SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

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Docket No. A-002647-23

YVETTE MCQUEEN, *on behalf of herself and those similarly situated*,	:	**CIVIL ACTION**
Plaintiff-Appellant,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY LAW DIVISION, HUDSON COUNTY
v.	:	
RAZOR CAPITAL, LLC; and JOHN DOES 1 to 10,	:	Trial Court Docket No. BER-L-3630-21
Defendant-Respondents.	:	Sat Below: HON. ANTHONY V. D'ELIA, J.S.C.
	:	DATE: March 31, 2024

BRIEF ON BEHALF OF PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

The flood of debt collection suits in state courts have "posed considerable challenges to the smooth and efficient operation of courts." *See* Federal Trade Commission, Collecting Consumer Debts: *The Challenges of Change, a Workshop Report*, at 55 (Feb. 2009). In fact, in New Jersey, 1,513,086 contract cases were filed in the Special Civil Part from 2010 to 2014. *See* New Jersey Judiciary, Superior Court Caseload Reference Guide 2010 – 2014. It is estimated that almost 90% of debt collection suits end in default judgments. *See* Federal Trade Commission, Repairing a Broken System: *Protecting Consumers in Debt Collection Litigation and Arbitration*, at 7 (July 2010). But here, Defendant Razor Capital, LLZ ("Razor") and the debt buying industry have become immune from the Consumer Fraud Act's coverage.

"No 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*. . . . In addition, a consumer lender who knowingly and willfully violates any

> provision of this act shall also forfeit to the borrower three times any amount of the interest, costs or other charges collected in excess of that authorized by law."

N.J.S.A. 17:11C-33(b) (emphasis added).

By failing to first hold the requisite license, Razor engaged in criminal conduct under the New Jersey Consumer Finance Licensing Act ("NCFLA") rendering Plaintiff McQueen's alleged debt a legal nullity. However, Razor then enforced McQueen's void debt (and those of the putative class members) through dunning letters and a collection lawsuit. Worse than suing on time-barred debts which remain valid although unenforceable (*see, e.g.*, *Midland Funding LLC v. Thiel*, 446 N.J. Super. 537 (App. Div. 2016)), Razor sued on void debts, which have no legal significance. By enforcing an improper, void debt against a consumer, Razor committed fraud in connection with the subsequent performance of the sale of merchandise. *See* N.J.S.A. 56:8-2. Thus, Razor must be within the scope of the Consumer Fraud Act.

By dismissing McQueen's Class Action Complaint, the trial court failed to give proper weight to the legislative intent of the NJCFLA, ratified Razor's fraudulent collection activity, and frustrated the state's ability to police the consumer credit industry in New Jersey. Thus, the trial court's March 21, 2024 Order granting Defendant Razor's Motion to Dismiss should be reversed.

PROCEDURAL HISTORY

On September 16, 2015, Razor initiated a collection lawsuit against McQueen in the Special Civil Part of the Bergen County Law Division, under docket number BER-DC-13488-15 ("Collection Lawsuit"), seeking to collect the amount of $1,201.16, together with interests and costs, allegedly arising from a Capital One Bank, N.A. account. (Pa1).

Default was entered against McQueen on December 11, 2015, then vacated (by way of McQueen's Motion) on September 29, 2021. (Pa4). McQueen filed her Answer to Razor's collection Complaint the same day. (Pa6).

On September 15, 2021, McQueen filed her Class Action Complaint alleging that Razor's unlicensed attempts to enforce a void debt violated the Consumer Fraud Act ("CFA"), N.J.S.A. 56:8-1, *et seq*. (Pa11).

On October 6, 2021, McQueen moved to transfer the Collection Lawsuit from the Special Civil Part to the Law Division and consolidate it with the instant putative class action.[1] (Pa28).

McQueen's Motion to Transfer and for Consolidation was granted on October 22, 2021. (Pa35).

[1] Razor's affirmative claims were later voluntarily dismissed on June 7, 2023, by way of Consent Order (Trans ID: LCV20231733202).

Default was entered against Razor on February 3, 2022 (Trans ID: LCV2022504600).

Razor filed its Answer to the Class Action Complaint on April 18, 2022 (Pa37), which was rejected the next day (Trans ID: LCV20221551653).

Default was vacated upon consent on May 4, 2022 (Trans ID: LCV20221789272).

The first Case Management Order was entered on August 2, 2022 (Trans ID: LCV20222802101).

The second Case Management Order was entered on March 9, 2023. (Trand ID: LCV2023851729).

The third Case Management Order was entered on June 7, 2023 (Trans ID: LCV20231733202; Trans ID: LCV20231750443).

The fourth Case Management Order was entered on November 6, 2023 (Trans ID: LCV20233330553).

On December 26, 2023, Razor filed its Motion to Dismiss the Complaint. (Pa55)

On March 21, 2024, the trial court granted Razor's Motion to Dismiss. (Pa86).

On May 3, 2024, McQueen timely filed her Notice of Appeal (Pa87).

STATEMENT OF FACTS

Prior to the initiation of this action—and without having first obtained a license under the NJCFLA—Razor is alleged to have acquired by assignment a pool of defaulted consumer debts including McQueen's Credit One Bank, N.A. credit account for pennies on the dollar. *See* Compl. ¶ 26 (Pa16). As Razor was unlicensed under the NJCFLA, McQueen's account and the contract governing the same were void upon assignment to Razor. *See* N.J.S.A. 17:11C-33(b). *See* Compl. ¶ 40 (Pa17). Additionally, McQueen disputed that she ever opened the account. *See* Compl. ¶ 27 (Pa16). Thereafter, Razor began dunning McQueen and subsequently initiated the Collection Lawsuit. *See* Compl. ¶¶ 34-35 (Pa17). However, Razor had no right to attempt to collect the void debt—by purchasing or otherwise taking assignment of the debt, Razor engaged in the "consumer loan business" as defined at N.J.S.A. 17:11C-2. *See* Compl. ¶¶ 39-40 (Pa17). The issue is that Razor was not licensed as a consumer lender at the time it took possession of or attempted to enforce McQueen's account—a fact that was undisputed in the trial court. *Id.* As a result of Razor's unlicensed status, the contract governing the alleged debt became void and unenforceable as of the date razor purchased or took assignment of the same, 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 . . . ." *See* Compl. ¶¶ 36-40 (Pa17).

On January 23, 2023, McQueen filed her Class Action Complaint in the Hudson County Law Division, alleging that Razor's unlicensed attempts to enforce a void debt violated the Consumer Fraud Act. In dismissing the Complaint, the trial court determined that Razor's conduct—collecting on void debts which constitutes a fourth-degree crime—was not unlawful conduct under the CFA. *See* N.J.S.A. 17:11C-33(b). As discussed herein, the trial court failed to consider applicable jurisprudence in a developing area of law and, thus, the trial court's March 21, 2024 Order granting Razor's Motion to Dismiss should be reversed.

LEGAL ARGUMENT

POINT I. THE STANDARD OF REVIEW (Raised Below: T1)

On appeal, the Court applies a plenary standard or review from a trial court's granting of a motion to dismiss. *Rezem Family Assocs., LP v. Borough of Millstone*, 423 N.J. Super. 103, 114 (App. Div. 2011); *Bacon v. N.J. State Dep't of Educ.*, 443 N.J. Super. 24, 33 (App. Div. 2015).

On a motion to dismiss for failure to state a claim under *R.* 4:6-2(e), the plaintiff is "entitled to every reasonable inference of fact." *Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman and Stahl, P.C.*, 237 N.J. 91, 107

(2018) (quoting *Printing Mart-Morristown v. Sharp Electronics Corp.*, 116 N.J. 739, 746 (1989)). And "if a generous reading of the allegations merely suggests a cause of action, the complaint will withstand the motion." *F.G. v. MacDonell*, 150 N.J. 550, 556 (1997). The Court "searches the complaint *in depth and with liberality* to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim, opportunity being given to amend if necessary." *Printing Mart-Morristown*, 116 N.J. at 746 (quoting *Di Cristofaro v. Laurel Grove Mem'l Park*, 43 N.J. Super. 244, 252 (App. Div. 1957) (internal quotation marks omitted).

POINT II. THE TRIAL COURT ERRED IN HOLDING THAT RAZOR'S MATERIAL MISREPRESENTATIONS, AND UNFAIR AND ABUSIVE ENFORCEMENT OF A VOID DEBT DO NOT GIVE RISE TO VIOLATIONS OF THE CFA (Raised Below: T1)

i. *The Private Right of Action Under the NJCFLA*

In granting Razor's Motion to Dismiss, the trial court primarily relied upon the Honorable Mary F. Thurber's October 4, 2023 Opinion in the matter captioned as *Valentine v. Unifund CCR, LLC, et al.,* docket number BER-L-376-23 (Law Div. October 4, 2023) (Pa62),[2] as well as *Asset Acceptance, LLC v. Toft*, No. A-2827-22, 2024 N.J. Super. Unpub. LEXIS 820 (App. Div. May

[2] The October 4, 2023 Opinion in *Valentine v. Unifund CCR, LLC, et al.,* docket number BER-L-376-23, was originally attached as Exhibit G (Pa59) to Razor's Motion to Dismiss.

8, 2024), *Woo-Padva v. Midland Funding LLC*, 2022 N.J. Super. Unpub. LEXIS 96 (Law Div. Jan. 21, 2022), and *Woo-Padva v. Midland Funding*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550 (App. Div. Sep. 21, 2023). *See* T1 7:2-10.

Of the four cases that the trial court found to be persuasive, only three address affirmative claims under the CFA arising from violations of the NJCFLA—*Valentine*, BER-L-376-23, *Woo-Padva*, 2022 N.J. Super. Unpub. LEXIS 96 ("*Woo-Padva* 1"), and *Woo-Padva*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550 ("*Woo-Padva* 2"). Of the remaining three cases, only *Valentine* and *Woo-Padva* 2 address the private right of action under the NJCFLA.

With respect to *Valentine*, (being the case the trial court found most persuasive), much of the *Valentine*'s reasoning was based on the premise that the NJCFLA "does not confer a private right of action." *See Valentine*, October 4, 2023 Opinion at 11 (Pa72). In dismissing Valentine's claims, the court reasoned that "[o]nly the Commissioner of Banking and Insurance has the authority to pursue claims for violations of the NJCFLA. N.J.S.A. 17:11C-18." *Id*. Similarly, *Woo-Padva* 2 cites to subsection 18 in support of the notion that the NJCFLA can only be enforced by the Commissioner of Banking and Insurance. *See Woo-Padva,* No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS

1550, at *9. The citations to subsection 18 are illustrative in that it shows the courts' reasoning was based entirely on the existence of enforcement remedies by the Commissioner of Banking and Insurance; however, nothing in N.J.S.A. 17:11C-18 precludes a private right of action. N.J.S.A. 17:11C-18 merely provides for the Commissioner's authority and available remedies under the NJCFLA. And notably, the NJCFLA's statutory predecessors (discussed *infra*) provided for enforcement by the Commissioner of Banking and Insurance *in addition to an implied private right of action for aggrieved consumers*. Indeed, the Supreme Court has confirmed that N.J.S.A. 17:11C-33(b), when it was embodied in the Consumer Loan Act, "allow[ed] for treble damages by aggrieved consumers," though the "typical remedy . . . [was] voiding of the contract . . . by individual consumers." *Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 271-72 (1997). The subsequent statutory revisions provide no support for the conclusion that the Legislature intended to eliminate that private right of action from the NJCFLA.

The present-day iteration of the NJCFLA originated as the New Jersey Small Loan Law ("NJSLL"), enacted in 1914. The NJSLL was meant to curtail predatory loan practices widely unregulated at the time.

> 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); 8 *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).

The NJSLL—like the NJCFLA—allowed for enforcement by the Commissioner and was intended to protect consumers from usurious, predatory, and unlawful loan practices by regulating and limiting what entities could enter the consumer loan marketplace.[3] 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). In addition to enforcement and gatekeeping remedies afforded to the Commissioner, the NJSLL also allowed

[3] "[T]he Small Loan Law was intended to and does afford to the Commissioner power to limit the number of licenses in a community." *Gough*, 10 N.J. Super. at 21.

private actions for damages by individual consumers. *See, e.g.*, *Langer v. Morris Plan Corp.*, 110 N.J.L. 186, 187 (1933).

