Supreme Court of New Jersey

Docket No. 089939

SCOTT DIANA, on behalf of himself and those similarly situated,	:	CIVIL ACTION
Plaintiff-Appellant-Petitioner,	:	ON CERTIFICATION FROM A FINAL JUDGMENT OF THE SUPERIOR COURT OF NEW JERSEY, APPELLATE DIVISION
vs.	:	
LVNV FUNDING LLC, MHC RECEIVABLES, LLC, FNBM, LLC, SHERMAN ORIGINATOR III LLC, SHERMAN ORIGINATOR LLC and JOHN DOES 1 to 10,	:	Docket No.: A-001000-23
	:	Sat Below:
	:	HON. CHRISTINE M. VANEK, J.A.D.
Defendants-Appellees-Respondents.	:	HON. MARK K. CHASE J.A.D.
	:	Date of Appellate Judgment: September 26, 2024

SUPPLEMENTAL BRIEF OF DEFENDANTS-APPELLEES-RESPONDENTS

On the Brief:
CHRISTOPHER A. DEGENNARO, ESQ.
Attorney ID# 163342015

FOLEY & LARDNER LLP
Attorneys for MHC Receivables LLC and FNBM LLC
90 Park Avenue
New York, NY 10016
(212) 338-3441
cdegennaro@foley.com

On the Brief:
NOWELL D. BAMBERGER, ESQ.
Pro hac vice pending
ELSBETH BENNETT, ESQ.
Pro hac vice pending

CLEARY GOTTLIEB STEEN & HAMILTON LLP
Attorneys for MHC Receivables LLC and FNBM LLC
2112 Pennsylvania Avenue NW

Washington, DC 20037
(202) 974-1500
nbamberger@cgsh.com
ebennett@cgsh.com

On the Brief:
JACQUELYN A. DICICCO, ESQ.
Attorney ID# 03102010

J. ROBBIN LAW
Attorneys for LVNV Funding LLC, Sherman Originator LLC, and Sherman Originator III LLC
200 Business Park Drive, Suite 103
Armonk, New York 10504
(914) 685-5015
jacquelyn.dicicco@jrobbinlaw.com

Date Submitted: June 30, 2025

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

State Cases

Page(s)

Page(s)

Federal Cases

Page(s)

Docketed Cases

Federal Statutes

State Statutes

Page(s)

Legislative History Materials

PRELIMINARY STATEMENT

As Plaintiff-Appellant-Petitioner, Scott Diana ("Petitioner") concedes, the New Jersey Consumer Finance Licensing Act, N.J. Stat. § 17:11C-1 *et seq.*, ("NJCFLA") does not expressly *state* it provides a private cause of action for alleged licensing violations, or any other purported violations. Petitioner nonetheless seeks to proceed with claims under the NJCFLA—claims that, on their merits, are borderline frivolous—by asking this Court to re-write the statute by implying a private right of action where none exists.

The Court should decline the invitation. Not only does the NJCFLA omit any private right of action, the legislative history of the statute makes clear that this was a deliberate choice by the Legislature. When the Legislature enacted the NJCFLA's immediate predecessor statute, the New Jersey Licensed Lenders Act in 1997 ("1997 NJLLA"), it removed a provision of a predecessor statute providing a private right of action. The Legislature replaced the prior private right of action with detailed administrative enforcement procedures intended to be enforced by the Commissioner of Banking and Insurance ("Commissioner"). That is both a rational policy choice and primary evidence that the Legislature affirmatively acted to foreclose the type of lawsuit Petitioner seeks to bring here. *See, e.g.*, *Castro v. NYT Television*, 370 N.J. Super. 282, 292–93 (App. Div. 2004) (holding where a revised statute "deleted" the predecessor statute's express

authorization of private causes of action, the "legislative history demonstrate[d] that the Legislature made a deliberate decision to withhold authorization for . . . private actions, . . . and [the court was] obligated to respect that legislative choice").

In crafting the NJCFLA, the Legislature established a comprehensive regulatory scheme under which enforcement of state licensing laws is the prerogative of the Commissioner. "Implied remedies are unlikely to be intended by a Legislature that enacts a comprehensive legislative scheme including an integrated system of procedures for enforcement." *See R.J. Gaydos Ins. Agency, Inc. v. Nat'l Consumer Ins. Co.*, 168 N.J. 255, 275 (2001) (quoting *In re Comm'r of Insurance's March 24, 1992 Order*, 256 N.J. Super. 158, 176–78 (App. Div. 1992), *aff'd*, 132 N.J. 209 (1993)).

The NJCFLA is such a comprehensive regulatory scheme. It specifies when the Commissioner can issue, suspend, and revoke licenses, and the procedures that the Commissioner must follow in the event of suspension or revocation. It authorizes investigations, including by power of subpoena, and governs books and records. It empowers the Commissioner to levy civil penalties, up to $25,000 per violation, as well as to recover overpaid interest for consumers, and it specifies the procedures the Commissioner must follow in

doing so. And it allows the Commissioner to initiate summary actions in court to seek injunctions compelling compliance with the statute's provisions, including the provision requiring offending lenders to pay affected borrowers three times the amount charged in excess of law. There is no express private right of action section in the Statute.

And nowhere in the statute is there any indication that the Legislature intended the licensing requirement to be the subject of private enforcement, and the Court should not infer otherwise. *See Jarrell v. Kaul*, 223 N.J. 294, 307–10 (2015) ("[I]n the absence of strong indicia of a contrary [legislative] intent, we are compelled to conclude that [the Legislature] provided precisely the remedies it considered appropriate.") (second and third modifications in original) (quoting *Middlesex Cty. Sewerage Auth. v. Nat'l Sea Clammers Ass'n*, 453 U.S. 1, 15 (1981)). There is nothing atypical about that. The State requires licenses for all manner of occupations and activities, and it would be the exceptional case—not the norm—for the Legislature to ascribe the power to enforce those licensing requirements to private parties.

It is thus unsurprising that, in the nearly 30 years since the 1997 NJLLA's passage, no decision has recognized a private right of action in the 1997 NJLLA or its successor, the NJCFLA. On the contrary, at least twenty separate judicial

decisions by New Jersey state and federal courts have uniformly recognized that the NJCFLA does not provide private litigants with a private right of action.

In its Appellate briefing, Petitioner relied on one case to argue otherwise: *Lemelledo v. Beneficial Mgmt. Corp. of Am.*, 150 N.J. 255, 273 (1997), a case that predates the current legislative framework. But *Lemelledo*'s discussion of New Jersey consumer lending laws was tangential to its analysis of the statute actually at issue there—the Consumer Fraud Act—and focused on the 1989 NJCLA, the predecessor to the 1997 NJLLA, which still expressly provided for a private right of action. *Lemelledo* did not hold there is now a private right of action in the 1997 NJLLA or the NJCFLA.

To the contrary, every court to consider whether the NJCFLA confers a private right of action has held that it does not. This Court should too.

