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DANIEL S. DELGADO, on behalf of himself and those similarly situated, Plaintiff, vs. LVNV FUNDING, LLC; RESURGENT CAPITAL SERVICES, L.P.; and JOHN DOES 1 to 10, Defendants.	SUPERIOR COURT OF NEW JERSEY COUNTY OF BERGEN LAW DIVISION—CIVIL PART DOCKET NO.: BER L-418-23 CBLP CIVIL ACTION ***CORRECTED*** DECISION ON MOTION FOR SUMMARY JUDGMENT

Decided: April 22, 2024

Philip D. Stern, attorney for plaintiff (Kim Law Firm, LLC).

Jacquelyn A. DeCicco and Austin O'Brien, attorneys for defendants (J. Robbin Law, PLLC).

MARY F. THURBER, J.S.C.

This matter is before the court on defendants' motion for summary judgment to dismiss plaintiff's complaint with prejudice. After the motion was fully briefed but before oral argument, the court directed counsel's attention to a newly published, relevant Appellate Division decision and invited additional briefing. Following receipt and review of those briefs, the court heard oral argument on April 19, 2024. The court grants defendants' motion in its entirety, dismissing plaintiff's complaint with prejudice.

I

The case arises out of an alleged debt originally owed by plaintiff to Fleet National Bank, which merged into Bank of America. The account records show plaintiff made periodic payments but defaulted on or after making a last payment on May 31, 2006. The account was thereafter transferred to non-party Arrow Financial Services, LLC ("Arrow"), the predecessor of defendant LVNV Funding LLC ("LVNV").

Arrow initiated a collection action against plaintiff on October 21, 2008, captioned Arrow Financial Services, LLC v. Daniel S. Delgado, Docket No. BER DC 030900-08, claiming to have purchased or otherwise to have taken possession of plaintiff's account. Plaintiff did not answer or respond; the court entered default judgment against plaintiff on December 10, 2008. Arrow pursued collection remedies, which resulted in orders directing plaintiff to comply with an information subpoena, issuance of a writ of execution, and issuance of a statement for docketing. Arrow transferred the account and judgment on or about November 30, 2011, with the account and judgment ultimately coming into the hands of defendant LVNV.

Collection efforts continued, in the name of the named plaintiff, Arrow. These included a Notice of Application for Wage Execution on September 21, 2016, and Order for Wage Execution and Garnishment on September 26, 2016, filing of a Writ of Execution against Wages on November 1, 2016, and entry of that writ by the

court on November 9, 2016. On February 24, 2017, plaintiff Delgado appeared for the first time, and he filed an objection to the wage execution writ. The judgment was satisfied by wage execution payments, and Arrow filed a Warrant to Satisfy Judgment on January 2, 2018.

On December 21, 2022, Delgado filed the current complaint against defendants in the Superior Court of New Jersey, Law Division, Hudson County, under Case Number HUD-L-4190-22, "on behalf of himself and those similarly situated." On January 24, 2023, the case was transferred from the Superior Court of New Jersey, Law Division, Hudson County to the Superior Court of New Jersey, Law Division, Bergen County, under Case Number BER-L-418-23. The complaint asserts claims based on defendants' alleged unlawful purchase and enforcement of alleged consumer debts without first obtaining a license under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to -49 ("NJCFLA"). The counts pleaded include a request for declaratory judgment and injunctive relief under the NJCFLA (Count 1); damages under the New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 to -229 ("CFA") (Count 2); and Unjust Enrichment, seeking disgorgement of monies collected (Count 3).

II

Summary judgment "shall be rendered forthwith if the pleadings, depositions, answers to interrogatories and admissions on file, together with the affidavits, if any,

show that there is no genuine issue of material fact challenged and that the moving party is entitled to a judgment or order as a matter of law." R. 4:46-2(c). The court is required to view all competent evidential materials presented in the light most favorable to the non-moving party (plaintiff in this case), and to grant summary judgment only if those materials are not sufficient to permit a rational factfinder to resolve the alleged disputed issue in favor of the non-moving party. Brill v. Guardian Life Ins. Co. of Am., 142 N.J. 520, 540 (1995). The Brill Court made clear the active role trial courts should take in considering such motions. The trial court must scrutinize the opposition to summary judgment and deny judgment only if the opponent can demonstrate more than the suggestion of a factual dispute. See id. at 539–40. The burden of opponents in response to a summary judgment motion is to show the court: (1) a bona fide dispute, over a (2) material fact, and (3) that enough evidence exists in favor of that position that a rational factfinder could resolve that dispute in their favor by the burden of proof that will be applied at trial. See id. at 540.