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 v. Benefit Mgmt. Corp.*, 150 N.J. 255, 271 (1997). "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).

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.[4] *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

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

("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 the "Consumer Finance Licensing Act."

Like the NJCLA before it (and the NJCFLA now), the NJLLA (now comprised of both consumer loan provisions and mortgage related provisions) enumerated the Commissioner's enforcement mechanisms at subsection 18 *and* stated in subsection 33(b) that "[a] consumer lender who violates or participates in the violation of any provision of sections 3 . . . shall be guilty of a crime of the fourth degree. A contract of 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 . . . ." New Jersey Licensed Lenders Act, 1997 N.J. A.N. 2513. Moreover, "[t]he [NJ]CLA, as incorporated in the Licensed Lenders Act, ***allow[ed] 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." *Lemelledo*, 150 N.J. at 272.

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. Importantly, all

iterations of the consumer lending based provisions—whether the NJCFLA, the NJSLL, NJCLA, or NJLLA—were enacted remedially to protect New Jersey consumers by, *inter alia*, curtailing predatory and usurious lending practices, limiting what property could be held as collateral, conducting ongoing criminal background checks on applicants and licensees, and ensuring that only qualified, regulated, licensed entities would enter the marketplace as consumer lenders in New Jersey. Indeed, in addition to regular criminal background checks for every officer, director, partner, and/or owner with a controlling interest in the applicant/licensee, the Commissioner must "find[] that the financial responsibility, experience, character, and general fitness of the applicant for a new license or for a renewal of a license demonstrate that the business will be operated honestly, fairly, and efficiently within the purposes of [the NJCFLA]" N.J.S.A. 17:11C-7(c); *see also* N.J.S.A. 17:11C-7(e).

Like the NJSLL and NJCLA, the newly titled 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. Indeed, codified statutory mechanism of enforcement by which an individual consumer voided an unlawful loan contract and/or pursued treble damages was N.J.S.A. 17:11C-33(b)—*the same provision of the same statute* which Plaintiff

asserts has voided her unlawful contract in the instant action under the same NJCFLA. Though N.J.S.A. 17:11C-18 codifies 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, 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 fact, N.J.S.A. 17:11C-33(b) continues to explicitly allow for treble damages—a remedy not included under the Commissioner's authority in N.J.S.A. 17:11C-18. N.J.S.A. 17:11C-18(i) further limits the Commissioner's authority to civil penalties "not exceeding $25,000." Therefore, in the absence of a private right of action, an unlicensed consumer lender could limit liability on consumer loans exceeding $25,000 since penalties are capped at $25,000.

In 2010, when the NJRLMA and NJCFLA were separated, 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.

Post 2010, the first case to address the NJCFLA was in the District Court of New Jersey: *Veras v. LVNV Funding, LLC*, No. 13-1745 (RBK/JS), 2014 U.S. Dist. LEXIS 34176 (D.N.J. Mar. 17, 2014) (Pa125). All case law post 2014 in the Superior Court and/or the District Court which analyzes the private right of action under the NJCFLA can be traced back to *Veras*. The first cases in the Superior Court to address the private right of action under the NJCFLA were *New Century Fin. v. Trewin*, 2018 N.J. Super. Unpub. LEXIS 1688 (Ch. Div. May 24, 2018) (Pa116) and *Woo-Padva* 1, *supra*. (Pa133). *Woo-Padva* 1 cites to *Browne v. Nat'l Collegiate Student Loan Tr.*, No. 21-11871 (KM) (JSA), 2021 U.S. Dist. LEXIS 244537, at *8 (D.N.J. Dec. 22, 2021) (Pa94)—who in turn cites to *Jubelt v. United Mortg. Bankers, Ltd.*, Civil Action No. 13-7150 (ES) (MAH), 2015 U.S. Dist. LEXIS 84595, at *14 (D.N.J. June 30, 2015) (Pa98), with *Jubelt* citing *Veras*.

In addressing the private right of action under the NJCFLA, the District Court in *Veras* reasoned that in order to determine whether the NJCFLA implies a private right of action, "the Court must consider . . . **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**." *Id.* (emphasis added) (quoting *In re Resolution of State*

Com. of Investigation, 108 N.J. 35, 41 (1987) (internal quotation marks omitted)). Indeed, "**the primary goal in determining whether a statute implies a right of action has almost invariably been a search for the underlying legislative intent**." *Veras*, No. 13-1745 (RBK/JS), 2014 U.S. Dist. LEXIS 34176, at *24 (quoting *R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co.*, 168 N.J. 255, 272-73 (2001) (internal quotation marks omitted)).

With respect to the legislative intent of the NJCFLA, the NJCFLA's intended mechanisms of enforcement, and the history of the same, the Court must certainly consider the NJCFLA's predecessors, discussed *supra*, for context. Despite the above, the court in *Veras* failed to analyze the statutory/legislative history or the legislative intent of the NJCFLA. Instead, *Veras*'s determination that no implied private right of action existed in the NJCFLA was based ***entirely*** on the existence of the Commissioner's enforcement abilities under subsection 18. But N.J.S.A. 17:11C-18 had always existed in conjunction with private enforcement remedies, i.e., N.J.S.A. 17:11C-33(b).

Moreover, *In re Resolution of State Com. of Investigation, supra*—cited by *Veras*—addressed and analyzed a statute that explicitly disallowed a private right of action, i.e., N.J.S.A. 52:9M-15(a). *See In re Resolution of State Com. of Investigation*, 108 N.J. 35, 36-37 (1987). *In re Resolution* did not analyze an

implied private right of action because there was no need to—improper disclosures of information related to investigations into crime by the State Commissioner of Investigation ("SCI") were and are explicitly within the purview of the SCI, as per the black letter language of the statute. *In re Resolution* supports *Veras*'s reasoning that, generally, when there are extensive state enforcement mechanisms included in a statute, that statute rarely also includes a private right of action. But *Veras* failed to acknowledge that the NJCFLA's predecessors all contained enforcement mechanisms by the Commissioner ***and*** an implied private right of action. There was no basis to reason that the separation of the NJRLMA from the rest of the current NJCFLA suddenly also removed the implied private right of action from the statute. In context, *Veras*'s citation to *In re Resolution* in ostensible support of the notion that the NJCFLA does not provide for a provide right of action does not make practical sense given that the enforcement mechanisms in subsection 18 have always coexisted with the implied private right of action in the NJSLL, NJLLA, and NJCLA.

The sudden reading of the private right of action out of the NJCFLA by *Veras* was simply not rooted in an examination of the NJCFLA's legislative intent and history—as *Veras* acknowledged was the polestar in determining whether an implied private right of action existed. Rather, *Veras*

acknowledged the existence of subsection 18 and determined that that, in and of itself, was sufficient to show that no implied private right of action existed in the statute, *without acknowledging further that there had always been a private right of action*. Since *Veras* was decided in 2014, every case that has determined that no private right of action exists under the NJCFLA can, directly or indirectly, be traced back to *Veras*.

The trial court, like *Veras*, *Valentine*, and *Woo-Padva* 1, erred by basing its analysis of the implied private right of action under the NJCFLA solely on N.J.S.A. 17:11C-18—nothing in N.J.S.A. 17:11C-18 precludes a private right of action or states that "[o]nly the Commissioner of Banking and Insurance has the authority to pursue claims for violations of the NJCFLA." *See Valentine*, October 4, 2023 Opinion at 11. As discussed *supra*, the NJCFLA's statutory predecessors had nearly the same statutory structure as the contemporary NJCFLA—*to wit*, they provided for a private right of action (including treble damages and voiding of unlawful contracts) in conjunction with the Commissioner's enforcement. Nothing in the NJCFLA suggests that the legislature intended the Act's remedies to be unavailable to private citizens. To suddenly read private mechanisms of enforcement out of the NJCFLA would be tantamount to legislation by the judiciary. Interpreting the NJCFLA as the legislature clearly intended requires viewing the NJCFLA in its historical

context, *i.e.*, acknowledging that the statute has always afforded private enforcement. Thus, the premise upon which the trial court based its granting of Defendants' Motion to Dismiss is inconsistent with relevant authority and principles of statutory construction.

ii. *Razor's Unlawful Conduct Violated the Consumer Fraud Act*

N.J.S.A. 17:11C-33(b) unequivocally defines Razor's conduct as "crime of the fourth degree." Moreover, there is no dispute that Razor was unlicensed when it acquired McQueen's debt.[5] Nor is there any dispute that Razor, "as a purchaser of debt . . . meets the definition of consumer lender" under N.J.S.A. 17:11C-2. *See Valentine v. Unifund CCR, Inc.*, Civil Action No. 20-cv-5024, 2021 U.S. Dist. LEXIS 44747, at *12 (D.N.J. Mar. 10, 2021); *see also McQueen v. Fein, Such, Kahn & Shepard, P.C.*, 2023 N.J. Super. Unpub. LEXIS 640, *9-17 (Law Div. April 26, 2023) (where the court expressley contradicted *Woo-Padva* 1 and reasoned that purchasers of consumer debt are within the ambit of the NJCFLA). Nonetheless, the trial court adopted the reasoning of *Valentine, supra*, BER-L-376-23, and determined that Razor's debt collection activity was not subsequent performance of the sale of merchandise within the ambit of the CFA.

However, "collecting or enforcing a loan, whether by the lender or its

[5] *See* Razor's license verifications at Pa84-Pa85.

assignee, constitutes the 'subsequent performance' of a loan, an activity falling within the coverage of the CFA." *Gonzalez v. Wilshire Credit Corp.*, 207 N.J. 557, 577-78 (2011) (quoting *Jefferson Loan Co., Inc. v. Session*, 397 N.J. Super. 520, 538 (App. Div. 2008)). The holding in *Gonzalez* is as clear as it is broad—debt collection activity constitutes "subsequent performance" under N.J.S.A. 56:8-2. To hold otherwise would yield absurd results—the original creditor would violate the CFA, but an assignee would not for the same unlawful commercial practice.

Further, courts have consistently held that the CFA is remedial and should be broadly construed to affect its purposes. *See Lee v. Carter-Reed Co., L.L.C.,* 203 N.J. 496, 522 (2010) ("Because it is 'remedial legislation,' the CFA is 'construe[d] liberally to accomplish its broad purpose of safeguarding the public.'") (internal citation omitted); *Lettenmaier v. Lube Connection, Inc*., 162 N.J. 134, 139 (1999) ("Because it is a remedial statute, its provisions are construed liberally in favor of the consumer to accomplish its deterrent and protective purposes.").

In granting the defendants' motion to dismiss, the court in *Valentine*, BER-L-376-23, reasoned:

> *Gonzalez* involved a mortgage foreclosure and "post-judgment agreements" that had "recast the terms of the original loan" and had included, according to plaintiff, "illicit financing charges and miscalculations of monies due." 207 N.J. at 563. The Court held the

> post-judgment loan modifications were "in form and substance an extension of credit," Id. at 563, and that the plaintiff could base a CFA claim on the defendant's alleged actions in connection with that new transaction. Those facts are not present in this case.

Valentine, October 4, 2023 Opinion at 15.

However, the *Valentine*'s (and by extension, the trial court's) analysis improperly narrowed the holding in *Gonzalez*, focusing on specific case facts which are inconsequential to the holding, all but reading collection activity and 'subsequent performance' out of the statute. *Gonzalez* explicitly held that collection activity by an assignee constitutes subsequent performance under the CFA—if the court wanted to hold, much more narrowly, that "recast[ing] the terms of the original loan" and/or "post-judgment loan modifications" were subsequent performance under the CFA, the court would have done so. Here, we must take the New Jersey Supreme Court at their word that that collection activity by an assignee constitutes subsequent performance under the CFA.

