JAMES G. LOWE, M.D., Plaintiff-Appellant, v. BERNARD AUDET, RICHARD LAVER, AND THE CREATIVE FINANCIAL GROUP, LTD., Defendants-Respondents.	SUPREME COURT OF NEW JERSEY DOCKET NO.: 090940 Civil Action On Certification of a Final Judgment of the Superior Court of New Jersey, Appellate Division, Docket No. A-4093-23 Sat Below: Hon. Greta Gooden Brown, P.J.A.D. Hon. Christine M. Vanek, J.A.D. Date Submitted: February 17, 2026

BRIEF OF AMICUS CURIAE ATTORNEY GENERAL OF THE STATE OF NEW JERSEY

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PRELIMINARY STATEMENT

Our Legislature established the Consumer Fraud Act as one of the Nation's strongest consumer protection laws. After first enacting the Act almost 70 years ago, the Legislature has continually expanded the CFA's scope to fulfill its broad purpose, growing more comprehensive each time—with the goal of protecting New Jersey consumers against fraud in its ever-evolving incarnations. As this Court has thus long recognized, the CFA must be construed liberally in light of the "clear legislative intent that its provisions be applied broadly." Lemelledo v. Beneficial Mgmt. Corp., 150 N.J. 255, 264 (1997). Indeed, its expansive text makes clear the Legislature intended it to broadly cover business dealings with consumers. Yet the decision below would create a gaping hole in the CFA's scheme, exempting from its reach a category of licensed semi-professionals who market and sell services to consumers like any other business.

Although this case specifically asks whether insurance brokers can evade CFA liability when they otherwise violate its antifraud provisions, the question turns on a more fundamental issue: the scope of the CFA's exception for "learned professionals" that this Court announced in Macedo v. Dello Russo, 178 N.J. 340 (2004). Macedo explained that the CFA does not apply to certain "learned professionals," but in the years since, the Appellate Division has struggled to identify the contours of this exemption, issuing conflicting rulings on whether

it covers licensed semi-professionals. Some courts have found that the "learned professionals" exception applies only to professions historically excluded from participating in activities within the CFA's ambit, while others have held that it applies as well to licensed semi-professionals with sufficient training.

This Court should confirm that this exception extends only to the narrow group of historically learned professions not generally permitted to market their services when the CFA was enacted. Most obviously, this is the precise way that Macedo described the exception, reasoning the CFA (despite its capacious text) "obviously was not meant to encompass advertising by physicians because such advertising was not permitted for another two decades." Moreover, any broader expansion of this exemption would be contrary to the CFA's plain text: it makes unlawful the fraudulent conduct of "any person" "in connection with the sale or advertisement of any merchandise or real estate," without any carve outs for particular industries. N.J.S.A. 56:8-2. It is one thing to say professionals fall outside that text when they could not have been engaging in that conduct at the time of the law's passage; it is another to create an unmoored exception based on that profession's licensure or training. This narrower version of the learned professionals exception also comports best with the CFA's remedial purpose, because licensed semi-professionals are just as capable of defrauding consumers

as the unlicensed. And no other support for a broader version of this exception exists in other indicia of legislative intent.

The decision below, which incorrectly held insurance brokers are exempt from CFA liability because they are subject to other licensing schemes, is thus unsustainable. The decision below not only goes well beyond Macedo but runs headlong into Lemelledo, which made clear that the existence of an alternative regulatory scheme does not alone exempt conduct that is otherwise covered by the language of the CFA except when there is a direct and unavoidable conflict between the two regulatory schemes—which no one here argues is the case. Indeed, not only are licensed semi-professionals as capable of defrauding consumers, but the mere fact of a licensing scheme by itself provides only limited recourse for consumers seeking redress for any injuries suffered at the hands of unscrupulous actors. This Court should thus explain that the proper bounds of the learned professionals exception extends, as Macedo already stated, only to professions historically excluded from participating in activities within the CFA's ambit—and, on that basis, hold insurance brokers fall within the CFA's scope.

PROCEDURAL HISTORY AND STATEMENT OF FACTS[1]

Amicus Attorney General adopts the Procedural History and Statement of Facts from the Appellate Division's opinion below, adding only the following.

A. The Consumer Fraud Act.

The CFA affords expansive protection to New Jersey consumers "from a wide variety of marketplace tactics and practices deemed to be unconscionable." Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 547 (2009). Enacted in 1960, the CFA originally granted the Attorney General exclusive enforcement authority. See Cox v. Sears Roebuck & Co., 138 N.J. 2, 14–15 (1994). Since then, the Legislature has continually amended the Act to expand its remedial reach, including with the addition of a private right of action, resulting in what our Legislature intended as "one of the strongest consumer protection laws in the nation." Id. at 15 (quoting Governor's Press Release for Assembly Bill No. 2402, at 1 (Apr. 19, 1971)); see New Mea Const. Corp. v. Harper, 203 N.J. Super. 486, 501–02 (App. Div. 1985) ("The available legislative history demonstrates that the [CFA] was intended to be one of the strongest consumer protection laws in the nation.").

"The scope of the CFA's proscriptions is both wide and deep." Real v. Radir Wheels, Inc., 198 N.J. 511, 521 (2009). The Act provides:

[1] These sections have been combined to reduce repetition.

> The act, use or employment by any person of any commercial practice that is unconscionable or abusive, 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.]

