes leaving a PS Form 3849, Delivery Notice / Reminder / Receipt."
> The parentheses after "notice left" in the tracking information in this case shows that there was no one there to take the mail. **That would be consistent with the mail being unclaimed. That would also be consistent with the intended recipients not being at the address indicated on the mail piece.** In other words, just because the postal carrier on July 3 may have left a notice at the stated address does not exclude the post office from later determining that the addressee was no longer at that address and, subsequently returning the mail piece with an insufficient address label. Further, whether a notice was left or whether the postal carrier only meant that the address was insufficient is an open question.

Ravenscroft Homeowners Ass'n, Inc. v. Derroisne, 473 N.J. Super. 278, 282-83 (Super. Ct. 2021) (emphasis added). Despite the foregoing and the corroborating evidence in Kaba's favor, the trial court drew a negative inference ("there is probably a fair inference that the defendant's delay was conscious or even intentional") despite the record showing no calculated neglect or contumacious conduct by Kaba. Moreover, the timeline of Kaba's explanation, as acknowledged by the trial court, aligns with LVNV's second bank levy, *i.e.*, the successful bank levy was the first time Kaba was apprised of the suit and moved to vacate immediately thereafter.

Thus, the trial court's July 22, 2024 Order and the reasoning therein is "inconsistent with the competent, relevant and reasonably credible evidence"

provided—so much so that the Order "offend[s] the interests of justice" and must be reversed. *See DeAngelo*, 464 N.J. Super. at 105.

POINT III. THE TRIAL COURT ABUSED ITS DISCRETION IN RULING THAT THE DEFAULT JUDGMENT IS NOT VOID PURSUANT TO RULE 4:50-1(F) (Raised Below: T1; Da105-Da106)

As asserted by Kaba and corroborated by evidence on record,[4] LVNV lacked the legal right to possess or enforce Kaba's alleged debt for its, as well as SO's and SO III's, violations of the NJCFLA. However, in denying Kaba's Motion, the trial court reasoned that there is no private right of action conferred by the NJCFLA and, as a result, Kaba could not assert LVNV's, SO's, or SO III's lack of a legal right as a defense. *See* July 22, 2024 Order at 3 (Da105). The trial court further reasoned that because the Legislature knows how to legislate, any private right of action would be expressly codified by way of amendment. *Ibid.* (citing *Lemelledo v. Beneficial Mgmt. Corp. of Am.*, 150 N.J. 255, 268 (1997)). Putting aside that Kaba is not claiming a **right of**

[4] ¶ 5 of the Certification of the Richardson Cert. states that LVNV acquired Kaba's alleged account on May 15, 2019 (Da16); however, LVNV's License Verification from the New Jersey Department of Banking and Insurance ("NJDOBI") states that LVNV was first licensed as of April 23, 2020. (Da65). ¶ 4 of the Richardson Cert. states that LVNV acquired Kaba's alleged account from SO, who allegedly acquired the account from SO III; however, neither SO nor SO III were licensed to engage in the "consumer loan business" or act as "sales finance compan[ies]" as per N.J.S.A. 17:11C-3. *See* Kaweblum Cert. ¶ 3 (Da57).

action and that a right of action is of no consequence to the assertion of a defense, the trial court's reasoning improperly forecloses the possibility of an implied private right of action in any context, despite the existence of binding authority from our highest court that informs the analysis of whether a statute confers a private right of action in the absence of an express codification. The trial court's citation to *Lemelledo* is serendipitous in that *Lemelledo* also provided an analysis into N.J.S.A. 17:11C-33(b)—the same statute that Kaba relies to argue that the contract governing her alleged account is void—and determined that N.J.S.A. 17:11C-33(b) allowed for treble damages by individual *aggrieved consumers*:

> If a violation of the [Consumer Loan Act[5]] is proven, the typical remedy, obtainable by the Department of Banking and Insurance **or by individual consumers**, is voiding of the contract, subject to a defense based on good faith on the part of the lender. *N.J.S.A.* 17:10-14 (replaced by *N.J.S.A.* 17:11C-33b). The CLA, as incorporated in the Licensed Lenders Act, **now allows for treble damages by aggrieved consumers**, *N.J.S.A.* 17:11C-33b, and summary revocation of a lender's license, *N.J.S.A.* 17:11C-48a.
>
> . . . .
>
> . . . The CLA provides the Department of Banking and Insurance with similar authority, **while also creating a private cause of action allowing for cancellation of**

[5] The CLA amended several times (discussed below), with the last amendment being the New Jersey Consumer Finance Licensing Act in 2009.

> **the loan contract and an award of damages** unless the lender can show that it has acted in good faith.

Lemelledo, 150 N.J. at 272-73 (emphasis added).

Even if our Supreme Court has not spoken on this statute, in *R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co.*, 168 N.J. 255 (2001), our Supreme Court described in detail the requisite test for determining whether a statute impliedly confers a private right of action and analyzed an application of the same. The test was originally articulated by the United States Supreme Court, subsequently adopted by the New Jersey Supreme Court, and rests largely on a search for the underlying legislative intent of the statute at issue. Thus, binding authority from our highest courts requires a structured analysis informed by the legislative and statutory history of the NJCFLA, which the trial court failed to perform.

"The seminal case in New Jersey to consider whether a state statute confers an implied private right of action is *In re State Comm'n of Investigation*." *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 273 (internal pin cite omitted). "There, the Court considered whether the plaintiffs, who were being investigated by the State Commission of Investigation (SCI), could be granted an injunction to enforce the SCI's statutorily mandated confidentiality obligations." *Ibid.* To weigh the foregoing, *In re Resolution* adopted the test

articulated by the United States Supreme Court in *Cort v. Ash*, 422 U.S. 66 (1975).

To determine whether a statute confers an implied private right of action, the Court **must** "consider whether: (1) plaintiff is a member of the class for whose special benefit the statute was enacted; (2) there is any evidence that the Legislature intended to create a private right of action under the statute; and (3) it is consistent with the underlying purposes of the legislative scheme to infer the existence of such a remedy." *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 272. "Those factors were established by the United States Supreme Court in *Cort v. Ash*, 422 U.S. 66, 95 S. Ct. 2080, 45 L. Ed. 2d 26 (1975) and adopted by [the New Jersey Supreme] Court in *In re State Comm'n of Investigation*,[6] 108 N.J. 35, 41, 527 A.2d 851 (1987)." Although varying weight is given to each one of those factors, "the primary goal has almost invariably been a search for the underlying legislative intent." *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 272-73. (quoting *Jalowiecki v. Leuc*, 182 N.J. Super. 22, 30, (App.Div.1981)).

Turning to the first factor of the *In re Resolution/Cort* test—whether Kaba is a member of the class for whose special benefit the statute was

[6] Cited herein as: *In re Resolution of State Com. of Investigation*, 108 N.J. 35 (1987).

enacted—"that is, does the statute create a . . . right in favor of the [Kaba]?" *Cort*, 422 U.S. at 78. It is undisputable that the NJCFLA creates rights and protections for consumers by mandating "[licensed] business[s] will be operated honestly, fairly, and efficiently within the purposes of [the NJCFLA]" N.J.S.A. 17:11C-7(c). The NJCFLA requires character and fitness examinations for licensees, including criminal background checks, to ensure that potential bad actors do not engage in credit transactions with consumers. *See* N.J.S.A. 17:11C-7. N.J.S.A. 17:11C-16 sets net worth and liquidity requirements for licensees and applicants to ensure transparency and adequate capitalization. N.J.S.A. 17:11C-37 sets interest caps for consumer loans. N.J.S.A. 17:11C-40 limits what and how much secured collateral can be demanded from consumers. And N.J.S.A. 17:11C-42 requires availability of books and records for inspection to ensure compliance in consumer facing transactions. These are just some of the NJCFLA's provisions established to benefit and protect consumers such as Kaba by remedying deficiencies in prior existing law. Thus, the first factor weighs in favor of private enforcement.

The second factor of the *In re Resolution/Cort* test asks whether there is any evidence that the Legislature intended to create a private right of action. The statutory and legislative history provides ample evidence that the Legislature intended that the NJCFLA protect consumers by, *inter alia*,

conferring a private right of action. *See In re Resolution*, 108 N.J. at 41-42. The NJCFLA declares "[n]o person shall engage in business as a consumer lender or sales finance company without first obtaining a license or licenses under this act." N.J.S.A. 17:11C-3(a).

> A consumer lender who violates or participates in the violation of any provision of section 3 . . . of this act, *shall be guilty of a crime of the fourth degree*. A contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges. . . ."

N.J.S.A. 17:11C-33(b) (emphasis added). Defining unlicensed activity as a consumer lender as a fourth-degree crime is consistent with the legislative intent of the NJCFLA, a remedial consumer protection statute designed to combat fraud, usury, and other criminal and predatory behavior in the consumer credit industry in New Jersey. Remedial consumer protection statutes like the NJCFLA are enacted to address holes in contemporaneously existing law. And the purpose of the NJCFLA is illustrated by, *inter alia*, the provisions requiring annual criminal background for licensees and ensuring ongoing compliance with the same, as well as those provisions that evidence the NJCFLA's history of private enforcement by aggrieved consumers. *See*,

e.g., N.J.S.A. 17:11C-7(e); N.J.S.A. 17:11C-11; N.J.S.A. 17:11C-33(b); N.J.S.A. 17:11C-43.

N.J.S.A. 17:11C-18 codifies the enforcement power granted to the Commissioner of Banking and Insurance. And though the trial court's Order intimates that those enforcement powers are the lone vehicle for relief, the mechanism of state enforcement was not intended to limit the individual rights of aggrieved consumers. Indeed, employing the logic utilized by the trial court, if the Legislature intended for the NJCFLA to exclude any and all private enforcement, the Legislature would have said so—either through one of the statutory progressions of the NJCFLA or in one of its many revisions.

The present-day iteration of the NJCFLA originated as the New Jersey Small Loan Law ("NJSLL") or Small Loan Act, which was enacted in 1914 to address the widely predatory and substantially unregulated consumer loan industry in New Jersey, primarily focusing on small loans to natural persons.