In dismissing the complaint, the court in *Valentine* relied primarily on two cases: *DepoLink Court Reporting & Litig. Support Servs. v. Rochman*, 430 N.J. Super. 325, 339 (App. Div. 2013), and *Chulsky v. Hudson Law Offices, P.C.*, 777 F. Supp. 2d 823, 825 (D.N.J. 2011). *Valentine* specifically noted *Chulsky*'s "distinction between assignees that acquired loans before default and those who acquired them strictly for collection." *Valentine*, October 4, 2023 Opinion at 16. However, *Chulsky* was a case in the District of New

Jersey decided before *Gonzalez*. For those reasons alone, *Chulsky* cannot control here or overrule *Gonzalez*. Moreover, the *Chulsky* court—a federal court interpreting substantive state law—asked a question that was explicitly answered by the New Jersey Supreme Court in *Gonzalez*, *i.e.*, whether the "[CFA] applies, in like manner, to assignees or debt buyers who purchase and attempt to collect upon defaulted debt." *See Chulsky*, 777 F. Supp. 2d at 838. *Gonzalez* responded by explicitly determining that "collecting or enforcing a loan, whether by the lender *or its assignee*, constitutes the 'subsequent performance' of a loan, *an activity falling within the coverage of the CFA*." *Gonzalez*, 207 N.J. at 577-78 (emphasis added). The holding in *Gonzalez* is purposefully broad—had the New Jersey Supreme Court wanted to narrow its reasoning and/or holding, it was certainly able to do so. Thus, *Valentine*'s (and *Woo-Padva* 2's)[6] reliance on *Chulsky* was in error as *Gonzalez* is controlling here. Razor's fraudulent, unlicensed debt collection activities, including suing on a void and unenforceable debt, constitute unconscionable and abusive commercial practices as well as deceptive misrepresentations committed during the subsequent performance of the sale of credit.

With respect to *DepoLink*, which was cited by *Valentine*, *Woo-Padva* 1,

[6] *See Woo-Padva*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550, at *11.

and *Woo-Padva* 2 (the three cases cited by the trial court which addressed affirmative claims under the CFA), the court in *Valentine* reasoned that "*Depolink*, a published Appellate Division decision post-dating *Jefferson Loan*, *Gonzalez*, and *Lemmeledo* [sic], held the actions of which plaintiff complains were not unlawful under the CFA" *Valentine*, October 4, 2023 Opinion at 16. However, the courts in *Valentine*, *Woo-Padva* 1, and *Woo-Padva* 2 failed to consider the factual underpinnings in *DepoLink*, which part *DepoLink*'s reasoning and holding from an analysis of violations of the NJCFLA. In *DepoLink*, the defendant—an attorney who utilized plaintiff's services to take two depositions—refused to pay the invoiced price for two ordered (and delivered) transcripts. *See DepoLink*, 430 N.J. Super. at 331. "Subsequently, defendant was contacted by [a] collection agency, which he claims misrepresented that it was a law office and threatened him with an ethics complaint and criminal prosecution." *Id.* at 332. Defendant then filed counterclaims under, *inter* alia, the CFA, which were dismissed by the trial court. In affirming the trial court's dismissal of the CFA counterclaims, the *DepoLink* court reasoned:

> Here, the CFA is inapplicable to defendant's claim against the collection agency because any misrepresentations by the collection agency, even if made, were not in connection with the sale of merchandise to defendant. The alleged prohibited conduct occurred later on, when the collection agency was attempting to collect the debt from defendant. The collection agency's contacts with

> defendant were not an offer to sell merchandise, nor did defendant buy anything from the collection agency. Debt collection activities on behalf of a third party who may have sold merchandise are not unconscionable activities "in connection with the sale" of merchandise. *See, e.g., Chulsky v. Hudson Law Offices, P.C.*, 777 F. Supp. 2d 823, 847 (D.N.J.2011) (holding that the CFA does not cover the debt collection activities of a third party that purchases consumer debt); *Joe Hand Promotions, Inc. v. Mills*, 567 F. Supp. 2d 719, 723-24 (D.N.J.2008) (finding that a letter demanding payment of a settlement did not fall within the CFA because plaintiff was not induced to purchase merchandise or real estate).

DepoLink, 430 N.J. Super. at 339.

Despite being decided two years after *Gonzalez*, *DepoLink* fails to analyze or even mention *Gonzalez*. Moreover, *DepoLink* did not analyze subsequent performance under the CFA—which *Gonzalez* says encompasses collection activity. Indeed, the only time *DepoLink* mentions subsequent performance is in quoting N.J.S.A. 56:8-2. *See DepoLink*, 430 N.J. Super. at 337.

Here, Razor violated the CFA by purchasing McQueen's account despite being prohibited from doing so, then assessing interest on the void account before misrepresenting in a dunning letter and a collection lawsuit to McQueen that 1) the void debt was valid, 2) Razor was legally allowed to enforce the void debt, and 3) Razor was legally allowed to continue to assess interest on the void debt. Thus, the facts of the case at bar are more aligned with *Gonzalez*—a case that actually analyzed subsequent performance under the

CFA—than *DepoLink.* Á propos, relevant to Razor's unlicensed debt collection activity here, the *DepoLink* court acknowledged that violations of the CFA can arise from "affirmative misrepresentation[s], even if unaccompanied by knowledge of [their] falsity." *DepoLink*, 430 N.J. Super. at 338 (quoting *Monogram Credit Card Bank of Ga. v. Tennesen*, 390 N.J. Super. 123, 133 (App.Div.2007)). Here, Razor affirmatively misrepresented that they were legally allowed to enforce McQueen's alleged debt when they lacked the licensure to do so—thus committing fraud in connection with the subsequent performance of the sale of merchandise.

Lastly, the New Jersey Supreme Court reiterated the broad scope of the CFA in a decision in response to a question certified to it by the Third Circuit in *Sun Chemical Corporation v. Fike Corporation*, 243 N.J. 319 (2020). In *Sun Chemical*, the District Court held that the plaintiff could not assert a CFA claim due to the fact that another statute served to regulate the asserted claims. *Id.* at 330. The Supreme Court rejected that ruling and held:

> In addition to its ever-growing scope, "[t]he language of the CFA evinces a clear legislative intent that its provisions be applied broadly." *Lemelledo*, 150 N.J. at 264. "[L]ike most remedial legislation, the [CFA] should be construed liberally in favor of consumers." *Cox*, 138 N.J. at 15. And, by the plain terms of the statute, "[t]he rights, remedies and prohibitions" created by the CFA are "in addition to and cumulative of any other right, remedy or prohibition accorded by the common law or statutes of this State." N.J.S.A. 56:8-2.13. Courts are therefore reluctant "to undermine the CFA's enforcement structure ... by carving out exemptions for each

> allegedly fraudulent practice that may concomitantly be regulated by another source of law." *Lemelledo*, 150 N.J. at 270.

Id.

The Supreme Court confirmed that there is a "presumption that the CFA applies to a covered activity," a presumption that can be overcome only when a court is satisfied "that a ***direct and unavoidable conflict exists*** between application of the CFA and application of the other regulatory scheme or schemes." *Id*. at 331 (quoting *Lemelledo*, 150 N.J. at 270 (emphasis added)). The trial court did not reason that there is any conflict between the NJCFLA and the CFA, because there is no conflict. Both statutes seek to protect consumers and impose minimum standards for any entity who engages in the consumer loan business as defined at N.J.S.A. 17:11C-2, *to wit*, the CFA and the NJCFLA are complementary as opposed to conflicting. Thus, the trial court erred in holding that Razor's unlicensed enforcement of a void debt does not constitute unlawful conduct under the CFA and the March 21, 2024 Order of Dismissal should be reversed.

iii. *Razor's Unlawful Conduct Caused Valentine to Suffer an Ascertainable Loss*

In order to establish a claim under the CFA, a plaintiff must show an unlawful act by the defendants, an ascertainable loss, and a causal nexus between the two. *See Varacallo v. Mass. Mut. Life Ins. Co.*, 332 N.J. Super.

31, 43 (App. Div. 2000).

In granting the defendants' motion to dismiss, the court in *Valentine* reasoned that, despite the defendants' attempted enforcement of a debt made void by N.J.S.A. 17:11C-33(b), Valentine had failed to show an ascertainable loss under the CFA.[7] *See Valentine*, October 4, 2023 Opinion at 18-19. However, in *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 23 (1994), the New Jersey Supreme Court "conclude[d] that an improper debt . . . against a consumer-fraud plaintiff may constitute a loss under the [CFA], because the consumer is not obligated to pay an indebtedness arising out of conduct that violates the Act." *Id.*

The plaintiff in *Cox* had incurred a debt for home repairs under a contract with Sears by which Sears had also recorded a lien on the plaintiff's property. Analogous to the instant action, the plaintiff in *Cox*, "by virtue of his contract with [a merchant] . . . incurred a legal obligation in the form of a debt." *Id*. However, in *Cox*, "the debt and the lien, although losses to

[7] Even in the absence of a showing of ascertainable loss, "a consumer-fraud plaintiff can recover reasonable attorneys' fees, filing fees, and costs if that plaintiff can prove that the defendant committed an unlawful practice." *Cox v. Sears Roebuck & Co.*, 138 N.J. 2, 24 (1994). Thus, as Razor's violations of the NJCFLA unequivocally constitute a "crime of the fourth degree," Plaintiff's counsel is entitled to reasonable attorney's fees, making dismissal without an opportunity for a fee application inappropriate. *See* N.J.S.A. 17:11C-33(b).

Cox . . . were not the result of [the merchant's] violation of the [CFA]. Rather, those losses occurred before any consumer fraud took place." *Id*; *see also Hoffman v. Asseenontv.Com, Inc.*, 404 N.J. Super. 415, 428-29 (App. Div. 2009) (In *Hoffman*, the Court held that an improper credit card authorization was not an ascertainable loss under the CFA because it was not a "charge," but reasoned that a charge on a credit account—even if unpaid—constitutes an ascertainable loss under the CFA; the factors considered by the Court in *Hoffman* included the loss of creditworthiness and overall effect on credit due to the existence of the improper debt—factors highly relevant here). Thus, our Supreme Court in *Cox* held that even though an improper debt constitutes a loss under the CFA, the plaintiff had failed to show causation. *See Cox*, 138 N.J. at 23.

In the case at bar, the debt is void—and thus improper—due to Razor's violations of the CFA, *i.e.*, illegally and fraudulently purchasing the debt in violation of NJCFLA. Razor then committed additional CFA violations by dunning McQueen, attempting to enforce a void debt, collect unlawful interest, and then suing her. Thus, the improper debt is an ascertainable loss which causally arose from Razor's violations of the NJCFLA and CFA—distinguishing the facts here from *Cox*. At bear minimum, the unlawful interest assessed by Razor after the debt became void is an improper debt and

ascertainable loss borne entirely out of Razor's unlawful conduct. By the letter of N.J.S.A. 17:11C-33(b), Razor's unlawful conduct voided the contract governing McQueen's account, rendering the alleged debt improper under *Cox* and making any representations to the contrary fraud in connection with the subsequent performance of the sale of merchandise.

The court in *Valentine* reasoned that "[t]o the extent [Valentine] relies on *Cox*, 138 N.J. at 23, for the proposition that imposition of an improper debt or lien against a consumer-fraud plaintiff may constitute a loss under the CFA, that fails because plaintiff cannot establish the debt is improper . . . she cannot establish her claim under NJCFLA." *Valentine*, October 4, 2023 Opinion at 19. Notwithstanding the private right of action under the NJCFLA, discussed *supra*, neither *Valentine* nor the trial court analyzed the statutory functioning of N.J.S.A. 17:11C-33(b)—which explicitly declares contracts acquired by unlicensed entities to be void. Thus, the trial court erred in holding that McQueen's CFA claims fail for lack of an ascertainable loss.