This language of the Act applies to such conduct regardless of the industry in which the unlawful practice occurs.

This Court construes the CFA liberally "in light of its objective to greatly expand protections for New Jersey consumers." DeSimone v. Springpoint Senior Living, Inc., 256 N.J. 172, 181 (2024). "The language of the CFA evinces a clear legislative intent that its provisions be applied broadly," Lemelledo, 150 N.J. at 264, and "like most remedial legislation, the [Act] should be construed liberally in favor of consumers," Cox, 138 N.J. at 15.

B. The Learned Professionals Exemption.

This Court first endorsed a "learned professionals" exemption to the CFA in 2004, in its decision in Macedo. There, the Court held that a physician's advertisements concerning his own professional services were insulated from the CFA. See 178 N.J. at 346. The Court reasoned that because physician

advertising was not permitted at all when the CFA was first enacted, the Act was "obviously not meant" to encompass that activity. Id. at 343–44.

In establishing a "learned professionals" exemption to the CFA, this Court explained that such an exemption was consistent with Lemelledo. Lemelledo had involved a CFA claim against a commercial lender that engaged in "loan-packing," a practice where lenders increase the loan's principal by combining it with related services, like credit insurance. 150 N.J. at 259–60. After finding that the CFA covered loan packing, this Court addressed whether the fact that other state agencies also regulated commercial lenders nevertheless precluded the CFA's application. Id. at 266–67. Lemelledo held that it did not, concluding the CFA applies to a covered practice absent a "direct and unavoidable conflict" between the CFA and other regulatory schemes. Id. at 270–74.

The Macedo Court, however, explained that Lemelledo did not foreclose a "learned professionals" exemption to CFA liability. While Macedo accepted the Lemelledo Court's conclusion that "the mere existence of an alternative regulatory scheme [governing professionals]" does "not automatically eliminate the applicability of the CFA," 178 N.J. at 345, Macedo held this determination was "irrelevant to the threshold question" it was addressing: "whether the CFA applies to learned professionals in the first instance." Id. That question, the Macedo Court explained, was based on the CFA's history: "The Act obviously

was not meant to encompass advertising by physicians because such advertising was not permitted for another two decades." Id. at 343.

The Court also cited two earlier Appellate Division rulings, Neveroski v. Blair, 141 N.J. Super. 365 (App. Div. 1976), and Vort v. Hollander, 257 N.J. Super. 56 (App. Div. 1992), in which those courts had recognized that members of certain "learned professions" were not subject to the CFA. Macedo, 178 N.J. at 344–46. The Court reasoned that the Legislature was "presumed to be aware of" these cases "identify[ing] learned professionals as beyond the reach of the Act," and yet "the CFA ha[d] not been amended to include the advertising of professionals." Id. at 344–46. That indicated legislative "approv[al]" of the view that "advertisements by learned professionals in respect of the rendering of professional services are insulated from the CFA." Id. at 346.

C. Subsequent Appellate Division Decisions.

Since Macedo, Appellate Division panels have issued varying rulings on the degree to which so-called semi-professionals subject to state licensing and regulatory regimes are exempt from the CFA.

In Plemmons v. Blue Chip Insurance Services, Inc., the court held that "an insurance broker is a semi-professional, who is subject to testing, licensing and regulation under other statutory provisions, and therefore is excluded from liability under the CFA." 387 N.J. Super. 551, 556 (App. Div. 2006). In support

of its holding, the Appellate Division noted that Macedo had quoted a portion of Neveroski alluding to the fact that real estate brokers have "a semi-professional status subject to testing, licensing, regulations, and penalties through other legislative provisions." Id. at 562. Plemmons then distinguished Lemelledo, reasoning that although it involved a commercial lender's sale of insurance, it did not control because the claim was not "against an insurance broker" or any "party who could be characterized as a …'semi-professional.'" Id. at 563. As such, Plemmons stated that learned professionals, "including those who occupy a semi-professional status," are necessarily excluded from the CFA completely, "regardless of whether there is an irreconcilable conflict between the CFA and the statutory provisions under which professionals are regulated." Id. at 564. Plemmons saw the question instead as whether insurance brokers were "semi-professionals who are excluded from liability under the CFA" because they are "subject to testing, licensing and regulation comparable to real estate brokers" and "thus are exempt from liability." Id. at 565.

In Shaw v. Shand, by contrast, the Appellate Division rejected its earlier reasoning in Plemmons in the process of deciding if "licensed home inspectors" are exempt from the CFA's reach. 460 N.J. Super. 592, 600 (App. Div. 2019). Conducting an exhaustive review of the CFA's history and the related caselaw, including Lemelledo, Neveroski, Macedo, and Plemmons; granting "deference"

to the Attorney General's interpretation of the CFA as expressed in an amicus brief; and considering "the CFA's remedial intent and that exceptions to remedial statutes must be narrowly construed," Shaw "decline[d] to extend the learned professional exception to licensed home inspectors simply because they are regulated by" another statutory scheme. Id. at 627. Shaw reasoned that the CFA is a broad remedial statute, and nothing in its text or purpose supports excluding licensed semi-professionals from its coverage. Id. at 609. The court found "the learned professional exception should be limited only to historically recognized learned professionals," akin to "those recognized in Macedo." Id. at 618–19, 627. A broader exception, it held, "would unfairly restrict the ability of private litigants and the [State] to seek redress for fraudulent commercial practices," contrary to "the canon of statutory interpretation that requires that exceptions to a remedial statute are to be narrowly construed." Id. at 619–20.