STATUTORY BACKGROUND

The NJCFLA is the current iteration of a long line of statutes and regulatory schemes governing the issuance of small consumer loans in New Jersey. There have been three major iterations of such statutes:

1. 1914 – 1997: The 1914 New Jersey Small Loan Law ("1914 NJSLL"), the 1932 New Jersey Small Loan Act ("1932 NJSLA"), and the 1989 New Jersey Consumer Loan Act ("1989 NJCLA");

2. 1997 – 2010: The 1997 NJLLA; and

3. 2010 – Present: The 2010 NJCFLA, which governs consumer loans in the state today.

The history of these predecessor statutes demonstrates unequivocally that the omission of a private cause of action from the NJCFLA was not an oversight, but a deliberate policy choice.

I. 1914 – 1997: The New Jersey Small Loan Law, The New Jersey Small Loan Act, and The New Jersey Consumer Loan Act

With the passage of the 1914 NJSLL, New Jersey became one of the first states to regulate consumer loans. *See Family Fin. Corp. v. Gough*, 10 N.J. Super. 13, 18–20 (App. Div. 1950) (discussing the history of New Jersey consumer lending laws); *see also Family Fin. Corp. v. Gaffney*, 11 N.J. 565, 572–75 (1953) (same). The law governed the making of small loans under a specified amount by creating a licensing system spearheaded by the Commissioner of Banking and Insurance (the "Commissioner"), setting maximum interest rates, and specifying penalties for violations. 1914 NJSLL, P.L. 1914, c. 49 [Dsa142–47][1];

[1] Respondents are submitting a supplemental appendix with this motion. Citations to the supplemental appendix are cited as "Dsa." Respondents will refer to briefings previously filed before the Appellate Division and the Supreme Court as follows: Petition for Certification, *Diana v. LVNV Funding, LLC, et al.* (N.J. Sup. Ct. Nov. 25, 2024) [Transaction ID E1050667-11252024] ("SC Pb");

see also Gough, 10 N.J. Super. at 18–20; *Ryan v. Motor Credit Co.*, 132 N.J. Eq. 398, 400 (1942). The 1914 NJSLL specifically authorized borrowers to recover from lenders. *See* 1914 NJSLL, P.L. 1914, c. 49, § 6 ("Every loan in connection with which [a violation] shall have occurred shall be absolutely null and void, and the borrower shall be entitled to recover from the lender any or all sums paid or returned on account of or in connection with such loan.") [Dsa146].

The statutory scheme established by the 1914 NJSLL was repeatedly modified—especially with respect to the conditions for receipt of a license, the maximum interest rate allowable by law, and the maximum loan amount qualifying as a "small" loan—often to track with updates to the Uniform Small Loan Law published by the Russell Sage Foundation beginning in 1916. *See Gough*, 10 N.J. Super. at 18–20. These modifications occasionally amended the short title of the statute, with "Small Loan Law" giving way to "Small Loan Act," in turn giving way to "Consumer Loan Act." *See* 1932 NJSLA, P.L. 1932, c. 62, § 28 (This act shall be known as the 'small loan act.'") [Dsa163]; P.L. 1989, c. 38 § 1 ("[The 1932 NJSLA] is amended to . . . be known and . . . cited as the 'Consumer Loan Act.'") [Dsa164]. However, later iterations were often referred

---

Brief on Behalf of Plaintiff-Appellant in *Diana v. LVNV Funding LLC*, No. A-001000-23 (App. Div. Feb. 2, 2024) ("AD Pb").

to as the "Small Loan Law" even well after that name had become obsolete, and once codified, the laws remained at N.J. Stat. § 17:10-1 *et seq.* until the statutory scheme was majorly overhauled by the New Jersey Licensed Lenders Act. *See, e.g.*, *Connell v. Am. Funding, Ltd.*, 231 N.J. Super. 409, 420 (Ch. Div. 1987) (referring to N.J. Stat. § 17:10-1 et seq. as the "Small Loan Law" in 1987).

Despite routine modifications and occasional changes in official name, the 1914 NJSLL, 1932 NJSLA, and 1989 NJCLA shared key attributes. Even though every iteration of the laws broadly empowered the Commissioner to grant or refuse licenses, inspect books and records, revoke licenses, and enact rules and regulations, none of them authorized the Commissioner to recover penalties from lenders for violations. *See* 1914 NJSLL, P.L. 1914, c. 49 [Dsa142–47]; 1932 NJSLA, P.L. 1932, c. 62 [Dsa148–63]; 1989 NJCLA, 1991 N.J. Stat. § 17:10-1 *et seq*. [Dsa177–221].

Instead, the Commissioner's licensing powers were coupled with an express private right of action authorizing civil suits by borrowers to void contracts and recover all principal, interest, and charges paid. *See* 1932 NJSLA, P.L. 1932, c. 62, § 13 ("If any interest, consideration or charges in excess of those permitted by this act are charged, contracted for, or received the contract of loan shall be void and the licensee shall have no right to collect or receive

any principal, interest, or charges whatsoever, and the borrower shall be entitled to recover from the lender any or all sums paid or returned to the lender by the borrower on account of or in connection with such loan.") [Dsa157]; 1989 NJCLA, 1991 N.J. Stat. § 17:10-14 ("If any interest, consideration or charges in excess of those permitted by this chapter are charged, contracted for or received, except as the result of a good faith error, the contract of loan shall be void and the licensee shall have no right to collect or receive any principal, interest, or charges whatsoever, and the borrower shall be entitled to recover from the lender any such sums paid or returned to the lender by the borrower on account of or in connection with the loan.") [Dsa171]; *see also Richmond v. Conservative Credit Sys. of N.J.*, 110 N.J.L. 73, 73–74 (1933) ("The statute is very drastic, and . . . enacts a forfeiture of principal and interest if the lender stray from the straight and narrow path, and permits the borrower to recover back at any time what he has paid for either principal or interest, leaving the lender shorn of all."); *Lemelledo*, 150 N.J. at 273 ("The [1989 NJ]CLA provides the Department of Banking and Insurance with [oversight] authority, while also creating a private cause of action allowing for cancellation of the loan contract and an award of damages unless the lender can show that it has acted in good faith.").

II. 1997 – 2010: The New Jersey Licensed Lenders Act

The 1997 NJLLA replaced and repealed the 1989 NJCLA. P.L. 1996 c. 157 [Dsa310–49]. This was a comprehensive revision of the statutory scheme. The new law combined consumer lending rules with mortgage-related lending provisions, superseding three distinct predecessor statutes: "the [1989 NJCLA], which applie[d] to consumer lenders; the 'Secondary Mortgage Loan Act,' P.L. 1970, c. 205 (C.17:11A-34 *et seq.*), which applie[d] to secondary mortgage lenders; and P.L. 1981, c. 18 (C.17:11B-1 *et seq.*), which applie[d] to mortgage bankers and brokers." A. 2513, 207th Leg. (Sponsor's Statement, Assembly Committee Statement) (Jan. 8, 1997) [Dsa351].