POINT III. THE TRIAL COURT ERRED IN HOLDING THAT VALENTINE LACKS STANDING TO ASSERT CLAIMS FOR DECLARATORY AND INJUNCTIVE RELIEF (Raised Below: T1)

The Uniform Declaratory Judgment Law ("UDJL") at N.J.S.A. 2A:16-53 provides that "[a] person interested under a . . . written contract . . . or whose rights, status, or other legal relations are affected by a statute . . . [or]

contract . . . may have determined any question of construction or validity arising under the . . . statute, ordinance, [or] contract . . . and obtain a declaration of rights, status or other legal relations thereunder." McQueen is a person interested under a now void contract with Capital One Bank, as well as a person whose rights, status, and legal relations are affected by a statute, *to wit*, the NJCFLA, the CFA, and the FDCPA. Therefore, McQueen has standing to seek declaratory and injunctive relief as pled in the Complaint.

Citing *In re Resolution of State Com. of Investigation*, 108 N.J. 35, 46 (1987), the courts in *Valentine* and *Woo-Padva* 2 reasoned that "Plaintiff cannot circumvent the lack of a private cause of action by seeking relief under the New Jersey Uniform Declaratory Judgement Law." *Valentine*, October 4, 2023 Opinion at 11; *Woo-Padva*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550, at *9. Notwithstanding the analysis of private right of action under the NJCFLA, discussed *supra*, and the fact that *In re Resolution* addressed a statute[8] which expressly prohibits a private right of action, the holding of *In re Resolution* was based on a conflict of competing equities not present here. The court in *In re Resolution* reasoned that they would not impede the "clear public interest"

[8] State Commission of Investigation confidentiality requirements at N.J.S.A. 52:9M-15.

of the Commissioner's ability to investigate, prosecute, and thwart crimes perpetrated within the criminal justice system. *See In re Resolution of State Com. of Investigation*, 108 N.J. at 45-47. Here, there are no competing equities. Even assuming *arguendo* that no private right of action exists under the NJCFLA, enjoining Razor from attempting to enforce debts declared void by the legislature does not conflict with the goals of the NJCFLA or the Commissioner's ability to enforce the same. Indeed, enjoining Razor from further unlicensed collection activity would further the legislative purpose of the NJCFLA, *to wit*, regulating the marketplace to ensure that only licensed entities participate. The trial court's reliance by proxy on *In re Resolution* and its reasoning based on the same are therefore in error as the trial court failed to analyze any competing equities in McQueen's petition for declaratory and injunctive relief. Thus, the trial court's Order granting Razor's Motion to Dismiss should be reversed.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant Yvette McQueen respectfully requests that the March 21, 2024 Order granting Razor's Motion to Dismiss be reversed.

Respectfully submitted,

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Dated: August 14, 2024

Attorneys for Plaintiff-Appellant

B&N File # 14709.2MW

Superior Court Of New Jersey
Appellate Division

Docket A-002647-23

	CIVIL ACTION
YVETTER MCQUEEN, *on behalf of herself & those similarly situated*	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, LAW DIVISION, HUDSON COUNTY
Plaintiff / Appellant	
vs.	
RAZOR CAPITAL, LLC, and JOHN DOES 1 to 10,	TRIAL COURT DOCKET NO. BER-L-3630-21
Defendant/Respondent	SAT BELOW HON. ANTHONY V. D'ELIA, J.S.C.

BRIEF ON BEHALF OF DEFENDANT-RESPONDENT

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PRELIMINARY STATEMENT

Whether Respondent violated the New Jersey Consumer Financing Law Act (NJCFLA) §N.J.S.A. 17: 11C-1 et seq was not an issue before the Trial Court and the extensive discussion by Appellant serves no purpose other than to distract.

The focus of the lower court was the parameters of the New Jersey Consumer Fraud Act, ("CFA") N.J.S.A. § 56:8-2 as it relates to third party debt collections, an issue which has already been reviewed by a multitude of courts, both on the trial and appellate levels.

The claim that "the debt buying industry [is] immune from the Consumer Fraud Act's coverage," (Pb1) means no more than complaining it is immune from any other unrelated Act. The NJCFA is a specific act, simply defined as false statements relating to the sale or advertisement of any merchandise or real estate. Both State and Appellate Courts have repeatedly stated that debt collection does not fall within that definition.

This Appeal is the sixth (6th) time (four separate actions and two appeals, inclusive of the instant appeal and the underlying judgment) the same causes of action have been challenged in the state courts of New Jersey.[1] Those complaints, all

[1] Jennifer Woo-Padva v Midland Funding, LLC, BER-L-003625-17; (Da152) Camilla Toft v Asset Acceptances, LLC et al, ESX-L-007345-19 (Da168) and Cassandra A. Valentine v Unifund CCR, LLC et al, BER-L-000376-23 (Da185). McQueen v Razor, LLC, HUD-L-3630-21 (Da135) Copies of the operative complaints are included in Respondent's Appendix.

filed and prosecuted by instant counsel, reveals the same allegations as present in the underlying Complaint here. In all cases, the outcome was the same, dismissals of the claims brought pursuant to the New Jersey Consumer Fraud Act, the New Jersey Uniform Declaratory Judgment Act and claims of unjust enrichment. [2]

The instant Complaint, as in the other matters, is premised on the underlying claim that when Respondent, a purchaser of defaulted accounts, filed its collection action on or about September 16, 2015 [3] against the Plaintiff to collect her defaulted Credit One account, it was not licensed pursuant to the NJCFLA, as either a "sales finance company" or a "consumer lender." Whether Respondent needed to be licensed under the NJCFLA is not a question necessary to be determined in this action, notwithstanding Appellant's pleas to the contrary. There is no private right of

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[2] See Order and Decision entered by Hon. Keith E. Lynott, J.S.C. on June 29, 2020 in Toft v Asset Acceptance, ESX-L-007345-19 (Da89); Order and Decision entered by Hon. Robert C. Wilson, J.S.C. on January 21, 2022 in Woo-Padva v Midland Funding, LLC, BER-L-003625-17 (Da103); Order and Decision entered by Hon. Mary F. Thurber, J.S.C. on October 4, 2023 in Valentine v Unifund CCR, LLC et al, BER-L-000376-23 (Da112) and the Appellate Division decision, albeit unpublished, entered on September 21, 2023 in *Woo-Padva v Midland Funding*, A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550 (Da83), certification denied, *Woo-Padva v. Midland Funding, LLC*, 257 N.J. 513, 314 A.3d 1267 (2024) Copies of all referenced documents as well as unpublished decisions pursuant to Rule 1:36-3, are included in Respondent's Appendix. Counsel is unaware of any contradictory decisions.

[3] It is a matter of public record that Razor was issued licenses both as a Sales Finance Company (license # L070419) and as a Consumer Lender (license # L070420) on May 3 and 4, 2018 respectively. (Pa83)

action pursuant to the NJCFLA [4]and Plaintiff did not plead one in the underlying Complaint.

In Count One of the Putative Class Action Complaint, Plaintiff sought a Declaratory Judgment pursuant to the Uniform Declaratory Judgments Law ("UDJL"), N.J.S.A. 2A: 16-53 declaring all accounts Respondent took assignment of prior to obtaining a license are void, and granting a permanent injunction "pursuant to the [NJ]CFA" prohibiting any further attempts to collect on those accounts or transfer them to other entities. In Count Two Plaintiff sought damages pursuant to the New Jersey Consumer Fraud Act N.J.S.A. 56:8-1, and in Count Three, notwithstanding there is no record of Plaintiff making any payments to Respondent, Plaintiff claimed Unjust Enrichment and sought disgorgement on behalf of herself and a subclass.

The question must be asked, how many more times does Counsel file lawsuits claiming a violation of the CFA and the UDJL based on debt collection before it can be deemed frivolous. The instant appeal should be denied based on prior decisions on these operative facts.

[4] *Francavilla v. Absolute Resols. VI LLC*, 478 N.J. Super. 171, 180, (App. Div. March 14, 2024)

RESPONSE TO APPELLANTS PROCEDURAL HISTORY

Respondent adopts the Appellants Procedural History with one addition. Respondent moved to Dismiss the Complaint based on the fact that the New Jersey Consumer Fraud Act did not apply to the activities, i.e. collection attempts, undertaken by Respondent. Unfortunately, the trial court did not issue a written decision, nor did it explain in any depth the basis of its reasoning other than to refer to the decision by the Hon. Mary F. Thurber, J.S.C in Cassandra A. Valentine v Unifund CCR, LLC et al, BER-L-000376-23 issued on October 4, 2023. (Pa60)[5]

COUNTER STATEMENT OF FACTS

Respondent Razor filed suit in 2015 (the "collection action") to collect Appellant McQueen's defaulted Credit One Bank, N.A. ("Credit One") credit account, which it had previously purchased from Credit One. [Pa1] McQueen did not respond to the Complaint and a default was entered. Six years later on September 2, 2021 McQueen successfully moved to vacate the default [Pa4] and subsequently filed an Answer to the collection action, alleging among her affirmative defenses that Razor was unlicensed pursuant to the NJCFLA. [Pa6] On September 15, 2021

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5 For some inexplicable reason, Appellant makes the claim in her brief (Ab 7) that the Court also relied on the decision by this Court in *Asset Acceptance, LLC v. Toft*, No. A-2827-22, 2024 N.J. Super. Unpub. LEXIS 820 (App. Div. May 8, 2024), notwithstanding that it was issued several months after Judge D'Alia issued his Order of Dismissal under review here.

McQueen filed the underlying putative class action in the matter now on appeal. [Pa11] The underlying complaint did not allege a violation of the NJCFLA and therefore the application of the NJCFLA that was not an issue before the Court. McQueen alleged that (1) she was entitled to a Declaratory Judgement and Injunctive Relief based on an alleged violation of the New Jersey Consumer Fraud Act ("NJCFA"; (2) that Razor violated the NJCFA and (3) that she was entitled to Disgorgement based on a theory of Unjust Enrichment. Of note is the fact that McQueen did not allege she paid any monies to Razor might justify disgorgement.

Subsequent to discovery ensuing, Razor moved to dismiss the Complaint [Pa55] relying on decisions both in the trial courts and the appellate division holding that the NJCFA does not apply to third party collection actions.

LEGAL ARGUMENT

The question raised by Appellant has repeatedly been answered both by this court and multiple courts below and as a result Respondents arguments reflect those prior decisions.

POINT I. STANDARD OF REVIEW

On appeal the Court reviews de novo a court's determination of a motion to dismiss for failure to state a claim under Rule 4:6-2(e). *W.S. v. Hildreth*, 252 N.J. 506, 518, 287 A.3d 421 (2023) and owes no deference to the trial court's legal

conclusions. *Dimitrakopoulos v. Borrus, Goldin, Foley, Vignuolo, Hyman & Stahl, P.C.*, 237 N.J. 91, 108, 203 A.3d 133 (2019). However, when an appeal involves the interpretation of a statute, the Court reviews de novo the court's statutory construction. *Hildreth*, 252 N.J. at 518-19. cited in *Kennedy v. Weichert Co*., 257 N.J. 290, 302, 313 A.3d 864, 871 (2024)

> "When courts interpret the meaning of a statute, the paramount goal is 'to determine and give effect to the Legislature's intent.'" *Malanga v. Township of West Orange*, 253 N.J. 291, 310, 290 A.3d 1212 (2023) (quoting *State v. Lopez-Carrera*, 245 N.J. 596, 612, 247 A.3d 842 (2021)). "We ascribe to the statutory words their ordinary meaning and significance and read them in context with related provisions so as to give sense to the legislation as a whole." *DiProspero v. Penn*, 183 N.J. 477, 492, 874 A.2d 1039 (2005) (citations omitted). We will not "rewrite a plainly written enactment of the Legislature . . . [or] presume that the Legislature intended something other than that expressed by way of the plain language." *Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 553, 964 A.2d 741 (2009) (omission and alteration in original) (quoting *O'Connell v. State*, 171 N.J. 484, 488, 795 A.2d 857 (2002)).

Kennedy v. Weichert Co., Id. at 302.