Shaw found that the contrary view from Plemmons was inconsistent not only with the CFA's text and remedial purpose, but also with Lemelledo, where this Court found the CFA's "strong and sweeping legislative remedial purpose" supported a "presumption that the CFA applies" to all practices encompassed by its text, unless there is a "direct and unavoidable conflict" between the CFA's application and some other statutory scheme regulating the profession. 150 N.J. at 268–70. In other words, the mere existence of "a comprehensive statutory

scheme regulating a class of individuals or entities" cannot "place that class beyond the reach of the CFA" if the CFA otherwise applies. See Shaw, 460 N.J. Super. 592 at 610–11 (summarizing Lemelledo). It followed then, Shaw reasoned, that Plemmons was necessarily incorrect: its holding "c[ould not] be squared" with Lemelledo, because "once [a court] define[s] a 'learned professional' as any licensed professional subject to a separate regulatory scheme, the mere existence" of that other scheme "automatically preempt[s] the CFA without any showing of direct and unavoidable conflict." Id. at 616–18.

Finally, the Shaw Court was "unpersuaded that the Legislature acquiesced in all semi-professional CFA immunity." Id. at 619. While recognizing that "Macedo relied in part on legislative acquiescence to the judicially created [learned professionals] rule," it noted that Macedo "did not disturb Lemelledo's directive that the CFA presumptively applies to a covered activity." Id. To require the Legislature to amend the Act "each time case law extends the learned professional exception to a class of regulated semi-professionals" not only inappropriately "expands Macedo's specific holding, but also unnecessarily frustrates" the Legislature's remedial intent underlying the CFA. Id.

D. The Decision Below.

Several years after Plemmons and Shaw, the Appellate Division in this case revisited the CFA's applicability to insurance brokers, and, in the process,

the learned professionals exemption's extension to licensed semi-professionals. See (Pa189–212.)[2] Faced with what it viewed as competing analyses in Plemmons and Shaw, the court followed Plemmons, concluding insurance brokers remain exempt from the CFA as semi-professionals. (Pa211–12.)

After summarizing at length this Court's prior holding in Macedo and the Appellate Division's holdings in Plemmons and Shaw, the Lowe panel rejected any contention that Shaw overruled Plemmons. (Pa210.) Shaw, according to the panel, was distinguishable because it "did not involve a CFA claim against an insurance broker," and Shaw's "limiting dicta"—presumably concerning the breadth of the learned professionals exemption—did not bind the panel. (Pa210.) The court again cited a legislative acquiescence analysis: "[t]he Legislature has not acted since the Plemmons holding in 2006," and if it "disagreed with this court's extension of the categorical exemption from CFA liability to insurance brokers, nineteen years was more than enough time for it to act." (Pa211.)

This Court granted review.[3]

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[2] "Pa" refers to Petitioner's Appendix.

[3] The Appellate Division has issued one other published decision discussing the scope of the learned professionals exemption since Lowe. Borough of Caldwell v. Cozzarelli Cirminiello Architects, LLC, 482 N.J. Super. 492 (App. Div. 2025). In asking if "architects qualify as a learned profession requiring extensive

ARGUMENT

POINT I

THE LEARNED PROFESSIONALS EXEMPTION TURNS ON A PARTICULAR BODY OF HISTORY, NOT ON LICENSURE AND REGULATION.

Macedo supports a narrow learned professionals exemption that extends no further than professionals not generally permitted to engage in consumer advertising when the CFA was enacted. This limited exception can cohere with the CFA's text, because although that text carved out no specific industries, this Court's logic explained that the CFA could not have meant to govern industries who could not in fact engage in the covered practices at the time of its enactment. But any broader exception, particularly one that turns on modern licensing and regulatory regimes, is inconsistent with both the plain statutory text of the CFA and its remedial purpose. Finally, any such exception would contravene not only Macedo and the text and purpose of the CFA, but Lemelledo as well.

Start with Macedo. Although it did not identify exactly which professions fall within the learned professionals exemption, this Court's reasoning supports a narrow scope. Because the CFA was enacted before professional advertising was permitted, this Court explained, the Legislature "obviously" did not intend

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knowledge," this panel summarily concluded that they did not because "[a]rchitects in New Jersey are subject to licensing requirements" and have "to meet educational, experiential, and examination standards." Id. at 504–05.

the Act to encompass the activities of professionals "in respect of the rendering of professional services." 178 N.J. at 343, 346. Indeed, certain professions were historically "banned by state law or other codes of conduct from advertising." Mark D. Bauer, The Licensed Professional Exemption in Consumer Protection: At Odds with Antitrust History and Precedent, 73 Tenn. L. Rev. 131, 166 (2006); see also Dee Pridgen, Consumer Protection and the Law, § 4:34 Professional Activities (updated Dec. 2025) ("The professions were barred by their codes of ethical conduct or by state law from even advertising their services to the general public"); Commonwealth v. Brown, 20 N.E. 2d 478, 481 (Mass. 1939) ("In the professions, the right to restrict advertising is broad and clear….Traditionally, the learned professions were theology, law and medicine."). As a result, "there was no need for them to be regulated by the statutes and rules governing ordinary commerce." Pridgen, § 4:34 Professional Activities.