Thus, when trial courts consider opposition to summary judgment motions, they must analyze that opposition considering the burden of proof to be used at trial. Although a party presenting a bona fide claim should be allowed his or her day in court, it is "just as important that the court not 'allow harassment of an equally deserving suitor for immediate relief by a long and worthless trial.' . . . To send a

case to trial, knowing that a rational [factfinder] can reach but one conclusion, is indeed 'worthless' and will 'serve no useful purpose.'" Id. at 540–41. "The purpose of summary judgment procedure is, with proper adherence to the rules, to avoid trials which would serve no useful purpose and to afford deserving litigants immediate relief." Kopp, Inc. v. United Techs., Inc., 223 N.J. Super. 548, 555 (App. Div. 1988) (citing Judson v. Peoples Bank Trust Co. of Westfield, 17 N.J. 67, 74 (1954)).

III

Defendants argue plaintiff's claims are barred by the entire controversy doctrine and the doctrines of res judicata and collateral estoppel, based on the collection action filed by Arrow that resulted in a default judgment, which Delgado paid in full. The court declines to apply any of these doctrines to bar plaintiff's claims, except plaintiff's claims based on Arrow's collection activities while unlicensed.

Entire Controversy Doctrine

The entire controversy doctrine is a fixture of New Jersey jurisprudence. It has roots in our common law and our 1947 Constitution, and it has been reflected in the New Jersey court rules since at least 1979, when Rule 4:27–1(b) required mandatory joinder of all claims against any other party to the action. "The doctrine is a reflection of the constitutional unification of the state courts and the comprehensive jurisdiction vested in the Superior Court established under our

Constitution, which recognized the value in resolving related claims in one adjudication so that 'all matters in controversy between parties may be completely determined.'" Mystic Isle Dev. Corp. v. Perskie & Nehmad, 142 N.J. 310, 322 (1995) (quoting N.J. Const., art. VI, § 3, ¶4).

Under the entire controversy doctrine, all claims emanating from a transaction, or a related series of transactions, must be joined in a single proceeding. See Crispin v. Volkswagenwerk, A.G., 96 N.J. 336, 343–44 (1984). The purposes of the doctrine are to prevent piecemeal or fragmented litigation and to promote comprehensive and final litigation, party fairness, and judicial efficiency. See Pressler & Verniero, Current N.J. Court Rules, cmt. 1 on R. 4:30A (2024). Claims are required to be joined if they arise out of the same transactional nexus as other claims in the suit. See In Re Estate of Gabrellian, 372 N.J. Super. 432, 444 (App. Div. 2004). The doctrine includes the joinder of defenses, Massari v. Einsiedler, 6 N.J. 303, 312–13 (1951), and all affirmative claims a party might have against another party, including counterclaims and cross-claims, Ajamian v. Schlanger, 14 N.J. 483, 487–89, cert. denied, 348 U.S. 835 (1954). The doctrine applies to successive suits with related claims. Kaselaan & D'Angelo Assocs. Inc. v. Soffian, 290 N.J. Super. 293, 299 (App. Div. 1996). It is "the factual circumstances giving rise to the controversy itself, rather than the commonality of claims, issues or parties,

that triggers the requirement of joinder to create a cohesive and complete litigation." Mystic Isle, 142 N.J. at 322 (citing DiTrolio v. Antiles, 142 N.J. 253, 272 (1995)).