The circumstances in *Dimitrakopoulos, supra,* cited by Appellant, for the proposition that plaintiff is "entitled to every reasonable inference of fact" (Ab at 6) were far different from the instant case, where, as Appellant pointed out in her recitation of the procedural history, the instant litigation extended over two years. *Dimitrakopoulos*, citing *Printing Mart-Morristown v. Sharp Elecs. Corp*., 116 N.J. 739, 563 A.2d 31 (1989) reviewed the matter at the initial stages and pointed out "[a]t this preliminary stage of the litigation the Court is not concerned with the ability

of plaintiffs to prove the allegation contained in the complaint," and the plaintiff is "entitled to every reasonable inference of fact." *Printing Mart, Id.* at 746. Additionally, *Dimitrakopoulos* was not concerned wih statutory interpretation as is the case here.

In the instant matter, Appellant had the time to develop a record and provide a factual basis beyond the complaint that might support of her claim that the New Jersey Consumer Fraud Act should apply to her claim against Razor or that she was entitled to reibursement. There is no indication that Appellant was able to provide same and the Court therefore had to rely on the plain language of the statute and apply it to the allegations of the complaint. The question of disgorgement was not addressed below and no factual basis or details were ever offered in support of that claim.

In the instant matter, Appellant built her case on unsupported conclusions that any debts purchased by Razor were void "ab initio" because Razor needed a "consumer lender" license under the New Jersey Consumer Finance Licensing Act ("NJCFLA") or a license as a "sales finance company." However, the only entity that could make that pronouncement is the New Jersey Department of Banking and Insurance ("NJDOBI"),[6] and it never took that step. As will be discussed below,

[6] While not determinative, it is curious that years since *v LVNV Funding, LLC*, 2014 U.S. Dist. LEXIS 34176 (D.N.J. 2014) was first raised regarding the application of

whether there is any merit to Plaintiff's allegations regarding the need for licenses is not an issue necessary to be decided by this Court as Plaintiff has not alleged a claim pursuant to the NJCFLA, due no doubt to the fact that there is no private right of action under it.

In the instant matter, the Court applied the standard which requires dismissal if the plaintiff's complaint has failed to articulate a legal basis entitling plaintiff to relief. *Camden County Energy Recovery Assocs., L.P. v. New Jersey Dep't of Envtl. Prot*., 320 N.J. Super. 59, 64, 726 A.2d 968 (App.Div.1999) cited in *Sickles v. Cabot Corp*., 379 N.J. Super. 100, 105-06, (App. Div. 2005). *See also Frederick v. Smith*, 416 N.J. Super. 594, 597, (App. Div. 2010) "[C]onclusory allegations" are not entitled to the presumption of truth and are insufficient to survive a motion to dismiss. *Scheidt v. DRS Techs., Inc*., 424 N.J. Super. 188, 193, (App. Div. 2012) (citing *Printing Mart-Morristown v. Sharp Elec. Corp*., 116 N.J. 739, 768, 563 A.2d 31 (1989)

POINT II COLLECTION ACTIVITIES DO NOT FALL UNDER THE PURVIEW OF THE NJCFA *(*RAISED BELOW: T1)

In the Second Count of the Complaint Plaintiff alleges violations of the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1. Count One of the Complaint seeking

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the NJCFLA against debt buyers, not once has the NJDOBI intervened in any cases or moved against any of the debt buyers involved.

a Declaratory Judgment, discussed below, is based on the alleged violation of the NJCFLA.

The CFA makes the following acts unlawful, in connection with the sale or advertisement of merchandise or real estate:

> The act, use or employment by any person of any unconscionable commercial practice, deception, fraud, false pretense, false promise, misrepresentation, or the knowing, concealment, suppression, or omission of any material fact with intent that others rely upon such concealment, suppression or omission, in connection with the sale or advertisement of any merchandise or real estate, or with the subsequent performance of such person as aforesaid, whether or not any person has in fact been misled, deceived or damaged thereby, is declared to be an unlawful practice.

[N.J.S.A. 56:8-2.] *DepoLink Court Reporting & Litig. Support Servs. v. Rochman*, 430 N.J. Super. 325, 337, 64 A.3d 579, 587 (App. Div. 2013)(emphasis added)

The CFA was established to address the legislative concern regarding "over sharp practices and dealings in the marketing of merchandise and real estate whereby the consumer could be victimized by being lured into a purchase through fraudulent, deceptive or other similar kind of selling or advertising practices." *Daaleman v. Elizabethtown Gas Co*., 77 N.J. 267, 270 (1978). *See also DeSimone v. Springpoint Senior Living, Inc.*, 256 N.J. 172, 182, 306 A.3d 1276, 1282 (Jan 10, 2024)

In the instant matter Plaintiff does not suggest that Razor provided any services to her. She does not allege that Razor provided her with credit nor that it attempted to sell her any merchandise. As in *Woo-Padva*, Plaintiff concedes that

Razor was "in the business of purchasing consumer debt" and that defendant merely had purchased her "charged-off" Credit One account. *Woo-Pava, supra.* at *14, Plaintiff's Complaint, ¶¶'s 16 and 26. This circumstance is fatal to Plaintiff' claim regarding the CFA. The alleged misrepresentation must be "in connection with" the sale of merchandise or services," and it "has to be one which is material to the transaction … made to induce the buyer to make the purchase." *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 607 (1997) (emphasis added)

In *DepoLink*, the Appellate Division directly addressed whether debt collection activity fell within the ambit of the CFA. It held that:

> Here, the CFA is inapplicable to defendant's claim against the collection agency because any misrepresentations by the collection agency, even if made, were not in connection with the sale of merchandise to defendant. The alleged prohibited conduct occurred later on, when the debt collection agency was attempting to collect the debt from defendant. The collection agency's contacts with defendant were not an offer to sell merchandise, nor did defendant buy anything from the collection agency. Debt collection activities on behalf of a third party who may have sold merchandise are not unconscionable activities "in connection with the sale" of merchandise. *See, e.g., Chulsky v. Hudson Law Offices, P.C.*, 777 F. Supp. 2d 823, 847 (D.N.J. 2011) (holding that the CFA does not cover the debt collection activities of a third party that purchases consumer debt); *Joe Hand Promotions, Inc. v. Mills*, 567 F. Supp.2d 719, 723-24 (D.N.J. 2008) (finding that a letter demanding payment of a settlement did not fall within the CFA because plaintiff was not induced to purchase merchandise or real estate).

DepoLink, 430 N.J. Super at 339, cited in *Woo-Padva at *12-14. See also Ogbin v. GE Money Bank*, 2011 U.S. Dist. LEXIS 64735, *9 (D.N.J. June 13, 2011) (the CFA

does not apply to the collection of a debt) citing to an earlier unpublished opinion *Hoffman v. Encore Capital Group, Inc.*, 2008 N.J. Super. Unpub. LEXIS 1627 (App. Div. Nov. 18, 2008), cert. denied, 2009 N.J. LEXIS 296 (2009). *See also Browne v. Nat'l Collegiate Student Loan Tr.,* 2021 U.S. Dist. LEXIS 244537 (D.N.J. 2021).

Plaintiff's arguments regarding the CFA have been raised repeatedly and have yet to gain any traction. In *Woo-Padva*, *infra*, the Court explained why *Gonzalez v. Wilshire Credit Corp*., 207 N.J. 557 (2011) and *Jefferson Loan Co., Inc. v. Session,* 397 N.J. Super. 520 (App. Div. 2008) do not stand for the application of the "subsequent performance" principle espoused by Plaintiff.

> We perceive no conflict given the factual differences in the cases; plaintiff's reliance on Gonzalez is misplaced. Gonzalez involved a mortgage foreclosure [*14] and "post-judgment agreements" that had "recast the terms of the original loan" and had included, according to plaintiff, "illicit financing charges and miscalculations of monies due." Id. at 563. The Court held the post-judgment loan modifications were "in form and substance an extension of credit," id. at 563, and that the plaintiff could base a CFA claim on the defendant's alleged actions in connection with that new transaction.

Woo-Padva v. Midland Funding, Id. at *13-14.

> Plaintiff's reliance on *Jefferson Loan Co. v. Session*, 397 N.J. Super. 520, 938 A.2d 169 (App. Div. 2008), is similarly misplaced. In *Jefferson*, the plaintiff finance company purchased an existing retail installment sales contract from the automobile dealer the day the defendant purchased the car and before she defaulted on it. *Id.* at 525-27. The plaintiff finance company also had "offer[ed] credit life and credit disability insurance through the dealers, insuring the life and health of the borrowers, as well as property insurance of the financed automobiles." *Id.* at 525-26. *Jefferson* [*15] did not involve the

> purchase of a defaulted, charged-off account, which is what is at issue in this case.

Woo-Padva v. Midland Funding, Id. at *14-15.

Plaintiff's citation to *Cox v Sears Roebuck & Co*., 138 N.J. 2 (1994) stands for the same proposition as *Gonzales* and *Jefferson Loan*, *infra*. Sears was found to have committed consumer fraud in relation to the contract for home repairs with Cox. Sears then tried to collect what it alleged to be an outstanding amount on the contract. A clear reading of the Court's conclusion is that if there was consumer fraud committed in the creation of the debt, i.e. the contract which created it, then the "debt" would also run afoul of the CFA. Again, that fact patten is distinguishable from 3rd party debt collection where the current owner of the account has no connection with the creation of the debt, nor is there any claim of fraud regarding the account. Nowhere does Appellant claim that Credit One Bank's activities ran afoul of the CFA.

i. Plaintiff Has No Ascertainable Loss To Support A Claim Under The CFA

Appellants Complaint also fails in regard to the application of the CFA as the Complaint must allege an "ascertainable loss of moneys or property, real or personal." N.J.S.A. 56:8-19; *see Weinberg v. Sprint Corp*., 173 N.J. 233, 248-54 (2002). *See also Castro v. NYT Television*, 370 N.J. Super. 282, 294 (App. Div. 2004). Plaintiff must show "a quantifiable or otherwise measurable loss as a result of the

alleged CFA unlawful practice[.]" *Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 238 (2005) (citing N.J.S.A. 56:8-2) The loss cannot be hypothetical or illusory. *See Furst v. Einstein Moomjy, Inc.*, 182 N.J. 1, 13-14 (2004); *Hoffman v. Hampshire Labs, Inc.*, 405 N.J. Super. 105, 114-15 (App. Div. 2009)

Plaintiff's complaint as to her CFA claim fails to provide any factual basis that she paid any money to Razor as a result of its collection activity, this is fatal. *See Zaman v. Felton*, 219 N.J. 199, 222, 98 A.3d 503 (2014) (quoting *Bosland v. Warnock Dodge, Inc.*, 197 N.J. 543, 557, 964 A.2d 741 (2009)

To prevail on a CFA claim, a plaintiff must establish unlawful conduct, an ascertainable loss, and a causal relationship between the two. *D'Agostino v. Maldonado*, 216 N.J. 168, 184 (2013), cited in *Woo-Padva, infra*, at *10. A review of the Plaintiff's Complaint discloses there are only two "factual" allegations regarding financial impact.

> 41. Numerous New Jersey consumers made payments to Defendant for accounts assigned to Razor when it was not properly licensed under the New Jersey Consumer Finance Licensing Act.
>
> 42. Defendant collected money from Plaintiff and the proposed class as a result of dunning letters and collection complaints on accounts acquired when Defendant was not properly licensed.

Complaint (Pa 1)

Neither of these allegations can be described as establishing an "ascertainable loss." The speculative nature of the claim as it relates to "New Jersey consumers"

makes clear it is at best a guess or assumption on the part of Plaintiff as to any other unnamed others. What is troubling however is the fact that while there is an allegation specifically regarding Plaintiff, it unsupported by any details or facts. In all likelihood that allegation was not fleshed out because it is simply untrue. Plaintiff would know if she made any payments to Razor, when they were, and in what amount. Her silence is deafening as to the issue and calls into question the propriety of the Complaint, given the crucial nature of that allegation.