As Macedo explained, the U.S. Supreme Court's ruling in Bates v. State Bar of Arizona, 433 U.S. 350 (1977), which held "advertising by attorneys may not be subjected to blanket suppression," id. at 383, "precipitated professional advertising," Macedo, 178 N.J. at 343. After Bates, the New Jersey Attorney General found blanket prohibitions on professional advertising impermissible, and only then did the Board of Medical Examiners permit physician

advertising.[4] Macedo, 178 N.J. at 343–44 & n.1. So while a learned professional's "services" may fall within the CFA's text, Macedo's logic was clear: the Legislature could not have meant to "creat[e] liability in connection with fraud in advertising" for learned professionals barred from advertising by the state laws and ethical codes that operated when the Act was passed. Id. at 343.

Macedo did not identify any other independent basis for the exemption in either the text or history of the CFA. Though a passage from Neveroski quoted

[4] Some other narrow categories of professionals such as dentists, engineers, and architects were similarly restricted in their advertising pre-Bates. See, e.g., Ashi Adamjee et al., What Does the Fact of Advertising Convey to Patients, 72 J. Am. Coll. of Dentists 22, 23 (2005), tinyurl.com/5bbhewnn (explaining that the American Dental Association's prohibition of competitive advertising was eliminated in 1979); Laurance Jerrold & Hengameh Karkhanehchi, Advertising, Commercialism, and Professionalism: A History of the Ethics of Advertising in Dentistry, 67 J. Am. Coll. of Dentists 39 (2000), tinyurl.com/mujxre7k (recounting historical ban on dentist advertising); Advertising: Representations Made on Web Site, Nat'l Soc'y of Prof'l Eng'rs (2004), tinyurl.com/k3e32d26 (explaining that engineers' advertising was historically "considered undignified, inappropriate, [or] even offensive," and not until the U.S. Supreme Court issued decisions holding that prohibitions on advertising violated free speech did professional engineering societies "eliminate or modify" restrictions on advertising to only prohibit false or misleading advertising); Paul Goldberger, Architects Will End Ban on Advertising, N.Y. Times (May 25, 1978), tinyurl.com/53thb5n9 (reporting that, "[f]ollowing the lead of the American Medical Association and the American Bar Association," the American Institute of Architects would end its longstanding ban on advertising by members). That said, although this Court should clarify the proper test for determining the scope of the Macedo exception, it need not address every profession that falls within that test's applications.

in Macedo notes that real estate brokers had been "in a semi-professional status subject to testing, licensing, regulations, and penalties through other legislative provisions," Macedo never endorsed that as a basis for determining whether one falls within the exemption. Instead, the Court pointed to Neveroski and Vort to note that the Legislature presumably acquiesced in the more general view that "a member of any of the learned professions" is not "subject to the provisions of the Consumer Fraud Act." Macedo, 178 N.J. at 344–45. As Shaw recognized, however, Macedo was narrow and "did not extend the [learned professionals] exception to semi-professionals or licensed professionals." 460 N.J. Super. at 615 n.13.[5] And indeed, if Macedo were merely adopting Neveroski's particular formulation as the binding test, it would make little sense that this Court would have separately emphasized the distinct issue that the Act was "obviously not

[5] The Attorney General recognizes that some courts, including Shaw itself, have characterized the learned professionals exemption as extending to professions "historically" deemed "'learned' based on the requirement of extensive learning or erudition," see 460 N.J. Super. at 599, rather than only to those professions not engaged in advertising their services when the CFA was passed, see Macedo, 178 N.J. at 343–44. These characterizations largely overlap, however, as those professions defined by extensive learning or erudition, like doctors or lawyers, were also "bound by training and by professional standards to do what is best for the patient or client," thus placing them largely "outside the hustle and bustle of the commercial arena," which included the marketing of ones services to the public. See Pridgen, § 4:34 Professional Activities. But in all events, they turn on the historical understanding at the CFA's enactment, not the unmoored analysis of licensure and regulatory schemes on the books today.

meant" to encompass those professions that were not permitted to engage in such advertising activity when the CFA was enacted. Id. at 343–44.[6]

Nothing in the CFA's text supports extending the learned professionals exemption further. See Headen v. Jersey City Bd. of Educ., 212 N.J. 437, 450–51 (2012) (statutes are read to "effectuate legislative intent," as revealed by the "plain language" of the statute and the structure of the "entire scheme"). To begin, in contrast to many other state consumer protection statutes, the CFA's plain text does not include any explicit language that would support broadening the exemption to carve out entire professions even if they engage in fraud.[7] And

[6] The Attorney General acknowledges that post-Macedo, this Court suggested that the "rationale underlying the learned professionals exception is that uniform regulation of an occupation, where such regulation exists, could conflict with regulation under the CFA." See Lee v. First Union Nat'l Bank, 199 N.J. 251, 264 (2009); see also Real, 198 N.J. at 522–23 (explaining that "[t]he measured application" of the principles underlying Lemelledo's analysis "has led to few, very limited exceptions to the CFA's reach," including the learned professionals exemption). These statements were plainly dicta, were not disputed in those cases, and do not bind this Court. They also conflict with Macedo's clear holding: whether a separate regulatory scheme governing a profession conflicts with the CFA is "entirely irrelevant to the threshold question of whether the CFA applies to learned professionals in the first instance." 178 N.J. at 345. And most fundamentally, as explained in the pages that follow, they do not cohere with the CFA's text or purpose.