While the 1997 NJLLA's consumer lending provisions kept much of the text from the 1989 NJCLA and other consumer lending predecessors, the law featured significantly overhauled enforcement mechanisms, which had previously remained relatively untouched in earlier revisions. *See* A. 2513 (Sponsor's Statement), 207th Leg. (Jan. 8, 1997) at 37–38 ("This bill changes current law in [that] it provides for a simpler and more rational licensing and regulation procedure for the Department of Banking and Insurance in connection with the four businesses for which lenders may be licensed. . . .") [Dsa348–49]; *id.* (Assembly Committee Statement) at 2 (same) [Dsa351]; *id.* at 1 (Governor's

Message on Signing) ("This legislation . . . brings us another step forward in streamlining the regulatory process and stimulating the economy.") [Dsa353].

Like its consumer lending predecessors, it permitted the Commissioner to issue, suspend, and revoke licenses; examine books and records; issue subpoenas to compel testimony or productions; and promulgate rules and regulations. 1997 NJLLA, 1998 N.J. Stat. § 17:11C-18, 42 [Dsa383–84, 430–31]. Unlike those predecessors, however, the 1997 NJLLA also authorized the Commissioner to bring summary actions in the name of the State against anyone "in any way participating in or about to participate" in a violation of the law to "enjoin the person or licensee from continuing the practices or transactions or engaging therein or doing any act in furtherance thereof or in violation of" the statute; to issue civil penalties up to $5,000; and to bar intentional violators from acting as or associating with a licensee for up to ten years. 1998 N.J. Stat. § 17:11C-47–48 [Dsa436–37].

In this new regulatory scheme, the Legislature designated the Commissioner as the sole party responsible for pursuing violations, and contemporaneously *removed* the private cause of action permitting aggrieved borrowers to recover directly from lenders. *See generally* 1997 NJLLA, 1998 N.J. Stat. § 17:11C-1 *et seq*. [Dsa354–441]. In its place, the new statute

provided for the Commissioner to levy civil penalties and seek forfeiture from violators on behalf of harmed consumers, repealing right of a private suit.

The 1989 NJCLA provided that, subject to a defense of good faith, a violative loan contract "shall be void" and "the borrower *shall be entitled to recover from the lender* any such sums paid or returned to the [violating] lender by the borrower on account of or in connection with the [violative] loan." 1989 NJCLA, 1991 N.J. Stat. § 17:10-14 (emphasis added) [Dsa196–97].

The 1997 NJLLA, however, removed this provision. Instead, the 1997 NJLLA provided for certain civil penalties enforceable solely by the Commissioner, 1997 NJLLA, 1998 N.J. Stat. § 17:11C-47–48 [Dsa436–37], and rendered certain violations a misdemeanor in the fourth degree and punishable by voiding the contract and "*forfeit[ure] to the borrower* three times any amount of the interest, costs or other charges collected in excess of that authorized by law," *id.* § 17:11C-33(b) (emphasis added) [Dsa415–16].

This change accorded with the 1997 NJLLA's mortgage-related predecessor statutes, which, unlike the 1989 NJCLA, did not contain express private rights of action. *See* 1995 N.J. Stat. § 17:11A-34 *et seq*. [Secondary Mortgage Loan Act] [Dsa222–82]; 1995 N.J. Stat. § 17:11B-1 *et seq.* [mortgage

bankers and brokers] [Dsa283–309]; *see also Connell*, 231 N.J. Super. at 421–22 (holding no private right of action under Secondary Mortgage Loan Act).

The 1997 NJLLA also changed *what* violators could be required to return to a borrower in case of a violation. While its predecessors barred lenders from collecting all sums—principal, interest, or otherwise—in the event of any violation, the 1997 NJLLA established a different scheme. The 1997 NJLLA instead barred lenders from collecting all "principal, interest or other charges" on a loan only in response to certain specific violations by the lender in relation to that loan. *See* 1997 NJLLA, 1998 N.J. Stat. § 17:11C-33(b) [Dsa415–416]. Outside of those specific violations, the 1997 NJLLA generally permitted lenders that acted contrary to the statute to retain any principal but not any interest or other charges. *Id.* Further, instead of authorizing civil suits for all "sums paid" to the violating lender, 1989 NJCLA, 1991 N.J. Stat. § 17:10-1 [Dsa196–97], the 1997 NJLLA's forfeiture provision mandated the forfeiture of three times any "interest, costs or other charges collected in excess of that authorized by law" in the event of knowing or willful violations of the statute, 1997 NJLLA, 1998 N.J. Stat. § 17:11C-33(b) [Dsa416].

III. 2010 – Present: The New Jersey Consumer Finance Licensing Act

In 2010[2], the Legislature replaced the 1997 NJLLA with the NJCFLA. The transition from the 1997 NJLLA to the NJCFLA was precipitated by new federal law governing mortgage standards. In response, the Legislature decided to separate mortgage-related provisions into their own statute, the New Jersey Residential Mortgage Lending Act. *See e.g.*, A. 3816 (Sponsor's Statement), 213th Leg. at 75 (May 4, 2009) ("The reforms are largely focused on mortgage activities, and undertaken in response to new federal law requirements [on mortgage standards]. . . .") [Dsa518].

Other than an increase in the maximum civil penalty for violations, the 1997 NJLLA's consumer lending provisions were largely untouched in the resulting NJCFLA. *See id.* (Assembly Sponsor's Statement) at 78 ("Generally, the qualifications for licensure as a consumer lender or sales finance company, the licensing process, and the oversight of licensees remain the same as currently set forth under the [1997 NJLLA]. However, the commissioner may impose a civil penalty not exceeding $25,000 for violations, which is an increase of the current limit on civil penalties under the [1997 NJLLA]; the current act permits civil penalties not to exceed $5,000.") [Dsa521]; *see id.* (Assembly Committee

---

[2] The law was passed on December 31, 2009 and became effective in 2010.

Statement) at 4 (same) [Dsa526]; *see id.* (Senate Committee Statement) at 4 (same) [Dsa535].

The NJCLFA not only maintained the comprehensive regulatory enforcement scheme as its predecessor, empowering only the Commissioner to seek penalties from lenders, but further strengthened the Commissioner's exclusive responsibilities for enforcement. Specifically, the NJCFLA added language providing that:

> Whenever it appears *to the commissioner* that any person has engaged, is engaging, or is about to engage, in any practice or transaction prohibited by the [NJCFLA] the commissioner may, in addition to any other remedy available, bring a summary action in a court of competent jurisdiction against the person, and any other person concerned or in any way participating in or about to participate in a practice or transaction in violation of the [NJCFLA] to enjoin the person from continuing the practice or transaction engaged in, or from engaging in the practice or transaction, or doing any act in furtherance of engaging in the practice or transaction.

NJCFLA, N.J. Stat. § 17:11C-18(h) (emphasis added). There is no suggestion that a private party can bring a cause of action, much less any provision so providing.

In all, the Legislature affirmatively eliminated the private cause of action that once existed under the 1914 NJSLL, 1932 NJSLA, and 1989 NJCLA, and replaced it with a comprehensive regulatory enforcement scheme empowering only the Commissioner to seek penalties from lenders.

ARGUMENT

New Jersey statutes may confer a private right of action in one of two ways: expressly or impliedly. *See In re Resol. of State Comm'n of Investigation*, 108 N.J. 35, 40–41 (1987). The NJCFLA's statutory text and legislative history confirm that it does neither.