> The small loan business has long been the subject of study, legislation and judicial determination. *See Gallert, Hilborn and May*, *Small Loan Legislation* (Russell Sage Foundation, 1932); *Hubachek*, *Annotations on Small Loan Laws* (Russell Sage Foundation, 1938); *Law and Contemporary Problems* (Winter, 1941). New Jersey was one of the five large industrial states which early adopted general acts designed to regulate and control the business of making small loans. Thus *P.L.* 1914, *c.* 49 provided for the licensing of small loan companies and granted power to the Commissioner of Banking and Insurance to reject

> an application for license because of lack of character or fitness of the applicant. In 1916 the Russell Sage Foundation submitted its first draft of a Uniform Small Loan Law which adopted the regulatory philosophy of the New Jersey act and some of its provisions.

Family Fin. Corp. v. Gough, 10 N.J. Super. 13, 19 (App. Div. 1950); *see also Ryan v. Motor Credit Co.*, 132 N.J. Eq. 398, 401 (1942) ("The underlying reason for the drastic provisions of the act for the protection of the borrower is his credulity and susceptibility to oppression by reason of his necessitous circumstances."); *Langer v. Morris Plan Corp.*, 110 N.J.L. 186, 187 (1933) (judgment for consumer where he obtained refund of his payments under a note which "was void and of no effect" because of the violation of the Small Loan Act of 1914); *Morris Plan Corp. v. Leschinsky*, 12 N.J. Misc. 1 (Sup. Ct. 1933) (judgement in favor of counterclaim-consumers where they obtained refunds of payment on a void note affirmed); *Consol. Plan, Inc. v. Shanholtz*, 7 N.J. Misc. 876, 878 (Sup. Ct. 1929) ("Legislative enactments are not to be played fast and loose with, and corporations who violate the law cannot be heard to say that they did not intend that their violations of the law should be construed as such. They, like all others, must stand or fall by their own acts."), *aff'd*, 107 N.J.L. 517 (1931).

The NJSLL—like the NJCFLA—was meant to police the consumer credit industry and allowed for enforcement by the Commissioner as well as

individual consumers. *See Gough*, 10 N.J. Super. at 21 ("[T]he Small Loan Law was intended to and does afford to the Commissioner power to limit the number of licenses in a community."). Though, determinative criteria for licensure was within the purview of the Commissioner, "dependent upon their relation to the objectives of the Small Loan Act in light of its history and purpose, it is difficult to see how better the Commissioner can execute the legislative policy than by looking to the needs of the community. . . ." *Family Fin. Corp. v. Gaffney*, 11 N.J. 565, 572 (1953).

The NJSLL was superseded by the New Jersey Consumer Loan Act ("NJCLA") in 1962. The NJCLA's espoused goal was to "prohibit [] deceptive lending practices generally, N.J.S.A. 17:10-13 (replaced by N.J.S.A. 17:11C-20)." *Lemelledo*, 150 N.J. 255, 271. "If a violation of the CLA [was] proven, the typical remedy, obtainable by the Department of Banking and Insurance **or by individual consumers, is voiding of the contract**," though the NJCLA **also provided for awards of damages to aggrieved consumers**. *Lemelledo*, 150 N.J. at 272 (emphasis added). The codified statutory mechanism of enforcement by which an individual consumer voided an unlawful loan contract and/or pursue treble damages was N.J.S.A. 17:11C-33(b)—the same provision of the same statute cited by Kaba here. *Ibid*.

Between 1962 and 1983, the NJCLA was amended seven times—many of the amendments added mortgage-based provisions, such as the Secondary Mortgage Loan Act of 1970. *See* 1996 N.J. ALS 157; 1996 N.J. Laws 157; 1996 N.J. Ch. 157; 1997 N.J. A.N. 2513. "On January 8, 1997, the Governor signed the New Jersey Licensed Lenders Act, which combine[d] the [NJ]CLA with two mortgage-related statutes.[7] L. 1996, c. 157 (codified at N.J.S.A. 17:11C-1 to -49)." *Lemelledo*, 150 N.J. at 262 n.1. When the NJCLA was combined with the New Jersey Residential Mortgage Lending Act ("NJRMLA"), N.J.S.A. 17:11C-51 to -89, under the umbrella of the Licensed Lenders Act ("NJLLA"), the consumer-lending based provisions formerly known as the NJCLA became known as the "Consumer Finance Licensing Act."

Like the NJSLL and NJCLA, the NJCFLA (under the umbrella of the NJLLA) allowed for a private right of action by individual consumers in addition to the enforcement remedies of the Commissioner. Though N.J.S.A. 17:11C-18 retains a codification of the Commissioner's authority to oversee licensure under the NJCFLA (as it did under the NJLLA), it does not disallow private actions by aggrieved consumers—nor has it ever. Prior to 2014,

[7] The New Jersey Residential Mortgage Lending Act ("NJRMLA"), N.J.S.A. 17:11C-51 to -89.

aggrieved consumers were always afforded an implied private right of action in addition to the Commissioner's authority to oversee licensure and pursue independent prosecutions. In 2010, the NJLLA, N.J.S.A. 17:C-1 to -49, was divided, separating the NJRMLA, N.J.S.A. 17:11C-51 to -89, from the NJCFLA. The NJRMLA and NJCFLA were now their own respective standalone statutes. Subsection 18 remained combined with the consumer lending provisions, as it had been for several decades. And reasonably so—the provisions of subsection 18 relate only to the Commissioner's authority relative to licensure to act as a "consumer lender" or "sales finance company" and do not address mortgages or real property. *See* N.J.S.A. 17:11C-2; N.J.S.A. 17:11C-3; N.J.S.A. 17:11C-18. Thus, when reviewing the history of the NJCFLA, the evidence indicated that the Legislature intended the NJCFLA to be privately enforceable.

Additional evidence exists in the statutory text—N.J.S.A. 17:11C-33(b) continues to expressly allow for treble damages—a remedy not included under the Commissioner's authority in N.J.S.A. 17:11C-18. Further, N.J.S.A. 17:11C-18(i) limits the Commissioner's authority to civil penalties "not exceeding $25,000." Thus, if an aggrieved consumer's pecuniary damages exceeded $25,000.00 and the only available recourse were through the Commissioner's express powers in Section 18, there would be no ability for

recovery, relief, or penalization *beyond* the $25,000.00 limit. However, the NJCFLA defines a "[c]onsumer loan" as, *inter alia*, "a loan of **$50,000** or less made by a consumer lender." N.J.S.A. 17:11C-2 (emphasis added). Without private enforcement, the NJCFLA would allow for a gap in penalties/protections for loans in between $25,000.01 and $50,000.00. *But that is not how we interpret statutes.* Courts must avoid statutory interpretations that yield unreasonable or absurd results and/or render other statutory language superfluous. *N.J. Republican State Comm. v. Murphy*, 243 N.J. 574, 592 (2020); *In re Johnny Popper, Inc.*, 413 N.J. Super. 580, 589 (App. Div. 2010). The Legislature's intent for the NJCFLA to be privately enforceable is further evidenced by the private right of action conferred by the NJCLA and the NJCFLA when it was under the title of the NJLLA, explained above. Thus, it is clear that the second factor of the *In re Resolution/Cort* test weighs in favor of private enforcement.

The final factor asks whether it would be consistent with the underlying purposes of the legislative scheme to infer the existence of a private right of action. Reading the statute to be privately enforceable in conjunction with the Commissioner's enforcement powers (related primarily to issuance, enforcement, and revocation of licensure) would further, rather than frustrate, the NJCFLA's underlying purpose of curtailing deceptive practices in the

consumer credit industry. As discussed above, without private enforcement, the NJCFLA would allow for a gap in penalties/protections for loans between $25,000.01 and $50,000.00. Thus, without conferring a private right of action, the legislative scheme would not "obviate[] the plaintiffs' need for a private cause of action." *In re Resolution*, 108 N.J. at 44. Further, unlike the statute at issue in *In re Resolution*, N.J.S.A. 52:9M-8, which requires that any evidence or information related to improper investigative disclosure violations "**shall** be immediately brought by the commission to the attention of the Attorney General," (emphasis added) the NJCFLA has no such requirement for 'immediate' and mandatory enforcement. To say nothing of prosecutorial resources, all of the Commissioner's enforcement remedies in Section 18 are discretionary, determining what the Commissioner "may" do rather than what shall occur as a result of a violation. Again, without conferring a private right of action, the legislative scheme would not obviate the need for a private right of action. *Ibid.* Lastly, we must consider whether "extrapolation of the implicit private cause of action that the plaintiffs propose would frustrate, rather than further, the legislative scheme that underlies" the NJCFLA. *Ibid.* at 45. Given the protections discussed in the analysis of the first test factor above, it is reasonable to infer that private enforcement would promote further policing of the consumer credit industry, thereby prohibiting deceptive lending practices

and furthering the underlying purposes of the NJCFLA. Thus, the third test factor weighs in favor of private enforcement. The totality of evidence applied to the *In re Resolution/Cort* test indicates that the NJCFLA confers an implied private right of action. Thus, the trial court's finding that the NJCFLA does not allow for private enforcement remedies was not rooted in the legal analysis required by our highest courts.

Lastly, enforcement of Kaba's alleged debt would constitute enforcement of a contract entered into in violation of New Jersey's licensing statute. *See Accountemps Div. of Robert Half, Inc. v. Birch Tree Grp., Ltd.*, 115 N.J. 614, 626 (1989) (holding "[o]ur courts have consistently held that public policy precludes enforcement of a contract entered into in violation of [the State's] licensing statute[s]"). Similarly, in *Insight Global, LLC v. Collabera, Inc.*, 446 N.J. Super. 525, 531-32 (Ch. Div. 2015), the Chancery Division examined the limit on the ability of an unlicensed entity to seek relief from a court. *Insight Global* held that an unlicensed party has no right to bring claims before the court and public policy prohibits enforcement of a contract entered into in violation of a licensing statute. *Insight Global, LLC*, 446 N.J. Super. at 531-32. Courts in New Jersey and many other states have consistently refused to aid or ratify illegal activities.

Thus, the trial court's July 22, 2024 Order must be reversed due to its failure to perform the prerequisite analysis promulgated by our highest courts and for its "inexplicabl[e] depart[ing] from established policies." *US Bank Nat. Ass'n v. Guillaume*, 209 N.J. 449, 467 (2012)

CONCLUSION

For the foregoing reasons, Defendant-Appellant Miatta Kaba respectfully requests that the trial court's Order denying her Motion to Vacate Default Judgment, to Vacate Orders to Turnover Funds, and to Dismiss the Complaint be reversed.