[7] Cf., e.g., N.C. Gen. Stat. § 75-1.1(b) (exempting "professional services rendered by a member of a learned profession"); Fla. Stat. § 501.212(6) (exempting "[r]eal estate sales, leases, rentals or appraisals by licensed persons"); Ohio Rev. Code Ann. § 1345.01(A) (exempting, among other things, "transactions between certified public accounts;…transactions between

exceptions not present in the text ought not be implied absent clear indicia of legislative intent. See New Mea Const. Corp., 203 N.J. Super. at 502 (quoting 2A Sutherland, Statutory Construction, § 47.11 at 145 (1984) (stating rule that "statutory exceptions are not to be implied")). After all, if "the Legislature intended to exclude" some category "from the statute's reach, it would have said so." State v. O'Donnell, 255 N.J. 60, 72 (2023); see also State v. O'Donnell, 471 N.J. Super. 360, 368 (App. Div. 2022) ("The interpretative process is not an invitation to find and employ loopholes or exceptions not plainly expressed, nor an opportunity to engraft … considerations not plainly revealed in or fairly implicated by the words used."). So while the exemption in Macedo may have been warranted given the history of professions not engaged in advertising in the first place, nothing in the CFA's text suggests extending the exemption to other professions based on modern licensure or regulation.

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attorneys, physicians, or dentists and their clients or patients; and transactions between veterinarians and their patients that pertain to medical treatment but not ancillary services."); Md. Code Ann., Commercial Law § 13-104(1) (exempting "[t]he professional services of a certified public accountant, architect, clergyman, professional engineer, lawyer, veterinarian, insurance company authorized to do business in the State, insurance producer licensed by the State, Christian Science practitioner, land survey, property line surveyor, chiropractor, optometrist, physical therapist, podiatrist, real estate broker, associate real estate broker, or real estate salesperson, or medical or dental practitioner.").

Indeed, far from evincing legislative intent to exempt semi-professionals, the CFA's plain terms subject any commercial entity to liability for fraudulent conduct in the sale or advertisement of any good or service. The CFA proscribes as an "unlawful practice" any "act, use or employment by any person of any commercial practice that is unconscionable or abusive, deception, [or] fraud, … in connection with the sale or advertisement of any merchandise …, whether or not any person has in fact been misled, deceived or damaged thereby." N.J.S.A. 56:8-2 (emphasis added). And "[a]ny person who suffers any ascertainable loss of moneys or property" by consequence may sue. N.J.S.A. 56:8-19. "Person" is defined to include any "business entit[ies] or association[s]," and it makes no carve-out for licensed semi-professionals in that definition. N.J.S.A. 56:8-1(d). Rather than suggesting a carve-out for licensed semi-professionals, the CFA's text uses capacious language to define those who are covered.

The broad language of the CFA continues, and again suggests a broad scope regardless of the relevant industry's regulatory or licensing scheme. The term "merchandise" is defined capaciously to include "objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c). The services of professionals—even learned ones, who are exempt only for the historical reasons from Macedo—fall comfortably within such a broad definition. Cf. Goldfarb v. Virginia State Bar, 421 U.S. 773,

787–88 (1975) ("Whatever else it may be, [an attorney's] examination of a land title is a service; the exchange of such a service for money is 'commerce' in the most common usage of that word."). Also noteworthy is the Legislature's use of words like "any" or "anything" in the CFA, which "undoubtedly reveal[s] the Legislature's intent that there be no artificial or implicit exemptions from the statute's reach." Cf. O'Donnell, 471 N.J. Super. at 364 (concluding that the Legislature's use of terms like "any" "evinces an intent to include all persons or agreements not specifically identified" in a bribery statute).

Not only does the CFA's text foreclose broadening the exemption beyond the narrow historical limits that Macedo describes, but its remedial purpose cuts the same way. In enacting the CFA, the Legislature intended to "give New Jersey one of the strongest consumer protection laws in the nation." See Cox, 138 N.J. at 15 (quoting Governor's Press Release for Assembly Bill No. 2402, at 1 (Apr. 19, 1971)). "The history of the Act is one of constant expansion of consumer protection." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 604 (1997). Its remedial target extends beyond "shifty, fast-talking and deceptive merchants," Cox, 138 N.J. at 16, and aims more generally to "establish a broad business ethic," in New Jersey, Meshinsky v. Nichols Yacht Sales, Inc., 110 N.J. 464, 472 (1988). This Court thus will not adopt interpretations that undermine the "clear legislative intent that [the CFA's] provisions be applied broadly."

Lemelledo, 150 N.J. at 264; see also Shaw, 460 N.J. Super. at 608 (relying on well-established interpretive cannon of construing exemptions to remedial legislation narrowly).

Yet excluding licensed semi-professionals from the CFA would gravely undermine the Legislature's efforts to avoid consumer fraud throughout the State no matter the industry or profession. Indeed, the Division of Consumer Affairs oversees fifty-two professional and occupational boards, which regulate semi-professionals like athletic trainers, barbers, manicurists, fire alarm installers, funeral directors, and master plumbers.[8] Many of these professionals market their services to the consuming public, and are no less susceptible to unscrupulous business practices than any other consumer-facing occupation. Excluding this wide-ranging set of professions from the CFA would contravene the "clear legislative intent that [the CFA's] provisions be applied broadly." Lemelledo, 150 N.J. at 264.