CFA claims require compliance with Rule 4:5-8(a). *Hoffman v. Hampshire Labs, Inc*., 405 N.J. Super. 105, 112 (App.Div.2009). Rule 4:5-8(a) provides that "[i]n all allegations of misrepresentation, fraud, mistake, breach of trust, willful default or undue influence, particulars of the wrong, with dates and items if necessary, shall be stated insofar as practicable." *Miller v. Bank of Am. Home Loan Servicing, L.P.*, 439 N.J. Super. 540, 552 (App. Div. 2015) (emphasis added) (Dismissing Miller's CFA claim for failure to comply)

Judge Thurber, in Cassandra A. Valentine v Unifund CCR, LLC et al, BER-L-000376-23 provided additional clarity on the issue as to why *Cox, supra*, does not provide support to Appellant.

> The ascertainable loss requirement goes back to the 1971 amendments to the CFA, when the Legislature added the private cause of action, but made clear that consumers were not simply stepping into the shoes of the Attorney General, but rather could pursue claims under the CFA only if they themselves actually suffered an ascertainable loss.

> Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended and supplemented may bring an action or assert a counterclaim therefor in any court of competent jurisdiction.
>
> [N.J.S.A. 56:8-19.]
>
> Our Supreme Court has discussed and emphasized this requirement in numerous cases. *See, e.g., Weinberg v. Sprint Corp*., 173 N.J. 233, 250 (N.J. 2002), and cases cited therein. ("[I]n contrast to the Attorney General, a private plaintiff must have an ascertainable loss in order to bring an action under the [CFA] . . . [and, the CFA] requires causal relationship between ascertainable loss and unlawful practice . . . ascertainable loss, particularly proximate to a misrepresentation or other unlawful act of the defendant condemned by the Consumer Fraud Act.") (internal citations omitted). Ascertainable loss means the plaintiff must suffer a definite, certain, and measurable loss, rather than one that is merely theoretical. *Bosland v. Warnock Dodge, Inc*., 197 N.J. 543, 558 (2009).
>
> "An ascertainable loss under the CFA is one that is 'quantifiable or measurable,' not 'hypothetical or illusory.'" *Johnson v. McClellan*, 468 N.J. Super. 562, 587 (App. Div. 2021) (quoting *D'Agostino*, 216 N.J. 168, 185 (2013)). A plaintiff can demonstrate ascertainable loss by showing an "out-of-pocket loss or the loss of the value of his or her interest in property[,]" or by demonstrating "that he or she has been deprived of the 'benefit of the bargain' because of a CFA violation." Id. (quoting *D'Agostino*, 216 N.J. at 190-92).

Valentine, Id. at 16-17

Appellant has not demonstrated an ascertainable loss, which would bar her invocation of the CFA even if the other requirements were met, which they were not.

POINT III. THERE CAN BE NO DECLARATORY JUDGMENT PURSUANT TO A VIOLATION OF A STATUTE THAT HAS NO PRIVATE RIGHT OF ACTION (RAISED BELOW: T1)

In the First Count of the Complaint, Plaintiff sought a Declaratory Judgment pursuant to the Uniform Declaratory Judgments Law ("UDJL"), N.J.S.A. 2A: 16-53 declaring that all accounts Razor took assignment of prior to obtaining a license are void, and granting a permanent injunction "pursuant to the [NJ]CFA" prohibiting any further attempts to collect on those accounts or transfer them to other entities. (Pa1) While not an issue that was argued below, Appellant includes it in her current argue and therefore Respondent responds.

Federal courts presented with the question made it clear that "[d]eclaratory and injunctive relief are not independent causes of action." *See ASAH, The Children's Inst. v. N.J. Dep't of Educ*., 2017 U.S. Dist. LEXIS 101736, at *35-36 (D.N.J. 2017) (collecting cases). Absent either a private right of action pursuant to a statute or a finding of a violation of a statute there can be no application of the UDJL.

"[C]ourts in this district have held that there is no private right of action for violation of the CFLA." *Macdonald v. CashCall, Inc.,* 2017 U.S. Dist. LEXIS 64761, at *29 (D.N.J. Apr. 28, 2017)(interior citations deleted)

> The Legislature, however, did not provide a private right of action under the CFLA. . . Instead, the Legislature determined that a "consumer lender" who violated the licensing provision of the CFLA

> would "be guilty of a crime of the fourth degree," N.J.S.A. 17:11C-33, and authorized the Commissioner of Banking and Insurance to punish those who violate any provision of the CFLA by, for example, refusing to issue a license or imposing penalties in accordance with the CFLA, N.J.S.A. 17:11C-18.

Woo-Padva, 2023 N.J. Super. Unpub. LEXIS 1550, supra at *9.

In *Woo-Padva*, this Court also went on to state:

> Plaintiff cannot circumvent the lack of a private right of action by seeking relief under the *Uniform Declaratory Judgments Act*, N.J.S.A. 2A:16-50 to 62. *See In re Resol. of State Comm'n of Investigation,* 108 N.J. 35, 46, 527 A.2d 851 (1987) (dismissing cause of action seeking a judgment declaring a party had violated a statute because plaintiffs did not have a private right of action under the statute); *Excel Pharmacy Servs., LLC v. Liberty Mut. Ins.*, 825 F. App'x 65, 70 (3d Cir. 2020) ("But it is well settled that parties cannot bring a declaratory judgment action under a statute when there is no private right of action under that statute.")

Id. at *9.

POINT IV. APPELLANT'S ARGUMENTS RELATING TO LICENSURE WERE NOT ARGUED BELOW AND SHOULD BE STRIKEN (NOT RAISED BELOW)

The question of whether Razor had a license, or needed a license, pursuant to the NJCFLA, was not argued below nor was any decision rendered regarding that issue by the trial court. The question should not now be addressed as a determining factor in deciding whether to grant or deny this appeal ,as to the dismissal based on the inapplicability of the New Jersey Consumer Fraud Act. Appellant fails to point out that fact. There is no excuse for, or exception to, the rule requirement that points

not raised below be identified. *State v es*, 132 N.J. Super. 121, 143 (App Div. 1977) aff'd in part and rev'd in part 78 N.J. 342 (1978).

Appellant's primary attack on the lower courts ruling here is her allegation that Razor was required to be licensed under the NJCFLA and that it was not licensed at a certain point in time. Neither of those allegations were ruled on by the lower court. Matters not raised in the Court below are not proper subjects of appeal and may not be considered by the appellate tribunal. *Brock v. Public Service Electric & Gas Co.*, 149 N.J. 378, 391 (1997) *citing Nieder v Royal Indemnity Insurance Co.*, 62 N.J. 229, 234 (1973) *See also Alan J. Cornblatt, P.A. v. Barow*, 153 N.J. 218, 230, 708 A.2d 401, 406-07 (1998) and *In re Board of Educ. of Boonton*, 99 N.J. 523, 536, 494 A.2d 279 (1985) (where the Court refused to consider newly-raised issues with "an insufficient factual basis" in the record), cert. denied sub nom, *Kramer v. Public Employment Relations Comm'n*, 475 U.S. 1072, 106 S. Ct. 1388, 89 L. Ed. 2d 613 (1986). There is no record which could support any discussion regarding the Trial Court's consideration as to the application of the NJCFLA.

i. *There Is No Private Right Of Action Under The NJCFLA*

For the sack of completeness, without waiver of Respondent's position that it is not relevant to this Appeal, Respondent states that multiple Courts have now reviewed and rejected instant Petitioner's counsel's attempts to invoke the NJCFLA, pointing out that there is no private right of action under the Act and only the

NJDOBI can employ the act to declare a violation of the Act. *See Francavilla v. Absolute Resols. VI LLC*, 478 N.J. Super. 171, 180, 312 A.3d 307, 312 (App. Div. March 14, 2024) "The NJCFLA does not provide a mechanism for action and enforcement to anyone other than the Commissioner of Banking and Insurance. See N.J.S.A. 17:11C-18" *N.A.R., Inc. v. Ritter*, No. A-0322-23, 2024 N.J. Super. Unpub. LEXIS 1313, at *10-11 (App. Div. June 24, 2024) ("The NJCFLA does not provide a mechanism for action and enforcement to anyone other than the Commissioner of Banking and Insurance") and *Jefferson Capital Sys., LLC Inc/Santander Consumer USA v. Glover*, No. A-3545-22, 2024 N.J. Super. Unpub. LEXIS 1248, at *10 (App. Div. June 18, 2024)

As pointed out by the Appellate Decision in *Francavilla, supra*, the Maryland cases *LVNV Funding LLC v. Finch*, 463 Md. 586, 207 A.3d 202 (2019) and *Finch v. LVNV Funding LLC*, 212 Md. App. 748, 71 A.3d 193, 198-205 (Md. Ct. Spec. App. 2013) raised by Petitioner do not provide support for her argument as to the effect of the NJCFLA for two reasons.

> Plaintiff's reliance on a decision by the Maryland Court of Special Appeals reversing a trial court order dismissing the plaintiff's class action as an impermissible collateral attack on a prior judgment is misplaced. The decision in Finch v. LVNV Funding LLC, 212 Md. App. 748, 71 A.3d 193, 198-205 (Md. Ct. Spec. App. 2013), was predicated on the Maryland Collection Agency Licensing Act (MCALA)2 and the Maryland Consumer Debt Collection Act (MCDCA),3 not New Jersey law. The MCDCA also contains a private right of action, while New Jersey's CFLA does not.

Francavilla Id. at 171, *See also Diana v. LVNV Funding LLC,* No. A-1000-23, 2024 N.J. Super. Unpub. LEXIS 2241, at *7-8 (App. Div. Sep. 26, 2024).

It is clear that the legislature knows how to exercise its power and provide a private right of action when it deems it necessary, even after a statute has been enacted. A review of the legislative history of the CFA provides just such an example.

> In 1960, the Legislature passed the Consumer Fraud Act "to permit the Attorney General to combat the increasingly widespread practice of defrauding the consumer." Senate Committee, Statement to the Senate Bill No. 199 (1960). The Act conferred on the Attorney General the power to investigate consumer-fraud [*15] complaints and promulgate rules and regulations that have the force of law. N.J.S.A. 56:8-4. In 1971, the Legislature amended the Act to "give New Jersey one of the strongest consumer protection laws in the nation." *Governor's Press Release for Assembly Bill No. 2402*, at 1 (Apr. 19, 1971). The Legislature expanded the definition of "unlawful practice" to include "unconscionable commercial practices" and broadened the Attorney General's enforcement powers. Ibid. That amendment also provided for private causes of action, with an award of treble damages, attorneys' fees, and costs. Ibid. Governor Cahill believed that those provisions would provide "easier access to the courts for the consumer, [would] increase the attractiveness of consumer actions to attorneys and [would] also help reduce the burdens on the Division of Consumer Affairs." *Governor's Press Release for Assembly Bill No. 2402*, at 2 (June 29, 1971).

Cox v. Sears Roebuck & Co., 138 N.J. 2, 14-15, 647 A.2d 454, 460 (1994).

> As consumer practices have evolved, the Legislature has amended and supplemented the CFA to provide additional protections to consumers, including what is arguably the greatest expansion of the CFA -- a 1971 amendment authorizing a private right of action. See L. 1971, c. 247 § 7 (codified at N.J.S.A. 56:8-19); *see also Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 245-46, 872 A.2d 783 (2005) (explaining how

> "[i]t is a well-known fact that the CFA initially conferred enforcement power exclusively on the Attorney General" but was amended to add a private right of action "[t]o augment . . . enforcement efforts").