I. The NJCFLA Does Not Expressly Provide For A Private Right Of Action.

In assessing whether a private litigant has a right of action under a given statute, this Court looks first to the "statutory language" to assess whether the statute's text "expressly sanction[s]" such a remedy. *See id.* The NJCFLA does not contain an express cause of action and Petitioner does not argue otherwise. While pre-1997 consumer lending laws explicitly permitted borrowers to recover directly from lenders, *see supra*, Statutory Background § I, the NJCFLA contains no such provision. *See generally* NJCFLA, N.J. Stat. § 17:11C-1 *et seq*. Indeed, N.J. Stat. § 17:11C-18 expressly provides that, should there be a violation of the NJCFLA, the Commissioner is the sole entity that can seek to enforce it and commence a summary action or impose civil penalties.

The only provision in the NJCFLA concerning compensation to aggrieved borrowers is the forfeiture provision in N.J. Stat. 17:11C-33, and it does not provide an express private cause of action. That provision states as follows:

> If any interest, consideration or charges in excess of those permitted are charged, contracted for or received, except as the result of a good faith error, the consumer lender may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. 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. Stat. § 17:11C-33. It is housed in a clause about remedies for fourth-degree misdemeanors—a criminal provision otherwise enforceable only by the State—and does not state that borrowers themselves may sue to recover excess interest or charge. In stark contrast, the pre-1997 consumer lending laws, and the countless other New Jersey statutes explicitly creating such a right, are clear and express in doing so. *See* 1989 NJCLA, 1991 N.J. Stat. § 17:10-14 ("borrower[s] shall be entitled to recover from [violating] lenders") [Dsa195]; *see also, e.g.*, N.J. Stat. § 34:11-4.10(c) (Wage Theft Act, conferring upon an aggrieved employee the right to "recover in a civil action the full amount of any wages due, or any wages lost because of any retaliatory action taken in violation of [this law]"); N.J. Stat. § 49:3-71 (Uniform Securities Law, stating that "[a]ny person who offered, sold or purchased a security or engaged in the business of giving investment advice to a person in violation of [sections of this law] is liable to that person, who may bring an action either at law or in equity to recover"); N.J. Stat. § 10:6-2 (Civil Rights Act, allowing any person who has been deprived of

certain rights or privileges under color of law to "bring a civil action for damages and for injunctive or other appropriate relief . . . in Superior Court," where, "[u]pon application of any party, a jury trial shall be directed").

This is no more evident than in the Consumer Fraud Act ("CFA"), a statute that is closely related to the NJCFLA. While prior versions of that statute featured an administrative scheme that only authorized suits by the Attorney General, the Legislature amended it specifically to add that private parties could "bring an action or assert a counterclaim." *See* N.J. Stat. § 56:8-19 (Consumer Fraud Act, permitting "[a]ny 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 [to] bring an action or assert a counterclaim therefor in any court of competent jurisdiction"); *Thiedemann v. Mercedes-Benz USA, LLC*, 183 N.J. 234, 246 (2005) ("To augment the Attorney General's enforcement efforts, the CFA was amended, after a decade's worth of experience, to add a private right of action.") (citing P.L. 1971, c. 247, § 7). There is no similar language here.

As illustrated by numerous examples, including the consumer lending predecessor statutes expressly providing a private right of action, the Legislature

knows how to craft an unambiguous private right of action. *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 275 (quoting *In re Commissioner of Insurance's March 24, 1992 Order*, 256 N.J. Super. 158, 176–78, (App. Div. 1992), *aff'd*, 132 N.J. 209 (1993)) (finding that "[w]henever the Legislature intended to create civil penalties for violations of insurance statutes, regulations, and Department orders, it knew how to do so. . . ."). It chose not to expressly do so here. *Francavilla v. Absolute Resols. VI LLC*, 478 N.J. Super. 171, 180 (App. Div. 2024) (cert denied Nov. 12, 2024) (holding the NJCFLA does not contain a private right of action).

A contrary reading of the statute would effectively nullify the Legislature's decision to remove from the 1997 NJLLA the private cause of action present in the 1989 NJCLA and its predecessors. *See Castro*, 370 N.J. Super. at 292–93 (Where revised statute "deleted" predecessor statute's express authorization of private causes of action, court was "obligated to respect that legislative choice." (citing *Munoz v. N.J. Auto. Full Ins. Underwriting Ass'n*, 145 N.J. 377, 387–89 (1996)).

To the extent Petitioner argues that a forfeiture provision is illogical or ineffective absent a private right of action, he is simply wrong. *See* SC Pb18 (arguing the NJCFLA "does not disallow private actions by aggrieved

consumers," citing its allowance of "treble damages"). *First*, the NJCFLA provides for "forfeit[ure]" of "three times any amount of the interest, costs or other charges collected in excess of that authorized by law," not "treble damages." N.J. Stat. § 17:11C-33. *Second*, it is not uncommon for a statute to require violators to pay restitution or otherwise compensate harmed parties without authorizing a private cause of action to recover damages. *Cf.* N.J. Stat. § 17:33A-5(c) (authorizing the New Jersey Commissioner of Banking and Insurance "to order restitution to any insurance company or other person who has suffered a loss as a result of a violation" of the Insurance and Fraud Prevention Act, without creating a private right of action); 5 U.S.C. § 7246 (Sarbanes-Oxley Act, enabling the SEC to require disgorgement of certain ill-gotten profits and create a "Fair Fund" to disburse the disgorged money in restitution to harmed investors, without providing private litigants with a cause of action); 12 U.S.C. § 5564 (Enabling the Consumer Financial Protection Bureau to "seek all appropriate legal and equitable relief," which includes restitution, without providing a private right of action); 15 U.S.C. § 45(m)(1)(B) (permitting the FTC to seek a civil penalty in federal court, including restitution, without providing a private cause of action); 18 U.S.C. § 3663A ("Mandatory restitution to victims of certain crimes," requiring courts to order restitution

payments to victims of certain crimes without allowing crime victims to sue privately under the statute).

In addition, N.J. Stat. § 17:11C-33's forfeiture provision has nothing to do with licensing violations—the sole theory offered by Petitioner—and, in any event, could not serve as the basis for a private right of action based on a licensing violation. The forfeiture provision is instead focused on "interest, costs or other charges collected in excess of that authorized by law." N.J. Stat. 17:11C-33. In *Moran v. Am. Funding, Ltd.* the court addressed an equivalent provision in the Secondary Mortgage Act, which was later superseded by the 1997 NJLLA. 238 N.J. Super. 263 (Ch. Div. Ber. Cnty. 1989). The court held that the provision "provides for a loss of interest only if the lender 'charges or collects' unlawful fees or other payments from the borrower. That language does not address the licensing issue, and thus . . . would not seem to call for a forfeiture of interest because the lender lacks a license. For that offense, a separate sanction is set out [elsewhere in the statute] — a [civil penalty] for each offense, with each separate loan constituting a separate offense." *Id.* at 270–71 (quoting N.J. Stat. § 17:11A-59.1 (1989)).[3]

---

[3] 1989 N.J. Stat. § 17:11A-59.1 is similar to the forfeiture provision of the NJCFLA. *Compare* N.J. Stat. § 17:11A-59.1 (1989) ("If a licensee charges or collects interest, costs or other charges in excess of those permitted by the

The fact that the NJCFLA expressly requires lenders subject to public enforcement action to forfeit excess interest and other charges does not mean that the statute expressly permits borrowers to sue, let alone for mere alleged licensing violations.