Moreover, the existence of a separate licensing scheme is no substitute for the robust enforcement provisions of the CFA, which allows for the recovery of monetary damages that compensate consumers and penalties that deter future misconduct. See Gonzalez v. Wilshire Credit Corp., 207 N.J. 557, 585 (2011).

[8] See Licensed Professions and Occupations, New Jersey Division of Consumer Affairs, tinyurl.com/yvrbjasf.

Indeed, the CFA's private right of action is a critical enforcement tool licensing regimes may lack. See e.g., Synnex Corp. v. ADT Sec. Servs., Inc., 394 N.J. Super. 577, 590 & n.2 (App. Div. 2007) (holding Electrical Contractors Licensing Act does not provide a private right of action). Private enforcement under the CFA is pivotal to rooting out fraud, as it "reduc[es] the enforcement burdens that otherwise would fall on the State," making it "integral to fulfilling the CFA's legislative purposes." Sun Chem. Corp. v. Fike Corp., 243 N.J. 319, 330 (2020) (cleaned up). Because "when remedial power is concentrated in [the State]," as opposed to being shared "among members of the consuming public in the form[] of … private causes of action," "underenforcement may result," whether for "lack of resources, concentration on other agency responsibilities, lack of expertise, agency capture by regulated parties, or a particular ideological bent by agency decisionmakers." Lemelledo, 150 N.J. at 269. In other words, empowering consumers to use the CFA is key to the Act's remedial purpose, so making it inapplicable to such a large group of potential perpetrators—merely because they are licensed—leaves consumers in the lurch.

A view that makes the learned professionals exception depend on modern licensing law rather than specialized exceptions extant at the time of the CFA's enactment likewise runs headlong into Lemelledo. Lemelledo recognized the "presumption that the CFA applies to covered practices, even in the face of other

existing sources of regulation," "because of the strong and sweeping legislative remedial purpose apparent in the CFA," evidenced in part by its "empowerment of citizens as private attorneys general" and cumulative remedies provision. 150 N.J. at 268–69 (cleaned up). That presumption is only overcome where there is a "direct and unavoidable conflict … between application of the CFA and application of the other regulatory … schemes." 150 N.J. at 270.

That is impossible to square with the approach taken in Plemmons (and relied on below), in which the learned professionals exception swallows the rule. Were Plemmons correct, a court will very rarely need to determine if there is a direct and unavoidable conflict between two distinct regulatory schemes such that the CFA could not apply, because the mere fact of regulation would remove the entire industry from the CFA's coverage at the threshold. Lemelledo warned against this precise way of thinking, explaining: "If the hurdle for rebutting the basic assumption of applicability of the CFA to covered conduct is too easily overcome, the statute's remedial measures may be rendered impotent as primary weapons in combatting clear forms of fraud simply because those fraudulent practices happen also to be covered by some other statute or regulation." Id.

Plemmons' attempts to distinguish Lemelledo are also unavailing. That Lemelledo involved claims against a lender, not "an insurance broker or other party who could be characterized as a 'semi-professional,'" 387 N.J. Super. at

563, is beside the point. Nothing in Lemelledo's analysis turned on the fact that the claim was against a commercial lender as opposed to some other profession. Plemmons also asserted that while Lemelledo made clear "financial institutions and insurance companies that sell insurance policies … are subject to the CFA," it "did not address the legislative intent" cited in Macedo "to exclude licensed professionals" from the Act. Id. at 563–64. But such a distinction between claims against the business institution providing financial services and claims against the individual who would sell those services—putting the former within the CFA's ambit and the latter out—lacks basis in the CFA or in common sense. The CFA applies equally to businesses and natural persons. N.J.S.A. 56:8-1(d). And holding businesses liable for misleading or deceptive conduct but letting individuals off the hook for the same conduct because of their own license still contravenes the CFA's remedial purpose.

Finally, even were the question not clear from the CFA's text, its remedial purpose, and Macedo, the Attorney General's longstanding interpretation of the CFA would be entitled to this Court's deference. The Attorney General enforces the CFA through the Division of Consumer Affairs. Lemelledo, 150 N.J. at 264 (citing N.J.A.C. 13:45-1.1 to -5.6). While this Court "is in no way bound by [the Division's] interpretation of a statute or its determination of a strictly legal issue, deference should be afforded to the interpretation of the agency charged

with applying and enforcing a statutory scheme." Matter of DiGuglielmo, 252 N.J. 350, 359 (2022) (cleaned up); Hargrove v. Sleepy's, LLC, 220 N.J. 289, 301–02 (2015) ("[O]ur courts give great deference to an agency's interpretation of statutes within its scope of authority.") (cleaned up); Commc'ns Workers of Am., AFL-CIO v. N.J. Civil Serv. Comm'n, 234 N.J. 483, 515 (2018) (explaining deference to an agency's interpretation of a statute it enforces is appropriate unless the interpretation is "plainly unreasonable"). This is the case even when the Division's position is set forth in an amicus brief, rather than through a final agency determination. US Bank, N.A. v. Hough, 210 N.J. 187, 200 (2012). And here, this is the position the Attorney General and Division espoused not only in the instant litigation, but in Shaw too. 460 N.J. Super. at 604–05.