DeSimone v. Springpoint Senior Living, Inc., 256 N.J. 172, 182, 306 A.3d 1276, 1282 (Jan 10, 2024). No such amendment was ever made to the NJCFLA.

ii. Nor Is There An Implied Right Of Action Under The NJCFLA

The discussion of the legislative history and intent of the statute is academically interesting but does not impact the question whether if the NJCFLA does not have a direct private right of action, should the Court infer it has an "implied" private right of action. While not determinative, it is another attempt to mislead. It glosses over the fact that "New Jersey courts have been reluctant to infer a statutory private right of action where the Legislature has not expressly provided for such action." *R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co.*, 168 N.J. 255, 271, 773 A.2d 1132, 1142 (2001). The appellate division's recent acknowledgement, in *Francavilla, supra*, confirms the earlier statements by this Court in *Woo-Padva v Midland Funding*, 2023 N.J. Super. Unpub. LEXIS 1550 (App. Div, 2023) regarding the lack of a private right of action. Of note is the fact that *Veras v LVNV Funding, LLC*, 2014 U.S. Dist. LEXIS 34176 (D.N.J. 2014) cited by Plaintiff was issued by a federal district court in 2014 long before New Jersey state courts addressed the effects of the NJCFLA. This Court, as recently as this past month reaffirmed the Francavilla Courts ruling. "We see no reason to depart from our conclusion in Francavilla in this case. Plaintiff relies solely

on non-binding authority to argue there is an implied private right of action under the CFLA. We are unconvinced by plaintiff's [*8] suggestion that we should contravene the plain statutory language of the CFLA." *Diana v. LVNV Funding LLC*, No. A-1000-23, 2024 N.J. Super. Unpub. LEXIS 2241, at *7-8 (App. Div. Sep. 26, 2024)

iii. Notwithstanding Its Lack Of Relevancy To The Instant Appeal, Appellant Mischaracterizes How New Jersey's State Courts Have Dealt With The New Jersey Consumer Financing Law Act As Related To Debt Collection

The New Jersey Federal District Court decisions included by Appellant, where the arguments were made that a lack of a license pursuant to the New Jersey Consumer Financing Law Act, ("NJCFLA") N.J.S.A. 17:11C-33(b) created a violation of the Federal Fair Debt Collections Act, ("FDCPA") 15 U.S.C §1692 et seq. serve no useful purpose here. Appellant acknowledges that there is limited state court jurisprudence on the licensure issue, "while there is no New Jersey appellate decision addressing the [NJCFLA] application to debt buyers there is a lower court decision, *New Century Fin. v. Trewin*, DC-960-17, 2018 N.J. Super. Unpub. LEXIS 1688, *8 (Ch. Div. May 24, 2018)" (Pb15) for the proposition that a buyer of distressed debt needs the license under the NJCFLA. *New Century Financial* ("*NCF*") does not address the licensing issue as it relates to Razor, In *NCF*, the focus was on the originator of the loan, Drake College, which was not licensed. As a direct lender it needed to be. Whether NCF was licensed was not at issue. There have been

no allegations that Razor had any involvement in creating the Appellants defaulted Credit One credit card account.

Appellant fails to address the relevant discussion in *Woo-Padva v. Midland Funding LLC*, BER-L-3625-17, 2022 N.J. Super. Unpub. LEXIS 96 (January 21, 2022) (Da103), where the Hon Robert C. Wilson, J.S.C. performed a thorough analysis and found another reason why Midland, a debt buyer, was not subject to the NJCFLA, explaining:

> [T]he NJCFLA does not define a consumer lender as one that buys debts. Rather, the plain words only include within its definition those "in the business of buying, discounting or endorsing notes." N.J.S.A. §17:11C-2. Courts have long considered the distinction between "notes" and "debts." *See Smith v. Palisades Collection, LLC*, 2007 U.S. Dist. LEXIS 28348, *15 (N.D. Ohio April 3, 2007) (plaintiff's claim "is based upon the flawed premise [*7] that a credit card agreement is equivalent to a promissory note."); *Cavalry SPV I, LLC v. Krantz*, 2012-Ohio 2202, 2012 Ohio App. LEXIS 1941, at *6 (Ohio App. May 17, 2012); *Lemke v. Barclays Bank Delaware*, 2015 U.S. Dist. LEXIS 69598, at *12 (E.D. Mich. Mar. 31, 2015). New Jersey statutes establish a distinction between a "note" and the credit card debt at issue in this case. N.J.S.A. §12A:3-118 explicitly provides the statute of limitations for "an action to enforce the obligation of a party to pay a note . . ." while N.J.S.A. §2A:14-1, a separate and distinct section of New Jersey law, provides the statute of limitations to enforce claims based on a breach of contract that generally apply to credit card debts. Plaintiff uses the word "buying" to aid in her claims. However, the NJCFLA uses the word "buying" to modify the word "notes." N.J.S.A. §17:11C-2. The NJCFLA therefore applies only when a party is buying "notes," not buying debts, and does not apply to Defendant.

Woo-Padva v. Midland Funding LLC, 2022 N.J. Super. Unpub. LEXIS 96, *6-7.

iv. The Legislative History Of The NJCFLA Demonstrates It Was Not Intended To Be Applied As Appellant Claims

The present-day iteration of the NJCFLA originated as the New Jersey Small Loan Law ("NJSLL"), enacted in 1914. The NJSLL was meant to curtail predatory loan practices widely unregulated at the time.

> 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); 8 *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.

Family Fin. Corp. v. Gough, 10 N.J. Super. 13, 19 (App. Div. 1950). (cited in Pb9-10). It may easily be deduced from the aforementioned discussion that the NJCFLA was concerned with the formation of loans made by local entities. There is no indication that the NJCFLA was meant to apply to credit accounts issued by national banks which have their own sets of laws and regulations. Illogically, in the face of the rational for the NJCFLA in all of its iterations, is the attempt to utilize it

on entities, in this case third party purchasers of defaulted accounts purchased from nationally charted banks and other financial institutions licensed under national banking laws and/or the states where they are located.

CONCLUSION

The Trial Court's decision should be Affirmed and costs should be awarded as the instant appeal is borderline frivolous given the prior decisions by this Court and others regarding the same fact pattern. Nowhere is her papers does Appellant distinguish this case from any of the prior matters and present any reason for this Court to ignore those prior decisions and the reasonings behind them

Dated November 4, 2024

Respectfully Submitted
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SUPERIOR COURT OF NEW JERSEY
APPELLATE DIVISION

❖ ❖ ❖

Docket No. A-002647-23

YVETTE MCQUEEN, *on behalf of herself and those similarly situated*,	:	**CIVIL ACTION**
Plaintiff-Appellant,	:	ON APPEAL FROM THE FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY
v.	:	LAW DIVISION, HUDSON COUNTY
RAZOR CAPITAL, LLC; and JOHN DOES 1 to 10,	:	Trial Court Docket No. HUD-L-3630-21
Defendant-Respondents.	:	Sat Below: HON. ANTHONY V. D'ELIA, J.S.C.
	:	DATE: November 18, 2024

REPLY BRIEF AND APPENDIX ON BEHALF OF PLAINTIFF-APPELLANT

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PRELIMINARY STATEMENT

Defendant Razor Capital, LLC's ("Razor") Brief largely fails to address the substantive arguments raised in Plaintiff McQueen's opening Brief. Rather, Razor attempts to argue that the issue of licensure under the New Jersey Consumer Finance Licensing Act ("NJCFLA"), N.J.S.A. 17:11C-1, *et seq*., was not raised in the trial court. However, as explained herein, Razor's failure to be legally licensed under the NJCFLA to enforce (or even possess) Plaintiff's alleged debt is the central issue to this case and was repeatedly raised in the trial court.

Razor has simply failed to address the plain language of the NJCFLA or the fact that the legislative intent and statutory history behind the NJCFLA clearly evidences and intent by the legislature to provide for an implied private right of action, enabling enforcement of the Act by aggrieved consumers. Thus, the trial court's March 21, 2024 Order granting Defendant Razor's Motion to Dismiss should be reversed.

REPLY ARGUMENT

POINT I. IT IS AXIOMATIC THAT THE PURVIEW OF THE CONSUMER FRAUD ACT EXTENDS TO SUBSEQUENT PERFORMANCE

Razor first argues that collection activities do not fall within the purview of the Consumer Fraud Act ("CFA"), but Razor, like the trial court, ignores that the CFA applies to the subsequent performance of the sale of

"merchandise," as defined by N.J.S.A. 56:8-1(c). *See* N.J.S.A. 56:8-2. Relying on *Gennari v. Weichert Co. Realtors*, Razor argues that "[t]he alleged misrepresentation must be 'in connection with' the sale of merchandise or services, and it 'has to be one which is material to the transaction . . . *made to induce the buyer to make the purchase*.'" Razor's Br. 26 (quoting *Gennari v. Weichert Co. Realtors*, 148 N.J. 582, 607 (1997)). However, in *Gennari*, the New Jersey Supreme Court analyzed a pre-sale affirmative misrepresentation, as reflected by the above-cited portion of the opinion. *To wit*, *Gennari* did not analyze subsequent performance—the linchpin issue here. Further, both this Court and the New Jersey Supreme Court have held that the purview of the CFA indisputably extends beyond the initial purchase of merchandise and/or inducement of the same. *See Jefferson Loan Co., Inc. v. Session*, 397 N.J. Super. 520, 533 (App. Div. 2008) ("We conclude that an assignee of a RISC can be held liable under the CFA, for its own unconscionable commercial activities in the subsequent performance of the assigned contract."); *Gonzalez v. Wilshire Credit Corp.*, 207 N.J. 557, 577-78, 582 (2011) ("[C]ollecting or enforcing a loan, whether by the lender or its assignee, constitutes the 'subsequent performance' of a loan, an activity falling within the coverage of the CFA . . . . We roundly reject defendants' argument that the collection activities of a servicing agent . . . do not amount to the 'subsequent

performance' of a loan, a covered activity under the CFA.").

Razor next attempts to improperly limit the New Jersey Supreme Court's holding in *Gonzalez* by relying on *DepoLink Court Reporting & Litig. Support Servs. v. Rochman*, 430 N.J. Super. 325 (App. Div. 2013). Notwithstanding the distinguishing factors that part *DepoLink* from the case at bar (discussed in pages 23-25 of McQueen opening Brief), Razor's arguments fail to substantially respond to the points raised in McQueen's opening Brief—i.e., *DepoLink* improperly relied on two federal cases[1] to decide an issue of state law and that *DepoLink* failed to address the *Gonzalez* holding, despite *DepoLink* being decided two years after the New Jersey Supreme Court decided *Gonzalez*. *See* Pressler & Verniero, *Current N.J. Court Rules*, comment 3.5 on *R.* 1:36 (2011) ("[A] federal court's decision on a question of New Jersey law is not binding on any court in this State."); *see also Dewey v. R.J. Reynolds Tobacco Co.*, 121 N.J. 69, 80 (1990); *Shaw v. City of Jersey City*, 346 N.J. Super. 219, 229 (App. Div. 2002), *rev'd on other grounds*, 174 N.J. 567 (2002).

Razor's citations to unpublished cases *Woo-Padva v. Midland Funding LLC*, 2022 N.J. Super. Unpub. LEXIS 96 (Law Div. Jan. 21, 2022) ("*Woo-*

[1] *Chulsky v. Hudson Law Offices, P.C.*, 777 F. Supp. 2d 823, 847 (D.N.J. 2011); *Joe Hand Promotions, Inc. v. Mills*, 567 F. Supp. 2d 719 (D.N.J. 2008).

Padva 1") (Pa133), and *Woo-Padva v. Midland Funding LLC*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550 (App. Div. Sep. 21, 2023) ("*Woo-Padva* 2") (Pa137), are susceptible to similar criticisms in that they too improperly narrow the holding in *Gonzalez*. *To wit*, there is nothing in *Gonzalez* to indicate that the NJ Supreme Court intended to limit the holding that collecting or enforcing a loan constitutes subsequent performance within the coverage of the CFA to the narrow facts of that case. If the *Gonzalez* court intended to do so, it's reasonable to infer that language applicable to post-judgment modifications would have been included in the holding.

As a remedial consumer protection statute, the NJ Supreme Court has repeatedly held that the CFA should be interpreted broadly to effect its purposes of safeguarding the public and deter unscrupulous bad actors. *See Lettenmaier v. Lube Connection, Inc.*, 162 N.J. 134, 139 (1999); *Lee v. Carter-Reed Co., L.L.C.*, 203 N.J. 496, 522 (2010). Deterring illegal collection activity by including under the umbrella of 'subsequent performance' aligns with both the espoused purposes of the CFA and the NJ Supreme Court's holding in *Gonzalez*. Thus, the trial court's March 21, 2024 Order, which improperly narrowed the scope and protections of the CFA, must be reversed.