II. The NJCFLA Does Not Imply A Private Right Of Action.

New Jersey courts are "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.*, 168 N.J. at 271. A statute only implies a private right of action when three factors are met: (1) "the plaintiff is 'one of the class for whose *especial* benefit the statute was enacted'"; (2) there is "evidence that the Legislature intended to create a private cause of action under the statute"; and (3) "implication of a private cause of action . . . would be 'consistent with the

---

'Secondary Mortgage Loan Act' . . . the licensee may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. In addition, a licensee who knowingly and willfully violates any provision of that 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."), *with* N.J. Stat. §17:11C-33 ("If any interest, consideration or charges in excess of those permitted are charged, contracted for or received, except as the result of a good faith error, the consumer lender may collect only the principal amount of the loan, and may not collect interest, costs or other charges with respect to the loan. 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.").

underlying purposes of the legislative scheme.'" *In re Resol.*, 108 N.J. at 41 (quoting and adopting the standard established in *Cort v. Ash*, 422 U.S. 66, 95 (1975)). "Although courts give varying weight to each one of those factors," the second is the most important: "the primary goal" is "a search for the underlying legislative intent." *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 272–73. But this standard is not easily met. *Id.* at 271.

Petitioner cannot demonstrate either the second or third prongs of the *In re Resol.* test. Any argument that the NJCFLA implies a private right of action is overcome by (A) the statute's complex administrative enforcement mechanisms; (B) legislative history reflecting an intent to discontinue private causes of action, including the affirmative deletion of the private cause of action; (C) the absence of any provision in the statute that could be read to imply a private right of action; and (D) together with points A through C, the absence of any case law construing the statute as inferring a private right of action.

A. The NJCFLA's Comprehensive Administrative Enforcement Mechanisms, Coupled With The Absence Of Any Reference to Private Suits, Precludes Finding A Private Right Of Action.

In assessing the second and third prongs of the *In re Resol.* test—searching for the legislative intent and examining the underlying legislative scheme—analyzing the remedies a statute does provide is critical. Generally, "[w]hen a statute limits a thing to be done in a particular mode, it includes the negative of

any other mode." *Botany Worsted Mills v. United States*, 278 U.S. 282, 289 (1929).

Here, the NJCFLA outlines in detail a comprehensive suite of penalties and consequences for violations of its provisions, and says nothing about private suits. That alone demonstrates that the Legislature did not intend to authorize such suits. *See id.*; *Connell*, 231 N.J. Super. at 422 ("[W]hen the Legislature intended that a borrower should have a right to recover any payments made respecting an unlawful loan, it knew precisely how to use clear and unambiguous language to say so. It used no such language [here] . . . .").

The absence of language authorizing private rights of action is especially dispositive where a statute otherwise devises a comprehensive system of regulatory enforcement. *See R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 274 ("New Jersey courts have generally declined to infer a private right of action in statutes where the statutory scheme contains civil penalty provisions."). "[W]here [the Legislature] has provided elaborate enforcement provisions for remedying the violation of a [given] statute, . . . it cannot be assumed that [the Legislature] intended to authorize by implication additional judicial remedies for private citizens suing under the statute." *Meghrig v. KFC W., Inc.*, 516 U.S. 479, 487–88 (1996) (internal quotes omitted). Instead, "[i]n seeking to ascertain

such intent, a court should be mindful of the 'elemental canon of statutory construction that where a statute expressly provides a particular remedy or remedies, a court must be chary of reading others into it.'" *Glynn v. Park Tower Apartments, Inc.*, 213 N.J. Super. 357, 362 (App. Div. 1986) (quoting *Transamerica Mortg. Advisors, Inc. (TAMA) v. Lewis*, 444 U.S. 11, 19 (1979)); *see also Campione v. Adamar of N.J., Inc.*, 155 N.J. 245, 266 (1998) ("Given the elaborate regulatory scheme, we likewise decline to imply a cause of action when no such cause of action exists at common law.").

The NJCFLA enacts a comprehensive and complete system of administrative enforcement. *See* N.J. Stat. § 17:11C-18. Specifically, it gives the Commissioner broad "authority with respect to issuing consumer lender and sales finance company licenses, and with respect to oversight of licenses and enforcement of the activities regulated under the [statute's provisions]." *Id.* That authority includes sweeping powers enabling the Commissioner to oversee licensees and activities that require licensure, ensure compliance with the NJCFLA's provisions, and pursue violators with license suspension or revocation, steep fines, injunctions, or, through a summary action to force compliance with N.J. Stat. § 17:11C-33, forfeiture payments to harmed consumers. *See* N.J. Stat. §§ 17:11C-18, 33. In other words, the aims of the

statute are fully addressed by detailed and complex administrative enforcement mechanisms spearheaded by the Commissioner.

Permitting private causes of action in addition to those enforcement mechanisms would severely disrupt the legislative scheme. Simply put, "recognition of a private right of action is not required to ensure proper enforcement of the statute." *Warren Cnty. Bar Ass'n v. Bd. of Chosen Freeholders*, 386 N.J. Super. 194, 203 (App. Div. 2006) (citing *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 274–75). And the Legislature had numerous potential bases to conclude that a private right of action would be more harmful than beneficial in this instance. While "a court would be limited to awarding relief to an individual [plaintiff]," the Commissioner "can conduct an investigation on the basis of an individual . . . complaint which may result in relief to other[s] as well." *See Glynn*, 213 N.J. Super. at 362.

The Commissioner can also assess the gravity of violations and the burdens on the consumer credit industry that would be caused by a penalty in deciding what actions and what penalties to pursue, and otherwise situate and contextualize the enforcement of the NJCFLA with "the other regulatory responsibilities" of the Department of Banking and Insurance. *See id.* at 363. "Thus, the [Legislature] might reasonably have concluded that the public

interest would be best served by placing total responsibility for the administration and enforcement of [the NJCFLA], upon the [Commissioner].” *See id.; see also Medina v. Planned Parenthood S. Atl.*, No. 23-1275, slip op. at 7 (U.S. June 26, 2025) (“[T]he decision whether to let private plaintiffs enforce a new statutory right poses delicate questions of public policy. . . . The job of resolving how best to weigh those competing costs and benefits belongs to the people’s elected representatives, not unelected judges charged with applying the law as they find it.”).