Respectfully submitted,

Dated: March 5, 2025

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Superior Court of New Jersey

Appellate Division

Docket No. A-000048-24

LVNV FUNDING LLC,	:	CIVIL ACTION
	:	
	:	ON APPEAL FROM THE
Plaintiff-Respondent,	:	FINAL JUDGMENT OF THE
	:	SUPERIOR COURT
	:	OF NEW JERSEY,
vs.	:	LAW DIVISION:
	:	SPECIAL CIVIL PART,
	:	MERCER COUNTY
MIATTA KABA,	:	
	:	Docket No. MER-DC-218-21
	:	
Defendant-Appellant.	:	Sat Below:
	:	
	:	HON. WILLIAM ANKLOWITZ,
	:	J.S.C.

BRIEF ON BEHALF OF PLAINTIFF-RESPONDENT

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PRELIMINARY STATEMENT

Appellant seeks to reverse the Lower Court's correct and proper denial of his untimely motion to vacate his default judgment and dismiss the valid collection action. But as recently as April 17, 2025, this Court in *LVNV Funding LLC v. Diana*, rejected identical arguments made by identical counsel and affirmed the denial of a motion to vacate a debtor's default. 2025 N.J. Super. Unpub. LEXIS 615 (App. Div. Apr. 17, 2025).

Here, nearly three and a half years after entry of default judgment and notice of default judgment, three years after execution against wages, one and a half years after execution against goods and chattels, and three months after execution against turn over funds, Appellant sought not only the vacatur of the Judgment and executions, but also the dismissal of this valid collection action based on the unsupported argument that service of process was not originally affected against her.

The Lower Court's own records indicate that the Clerk affected service via a mailing to Appellant's residence address, and Appellant's own certification confirmed the accuracy of the mailing address in the Court's records. Regardless, the Records also demonstrate that Appellant had known of this Action since at least 2021 and delayed in bringing any motion. Accordingly, the Lower Court correctly determined that based on the totality of the

circumstances, Appellant failed to demonstrate the motion was made within a reasonable time

As is set forth in greater detail below, the Court should affirm the Lower Court's denial of Appellant's Motion in its entirety because (1) service was timely and effectively made, (2) the untimely motion is barred by the doctrine of laches because Appellant did not move within a reasonable time and Respondent would be severely prejudiced by Appellant's willful delay in moving to vacate the Judgment, and (3) even if Appellant's actions were not in disregard for the law, Appellant's affirmative defense lacks merit and the Action should not be dismissed as the CFLA (defined *infra*) does not provide a mechanism to bring a private right of action or otherwise provide for a defense to a collection action.

PROCEDURAL HISTORY

On or about January 28, 2021, Plaintiff-Respondent, LVNV Funding, LLC ("Respondent"), initiated the collection action in the Superior Court of New Jersey, Law Division, Special Civil Part, Mercer County ("Court") by filing a Summons and Complaint ("Complaint") under Case No. MER-DC-00218-21 ("Action"). (Da 73).

In the Complaint, Respondent alleged its ownership of the Debt and sought to collect on the Debt. (Da1-2). At the time, Pressler prepared the

Complaint, and at all times since, Pressler has had only one address for Defendant on file, 826 Greenwood Ave., Trenton, NJ 08609. (Da72-75).

Per the Court's records, the Clerk of the Court, Special Civil Part, effectuated service upon Appellant on or about January 20, 2021, at the address provided by Pressler of 826 Greenwood Ave., Trenton, NJ 08609. (Da73). The regular mail was not returned, and the disposition of the certified mail is not available per the Court's electronic case jacket, but there is no indication that the certified mail was not delivered. (*Id.*)

Appellant failed to file a responsive pleading and the Clerk of the Court, upon Respondent's request, entered a default judgment against Appellant on or about March 17, 2021. (Da73).

Per Pressler's records and normal business practices, pursuant to R. 6:6-3(e), Pressler mailed a Notice of Entry of Judgment on or about March 23, 2021 to Appellant at 826 Greenwood Ave., Trenton, NJ 08609. (Da73). The mailing included an information subpoena. *Id.* The regular mail was not returned, and the disposition of the certified mail is unknown but there is no record of it not being delivered, which would have been notated at the time if it had not been delivered. *Id.* Appellant did not return an executed information subpoena questionnaire. *Id.*; (Da77-80).

Per Pressler's records, Pressler in compliance with its normal business practices sent Appellant a subsequent Notice of Application for Writ of Execution against Appellant's Wages pursuant to the Court Rules on or about July 9, 2021 to Defendant at 826 Greenwood Ave., Trenton, NJ 08609. (Da73-74). Pressler's Records confirm that the regular mail was not returned and, the United States Postal Service ("USPS") designated the certified mailing as "delivered, left with individual". (Da82-83).

The Clerk of the Court ultimately issued the aforesaid Writ of Execution against Appellant's Wages on or about July 28, 2021. (Da74).

Per Pressler's records, the assigned court officer served Appellant's employer with said writ on August 3, 2021. (Da74).

Per Pressler's records, Appellant's employer subsequently acknowledged receipt of the aforesaid writ and provided this office with notice dated September 16, 2021, that Appellant was subject to a prior wage execution. (Da74 & Da85-91).

Per Pressler's records, Pressler sent in compliance with its normal business practices Appellant a subsequent information subpoena pursuant to the Court Rules on or about March 22, 2022 to Defendant at 826 Greenwood Ave., Trenton, NJ 08609. (Da74). The regular mail was not returned and, per

Pressler's records, USPS designated the certified mail as "delivered". *Id.*; (Da88-91).

Per Pressler's records, Pressler sent Appellant an information subpoena pursuant to the Court Rules on or about April 27, 2023. (Da74). The regular mail was not returned, and USPS designated the certified mail as delivered. *Id.*; (Da 93-98).

Per the Court's records, the Clerk of the Court, upon Respondent's request, issued a Writ of Execution against Appellant's Goods and Chattels on or about November 21, 2023. (Da74-75).

Per the Court's records, Respondent filed a Motion for Turnover of Funds on or about March 4, 2024, based upon a levy on Appellant's Wells Fargo account in the amount of $444.57 on February 1, 2024. (Da75). Pressler sent a copy of this motion to Defendant at 826 Greenwood Ave., Trenton, NJ 08609. Appellant did not file opposition to that motion. *Id.*

Per the Court's records, the Court granted Respondent's motion as unopposed by Order for Turnover of Funds dated March 22, 2024. (Da75 & Da100).

Per Pressler's records, Pressler called Appellant on April 9, 2022, to discuss this matter. (Da75). During that call, the caller identified as Appellant upon answering. *Id.* Pressler identified itself as the caller and indicated that it

wanted to discuss the matter with Appellant. *Id.* Appellant indicated that Appellant was busy and would call back. *Id.* Appellant did not call back. *Id.*

Per the Court's records, Respondent filed a Motion for Turnover of Funds on or about May 14, 2024 based upon a levy on Appellant's Wells Fargo account in the amount of $509.60 on April 22, 2024. (Da75). Pressler sent a copy of this motion to Defendant at 826 Greenwood Ave., Trenton, NJ 08609. Appellant did not file opposition to that motion. *Id.*

Per the Court's records, the Court granted Respondent's motion as unopposed by Order for Turnover of Funds dated June 7, 2024. (Da75 & Da102).

On June 19, 2024, Appellant filed this untimely motion to vacate the executions and judgment and to dismiss the action. (Da53-65). Within her motion, she confirmed that the address on the Summons was correct. (Da54). On July 15, 2024, Respondent filed its opposition. (Da66-102).

The parties appeared for oral argument on July 22, 2024. *See* 1T.[1] As to the issue of service, the Lower Court correctly held that service was proper as follows:

[1] The transcript for the oral argument held on July 22, 2024 before the Hon. William Anklowitz, J.S.C., of the Mercer County Special Civil Cart shall hereinafter be referred to as "1T."

> The service by mail is permitted under Rule 6:2-3(d). In fact, the initial service has to be done by mail through the clerk's office under Rule 6:2-3(b)(1). Effective service is when the regular mail is not returned and the certified mail has either been claimed or is returned with a marking to indicate that service at the given address was good. The way the rule is written is to identify markings that show ineffective service, such as certified mail returned with a stamp that says that the addressee is not known under Rule 6:2-3(d)(4).
>
> So something affirmative is needed in terms of the certified mailing to show that the address was not a good address. Here, the issue of address was raised, actually, in the response brief by the plaintiff showing what address service was made at and is not a point of factual dispute here.
>
> The constitutionality of service by mail has been litigated. The service -- the process has set out in Rule 6:2-3(d), was upheld in the Appellate Division under New Jersey District Court Association v. New Jersey Supreme Court, 205 N.J. Super. 582 Law Division (1985), affirmed 208 N.J Super. 527 Appellate Division (1986).
>
> In this case, neither of the certified nor the regular mail were returned. That would be presumptive good service. The request for a default judgment said that the address for service was from plaintiff's business records, which is the rule that's required in Special Civil Part. The e-Courts records show that the summons complaint were mailed January 19, 2021, to defendant at 826 Greenwood Avenue, Trenton, New Jersey 08609. Defendant hasn't provided any evidence of address to rebut the presumption of good service.

See 1T16:16 – 1T17:25. The Court further held that based on the totality of the circumstances Appellant's conduct in untimely bringing the motion was inexcusable (*see* 1T18:22 – 1T20:18), and that Appellant failed to propose a meritorious defense, namely under the CFLA (*see* 1T20:19 – 1T23:20).

Appellant thereafter filed her Notice of Appeal, seeking to reverse the Decision of the Lower Court correctly denying the motion to vacate. (Pa 107-110).

Respondent now timely submits its Brief herein and request that this Court affirm the Lower Court's holding in its entirety.

STATEMENT OF FACTS

On or about March 10, 2017, Comenity Bank issued Appellant a credit card with an account number ending in 8211 (the "Account"). (Da70-71). Appellant was mailed, and accepted, the terms of the Cardholder Agreement. (Da71).