Delgado's claim that Arrow lacked the legal right to collect his debt because of its failure to have obtained a license was a defense Delgado could have raised in the collection action, and therefore he cannot assert that here. The Appellate Division recently affirmed application of the entire controversy doctrine to a similar attempt by a judgment debtor to pursue a class action under the NJCFLA and CFA against a collection agency that had acquired debt without obtaining a license under the NJCFLA. See Francavilla v. Absolute Resolutions VI, LLC, No. A-2951-21 (App. Div. Mar. 14, 2024) (Approved for Publication). The reasoning there is wholly applicable here as to claims based on Arrow's lack of license.

Plaintiff points out, correctly, that because LVNV and Resurgent Capital Services, L.P. ("Resurgent") were not parties to the collection action and their acquisition of the debt had either not occurred or was not disclosed to plaintiff (collection continued under the name of Arrow), plaintiff could not have raised in the collection action the illegality of their acquiring and collecting the debt without a license. Although it could be argued that this is the same legal issue as the defense plaintiff failed to assert against Arrow, the court views the factual distinction, that the affirmative claims against LVNV and Resurgent could not have been raised in

defense of the collection, as controlling. The court agrees the entire controversy doctrine does not bar plaintiff's NJCFLA claims against LVNV and Resurgent.

Res Judicata

Res judicata is generally described as the common law doctrine barring re-litigation of claims that have already been adjudicated, distinguishing it from the common law doctrine of collateral estoppel, which is generally understood to bar re-litigation of issues that have already been adjudicated. First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007). For res judicata to apply:

> (1) the judgment in the prior action must be valid, final, and on the merits;
> (2) the parties in the later action must be identical to or in privity with those in the prior action; and
> (3) the claim in the later action must grow out of the same transaction or occurrence as the claim in the earlier one.
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> [Watkins v. Resorts Int'l Hotel & Casino, 124 N.J. 398, 412 (1991).]

The doctrine applies when "the judgment relied upon [is] valid, final and on the merits; the parties in the two actions [are] either identical or in privity with one another; and the claims [grew] out of the same transaction or occurrence." Olds v. Donnelly, 291 N.J. Super. 222, 232 (App. Div. 1996), aff'd, 150 N.J. 424 (1997). "Res judicata, like the entire controversy doctrine, serves the purpose of providing 'finality and repose; prevention of needless litigation; avoidance of duplication; reduction of unnecessary burdens of time and expenses; elimination of conflicts,

confusion and uncertainty; and basic fairness[.]'" Wadeer v. New Jersey Mfrs. Ins. Co., 220 N.J. 591, 606 (2015) (citing First Union Nat'l Bank v. Penn Salem Marina, Inc., 190 N.J. 342, 352 (2007) (quoting Hackensack v. Winner, 82 N.J. 1, 32-33 (1980))).

Claims are considered resolved by final judgment for res judicata purposes if they are pleaded and disposed of by the court. Velasquez v. Franz, 123 N.J. 498, 506 (1991) (quoting Restatement (Second) of Judgments, § 27 cmt. d (1982)). A trial on the merits of an issue is not necessary for preclusion. Velasquez, 123 N.J. at 506–07 (involuntary dismissal or dismissal with prejudice constitutes an adjudication on the merits "as fully and completely as if the order had been entered after trial") (citations omitted)

Plaintiff argues the parties in the two suits are not the same, but does not deny defendants are in privity with Arrow, the party in the first action, which is sufficient to satisfy the second element defined in Watkins, 124 N.J. at 412. Plaintiff argues the claims are not the same, as his claims here were not raised or litigated in the collection lawsuit. The court agrees that res judicata does not bar plaintiff's claims, because the claims were not litigated and decided in the collection action.

Collateral Estoppel

"The doctrine of collateral estoppel precludes the relitigation of issues, whereas res judicata precludes relitigation of judgments." Brae Assocs. v. Park

Ridge Borough, 17 N.J. Tax 187, 193 (Tax 1998) (citing Mazzilli v. Accident & Cas. Ins. Co., 26 N.J. 307 (1958); Allesandra v. Gross, 187 N.J. Super. 96 (App. Div. 1982)). For the doctrine of collateral estoppel to apply to foreclose the re-litigation of an issue, the party asserting the bar must show that:

> (1) the issue to be precluded is identical to the issue decided in the prior proceeding;
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> (2) the issue was actually litigated in the prior proceeding;
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> (3) the court in the prior proceeding issued a final judgment on the merits;
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> (4) the determination of the issue was essential to the prior judgment; and
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> (5) the party against whom the doctrine is asserted was a party to or in privity with a party to the earlier proceeding.
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> [In Re Estate of Dawson, 136 N.J. 1, 20–21 (1994).]