Because the Court must not disturb the Legislature’s carefully laid statutory design, no private right of action may be inferred. *See Kaul*, 223 N.J. at 307–10 (“‘[I]n the absence of strong indicia of a contrary [legislative] intent, we are compelled to conclude that [the Legislature] provided precisely the remedies it considered appropriate.’ . . . Administrative oversight and enforcement is the declared enforcement mechanism [here] and that choice reflects a legislative decision . . . .”) (second and third modifications in original) (quoting *Nat’l Sea Clammers Ass’n*, 453 U.S. at 15); *Castro*, 370 N.J. Super. at 293 (“[T]he Legislature has conferred pervasive authority upon the Commissioner of Health to regulate hospitals, which includes not only the specific authority to adopt rules and regulations . . . but also general authority

to . . . suspend or revoke the license of, or assess penalties against, a hospital that fails to comply . . . . [A] court should be especially hesitant in implying a right to a private cause of action against an entity that is subject to such pervasive regulation by a State agency." (citing *R.J. Gaydos Ins. Agency, Inc.*, 168 N.J. at 280–81)).

B. The Legislative History Reflects A Shift From Private to Regulatory Enforcement And Reflects No Legislative Intent To Permit Private Causes of Action.

As previously emphasized, "[i]n determining whether to infer a private cause of action from a [given] statute, [the] focal point is [the Legislature's] intent in enacting the statute." *Thompson v. Thompson*, 484 U.S. 174, 179 (1988) (citing *Cort*, 422 U.S. at 78, adopted by this Court in *In re Resol.*, 108 N.J. at 40–41). Courts consider the legislative history and statutory language in assessing that focal point. *See Kaul*, 223 N.J. at 307–08. And where "neither the statute nor the legislative history reveals a [legislative] intent to create a private right of action . . . [the Court] need not carry the *Cort v. Ash* inquiry further." *Mass. Mut. Life Ins. Co. v. Russell*, 473 U.S. 134, 148 (1985) (internal quote omitted). Here, the NJCFLA's legislative history unequivocally demonstrates that the Legislature terminated private rights of action in enacting the NJCFLA's predecessor, the 1997 NJLLA, and the NJCFLA did not in any way revive them.

1. The 1997 NJLLA Terminated The Private Right Of Action That Existed Under the 1989 NJCLA And Its Predecessors.

The 1997 NJLLA's text, structure, and history demonstrate that no private right of action was intended under the statute. In enacting the 1997 NJLLA, the legislature vested enforcement authority with respect to that statute in the Commissioner, and only in the Commissioner. *See* 1997 NJLLA, 1998 N.J. Stat. § 17:11C-47 ("If the ***commissioner*** has reason to believe that any person or licensee has engaged, is engaged, or is about to engage in any practice or transaction prohibited by this act, ***the commissioner*** may, in addition to any other remedies he may have, bring a summary action in the name and on behalf of the State against the person or licensee and any other person concerned or in any way participating in or about to participate in those practices or those actions in violation of this act, to enjoin the person or licensee from continuing the practices or transactions or engaging therein or doing any act in furtherance thereof or in violation of this act.") (emphasis added) [Dsa436].

First, the Legislature's decision to remove language expressly authorizing private causes of action in drafting the 1997 NJLLA makes clear that the Legislature did not intend the statute to be privately enforced. As discussed above, every iteration of every consumer lending statute in New Jersey history from 1914 to 1997, expressly authorized private causes of action to enforce their

provisions, in addition to providing for more limited regulatory enforcement mechanisms. *See supra*, Statutory Background § I.

The Legislature's removal of the language authorizing private rights of action that had remained largely stable for more than eighty years reflected a deliberate decision to shift from a private to a public enforcement regime. *Compare* 1914 NJSLL, P.L. 1914, c. 49, § 6 ("[T]he borrower shall be entitled to recover from the lender any or all sums paid. . . .") [Dsa146] *and* 1932 NJSLA, P.L. 1932, c. 62, § 13 (same) [Dsa157] *and* 1989 NJCLA, 1991 N.J. Stat. § 17:10-14 (same) [Dsa171] *with* 1997 NJLLA, 1998 N.J. Stat. § 17:11C-1 *et seq.* (lacking any similar provision, but granting heightened powers to the Commissioner) [Dsa354–441]. The Legislature's deliberate choice cannot be ignored. *See Munoz*, 145 N.J. at 389 ("It is not the role of a court to supply what the Legislature has omitted, and we decline to do so here."); *Castro*, 370 N.J. Super. at 292–93.

Second, the statements regarding the 1997 NJLLA at the time of its passage further establish that the goal of the 1997 NJLLA was to overhaul prior enforcement mechanisms in favor of streamlined regulatory enforcement mechanisms. The 1997 NJLLA's Sponsor Statement and Assembly Committee Statement both expressly explain, "This bill changes current law in [that] it

provides for a simpler and more rational licensing and regulation procedure for the Department of Banking and Insurance in connection with the four businesses for which lenders may be licensed[.]" A. 2513, 207th Leg. (Jan. 8, 1997) [Dsa351]. Similarly, the Governor's Statement on Signing stated, "This legislation . . . . brings us another step forward in streamlining the regulatory process and stimulating the economy." *Id.* [Dsa353].

Finally, the fact that the 1997 NJLLA combined consumer lending rules with legal regimes that did not previously authorize private rights of action further supports the lack of such a right under that statute. Specifically, even as the 1997 NJLLA's predecessor *consumer lending* statutes like the 1989 NJCLA provided express private rights of action, the 1997 NJLLA was in fact an amalgamation of three predecessor statutes: "the [1989 NJCLA], which applie[d] to consumer lenders; the 'Secondary Mortgage Loan Act,' P.L. 1970, c. 205 (C.17:11A-34 *et seq.*), which applie[d] to secondary mortgage lenders; and P.L.1981, c. 18 (C.17:11B-1 *et seq.*), which applie[d] to mortgage bankers and brokers." *Id.* (Sponsor's Statement, Assembly Committee Statement) [Dsa350].

The Secondary Mortgage Loan Act and the law applicable to mortgage bankers and brokers did not include any provisions authorizing private rights of action. *See Connell*, 231 N.J. Super. at 421–22 (holding no private right of

action under Secondary Mortgage Loan Act); *see also* 1995 N.J. Stat. § 17:11A-34 *et seq*. [Secondary Mortgage Loan Act]; 1995 N.J. Stat. § 17:11B-1 *et seq.* [mortgage bankers and brokers]. Reading the 1997 NJLLA to carry with it a private right of action from the 1989 NJCLA would require assuming that the Legislature intended the 1997 NJLLA to generate new private rights of actions for two legal regimes that had never authorized them—all without mentioning private actions anywhere, either in that statute itself or in its discussions of the statute. Such an assumption would be far-fetched indeed. Instead, while the 1989 NJCLA and its predecessors vested individual borrowers with private rights of action, those private rights of action were terminated by the 1997 NJLLA, which served to streamline enforcement of statutes governing loans of all kinds.

2. The NJCFLA Did Not Revive The Private Rights Of Action Terminated By The 1997 NJLLA.

The NJCFLA did not revive the cause of action terminated by the 1997 NJLLA. As discussed above, the transition from the 1997 NJLLA to the NJCFLA and the New Jersey Residential Mortgage Lending Act was motivated by a need to update New Jersey's mortgage laws to comply with new federal law governing mortgage standards. The Legislature expressly intended to leave the 1997 NJLLA's consumer loan oversight and enforcement provisions untouched.