On or about October 28, 2018, Appellant defaulted on the Account by failing to pay amounts owed as they became due (the "Debt"). (Da71). On April 30, 2019, the Account and Debt were charged-off. *Id.*

Appellant never opted out of any of the terms and conditions of the Governing Cardholder Agreement. (Da71).

Thereafter, all right, title, and interest in the Account, Debt, and Cardholder Agreement were ultimately sold, assigned, and conveyed to Respondent (*i.e.*, LVNV, the current creditor) on May 15, 2019. (Da71). Appellant has never disputed the Debt incurred to the original creditor or her default. *Id.*

LEGAL ARGUMENT

I. STANDARD TO VACATE A DEFAULT JUDGMENT

Rule 4:50-1 permits a party to vacate a default judgment, as follows:

> On motion, with briefs, and upon such terms as are just, the court may relieve a party or the party's legal representative from a final judgment or order for the following reasons: (a) [M]istake, inadvertence, surprise, or excusable neglect; (b) newly discovered evidence which would probably alter the judgment or order and which by due diligence could not have been discovered in time to move for a new trial under *R.* 4:49; (c) fraud (whether heretofore denominated intrinsic or extrinsic), misrepresentation, or other misconduct of an adverse party; (d) the judgment or order is void; I the judgment or order has been satisfied, released or discharged, or a prior judgment or order upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment or order should have prospective application; or (f) any other reason justifying relief from the operation of the judgment or order.

See Rule 4:50-1.

In addition, *Rule* 4:50-2 mandates that, for all sections of 4:50-1, "[t]he motion shall be made within a ***reasonable time***." (emphasis added).

The Appellate Division "reviews a motion under Rule 4:50-1 to vacate final judgment under an abuse of discretion standard." *257-261 20th Ave. Realty, LLC v. Roberto*, 477 N.J. Super. 339, 366, 307 A.3d 19 (App. Div. 2023), *petition for certif. granted*, 256 N.J. 535, 310 A.3d 1255 (2024) (citing *U.S. Bank Nat'l Ass'n v. Guillaume*, 209 N.J. 449, 467, 38 A.3d 570 (2012)). "Although the ordinary abuse of discretion standard defies precise definition, it arises when a

decision is made without a rational explanation, inexplicably departed from established policies, or rested on an impermissible basis." *Flagg v. Essex Cnty. Prosecutor*, 171 N.J. 561, 571, 796 A.2d 182 (2002) (internal quotation marks omitted).

"The decision [as to] whether to vacate a judgment . . . is a determination left to the sound discretion of the trial court, guided by principles of equity." F.B. v. A.L.G., 176 N.J. 201, 207, 821 A.2d 1157 (2003). "The trial court's determination under [Rule 4:50-1] warrants substantial deference, and should not be reversed unless it results in a clear abuse of discretion." Guillaume, 209 N.J. at 467.

II. SERVICE OF PROCESS WAS PROPER AND EFFECTED UPON APPELLANT

Rule 6:2-3 (d) mandates that, in the Special Civil Part, service to initiate a lawsuit may be made by mail to a defendant within New Jersey. *Rule* 6:2-3 (d); *Unifund CCR Partners v. Beras,* 2011 N.J. Super. Unpub. LEXIS 717 (App. Div. Mar. 23, 2011) (service by mail was effective service of process). "Service to a defendant's home address is effective unless at least one of the mailings is returned by the postal service indicating that the mail could not be delivered as addressed." *Id.* (citing *Rule* 6:2-3 (d)(4)). "If the certified mailing is refused or unclaimed but the ordinary mailing is not returned, service is process is still

deemed effective." *Id.* "[T]the constitutional requirement of due process does not mandate perfect service. Rather, due process contemplates effective service." *Coryell, L.L.C. v. Curry*, 391 N.J. Super. 72, 81 (2006).

The Record confirms that the Lower Court did not abuse its discretion in holding that Appellant was served with process at the address stated on the Summons and to which Appellant admits to residing at. (Da54). Indeed, Appellant's allegation that service of process was not made on Appellant is rooted solely in a bare, general denial. (Da53-55).

The Special Civil Part's Case Jacket itself demonstrates that the Summons was mailed by the Court to the correct address because the Case Jacket specifically identifies the address as 826 Greenwood Ave., Trenton, NJ 08609. (Pa2 & Pa183). Specifically, per the Court's records, the Clerk of the Court, Special Civil Part, effectuated service upon Defendant on or about January 20, 2021 at the address of 826 Greenwood Ave., Trenton, NJ 08609. [Transaction ID SCP2021100601]. (Da73). There is no indication that the regular mail was returned or that the certified mail was not delivered, which it would have been if it had been, and the disposition of the certified mail is not available per the Court's electronic case jacket. *Id.* Further, Appellant's certification confirms the address on record with Pressler, and which was specifically included in the Summons, is correct. (Da54, Da73 & Pa183).

Thus, Appellant's allegations of lack of mailing are erroneous if not also frivolous as they are rebutted, not only by Pressler's certification, but also by the Lower Court's own records, and Appellant cannot rebut the presumption in favor of the Court's records confirming effective service.[2] Thus, the Lower Court did not abuse its discretion in holding that service was proper.

III. THE JUDGMENT IS NOT VOID PURSUANT TO RULE 4:50-1(d) and (f)

Rule 4:50-1(d) permits a party to vacate a default judgment if it is void.[3] But, pursuant to *Rule* 4:50-1 (d) the motion "shall be made within a reasonable time, . . . after the judgment, order or proceeding was entered or taken." *Rule* 4:50-2.

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[2] Regardless, Appellant failed to demonstrate any meritorious defense, and "[n]ot every defect in service of process constitutes a denial of due process qualifying defendant for relief from the [ ] judgment." *T.M.S. v. W.C.P.*, 450 N.J. Super. 499, 507 (App. Div. June 5, 2017) (quoting Pressler & Verniero, Current N.J. Court Rules, comment 5.4.2 on R. 4:50-1(d) (2017)).

[3] Appellant did not seek to move to vacate the Judgment pursuant to *Rule* 4:50-1(a) on the basis of excusable neglect. But, even if Defendant did move under these grounds, Defendant's Motion would be deemed untimely as the Motion was not made within one year of the Judgment. *Rule* 4:50-2 ("[t]he motion shall be made within a reasonable time, and for reasons (a), (b) and (c) of R. 4:50-1 not more than one year after the judgment, order or proceeding was entered or taken."); *Orner v. Liu,* 419 N.J. Super. 431, 437 (2011) (If the motion is made on the basis of excusable neglect, then it must be brought within one year after the judgment). And, even if it was timely, Appellant failed to establish excusable neglect, including a meritorious defense.

"Rule 4:50-1(f) has been described as a catch-all provision, and in '"exceptional cases its boundaries are as expansive as the need to achieve equity and justice."' *LVNV Funding LLC v. Diana*, 2025 N.J. Super. Unpub. LEXIS 615, at *6 (quoting *DEG, LLC v. Twp. of Fairfield*, 198 N.J. 242, 269-70, 966 A.2d 1036 (2009) (quoting *Ct. Inv. Co. v. Perillo*, 48 N.J. 334, 341, 225 A.2d 352 (1966))). But relief under Rule 4:50-1(f) is available only when "truly exceptional circumstances are present"" *Id.* (quoting *Hous. Auth. of Morristown v. Little*, 135 N.J. 274, 286, 639 A.2d 286 (1994) (quoting Baumann v. Marinaro, 95 N.J. 380, 395, 471 A.2d 395 (1984))). "Not only must the movant 'demonstrate the circumstances are exceptional' but also that 'enforcement of the judgment or order would be unjust, oppressive or inequitable.'" *Id.*, at *6-7 (quoting *Johnson v. Johnson*, 320 N.J. Super. 371, 378, 727 A.2d 473 (App. Div. 1999)). Significantly, like a motion made under *Rule* 4:50-1(d), a motion brought under *Rule* 4:50-1(f) must be "made within a reasonable time, …after the judgment, order or proceeding was entered or taken." *Rule* 4:50-2; *see also Diana*, *supra*, at *7.

Here (1) Appellant's Motion was untimely and (2) the Judgment is not void due to Respondent allegedly not having had a license as a consumer lender at the time the Action was commenced.

A. Appellant's Motion was Untimely

A motion to vacate a default judgment must be "made within a reasonable time." *Citibank, N.A. v. Russo*, 334 N.J. Super. 346 (2000). Even if the motion to vacate is made on the basis that the judgment is void, it still must be brought within a reasonable time under the circumstances. *Orner v. Liu,* 419 N.J. Super. 431, 437 (2011) (denying motion to vacate an allegedly void judgment as untimely). Indeed, courts must deny a motion to vacate even where a defendant alleges it was not served with the underlying pleadings, if the motion is not brought within a reasonable time. *Russo,* 334 N.J. Super. At 353 (denying defendant's motion to vacate the default judgment as not made within a reasonable time because the motion was made six years after the entry of the default judgment and the record indicates that defendant was aware of the action and the judgment entered against him); *Garza v. Paone,* 44 N.J. Super. 553, 557-559 (1957) ("the mere fact that the judgment may be regarded as void for lack of personal jurisdiction will not automatically authorize a court to relieve a party from its operation on motion. He must make his motion within a reasonable time"); *Sobel v. Long Island Entertainment Productions, Inc.,* 329 N.J. Super. 285, 293-94, 747 A.2d 796 (App. Div. 2000) (holding where defendant had notice of judgment, equitable considerations precluded relief from a void judgment because defendant did not act within a reasonable time).

Further, the Appellate Division has rejected a near identical motion brought by identical counsel seeking to vacate a judgment on the same grounds as is sought here by Appellant. *See LVNV Funding LLC v. Diana*, 2025 N.J. Super. Unpub. LEXIS 615 (App. Div. Apr. 17, 2025) (holding absent a showing of factual circumstances establishing the delay in moving to vacate was reasonable, we see no basis to disturb the trial court's order); *Asset Acceptance, LLC v. Toft,* 2024 N.J. Super. Unpub. LEXIS 820 (App Div. May 8, 2024) (Pa4-7).