POINT II. THE ALLEGATIONS IN THE COMPLAINT ARE SUFFICIENT TO DEMONSTRATE MCQUEEN'S ASCERTAINABLE LOSS AT THE PLEADING STAGE

Razor's Brief concedes that McQueen's class action Complaint alleges that Razor collected money from McQueen and the putative class members while Razor was unlicensed under the NJCFLA. *See* Razor's Br. 12 (quoting Compl. ¶ 42) (Pa18). The Complaint further alleges that because Razor was not licensed as a "consumer lender," they had no right to solicit payments or enforce the account, because the contract governing the same was void. *See* Compl. ¶¶ 33-41 (Pa17); *see also* N.J.S.A. 17:11C-2; N.J.S.A. 17:11C-3; N.J.S.A. 17:11C-33(b). At the pleading stage, the allegations in the Complaint are sufficient to establish an ascertainable loss and meet the requirements of *R.* 4:5-8(a). Indeed, Razor concedes that the "particulars of the wrong, with dates and items **if necessary**, shall be stated **insofar as practicable**." Razor's Br. 14. (quoting *Miller v. Bank of Am. Home Loan Servicing, L.P.*, 439 N.J. Super. 540, 552 (App. Div. 2015)) (emphasis added); *see also R.* 4:5-8(a). A litigant is not required to know and plead all details of a bad actor's wrongdoings when filing a complaint—only those facts that are "necessary" and "practicable."

The pertinent allegations here are sufficient to put Razor on notice of McQueen's claims because "'the fundament of a class action' could be gleaned

from plaintiff[’s] complaint.” *Pace v. Hamilton Cove*, 258 N.J. 82, 91 (2024).

POINT III. RAZORS VIOLATIONS OF THE CONSUMER FRAUD ACT AND CONSUMER FINANCE LICENSING ACT GIVE RISE TO MCQUEEN’S STANDING TO SEEK DECLARATORY AND INJUNCTIVE RELIEF

Razor cites to *Woo-Padva* 2 to argue that McQueen lacks standing to seek relief under the Uniform Declaratory Judgments Law (“UDJL”) due to an ostensible lack of a private right of action under the NJCFLA. *See* Razor’s Br. 16-17. *Woo-Padva* 2 (at *9) in turn, cites to *In re Resolution of State Com. of Investigation*, 108 N.J. 35, 46 (1987), to reason that “Plaintiff cannot circumvent the lack of a private right of action by seeking relief under the Uniform Declaratory Judgments Act.” Notwithstanding the analysis of private right of action under the NJCFLA discussed in McQueen’s opening Brief and the fact that *In re Resolution* addressed and analyzed a statute where the “extrapolation of the implicit private cause of action . . . would frustrate, rather than further, the legislative scheme that underlies N.J.S.A. 52:9M-15(a).” *Id.* at 36-37, 44.

In re Resolution analyzed N.J.S.A. 52:9M-15(a)—which governs improper disclosures of information related to investigations into crime by the State Commissioner of Investigation (“SCI”). Investigation of such improper disclosures by private individuals would frustrate the legislative purpose of the statute itself, i.e., improper disclosures on confidential information related to

ongoing criminal investigations. Here, with respect to the NJCFLA and enforcement by private individuals, there is no frustration of the NJCFLA's purpose of policing the consumer credit industry in New Jersey. Because private enforcement would not frustrate the NJCFLA's manifest purpose, the holding in *In re Resolution* was misapplied by the court in *Woo-Padva* 2—*In re Resolution* supports McQueen's position. Thus, the trial court's March 21, 2024 Order should be reversed.

POINT IV. THE ISSUES OF RAZOR'S LICENSURE AND THE PRIVATE RIGHT OF ACTION UNDER THE NJCFLA WERE RAISED IN THE TRIAL COURT

Next, Razor argues that "[t]he question of whether Razor had a license, or needed a license, pursuant to the NJCFLA, was not argued below nor was any decision rendered regarding that issue by the trial court." Razor's Br. 17. Pursuant to *R.* 2:6-1(b) and *R.* 2:6-5, McQueen Reply Appendix contains McQueen's Brief in Opposition to Razor's Motion to Dismiss, filed on February 6, 2024, to show that the issue of Razor's licensure was repeatedly raised by McQueen; the Court is respectfully referred to sections 3.2 (Pra9), 3.2.1 (Pra13), 3.4 (Pra20), and 3.5 (Pra22). However, even if the aforementioned sections did not show that the issue was raised below, the trial court adopted the Honorable Mary F. Thurber's October 4, 2023 Opinion in the matter captioned as *Valentine v. Unifund CCR, LLC, et al.*, docket number

BER-L376-23 (Law Div. October 4, 2023) (Pa62),[2] where the court repeatedly addressed the issue of the defendants' licensure under the NJCFLA. Thus, the issue was raised both by McQueen and the trial court in adopting the *Valentine* decision.

With respect to the implied private right of action under the NJCFLA, Razor cites to dicta in *Francavilla v. Absolute Resols. VI LLC*, 478 N.J. Super. 171 (App. Div. 2024) (a case analyzing an application of the entire controversy doctrine) to assert that two Maryland cases are dispositive in the Court's analysis of a New Jersey statute. *See* Razor's Br. 19-20. But Razor again fails to address the arguments in McQueen's opening brief, i.e., 1) allowing for private enforcement of the NJCFLA furthers (and does not frustrate) the manifest purpose of the statute to police the consumer credit industry,[3] and 2) the statutory history of the NJCFLA shows that its predecessors provided for an implied private right of action and, thusly, that the legislature intended to provide for private enforcement. *See*, *e.g.*, *Lemelledo v. Benefit Mgmt. Corp.*, 150 N.J. 255, 271-72 (1997) (The New Jersey Consumer Loan Act, "which prohibit[ed] deceptive lending practices generally," "as incorporated in the

[2] The October 4, 2023 Opinion in *Valentine v. Unifund CCR, LLC, et al.*, docket number BER-L-376-23, was originally attached as Exhibit G (Pa59) to Razor's Motion to Dismiss.
[3] *See In re Resolution, supra*, 108 N.J. at 44, 46.

Licensed Lenders Act . . . allow[ed] for treble damages by aggrieved consumers, N.J.S.A. 17:11C33b . . . ." *Id.* at 271-72. Though the "typical remedy" was a "voiding of the contract" by "individual consumers." *Ibid*.). Razor has provided no explanation or argument as to why the excision of the New Jersey Residential Mortgage Lending Act ("NJRMLA") from the NJCFLA meant that the private right of action was also abrogated, nor for that matter has any court. Instead, Razor's arguments mischaracterize a quote from *Family Fin. Corp. v. Gough*, 10 N.J. Super. 13, 19 (App. Div. 1950), being: "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*." *See* Razor's Br. 24 (emphasis in original). Razor argues that "[i]t may easily be deduced from the aforementioned discussion that the NJCFLA was concerned with the formation of loans made by local entities." *Ibid.* First, adopting general acts to control the consumer loan business indicates that the NJCFLA's purpose would be furthered by private enforcement. Second, applying principles of statutory construction, if the legislate intended *only* state regulation, then the phrase "and control" would be rendered superfluous. Razor's inferred message is simply not supported by *Gough* or the other cases cited in McQueen's opening Brief. *See, e.g., Lemelledo, supra.*

Next Razor cites to *Woo-Padva* 1 to argue that the "consumer loan

business," as defined by the NJCFLA, includes "buying, discounting or endorsing notes" but not buying debts. *See* Razor's Br. 23; *see also* N.J.S.A. 17:11C-2 (definition of "consumer loan business"). Thus, Razor argues, the NJCFLA is inapplicable to Razor here as a purchaser of debt. However, this argument has been roundly rejected in both the federal District Court of New Jersey and the Superior Court of New Jersey.

> [T]he NJCFLA requires a person or entity that qualifies as a "consumer lender" or "sales finance company" to first obtain a license from the NJDOBI. N.J. Stat. Ann. § 17:11C-3(a). A "consumer lender" is a person or entity that, among other things, "directly or indirectly engag[es] . . . in the business of buying, discounting or endorsing notes" . . . In analyzing whether this definition covered debt buyers, the Superior Court in Woo-Padva stated that "notes" were distinct from "debts," but did not define either term. The Superior Court relied on three unpublished cases from Ohio and Michigan to support its assertion, and pointed to the fact that a New Jersey statute, N.J. Stat. Ann. § 12A:3-118, "explicitly provides the statute of limitations for 'an action to enforce the obligation of a party to pay a note'" while another statute, N.J. Stat. Ann. § 2A:14-1 "provides the statute of limitations to enforce claims based on a breach of contract that generally apply to credit card debts."
>
> Respectfully, the Court is not persuaded by this line of reasoning. Courts in this District have invoked that part of the NJCFLA—the part reading: "directly or indirectly engag[es] . . . in the business of buying, discounting or endorsing notes"—when classifying debt collection practices as falling within the "consumer loan business." This Court will do the same and find that as a purchaser of debt, DAP III meets the definition of "consumer lender" required to obtain a

license under the NJCFLA.

Valentine v. Mullooly, Jeffrey, Rooney & Flynn LLP, No. 2:20-cv-14152 (WJM), 2022 U.S. Dist. LEXIS 118399, at *13-14 (D.N.J. July 6, 2022) (internal citations omitted) (Pra24). The reasoning in *Woo-Padva* 1 was also criticized in the Superior Court:

> The Court must interpret and apply statutory text according to the plain, ordinary meaning of its terms. It must also construe such text in the context of relevant definitions or other provisions of the statute examined in their entirety. It is required to interpret in a manner that is consonant with the statutory purpose and that does not produce an absurd or nonsensical result.
>
> The Court finds that the plain, ordinary meaning of the term "notes", as used in this statutory definition, encompasses a debt obligation arising—as here—from an underlying credit card account. A dictionary definition of "note" is a "written promise to pay a debt." *Note*, Merriam-Webster, https://www.merriam-webster.com/dictionary/note (last visited April 20, 2023). An open-ended credit card agreement of the type Razor and its predecessor assignees acquired is such a written promise to pay a debt.
>
> [The NJCFLA] captures within the definitions of "consumer lender" and "consumer loan business" a wide range of other participants in consumer lending . . . the statutory coverage extends not only to those making or extending loans, but those that solicit such loans, those that assist in the procurement or negotiation of the same and those that purchase or acquire "notes." The purpose of the second sentence of the definition [of consumer loan business] is pellucid — to expand the scope of the statute and its licensure and other requirements well beyond the entities that

> actually provide the credit ab initio.
>
> . . . .
>
> Indeed, a contrary interpretation of the term "notes"—for example, an interpretation that would limit the scope of the term to negotiable promissory notes subject to the Uniform Commercial Code — would produce an absurd, and the Court finds, unintended result . . . .
>
> In light of the breadth of the definition as a whole, to hold that the term "notes" does not encompass a debt obligation arising from breach of a credit card agreement would not only limit the scope of "notes" in a manner that is inconsistent with the ordinary meaning of the term. Such a conclusion would also frustrate the manifest purpose of the statute to require licensure of, and to impose certain substantive requirements on, all essential participants in the "consumer loan business."
>
> []This Court has examined the federal cases cited by the movant (which are also unpublished) and the contrary decision of a different New Jersey trial-level court in *Woo-Padva* . . . [The Court] disagrees with the conclusions reached in that case for the reasons set forth herein.

McQueen v. Fein, Such, Kahn & Shepard, P.C., ESX-L-1439-22, 2023 N.J. Super. Unpub. LEXIS 640, at *12-16 (Law Div. April 26, 2023) (internal citations omitted) (Pa111). As shown by the above cases, consumer debts are within the statutory definition of the consumer loan business. Thus, Razor's arguments fail and the trial court's March 21, 2024 Order granting Razor's Motion to Dismiss must be reversed.

CONCLUSION

For the foregoing reasons, Plaintiff-Appellant Yvette McQueen respectfully requests that the March 21, 2024 Order granting Razor's Motion to Dismiss be reversed.

Respectfully submitted,

/s/ Mark Jensen

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