See supra, Statutory Background § III; A. 3816 (Sponsor's Statement), 213th Leg. (May 4, 2009) ("The reforms are largely focused on mortgage activities, and undertaken in response to new federal law requirements [on mortgage standards]. . . .") [Dsa518]; *id.* (Assembly Committee Statement) ("Generally, . . . the oversight of licensees remain the same as currently set forth under the 'New Jersey Licensed Lenders Act.'") [Dsa526]; *compare* 1997 NJLLA, 1998 N.J. Stat. § 17:11C-1 *et seq.* [Dsa354–441] *with* N.J. Stat. § 17:11C-1 *et seq*.

Consequently, because the 1997 NJLLA unequivocally rejected private rights of action and the NJCFLA then adopted the 1997 NJLLA's regulatory enforcement system wholesale, the NJCFLA cannot plausibly be read to infer a private right of action. Instead, the NJCFLA's text, structure, and legislative history firmly refute any implied private right of action. *See Mass. Mut. Life Ins. Co.*, 473 U.S. at 148 (Where "neither the statute nor the legislative history reveals a [legislative] intent to create a private right of action," the judiciary may not create such a right.) (internal quote omitted).

C. Neither The NJCFLA's Restitution Provision Nor Its $25,000 Cap On Civil Penalties Imply A Private Right of Action.

Petitioner has previously argued that the NJCFLA's $25,000 cap on civil penalties and its forfeiture provision for excessive interest imply a private cause of action. AD Pb11 –12; *see* N.J. Stat. § 17:11C-18(i) ("The commissioner may

impose a civil penalty not exceeding $25,000 on any person for a violation of the 'New Jersey Consumer Finance Licensing Act.'"); *id.* § 17:11C-33(b) ("[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."). Petitioner is wrong on both counts.

First, the $25,000 cap on civil penalties, which as per statute "the commissioner may impose," has no bearing on whether the statute implies a private cause of action. While Petitioner argues that that cap prevents aggrieved consumers from receiving full remuneration absent a private right of action, *see* AD Pb11–12, civil penalties are imposed by the Commissioner and paid to the State. *See* N.J. Stat. § 17:1D-2 ("The Department of Banking and Insurance shall fund the approved budget of the [New Jersey Health Information Technology Commission] from fines, sanctions, and *civil penalties* assessed by the department on entities regulated by the department. . . .") (emphasis added). Accordingly, a cap on civil penalties cannot "limit," as Petitioner insists, the amount of money a lender must pay directly to an aggrieved borrower under this statute or any other. *See* AD Pb11. Petitioner wrongly conflates civil penalties

and restitution payments in arguing to the contrary, and no New Jersey law or precedent supports his interpretation.

Second, N.J. Stat. § 17:11C-33(b), providing for forfeiture, cannot be read to imply a private right of action. The removal of unambiguous language expressly permitting "borrower[s] . . . to recover from [lenders]" and the creation of highly specific regulatory enforcement mechanisms instead demonstrate the Legislature's intent to vest enforcement of that provision exclusively with the Commissioner. *See supra*, Statutory Background § II & Argument §§ I, II.B. It is not uncommon for statutes to on the one hand require violators to forfeit ill-gotten gains to affected parties and on the other hand forgo permitting private rights of actions to enforce such forfeiture, as the NJCFLA is best read to do. *See supra*, Argument § I (listing examples).

Further, the NJCFLA's forfeiture provision is housed in a paragraph dealing with criminal enforcement of the NJCFLA, further undermining any argument that the provision infers a private right of action.[4] *See In re Resol.*, 108 N.J. at 41 ("New Jersey courts generally will not allow private plaintiffs to

[4] In any event, for purposes of the instant dispute, N.J. Stat. § 17:11C-33(b)'s forfeiture provision has nothing to do with licensing violations and instead is focused solely on the forfeiture of excessive interest, fees, or similar charges. *See supra* n. 3.

sue . . . to enforce the state penal laws. Violations of these laws are left to the agencies charged with the enforcement of the criminal laws.") (internal citations and quotes omitted).

Finally, Petitioner is wrong to suggest that a private cause of action is needed to enforce the forfeiture provision. Because lenders are required under N.J. Stat. § 17:11C-33(b) to "forfeit to [an aggrieved] borrower three times any amount of the interest, costs or other charges collected in excess of that authorized by law," any lender that declines to do so has engaged in a "practice . . . prohibited by the [NJCFLA]," and the Commissioner may seek an injunction under N.J. Stat. § 17:11C-18(h) to compel compliance. N.J. Stat. § 17:11C-18(h), 33(b). Thus, the Commissioner has full, effective, and exclusive authority to enforce all provisions of the NJCFLA, and may bring actions to pursue restitution for aggrieved consumers as he sees fit in the exercise of his powers. *See supra*, Argument § II.B. "[W]hen the Legislature intended [under the 1932 NJSLA] that a borrower should have a right to recover any payments made respecting an unlawful loan, it knew precisely how to use clear and unambiguous language to say so. It used no such language [here] . . . ." *See Connell*, 231 N.J. Super. at 422.

D. No Case Has Recognized An Implied Private Right Of Action Under The 1997 NJLLA Or The NJCFLA, Including *Lemelledo*.

Since the enactment of the 1997 NJLLA, no New Jersey court has recognized a private right of action under the NJCFLA or its predecessor, the 1997 NJLLA. Nonetheless, Petitioner asserts that "[p]rior to 2010, 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." SC Pb18.[5] No support exists for this proposition.

First, Petitioner is wrong that private rights of action under previous consumer lending statutes have been implied rather than express. To the contrary, all pre-1997 iterations of New Jersey's consumer lending laws contained an *express* private right of action. *See supra*, Statutory Background § I. The first New Jersey consumer lending statute *not* to expressly authorize private suits was the 1997 NJLLA, and that statute's deletion of the express

---

[5] Petitioner also claims that "the [1989] NJCLA's 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 Petitioner asserts has voided his unlawful contract in the instant action." AD Pb11 (emphasis removed). This statement is simply incorrect. The 1989 NJCLA was located in the New Jersey Code at N.J. Stat. § 17:10-1 *et seq*. Consumer lending provisions were only moved to N.J. Stat. § 17:11C-1 *et seq.* with the passage of the NJLLA.

private right of action that existed under its predecessors is dispositive here. *See supra*, Argument §§ I, II.B.

Second, the only New Jersey decision issued after the 1997 NJLLA took effect that touched on private consumer lending suits without rejecting them, is *Lemelledo v. Beneficial Mgmt. Corp.*, 150 N.J. 255 (1997). But the issue before the Court in *Lemelledo* was "whether the New Jersey Consumer Fraud Act" ("CFA"), an entirely different statute, "applie[d] to lenders who engage in 'loan packing.'" *Lemelledo*, 150 N.J. at 260. The decision resulted from an interlocutory appeal "from the Law Division's dismissal of plaintiff's CFA claim," not any claim under the 1989 NJCLA or 1997 NJLLA. *Id.* at 263.