Although the issue of applicability of the NJCFLA licensing requirements to debt collectors and its effect on the validity of a collection action could have been litigated in the prior action as a defense to Arrow's collection, it was not. Collateral estoppel does not apply.

IV

New Jersey Consumer Finance Licensing Act

All counts of the complaint are founded on plaintiff's contention that the debts defendants purchased were void once defendants or their predecessors purchased them while not licensed under the NJCFLA, making the actions to collect them violative of the various statutory provisions on which plaintiff relies. Plaintiff argues Arrow, LVNV, and Resurgent were each required to obtain a license to conduct business as a consumer lender or sales finance company, N.J.S.A. 17:11C-3 (licensure requirement), before acquiring his debt or taking steps to collect it, and that their failure to do so voided the debts. N.J.S.A. 17:11C-33(b) ("A contract of a loan not invalid for any other reason, in the making or collection of which any act shall have been done which constitutes a crime of the fourth degree under this section [including section 11:C-3], shall be void and the lender shall have no right to collect or receive any principal, interest, or charges . . . .").

Defendants argue the NJCFLA does not confer a private, statutory cause of action—only the Commissioner of Banking and Insurance has authority to pursue claims for violations of the NJCFLA. N.J.S.A. 17:11C-18. Plaintiff's opposition brief argues he "has asserted no claims under the NJCFLA," but the court reads Count 1 to assert a claim resting on plaintiff's right to assert claims based on a violation of the NJCFLA. Plaintiff cannot circumvent the lack of a private cause of

action under the NJCFLA by seeking relief under the New Jersey Declaratory Judgment Law. See In re Resol. of State Comm'n of Investigation, 108 N.J. 35, 46 (1987) (dismissing cause of action seeking a judgment declaring a party had violated a statute because plaintiffs did not have a private right of action under the statute); Excel Pharmacy Servs., LLC v. Liberty Mut. Ins., 825 F. App'x 65, 70 (3d Cir. 2020) ("But it is well settled that parties cannot bring a declaratory judgment action under a statute when there is no private right of action under that statute.").

Plaintiff argues that although the NJCFLA does not expressly convey a private right of action, and although it does expressly designate the Commissioner of Banking and Insurance to pursue claims for violations, N.J.S.A. 17:11C-18, the legislative history and intent support a finding that a private right of action is implied. Plaintiff traces the present-day NJCFLA back to the New Jersey Small Loan Act of 1914, identifies each subsequent enactment that superseded or subsumed prior Acts, and asserts that each of those predecessors, "every iteration," permitted private causes of action. Plaintiff does not state those private causes of action were implied rather than express, and does not cite any case implying a private cause of action.

The Supreme Court's Lemelledo decision was published on July 3, 1997. Lemelledo v. Benefit Mgmt. Corp., 150 N.J. 255 (1997). The New Jersey Licensed Lenders Act, 1997 N.J. A.N. 2513, an Act concerning licensed lenders, supplementing Title 17 of the Revised Statutes, and amending and repealing various

parts of the statutory law, 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. 17C:11-33b)." Lemelledo, 150 N.J. at 272. However, the Court did not hold that by N.J.S.A. 17:11C-33b, itself, and as later incorporated into the NJCFLA, provided for a private cause of action.

Plaintiff states the recent Francavilla decision "suggests the court is addressing an implied right of action," but this court disagrees. In distinguishing a Maryland decision that held a class action claim similar to plaintiff's was not a "collateral attack" on a prior judgment, the court noted the Maryland Consumer Debt Collection Act "also contains a private right of action, while New Jersey's CFLA does not." Francavilla, slip op. at 10.

Although this court was open to the suggestion that legislative history might demonstrate an intention to imply a private cause of action under the NJCFLA, plaintiff did not provide persuasive evidence of that or any case that has so held.