In short, limiting the learned professionals exception to those professions historically prohibited from engaging in conduct the CFA covers is consistent with Macedo, the CFA's text, the law's remedial purpose, Lemelledo, and the deference owed to the Division's consistent interpretation.

2. Against all this, there is no support for the contrary view reflected in Plemmons and Neveroski that semi-professionals be exempted due to licensing and regulation or the nature of the services they provide. To start, the Plemmons panel misread Macedo as holding that licensed semi-professionals fall within

the class of "learned professionals" exempt from the CFA. Macedo never says licensed professionals all fall outside of the Act's reach. Macedo's citation to Neveroski was only in support of its reasoning that the Legislature acquiesced in the interpretation that "advertisements by learned professionals in respect of the rendering of professional services are insulated from the CFA." 178 N.J. at 345–46. To be sure, the Neveroski passage observed real estate brokers are licensed semi-professionals while noting that they are not engaged in CFA-covered conduct. But the quoted passage distinguished such semi-professionals from "other professionals such as lawyers, physicians, dentists, accountants, or engineers," declaring by comparison that "no one would argue" that a member of these "learned professions is subject to the provisions of the [CFA]." Id. at 344. In other words, Neveroski made the point that learned professionals are "[c]ertainly" exempt in service of its argument that real estate brokers falling in the category of licensed semi-professionals should also be exempt. Macedo said nothing about the latter, nor did it have to, as that case concerned physicians. Instead, Macedo noted the Legislature's awareness of Neveroski and Vort to show its acquiescence in the more general view that "learned professionals" are "beyond the reach" of the CFA—not a specific test for divining them.

The Court should also reject any suggestion that licensed semi-professionals are exempt from the CFA based on the nature of services they

provide. Although Neveroski's holding that the then-applicable version of the CFA did not encompass real estate transactions was based on the exclusion of such transactions from the Act's definition of "merchandise," that court also suggested that the CFA did not cover real estate brokers in "semi-professional status" because "the nature of the services" they provided "does not fall into the category of consumerism." 141 N.J. Super. at 378–79. The "entire thrust of the [CFA]," it asserted, "is pointed to products and services sold to consumers in the popular sense," evidencing an "intent to protect the consumer in the context of the ordinary meaning of that term in the market place." Id. at 378. And real estate agents provided consumers "something beyond" the ordinary purveyor of goods and services. Id. at 379.

Neveroski's amorphous "nature of the services" standard lacks any basis in the CFA itself and is not workable. As an initial matter, and as courts have recognized, the CFA does not define the term "consumer," or impose any sort of "retail restriction" on the types of services it covers. See J&R Ice Cream Corp. v. Ca. Smoothie Licensing Corp., 31 F.3d 1259, 1272 (3d Cir. 1994). But even if it did, the "ordinary meaning" of consumer is broad enough to encompass individuals who pay for services of licensed semi-professionals. "Consumer" generally refers to "[s]omeone who buys goods or services for personal, family, or household use," or "a natural person who uses products for personal rather

than businesses purposes." See Black's Law Dictionary, Consumer (12th ed. 2024). Absent a more restrictive statutory definition, this means that "citizens who 'consume' or use goods and services, ranging from plumbing to health services and education," are consumers. Id. Nothing in those definitions can be fairly read to exclude from the definition of "consumer" those who consume services from a semi-professional because they do not fall into some vague intuition about the "category of consumerism."[9] Cf. Goldfarb, 421 U.S. at 787–88 ("Whatever else it may be, [a professional's] examination of a land title is a service; the exchange of such a service for money is 'commerce' in the most common usage of that word….The nature of an occupation, standing alone, does not provide sanctuary from the Sherman Act."); Pridgen, § 4:34 Professional Activities ("The notion that [licensed professions] were not commercial activities, within the scope of the phrase trade or commerce … has long since been dispelled.").

Similarly, while the CFA's legislative history indicates it was intended to protect "the consumer," see Kugler v. Romain, 58 N.J. 522, 545 (1971), that intent is entirely consistent with protecting consumers against the deceptive or

[9] The term "consumerism" is similarly broad. See Black's Law Dictionary, Consumerism (12th ed. 2024) (defining consumerism as "[a]dvocacy to protect people from unfair prices, misleading advertisements, unconscionable consumer contracts, etc.").

fraudulent acts of licensed semi-professionals. For the same reason, the Neveroski panel's reliance on the pre-enactment statements by then-Governor Meyner that the Legislature should enact a law "to protect the consumer in the context of the ordinary meaning of the marketplace," 141 N.J. Super. at 378 & n.4, hardly suggest a carveout for consumers of services provided by licensed semi-professionals. Indeed, the Governor's statements underscore that the Act was intended to sweep broadly, as he encouraged the Legislature to "provide better protection for the consumer" and "encourage the honest and deter the unscrupulous" without limitation. Fifth Annual Message of Robert B. Meyner to the One Hundred and Eighty-Third Legislature of New Jersey, at 10–11 (Jan. 13, 1959), tinyurl.com/3jyxzhtn.[10] As this Court explained, the Act is not "aimed solely at shifty, fast-talking and deceptive merchants," Cox, 138 N.J. at 16, but seeks more generally to "establish a broad business ethic," in New Jersey, Meshinsky, 110 N.J. at 472, and there is no reason licensed semi-professionals are incapable of deceiving their consumers, or that consumers are less deserving of protection absent some textual carve-out. To the contrary, "courts and legislatures [have] recognized that consumers need protection

[10] Sixth Annual Message of Robert B. Meyner to the One Hundred and Eighty-Fourth Legislature of New Jersey, at 8–9 (Jan. 12, 1960) (criticizing legislature for failure to pass legislation in prior session "to crack down on consumer frauds"), tinyurl.com/ydzrznbm.

from…'professionals' as much as they do from any other entity." Cf. Pridgen, § 4:34 Professional Activities.