While the Court addressed New Jersey consumer lending laws, it only did so in rejecting the defendant's argument that a conflict between those laws and the CFA prevented the application of the latter. *Id.* at 271–75. In this regard, the Court's discussion focused on whether the 1989 NJCLA conferred a private right of action that might conflict with the CFA, not whether the 1997 NJLLA did. This is not surprising. The Court's opinion in *Lemelledo* was issued only two days after the 1997 NJLLA superseded the 1989 NJCLA, and was argued months before the 1997 NJLLA took effect. *See generally id.* (argued Feb. 18,

1997, and decided July 3, 1997); P.L. 1996, c. 157, §§ 1, 56 (providing for a July 1, 1997 effective date, with two exceptions not relevant here) [Dsa311, 347].

Indeed the Court noted that the changes in the law "affect[ed] neither [its] analysis nor [its] conclusion in this case." *Id.* at 262 n.1. The Court's passing suggestion that the 1997 NJLLA "now allows for treble damages by aggrieved consumers" is therefore dicta. *Id.* at 272 (citing N.J. Stat. § 17:11C-33(b)). For the reasons explained above, this statement is not correct, and there is no indication the issue was briefed by the parties. Accordingly, no court has accepted Petitioner's argument that *Lemelledo* means the NJCFLA affords a private right of action.

As one court explained:

> The Supreme Court's *Lemelledo* decision was published on July 3, 1997. The New Jersey Licensed Lenders Act . . . went into effect on July 1, 1997. The *Lemelledo* decision's citations to various statutory provisions noted the new statutory designation if the provision it was citing had been replaced by the new law. In discussing the Consumer Loan Act, which allowed for remedies by consumers as well as the Department of Banking and Insurance, the Court cited to 'N.J.S.A. 17:10-14 (replaced by N.J.S.A. 17:11C-33(b)).' However, the Court did not hold that by N.J.S.A. 17:11C-33(b) [of the 1997 NJLLA], itself, and as later incorporated into the NJCFLA, provided for a private cause of action.

Delgado v. LVNV Funding, No. BER-L-418-23, 2024 N.J. Super. Unpub. LEXIS 713, at *12–13 (Law Div. Apr. 22, 2024) (internal citations omitted) [Dsa10–

11].[6] Given that the 1997 NJLLA took effect long after the case was briefed and argued at the trial, appellate, and Supreme Court levels, there is no indication that the issue of whether the 1997 NJLLA conferred a private right of action was argued before, briefed to, or considered by the *Lemelledo* Court. And critically, to the extent it was not argued or briefed, the issue was not before the Court in the first place. *See Elizabeth Iron Works, Inc. v. Kevon Constr. Corp.*, 75 N.J. 332, 336 n.3 (1978) ("[T]he issue was never raised by the parties and is therefore not properly before the Court . . . .").

Meanwhile, no court has ever held that the 1997 NJLLA or the NJCFLA contain a private right of action, and every court to consider the issue has concluded it does not. *See, e.g.*, *Francavilla*, 478 N.J. Super. at 180; *Valentine v. Unifund CCR, LLC*, No. A-0835-23, 2025 N.J. Super. Unpub. LEXIS 765, at *8 (App. Div. May 6, 2025) (per curiam) [Dsa119]; *McQueen v. Razor Cap., LLC*, No. A-2647-23, 2025 N.J. Super. Unpub. LEXIS 747, at *5 (App. Div. May 6, 2025) (per curiam) [Dsa89]; *Portfolio Recovery Assocs., LLC v. Chartonavich*,

---

[6] *See also* Transcript of Oral Argument, *LVNV Funding, LLC v. Rodriguez*, No. MRS-L-000735-24, at 24:23–25:19 (Law Div. Feb. 27, 2025) ("[In *Lemelledo*,] the Court was not addressing the issue regarding whether the NJCFLA [or 1997 NJLLA] provided a private cause of action to consumers. . . . The Court . . . did not hold that N.J.S.A. 17:11C-33(b) by itself and as later incorporated into the NJCFL[A] provided for a private cause of action[.]") [Dsa54].

No. A-1088-23, 2024 N.J. Super. Unpub. LEXIS 2537, at *7 (App. Div. Oct. 21, 2024) (per curiam) [Dsa106]; *Diana v. LVNV Funding LLC*, No. A-1000-23, 2024 N.J. Super. Unpub. LEXIS 2241, at *7–8 (App. Div. Sep. 26, 2024) (per curiam) [Dsa17–18]; *Jefferson Cap. Sys., LLC Inc/Santander Consumer USA v. Glover*, No. A-3545-22, 2024 N.J. Super. Unpub. LEXIS 1248, at *10–12 (App. Div. June 18, 2024) (per curiam) [Dsa24–25]; *Woo-Padva v. Midland Funding*, No. A-1996-21, 2023 N.J. Super. Unpub. LEXIS 1550, at *9 (App. Div. Sep. 21, 2023) (per curiam) [Dsa138]; *Delgado*, No. BER L-418-23, 2024 N.J. Super. Unpub. LEXIS 713, at *11–15 [Dsa9–11]; *Valentine v. Unifund CCR, LLC*, No. BER-L-376-23 2023 N.J. Super. Unpub. LEXIS 4234, at *12–13 (Law Div. Oct. 4, 2023) [Dsa111]; *Browne v. Nat'l Collegiate Student Loan Tr.*, No. 21-11871 (KM) (JSA), 2021 U.S. Dist. LEXIS 244537, at *8–9 (D.N.J. Dec. 22, 2021) [Dsa4]; *North v. Portfolio Recovery Assocs., LLC*, No. 2:20-cv-20190 (BRM) (JSA), 2021 U.S. Dist. LEXIS 184974, at *8–9 (D.N.J. Sep. 24, 2021) [Dsa97–98]; *Macdonald v. CashCall, Inc.*, No. 16-2781, 2017 U.S. Dist. LEXIS 64761, at *29 (D.N.J. Apr. 28, 2017) [Dsa80]; *Jubelt v. United Mortg. Bankers, Ltd.*, No. 13-7150 (ES) (MAH), 2015 U.S. Dist. LEXIS 84595, at *39 (D.N.J. June 30, 2015) [Dsa39]; *Veras v. LVNV Funding, LLC*, No. 13-1745 (RBK/JS), 2014 U.S. Dist. LEXIS 34176, at *24–28 (D.N.J. Mar. 17, 2014) [Dsa132–33].

New Jersey's consumer lending laws have not recognized private rights of action for nearly 30 years, and Petitioner's arguments to the contrary lack merit.

CONCLUSION

The NJCFLA's text, structure, and legislative history make abundantly clear that no private right of action under the statute was intended. Under longstanding precedent, that ends the instant inquiry. The Court should answer the certified question in the negative.

Respectfully submitted,

FOLEY & LARDNER LLP
Attorneys for MHC Receivables LLC and FNBM LLC

By: */s/ Christopher A. DeGennaro*

Christopher A. DeGennaro

J. ROBBIN LAW
Attorneys for LVNV Funding LLC, Sherman Originator LLC, and Sherman Originator III LLC

By: */s/ Jacquelyn A. DiCicco*

Jacquelyn A. DiCicco

Dated: June 30, 2025