This Court, just last month, rejected an appellant debtor's identical arguments under *Rules* 4:50-1(d) and (f) , involving identical counsel for both Appellant and Respondent, and involving the same debt buyer on near-identical facts. *See LVNV Funding LLC v. Diana*, 2025 N.J. Super. Unpub. LEXIS 615 (App. Div. Apr. 17, 2025). In *Diana*, on or about May 7, 2015, Credit One Bank, N.A issued an open-end credit card to defendant along with a card agreement, mailed to his address in Saddle Brook, New Jersey. *See id.*, at *1. A change in terms notice was sent to defendant at the same address in November 2015, which was not returned as undeliverable. *Id.* Defendant used the credit card to make purchases, accepting the agreement and modified terms, and Defendant's last payment of the monthly billing statement mailed to his address in Saddle Brook was in November 2015. *Id.* The outstanding balance was charged off for non-

payment on June 15, 2016. *See id.*, at *1-2. Thereafter, the rights to defendant's credit account, along with others, were transferred to various successors with plaintiff ultimately owning the debt. *See id.*, at *2. Defendant never advised Credit One, or any successor entity, of any change in address. *Id.*

Plaintiff attempted to resolve the outstanding credit card debt with defendant by sending correspondence by regular mail to defendant in Saddle Brook, after confirming the address through the United States Post Office, National Change of Address database. *Id.* When defendant did not respond, plaintiff filed a collection action against defendant in the Special Civil Part on January 3, 2017. *Id.* The court effectuated service of process on defendant pursuant to Rule 6:2-3 by certified and regular mail to the Saddle Brook address. *Id.* The court's record of service from the United States Postal Service establishes the certified mail was signed for by a family member and the regular mail was not returned to the court as undeliverable. *Id.* When defendant did not answer or otherwise appear, the court entered default. *Id.*

On or about April 11, 2017, plaintiff moved for final default judgment, serving defendant with the motion by certified and regular mail at the same Saddle Brook address. *See id.*, at *2-3. Defendant did not oppose the motion or otherwise respond. *See id.*, at *3. On April 20, 2017, the trial court entered default judgment against Defendant. *Id.* Plaintiff served defendant with the

judgment by regular and electronic mail, but received no responsive communication from defendant. *Id.*

Over six years later, defendant filed a motion to vacate the final judgment and entry of default on June 7, 2023, which plaintiff opposed. Defendant's motion was denied without prejudice subject to refiling due to a pending motion on a related Law Division complaint. *Id.* Thus, Defendant refiled the motion to vacate on January 3, 2024. *Id.* After considering oral argument, the trial court conducted a plenary hearing to determine whether defendant moved to vacate within a reasonable time of discovering the judgment against him and whether defendant was barred by laches. *Id.* The trial court stated that if it were to find defendant's motion was filed within a reasonable time, then it would proceed to address defendant's asserted meritorious defenses. *Id.*

During the plenary hearing, defendant testified that in April 2016 he moved within Pennsylvania from Scranton to Clarks Summit. He first discovered this collection action against him in 2019 when he received a letter from his attorney asking if he had any dealings with LVNV. *See id.*, at *3-4. Defendant admitted to living in his family's house in Saddle Brook, without specifying when. *See id.*, at *4. He testified his workers' compensation checks still get sent "to [his] house" in Saddle Brook. *Id.* Defendant could not produce

a current tax return to evidence his address, positing his income does not exceed the required tax filing threshold. *Id.*

In considering those facts, this Court affirmed the lower court's denial of the debtor's motion to vacate the default, held that the motion was untimely, and specifically reasoned as follows:

> Applying well-established principles to this matter, we are satisfied the trial court did not abuse its discretion in concluding defendant's motion was not filed within a reasonable time after entry of the final default judgment. Defendant's motion to vacate was filed over six years after final default judgment was entered, and four years after defendant's admitted knowledge of the judgment. Defendant does not explain why he failed to answer or otherwise defend this case—until he moved to vacate the final default judgment in 2023, around the same time that the statute of limitations expired—other than suggesting it was a strategic response. Absent a showing of factual circumstances establishing the delay in moving to vacate was reasonable, we see no basis to disturb the trial court's order.

Id., at *8.

Likewise in *Toft*, the original collection lawsuit was filed by the plaintiff in 2013. (Pa4). The defendant was served with the complaint, but never responded. *Id.* A default judgment was entered against the defendant. *Id.* The plaintiff then obtained a wage execution. *Id.* Things laid dormant for six years until the defendant filed a class action against the plaintiff, claiming the plaintiff engaged in debt collection activity without obtaining the proper license to do so

in New Jersey. (Pa4-5). The case ended up before the Appellate Division and it affirmed the dismissal of the class action because the individual could have challenged the alleged infraction during the collection lawsuit. *Id.* The defendant then filed a motion to vacate the default judgment and wage execution. (Pa5). That was denied because the motion was not filed within a reasonable time, which the defendant appealed. (Pa5-6). On appeal, the defendant cited two cases involving whether collectors had the proper licenses to collect in the state and decisions that vacated default judgments, but those cases were different, the Appeals Court noted, because in this situation, the defendant had filed a lawsuit of her own. *Id.* The Appellate Division specifically noted that "[t]he class action filing reveals she knew, at least as of 2019, about the CFLA claim, which she now reasserts to vacate the December 2013 judgment" and "[y]et, [defendant] fails to explain why she let four years expire after the class action was dismissed to move to vacate the default judgment." (Pa6).

Thus, the Appellate Division affirmed the denial of the defendant's untimely motion. (Pa6). This was again re-affirmed by the Appellant Division in *NAR Inc. v. Ritter*, where the Court held that failure to provide reason for the delay in moving barred Defendant from vacating the Judgment. 2024 N.J. Super. Unpub. LEXIS 1313, at *6 (App. Div. June 24, 2024) (Pa197).

Similarly, in *Garza,* the Appellate Division held that where the motion to vacate on the basis of lack of personal jurisdiction was made four years after entry of the judgment, and where the motion to vacate was only made because he needed to restore his motor vehicle license that was suspended because of his failure to satisfy the judgment, the motion was untimely and denied. 44 N.J. Super. at 557-559. Specifically, the Court held: "[w]e are satisfied that defendant has deliberately waited for years to apply for relief against a long-known void judgment simply because it was not convenient for him to do so earlier, and that only the pinch of the need for a driving license has at last brought him to court. These are not circumstances of the kind which the rule of court envisages as an equitable basis for relief 'within a reasonable time.'" *Id.* Moreover, where the defendant challenges service, the right to attack a judgment on jurisdictional issues may be waived if not brought within a reasonable time. *Bascom Corp. v. Chase Manhattan Bank*, 363 N.J. Super. 334 (2003) (denying the motion to vacate pursuant to *Rule* 4:50-1 because the motion was not made within a reasonable time and did not establish excusable neglect, even where the challenge was based on jurisdiction); *Wohlegmuth v. 560 Ocean Club,* 302 N.J. Super. 306, 312 (1997); *Berger v. Paterson Veterans Taxi Serv.,* 244 N.J. Super. 200, 204 (1990).

Here, the Record is almost identical to *Toft* and *Diana.* First, the Judgment was obtained on March 17, 2021, and notice of the Judgment was sent to Appellant on March 23, 2021. (Da73). Appellant received notice of the Judgment repeatedly over the three-year period following entry of the Judgment, including by notice sent to Appellant's employer in addition to several notices for requests for execution. *Id.* The *only* difference between the instant facts and *Toft* is that, rather than commencing a baseless class action suit, Appellant instead filed an untimely motion here almost three and a half years after the entry of the Judgment and after notice of the judgment was mailed to his residence address. *Id.* Thus, it is respectfully submitted that this Court's analysis should follow the analysis set forth in *Toft* and *Garza* and affirm the Lower Court's denial of Appellant's motion as not having been made within a reasonable time.

B. Appellant's Motion was Barred by Laches

Where a defendant fails to promptly file the motion to vacate a default, while allowing an extensive period of time to pass, there is severe prejudice to the plaintiff and the defendant is barred by latches. *RP Leasing Assocs. V. Kennedy,* 2010 N.J. Super. Unpub. LEXIS 1858, at *13 (App. Div. Aug. 3, 2010) ("plaintiff would be severely prejudiced if the default judgment was vacated. The judge reasoned that 'to vacate [the j]udgment would do [a] grave injustice .

. . . Now some five or six years later[,] to reconstruct the [d]efault would be almost impossible . . . Moreover, plaintiff spent at least six years diligently attempting to collect the amount of the judgment.") (Pa214); *Mauro v. Mauro*, 2014 N.J. Super. Unpub. LEXIS 1437 (App. Div. June 18, 2014) (denying motion to vacate default because plaintiff will suffer prejudice) (Pa192-194); *LaMarca v. Caffrey*, 2009 N.J. Super. Unpub. LEXIS 3241, at *6 (Sup. Ct., Law Div., Hunterdon Cty. Nov. 20, 2009) ("Furthermore, unlike other cases the defendants acted promptly to vacate the entry of default. Default was entered approximately a month and a half before the return date of the defendant's motion. This does not represent an extensive period of time which would cause the plaintiff prejudice.") (Pa10).

New Jersey trial courts have routinely held in almost identical fact patterns involving identical counsel that, where a plaintiff knew of a judgment and did not move to vacate until its other strategic decisions failed, it "does not alleviate the employment by this Court of the equitable doctrine of laches." *See LVNV Funding v. Scott Diana* Docket No. DC 57-17 April, 8, 2024 at (Pa.174); *see also New Century Financial Services, Inc. vs. Ivette Cordero*, Docket No. UNN-Dc-6974-10, April 7, 2025 (Pa200-209). In the *Diana* matter, the plaintiff became aware of the matter in 2019, four years prior to making its motion to vacate but instead chose to bring an affirmative class action. The *Diana* court

therefore held that to allow a party to make a strategic decision to bring this motion is unjust to the plaintiff and does not pass the standard set forth in *R.* 4:50-1. (Pa177-179); (Pa11-65) re: *LVNV Funding LLC v. Caroline Costello*, Docket No. BER-DC-12389-12 (Sup. Ct., Bergen Cty.) (May 24, 2024) (denying motion to vacate for the reasons stated on the record which were identical to those of *Diana*, namely that the debtor could not strategically delay the bringing of her motion to vacate the judgment, and thus she was barred by laches).