Finally, the fact the Legislature has not amended the CFA post-Neveroski to cover learned and licensed semi-professionals—the legislative acquiescence argument on which the decision below is based—is of no moment. As this Court recently opined, "[l]egislative inaction is weak reed upon which to lean to determine the meaning of a law enacted years before," O'Donnell, 255 N.J. at 79 (cleaned up), and it "demonstrates nothing more than that the subsequent legislatures failed to act," Investors Bank v. Torres, 243 N.J. 25, 46 (2020) (cleaned up). Reliance "on unsuccessful attempts to amend a statute in order to interpret it" is similarly misplaced because "[a] bill can be proposed for any number of reasons, and it can be rejected for just as many others." O'Donnell, 255 N.J. at 79. And this case is a perfect example: the Legislature no more attempted to amend the CFA after the Appellate Division issued its decision in Shaw than after the decisions Respondent favors. The fact that the Legislature did not act in the face of conflicting lower court precedents on how to understand "learned professionals" cannot suggest an endorsement of any particular test.

Traditional signifiers of legislative intent, like the CFA's plain language construed in light of its remedial objective, must guide the Court's analysis. See DeSimone, 256 N.J. at 181–82. Those signifiers unambiguously demonstrate

that Neveroski's expansive "nature of the services" exemption, or one keyed to licensure or regulation, lacks a basis in the Act. Only those learned professionals identified in Macedo and Shaw—professionals who could not have been within the Act's original intendment—are exempt from the CFA's coverage.

POINT II

INSURANCE BROKERS ARE NOT LEARNED PROFESSIONALS.

Turning to the instant appeal, there is no colorable argument that insurance brokers are "learned professionals" exempted from the Act. As Macedo shows, the exemption is properly limited to professions that were generally prohibited from advertising their services when the CFA was passed, such as doctors and lawyers. See 178 N.J. at 343–44. As the Court reasoned, the CFA "obviously" could not have been intended to encompass the activities of professionals that their relevant codes of ethical conduct largely banned. Id.; see Pridgen, § 4:34 Professional Activities. Applying this standard, insurance brokers clearly do not fall within this limited category of professionals.

The history is clear. Nothing in the record indicates any historical ban on insurance brokers' advertising prior to the CFA's passage, and the Attorney General has not identified one. Indeed, the State regulated advertising in the insurance business long before the CFA, via the Insurance Trade Practices Act ("ITPA"). Enacted in 1947, the ITPA stated that "[n]o person shall engage in

this State in any … unfair method of competition or an unfair or deceptive act or practice in the business of insurance." N.J.S.A. 17:29B-3, P.L. 1947, c. 379, § 3. Unfair methods of competition or unfair or deceptive acts or practices were explicitly defined to include deceptive advertising. N.J.S.A. 17:29B-4, P.L. 1947, c. 379, § 4. Other states, too, regulated insurance advertising. See FTC v. Nat'l Cas. Co., 357 U.S. 560, 564 n.6 (1958) (noting that, at the time the relevant complaints were filed, forty-four states had enacted laws regulating advertising in the insurance industry). So while insurance-related advertising was regulated, it was obviously permitted, in contrast to those professions identified in Macedo that were largely excluded from marketing their services altogether.

Nor can the Attorney General identify non-statutory limitations on the insurance business that would have taken it out of the CFA's ambit at its passage. Indeed, nothing in New Jersey's Insurance Producers Standards of Conduct, which were promulgated in 1990 to implement the State's statutory prohibition on unfair or deceptive conduct in the insurance business, suggests that insurance brokers are or ever were banned from advertising. See N.J.A.C. 11:17A-1.1 to 17D-2.8; id. 11:17A-2.1 (implementing N.J.S.A. 17:29B-4). And, regardless, they do not ban advertising. Insurance brokers are thus not within the limited category of "learned" professionals excluded from the CFA under Macedo.

Finally, even if this Court disagrees with the above methodology and looks more broadly to the degree of training required, insurance brokers still fall outside the class of professions historically recognized as learned "based on the requirement of extensive learning or erudition," Shaw, 460 N.J. Super. at 599; see, e.g., Macedo, 178 N.J. at 343–44 (identifying law and medicine and historically learned); Shaw, 460 N.J. Super. at 611 (identifying law, medicine, and theology as historically learned); Brown, 20 N.E. 2d at 481 (same). Indeed, obtaining this license requires only a brief course of study—twenty hours for each type of insurance license sought, see N.J.A.C. 11:17-3.4—and passing a written examination, see N.J.S.A. 17:22A-31. Such minimal requirements pale in comparison to the years of training required to join the historically learned professions. And given that this exception appears nowhere in the text, it makes little sense to extend it to the undoubtedly large category of persons who have completed some degree of occupational training.

CONCLUSION

Because insurance brokers are not learned professionals categorically exempt from the CFA, this Court should reverse.

Respectfully submitted,

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