Despite the notice of the default judgment mailed to Appellant at the latest on March 23, 2021, she waited nearly three and half years to file the current motion. (Da76). Thus, unlike *LaMarca*, but identical to the *Diana* and *Costello* court's holding, Appellant failed to act promptly to vacate the entry of the Judgment and her delay precludes his motion and most certainly causes Respondent severe prejudice.

C. Appellant Is Barred from Raising Claims as to the Collection Action's Validity

The Judgment is not void due to Appellant's alleged NJCFLA affirmative defense because the claim is barred by the doctrines of *res judicata* and collateral estoppel.

Where a defendant argues, in a motion to vacate a default judgment, that the transfer of the debt is void, and that plaintiff failed to establish proof of

assignment and violated federal laws, these arguments address the sufficiency of plaintiff's complaint or defendant's potential defenses to the claim and must have been raised in a timely in an answer to the complaint and not in defense of a motion to vacate the default judgment. *See Unifund CCR Partners v. Beras,* 2011 N.J. Super. Unpub. LEXIS 717, at *11 (App. Div March 23, 2011) (denying a motion to vacate a default judgment where defendant challenged the sufficiency of the judgment on the basis that the Court lacks personal jurisdiction and that plaintiff failed to establish proof of assignment and violated provisions of federal debt collection laws) (Pa219).

Here, Appellant's arguments and potential defenses to Plaintiff's Action regarding LVNV's sufficiency of its standing were required to be raised in a timely answer to the Complaint, and not in the present Motion to Vacate. Regardless, Appellant's claims lack merit.

D. Appellant's Arguments as to the NJCFLA Lack Merit

Regardless, Appellant's arguments for vacatur were rejected because: (i) Appellant lacks standing to assert a claim under the NJCFLA and (ii) the Debt was not void at the time LVNV acquired it.

1. There is no private right of action under the NJCFLA

Since the Lower Court's determination of Appellant's motion, this Court had held that no private right of action exists under the NJCFLA, and that only

the Commissioner of Banking may enforce the statute. In *Francavilla v. Absolute Resols. VI LLC*, the Appellate Division held that (1) there is no private right of action under the CFLA and (2) only the Commissioner of the Department of Banking and Insurance has the exclusive authority to enforce the statute.[4] 478 N.J. Super. 171, 180 (App. Div 2024). Specifically, the Appellate Division compared the New Jersey statute to a Maryland licensing statute and determined that "[t]he [Maryland Consumer Debt Collection Act] [] contains a private right of action, while New Jersey's CFLA does not." *Id.* (citing Md. Code. Ann., Com. Law §14-203; N.J.S.A. 17:11C-1 to -49).

This precedent follows from the fact that nowhere in the CFLA is there *any* authorization, either explicit or implicit, for a private right of action. *See* N.J.S.A. § 17:11C-1, *et seq.* Instead, throughout the statute, the only person identified as having any power or right to enforce the CFLA is the Commissioner of the Department of Banking and Insurance. *Id.* For example, N.J.S.A. § 17:11C-18 gives the Commissioner authority relating to issuance, revocation,

[4] Identical counsel for Appellant here filed a petition for certification of the judgment in *Francavilla*, and said petition was denied. Respondent does note and recognize that, on April 8, 2025, the New Jersey Supreme Court granted a petition for certification, in *Scott Diana v. LVNV Funding, LLC, et al.*, Docket No. A-001000-23, limited to whether the CFLA provides a private right of action.

and oversight of licenses, and their related enforcement. *See* N.J.S.A. § 17:11C-18. There, subsection h specifically provides:

> Whenever it appears to the commissioner that any person has engaged, is engaging, or is about to engage, in any practice or transaction prohibited by the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), the commissioner may, in addition to any other remedy available, bring a summary action in a court of competent jurisdiction against the person, and any other person concerned or in any way participating in or about to participate in a practice or transaction in violation of the "New Jersey Consumer Finance Licensing Act," sections 1 through 49 of P.L.1996, c.157 (C.17:11C-1 et seq.), to enjoin the person from continuing the practice or transaction engaged , or from engaging in the practice or transaction, or doing any act in furtherance of engaging in the practice or transaction.

See N.J.S.A. § 17:11C-18(h).

Similarly, N.J.S.A. § 17:11C-84 gives investigatory power to the Commissioner, N.J.S.A. § 17:11C-89 gives rule making and regulatory power to the Commissioner consistent with the Administrative Procedure Act, and N.J.S.A. § 17:11C-70 provides the Commissioner with authority relative to the issuance of licenses. *See* N.J.S.A. §§ 17:11C-84, 17:11C-89, and 17:11C-70. There is not a single provision within the CFLA suggesting any individual party may invoke the CFLA or otherwise seek a private right of action under the CFLA. *See* N.J.S.A. § 17:11C-1, *et seq.* If the Legislature wanted to provide for such a mechanism, it would have done so as it very well knows how to do so, as

is evidenced by the CFA. *Compare* N.J.S.A. § 17:11C-1, *et seq.*, *with* N.J.S.A. § 56:8-1, *et seq.*

Indeed, in contrast to the CFLA's plain language, the CFA's plain language specifically contemplates and provides for a private right of action:

> The Superior Court and every municipal court shall have jurisdiction of proceedings for the collection and enforcement of a penalty imposed because of the violation, within the territorial jurisdiction of the court, of any provision of the act to which this act is a supplement. Except as otherwise provided in this act the penalty shall be collected and enforced in a summary proceeding pursuant to "the penalty enforcement law" (N.J.S. 2A:58-1 et seq.). Process shall be either in the nature of a summons or warrant and shall issue in the name of the State, upon the complaint of the Attorney General ***or any other person.***

See N.J.S.A. § 56:8-14 (emphasis added). By including "or any other person," the Legislature provided a private right of action under the Consumer Fraud Act. *Id.* If the Legislature wanted to provide for a CFLA private right of action, it could have readily and easily done so by allowing enforcement actions by the Commissioner "or any other person." *See DiProspero v. Penn,* 183 N.J. 477, 495 (2005) (recognizing the use of the cannon of *expressio unius est exclusio alterius*, meaning that the inclusion of one thing suggests the exclusion of that which is left unmentioned). Because the Legislature included only the Commissioner and not "any other person," there is no private right of action by the plain language of the CFLA.

Even setting aside this Court's published *Francavilla* decision, the holding is consistent with principles of statutory interpretation set forth by the New Jersey Supreme Court. *See In re Resolution of State Com. of Investigation*, 108 N.J. 35 (1987) (adopting and applying United States Supreme Court test for federal rights of action set forth in *Cort v. Ash*, 422 U.S. 66 (1975)). There, the New Jersey Supreme Court was directed to evaluate whether a statute provided for an implicit private right of action where it clearly did not expressly provide for a private right of action. *See id.* at 40-41. The New Jersey Supreme Court evaluated "whether the plaintiff is 'one of the class for whose *especial* benefit the statute was enacted,' [. . .] whether there is any evidence that the Legislature intended to create a private cause of action under the statute [. . .]; and whether implication of a private cause of action in this case would be 'consistent with the underlying purposes of the legislative scheme.'" *See id.* at 41 (internal citations omitted) (emphasis original).

Here, consistent with the *Francavilla* holding and the principles set forth in *In re Resolution*, it is respectfully submitted that (1) Appellant cannot demonstrate that she is a member of some especial class intended to be protected under the CFLA, (2) there is no evidence, including by the plain language of the statute, that the Legislature intended to create a private right of action under the CFLA, and (3) a private right of action would be inconsistent with the CFLA's

statutory scheme which exclusively and explicitly allows for enforcement of the statute by the Commissioner of the Department of Banking and Insurance. And it is notable that, where a private right of action does not exist, a party may not seek an end-around this lack of private right via declaratory relief. *See Matter of State Comm'n of Investigation*, 108 N.J. 35, 46 (1987) (affirming lower court's dismissal of declaratory judgment where the plaintiffs did not have private cause of action for injunctive relief under statute).

2. The purchase of a debt without a license does not result in the debt being void ab initio

This Court and trial courts, such as in *LVNV Funding v. Scott Diana* Docket No. DC 57-17, on facts near identical to those here, have repeatedly held, [t]he Court agreed that with the defendants, right, that the N.J.C.F.L.A. does not confer private statutory case of action. (Pa110). And the Court further held that, to the extent Defendant seeks to assert this solely as an affirmative defense, nothing in N.J.S.A. 17:11C-33 (b) states the purchase of debt without a license does not automatically bar the assignment of the debts, or mean that the debts are automatically void. (Pa146-147 & Pa150-151).[5] In fact, there is simply no

[5] N.J.S.A. 17:11C-33 (b) ("A contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section, shall be void and the lender shall have no right to collect or receive any principal, interest or charges ...")

caselaw, including from this Court, holding that the mere acquisition by an unlicensed entity of a debt, without taking any collection action or otherwise communicating with a debtor, is void as a matter of law. *Maisano v. LVNV Funding LLC,* 2019 N.J. Super. Unpub. LEXIS 2421, at * 6-7 (App. Div Nov. 27, 2019) (rejecting argument that underlying credit agreement was voided at the time of transfer because the LVNV was not licensed) (Pa190). Because the intermediate assignees did not make the underlying loan or seek to collect on the debt, N.J.S.A. 17:11C-33 simply does not apply.

CONCLUSION

For all the foregoing reasons, Respondent respectfully requests that this honorable Court affirm the Lower Court's denial of Appellant's motion in its entirety.

Respectfully submitted,

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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

❖ ❖ ❖

Docket No. A-000048-24

LVNV FUNDING LLC,	:	**CIVIL ACTION**
Plaintiff-Respondent,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION: SPECIAL CIVIL PART, MERCER COUNTY
v.	:	
MIATTA KABA,	:	
Defendant-Appellant.	:	Trial Court Docket No. MER-DC-218-21
	:	Sat Below: HON. WILLIAM ANKLOWITZ, J.S.C.
	:	DATE: July 18, 2025

REPLY BRIEF ON BEHALF OF DEFENDANT-APPELLANT

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PRELIMINARY STATEMENT

Defendant-Appellant Miatta Kaba ("Kaba") respectfully submits her Reply to the Brief filed by Plaintiff-Respondent LVNV Funding LLC ("LVNV").

REPLY ARGUMENT

POINT I. THE EVIDENCE ON RECORD SHOWS THAT SERVICE OF PROCESS WAS DEFECTIVE AND THAT THE DEFAULT JUDGMENT IS VOID

The language of *R.* 6:2-3(d)(1) is clear—service by mail is only effective where the summons and complaint were "simultaneously mail[ed] . . . by both certified and ordinary mail." Here, notwithstanding Kaba's Certification as to never having received the Summons and Complaint, the record before the Court shows that the certified mailing was never sent. The USPS tracking information accessible from the trial court docket on eCourts shows that the Summons and Complaint were not received by USPS and the package was not entered into the USPS system. (Da62).

"The requirements of the rules with respect to service of process . . . must be strictly complied with. Any defects . . . are fatal and leave the court without jurisdiction and its judgment void." *Berger v. Paterson Veterans Taxi Serv.*, 244 N.J. Super. 200, 204 (App. Div. 1990) (quoting *Driscoll v. Burlington-Bristol Bridge Co.*, 8 N.J. 433, 493 (1952) (internal

quotation marks omitted)). Keeping in mind that "the opening of default judgments should be viewed with great liberality, and every reasonable ground for indulgence is tolerated,"[1] the trial court's findings were "manifestly unsupported by or inconsistent with the competent, relevant and reasonably credible evidence."[2] In reviewing the evidence presented, the trial court reasoned that "markings from the post office are not reliable." July 22, 2024 Order at 2 (Da104) (citing *Ravenscroft Homeowners Ass'n, Inc. v. Derroisne*, 473 N.J. Super. 278, 281-82 (Super. Ct. 2021)). However, it is axiomatic that post office markings are presumptively reliable, especially as to service by mail under *R.* 6:2-3(d). *See Morristown Mem'l Hosp. v. Caldwell*, 340 N.J. Super. 562, 570 (App. Div. 2001) ("Our Supreme Court recognized that the postal service was sufficiently reliable even for service of original process filed in the Special Civil Part when, in January 1987, it permitted the establishment of a county by county service by mail program, at the discretion of the Assignment Judge, in which the court clerk simultaneously mails the summons and complaint by both certified and regular mail."). *Ravenscroft*

[1] *Marder v. Realty Constr. Co.*, 84 N.J. Super. 313, 319 (App. Div. 1964) (citing *Foster v. New Albany Machine & Tool Co.*, 63 N.J. Super. 262 (App. Div. 1960)).
[2] *See LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 108 (App. Div. 2020) (quoting *Rova Farms Resort, Inc. v. Inv'rs Ins. Co.*, 65 N.J. 474, 484 (1974) (internal quotation marks omitted)).

Homeowners Ass'n, cited by the trial court, explained that USPS electronic tracking information "is a service provided by the post office" that, like USPS markings on paper mail, is governed by the United States Domestic Mail Manual ("DMM"). *Ravenscroft Homeowners Ass'n*, 473 N.J. Super. at 281-82. *Ravenscroft* further explained that while USPS electronic tracking information in the form of "event codes" are "loosely defined in USPS publications," "the mail piece markings are clearly defined in the DMM." *Id.* at 283. *Ravenscroft* went on to say that electronic event codes are consistent with mail piece markings. *Ibid. Ravenscroft* did not reason that 'markings from the post office are not reliable,' as stated by the trial court.

The presumption of effective service of process can only be established where there is compliance with the Court Rules and, in the case of service by mail, where the mailings are actually sent. As explained in Kaba's opening Brief, by requiring Kaba to show that a mailing, which was never sent, was later returned to the court, the trial court placed Kaba in a logically impossible position. The trial court's reasoning was therefore unsupported by the competent evidence on record and inconsistent with the liberal approach to vacatur of default judgments demanded by *Marder* and *Foster*. Therefore, the trial court abused its discretion.

In its Brief, LVNV argues that "[t]here is no indication that the regular

mail was returned or that the certified mail was not delivered, which it would have been if it had been, and the disposition of the certified mail is not available per the Court's electronic case jacket. LVNV's Br. at 11. However, LVNV's argument ignores the evidence on record. There is a verifiable indication that that the certified mail was not sent/delivered, and by LVNV's own logic, that indication would not be available if the certified mailing was actually sent. The analysis should end there; parsing whether the regular mailing was correctly addressed is simply a red herring. The electronic tracking information shows the certified mail was not sent and thusly that service of process in this case failed to comply with the Court Rules. Despite the foregoing, LVNV continues to assert that the presumption of effective service has been established, arguing that "[Kaba]'s allegations of lack of mailing are erroneous . . . as they are rebutted . . . by Pressler's certification [and] by the Lower Court's own records." LVNV's Br. at 12. However, as explained above, the trial court's records do not indicate that the certified mail was sent, as argued by LVNV. Moreover, the Certification offered by LVNV's prior counsel (Pressler, Felt & Warshaw, LLP) in Opposition to Kaba's Motion to Vacate and Dismiss does not rebut Kaba's assertions as to the certified mailing. In fact, Pressler's Certification states that "[t]he regular mail was seemingly not returned and the disposition of the certified mail is not available

per the Court's electronic case jacket." Valenzano Cert. ¶ 5 (Da73). Thus, LVNV represented to the trial court only that the regular was "seemingly not returned" *and that it has no record of the certified mail ever being sent or delivered*. Thus, LVNV has neither established the presumption of effective service not rebutted Kaba's corroborated factual assertions.

LVNV next argues that, aside from fatal defects in service of process, "[Kaba] failed to demonstrate any meritorious defense." LVNV's Br. at 12, n.2. However, LVNV's argument ignores that "[i]f defective service renders the judgment void, a meritorious defense is not required to vacate the judgment under *R.* 4:50-1(d)." *Jameson v. Great Atl. & Pac. Tea Co.*, 363 N.J. Super. 419, 425 (App. Div. 2003). Thus, Kaba is not required to show a meritorious defense, though, as explained in more detail in Point IV below, Kaba has asserted defenses.

LVNV next argues that Kaba's Motion is untimely because it was brought three years after the entry of default judgment. *See* LVNV's Br. at 14-18. It is unclear why LVNV relies primarily on unpublished, non-binding cases that all address default judgments that were **more than twice as old as the one at issue here**.[3] Further, LVNV's argument forgets that this Court "ha[s]

[3] LVNV argues that "[h]ere, the [r]ecord is almost identical to *Toft* and *Diana*." LVNV's Br. at 20. However, a review of those unpublished cases

explained that a reasonable time is determined based upon the totality of the circumstances." *Romero v. Gold Star Distribution, LLC*, 468 N.J. Super. 274, 296 (App. Div. 2021). The Court has further explained that while "motions under subsections (d), (e) and (f) must be brought within a 'reasonable time,' [that] could be more or less than one year after the judgment, depending on the circumstances." *Ibid.* (citing *Garza v. Paone*, 44 N.J. Super. 553, 557-58 (App. Div. 1957)). Here, the record shows that Kaba became aware of the default judgment and the action against her in February of 2024.[4] Kaba then sought to retain counsel and moved to vacate; Kaba's Motion was filed five months later in July of 2024. Considering the totality of circumstances present here, the aforementioned five-month interim should not be fatal to Kaba's Motion when considering the liberal standard under which the Motion was to be adjudicated. Thus, the trial court's Order denying Kaba's Motion to Vacate Default Judgment should be reversed.

indicates that, aside from the record showing the certified mailings to have been delivered, the default judgments were ten-years old and nearly seven-years old, respectively—more than twice the age of the default judgment at issue here.

[4] *See* Kaba Cert. ¶¶ 7-8 (Da54); *see also* July 22, 2024 Order at 2-3 (Da104).

POINT II. LVNV'S ARGUMENT AS TO THE DOCTRINE OF LACHES IS OUTSIDE THE SCOPE OF THIS APPEAL AND SHOULD NOT BE CONSIDERED BY THE COURT

LVNV next argues, relying entirely on unpublished and distinguishable cases, that Kaba's Motion *should have been* denied based on the doctrine of laches. However, laches is an equitable doctrine which requires a showing of two elements: inexcusable delay and prejudice to the non-moving party. *See Allstate Ins. Co. v. Howard Sav. Institution*, 127 N.J. Super. 479, 489 (Ch. Div. 1974); *see also Knorr v. Smeal*, 178 N.J. 169, 180-81 (2003). As explained above, there was no inexcusable delay here. But more importantly, LVNV's argument as to laches is outside the scope of this appeal and should not be considered by the Court. The trial court's Order did not mention laches as a basis for denial of Kaba's Motion or otherwise. LVNV did not file a notice of cross appeal to argue that the trial court abused its discretion in failing to apply the doctrine of laches. Thus, in effect, LVNV is improperly arguing for a de novo review of the trial court's Order. Therefore, LVNV's arguments as to laches should not be considered by the Court.

POINT III. KABA IS NOT BARRED FROM ASSERTING MERITORIOUS DEFENSES IN A MOTION TO VACATE UNDER RULE 4:50-1

As a threshold issue, LVNV's argument that Kaba is barred from attacking the validity of the debt at issue is, like LVNV's argument as to the doctrine of laches, outside the scope of this appeal. Out of an abundance of

caution, Kaba responds to LVNV's arguments; however, LVNV's arguments should not be considered by the Court.

With the foregoing in mind, LVNV next relies on a single unpublished decision to argue that Kaba cannot assert any meritorious defenses that go to the validity of the debt at issue because Kaba did not timely respond to the Complaint. *See* LVNV's Br. at 23-24. Putting aside that LVNV's argument seems to be limited to "federal laws" and Kaba's affirmative defense is related to a violation of state law, LVNV's argument is wholly inconsistent with binding authorities. As a threshold matter, *R.* 4:50-1(a) requires a showing of a meritorious defense; *R.* 4:50-1(d) and (f), the subsections under which Kaba moved, do not. Any affirmative defense that can be asserted in an answer can also be asserted as a meritorious defense under *R.* 4:50-1(a). That being said, this Court has explained that violations of federal law can certainly be asserted as a basis for a *R.* 4:50-1(f) motion. *See LVNV Funding, LLC v. DeAngelo*, 464 N.J. Super. 103, 110 (App. Div. 2020) (where the Court affirmed a trial court's grant of a motion under *R.* 4:50-1(f) and vacated an eight-year-old default judgment because plaintiff LVNV—the same Plaintiff here—filed a collection lawsuit on a time-barred debt in violation of the federal Fair Debt Collection Practices Act, 15 U.S.C. §§ 1692 to 1692p). LVNV's arguments do not withstand minimal scrutiny.

POINT IV. THE PRIVATE RIGHT OF ACTION UNDER THE NJCFLA IS IMMATERIAL TO THE ASSERTION OF DEFENSE

Kaba first notes that the New Jersey Supreme Court has recently granted petition for certification "limited to whether the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to - 49, provides a private right of action." *Diana v. LVNV Funding LLC*, 332 A.3d 1137 (N.J. 2025). Thus, it is reasonable to infer that if our Supreme Court considered the matter settled and/or in line with existing precedent, the Petition for Certification in *Diana* would likely not have been granted.

As explained Kaba's opening Brief, Kaba has asserted that LVNV and the entities preceding LVNV in the alleged chain of assignment of Kaba's alleged account were not licensed under the New Jersey Consumer Finance Licensing Act ("NJCFLA"), N.J.S.A. 17:11C-1 to -49, to legally take possession of Kaba's account. Kaba has alleged that the aforementioned violations of N.J.S.A. 17:11C-3 triggered the provisions of N.J.S.A. 17:11C-33(b), which rendered the contract governing the account void. Of note, Kaba is not claiming a right of action and, instead, is pointing to LVNV's lack of a legal right as a defense to the collection action and a basis to vacate the default judgment under *R.* 4:50-1(f). However, should the Court determine that the private right of action under the NJCFLA is relevant to Kaba's Motion to Vacate, then the conclusion that follows must be that the trial court failed to

undergo the required three-part test[5] adopted by our Supreme Court which determines whether a statute provides for an implied private right of action. *See R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co.*, 168 N.J. 255, 272-73 (2001) (citing *Cort v. Ash*, 422 U.S. 66, 78 (1975); *In re Resolution of State Com. of Investigation*, 108 N.J. 35, 41 (1987); *Jalowiecki v. Leuc*, 182 N.J. Super. 22, 30 (App. Div. 1981)). Further, Kaba has asserted that the New Jersey Supreme Court has previously explained that N.J.S.A. 17:11C-33(b) confers a private right of action upon aggrieved consumers, that when the Licensed Lenders Act ("LLA") subsumed the earlier Consumer Loan Act, the ability of a consumer to seek treble damages was added to the previously-existing ability to void an unlawful contract, and that the text of N.J.S.A. 17:11C-33(b) remained exactly the same during the amendments to the LLA, when the name was changed to the NJCFLA. *See Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 262 n.1 (1997); *see also* N.J.S.A. 17:11C-1.

LVNV's argument that the NJCFLA does not provide for an express or implied private right of action by citing the "CFLA's plain language"

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[5] "To determine if a statute confers an implied private right of action, courts consider whether: (1) plaintiff is a member of the class for whose special benefit the statute was enacted; (2) there is any evidence that the Legislature intended to create a private right of action under the statute; and (3) it is consistent with the underlying purposes of the legislative scheme to infer the existence of such a remedy." *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 272.

mischaracterizes the nature of an *implied* private right of action. *See* LVNV's Br. at 26-27. That being said, with respect to the first factor of the *In re Resolution*/*Cort* test—whether Kaba is a member of a class of persons for whose special benefit the statute was enacted—LVNV argues that "Appellant cannot demonstrate that she is a member of some especial class intended to be protected under the CFLA." LVNV's Br. at 28. Putting aside that LVNV fails to address any of the factors/provisions explained on pp. 18-19 of Kaba's opening Brief, it is indisputable that the NJCFLA, a remedial consumer protection statute, creates rights and protections for consumers who have been extended loans or credit, such as Kaba. The NJCFLA was enacted with the express purpose of protecting consumers by curbing deceptive practices in the consumer credit industry. LVNV's argument that there must be some other "especial class" that LVNV wholly fails to describe is without merit.

LVNV next argues that "[i]n *Francavilla v. Absolute Resols. VI LLC*, the Appellate Division held in a published decision that (1) there is no private right of action under the CFLA and (2) only the Commissioner of the Department of Banking and Insurance has the exclusive authority to enforce the statute." LVNV's Br. at 25 (citing *Francavilla v. Absolute Resolutions VI, LLC*, 478 N.J. Super. 171, 180 (App. Div. 2024)). However, the single line in *Francavilla* that references the private right of action under the NJCFLA

cannot reasonably be considered the holding of the case, as asserted by LVNV. It is axiomatic that a single line without any supporting analysis or reasoning, which does not go to the issue then being decided, is correctly classified as dicta, or in this case, dictum. A "Holding as Ruling on a Matter of Law" is defined as "[t]he controlling rule or principle in a judicial opinion. The holding of an opinion is the statement of the rule or principle of law that is most essential to the mandate of the case." *Holding as Ruling on a Matter of Law*, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY DESK EDITION (2012). Whereas "Dictum (Obiter Dictum or Dicta)" is defined as "[a] judge's comments in an opinion that are inessential to its ruling." *Dictum (Obiter Dictum or Dicta)*, THE WOLTERS KLUWER BOUVIER LAW DICTIONARY DESK EDITION (2012).

With respect to *Francavilla*, there was no analysis performed as to the *In re resolution*/*Cort* test. When presented with an analysis of an application of New Jersey's entire controversy doctrine ("ECD"), *Francavilla* held: "the trial court did not abuse its discretion in applying the entire controversy doctrine to dismiss the Essex County litigation where the substantive defenses raised here could have been pursued in the Bergen County litigation." *Francavilla*, 478 N.J. Super. at 180. *To wit*, the plaintiff's claims under the NJCFLA were barred by the ECD due to a resting default judgment resulting from a

collection lawsuit on the same credit account which gave rise to the plaintiff's subsequent offensive claims. *Francavilla* provided no analysis as to the implied private right of action under the NJCFLA. The entire portion of *Francavilla* that addresses the private right of action under the NJCFLA is: "The MCDCA also contains a private right of action, while New Jersey's CFLA does not. *See Md. Code Ann., Com. Law* § 14-203; N.J.S.A. 17:11C-1 to -49." *Francavilla*, 478 N.J. Super. at 180. That single sentence cannot reasonably be interpreted as 'the controlling rule or principle' in *Francavilla*. And "[t]he rule on dicta of [the New Jersey] Supreme Court is clear and not open to debate." *Marconi v. United Airlines*, 460 N.J. Super. 330, 339 (App. Div. 2019) (citing *State v. Dabas*, 215 N.J. 114, 136-37 (2013)). "[W]here dictum is 'not necessary to the decision then being made[,]' it "'does not invoke the principle of stare decisis.'" *Marconi*, 460 N.J. Super. at 339 (quoting *Bandler v. Melillo*, 443 N.J. Super. 203, 210 (App. Div. 2015)).

As explained in Kaba's opening Brief, the second factor of the *In re Resolution/Cort*—whether there is any evidence that the Legislature intended to create a private right of action—is acknowledged as the most important factor. The legislative intent of private enforcement is readily illustrated by the NJCFLA's statutory and legislative predecessors, discussed in detail in Kaba's opening Brief. N.J.S.A. 17:11C-1 states "Sections 1 through 49 [C.17:11C-1

through C.17:11C-49] of this act, previously known and cited as the 'New Jersey Licensed Lenders Act,' shall be known and may be cited as the 'New Jersey Consumer Finance Licensing Act,' on or after the effective date of P.L.2009, c.53 (C.17:11C-51 et al.). Thus, as of the 2009 amendment to the Licensed Lenders Act ("LLA"), the LLA became known as the NJCFLA. The New Jersey Supreme Court has confirmed that when the codification relied upon by Kaba here to assert voidness of the loan contract and treble damages—N.J.S.A. 17:11C-33(b)—was embodied under the LLA, it conferred a private right of action upon aggrieved consumers. The New Jersey Supreme Court has also confirmed that the Consumer Loan Act ("CLA"), which was subsumed by the LLA, conferred a private right of action through a predecessor of the same codification, having been replaced by N.J.S.A. 17:11C-33(b). *See Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 271-72 (1997). Footnote No. 1 in *Lemelledo* explains that the CLA allowed for private consumers to void an unlawful contract and that when the CLA was incorporated into the LLA, N.J.S.A. 17:11C-33(b) allowed aggrieved consumers to void the contract *and* seek treble damages.

> On January 8, 1997, the Governor signed the New Jersey Licensed Lenders Act, which combines the CLA with two mortgage-related statutes. *L.* 1996, *c.* 157 (codified at N.J.S.A. 17:11C-1 to -49). The Act maintains the aspects of the CLA that are relevant to this case. It also incorporates a relevant CLA-based regulation, N.J.A.C. 3:17-5.1 (replaced by N.J.S.A. 17:11C-21) (prohibiting

> mandatory credit insurance), and adds a new remedy, namely, treble damages for injured consumers, *L.* 1996, *c.* 157, § 33(b) (codified at N.J.S.A. 17:11C-33b). The CLA did not contain that remedy, instead providing consumers with the right only to cancel the fraudulent loan contract.

Lemelledo, 150 N.J. at 262 n.1. During the 1996-97 amendments to the statute, as the CLA was incorporated into the LLA, N.J.S.A. 17:10-14 was replaced by N.J.S.A. 17:11C-33(b), as discussed in *Lemelledo*. At that time, the text of N.J.S.A. 17:11C-33(b) was introduced in the Assembly and Senate Bills in its current form—the same codified text of N.J.S.A. 17:11C-33(b) that was included in the 1996-96 enactment of the LLA. *See* 1996 Bill Text NJ S.B. 1688; *see also* 1996 N.J. ALS 157; 1996 N.J. Laws 157; 1996 N.J. Ch. 157; 1997 N.J. A.N. 2513. Thus, the language of N.J.S.A. 17:11C-33(b), which *Lemelledo* confirmed provided for a private right of action under the LLA, remained wholly unchanged when the name of the LLA was changed to the NJCFLA. Considering the foregoing, there is virtually no basis to conclude that the NJCFLA does not confer a private right of action. Thus, the trial court's order denying Kaba's Motion to Vacate Default Judgment should be reversed.

CONCLUSION

For the foregoing reasons, Kaba respectfully requests that the trial court's Order denying her Motion to Vacate be reversed.

Respectfully submitted,

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