Because plaintiff's claim for declaratory judgment and injunctive relief in Count 1 seeks declarations under the NJCFLA that the court finds he is not

authorized to pursue, and seeks to bootstrap the CFA and DJ claims to those, Count 1 is dismissed.

Consumer Fraud Act

The CFA provides in part:

> 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.
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> [N.J.S.A. 56:8-2 (emphasis added).]

Merchandise is defined as "any objects, wares, goods, commodities, services or anything offered, directly or indirectly to the public for sale." N.J.S.A. 56:8-1(c).

Advertisement includes "the attempt directly or indirectly by publication, dissemination, solicitation, indorsement or circulation or in any other way to induce directly or indirectly any person to enter or not enter into any obligation or acquire any title or interest in any merchandise or to increase the consumption thereof or to make any loan." N.J.S.A. 56:8-1(a).

A claim under the CFA requires a consumer to show: (1) unlawful conduct or practice by defendant, (2) an ascertainable loss by plaintiff, and (3) a causal

relationship between the unlawful conduct and the ascertainable loss. Bosland v. Warnock Dodge, Inc., 197 NJ 543, 557 (2009); Cox v. Sears Roebuck, 138 N.J. 2 (1994).

1. Unlawful Conduct

Defendants argue plaintiff's complaint does not sufficiently state the first element, unlawful conduct, because it does not allege defendants engaged in the sale of merchandise, N.J.S.A. 56:8-2, and committed unlawful conduct in connection with that.

> The CFA defines "merchandise" to include "services." N.J.S.A. 56:8-1. Thus, to state a cause of action under the CFA, a plaintiff must allege the commission of a deception, fraud, misrepresentation, etc., **"in connection with" the sale of merchandise or services.** To satisfy this requirement, "[t]he misrepresentation has to be one which is material to the transaction … made to induce the buyer to make the purchase." Gennari v. Weichert Co. Realtors, 148 N.J. 582, 607, 691 A.2d 350, 366 (1997).
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> [Castro v. NYT Television, 370 N.J. Super. 282, 294 (App. Div. 2004) (emphasis added).]

Defendants argue statements made by a collection agency who purchased the debt after it was made and, in this case, after plaintiff defaulted, are not activities "in connection with" the sale of merchandise or services. DepoLink Court Reporting & Litig. Support Servs. v. Rochman, 430 N.J. Super. 325, 339 (App. Div. 2013).

The CFA applies to sales of credit. Lemelledo, 150 N.J. at 265 ("Given the broad language of the CFA, we conclude that its terms apply to the offering, sale, or

provision of consumer credit."). Plaintiff argues defendants' collection actions constitute "subsequent performance" of the contract within the meaning of N.J.S.A. 56:8-2, relying on Jefferson Loan Co. v. Session, 397 N.J. Super. 520 (App. Div. 2008), and Gonzalez v. Wilshire Credit Corp., 207 N.J. 557 (2011).

The court disagrees. Plaintiff alleges defendants' unconscionable practices included unlawfully collecting monies from a wage garnishment executed by an unlicensed entity, stemming from a judgment on a void debt, based on its assignment/acquisition when defendants and Arrow were not licensed. Gonzalez involved a mortgage foreclosure and "post-judgment agreements" that had "recast the terms of the original loan" and had included, according to plaintiff, "illicit financing charges and miscalculations of monies due." 207 N.J. at 563. The Court held the post-judgment loan modifications were "in form and substance an extension of credit," id. at 563, and that the plaintiff could base a CFA claim on the defendant's alleged actions in connection with that new transaction. Those facts are not present in this case.

Plaintiff's reliance on Jefferson Loan Co. v. Session is similarly misplaced. 397 N.J. Super. 520 (App. Div. 2008). In Jefferson, the plaintiff finance company purchased an existing retail installment sales contract from the automobile dealer the day the defendant purchased the car and before she defaulted on it. Id. at 525–27. The plaintiff finance company also had "offer[ed] credit life and credit disability

insurance through the dealers, insuring the life and health of the borrowers, as well as property insurance of the financed automobiles." Id. at 525–26. Jefferson did not involve the purchase of a defaulted, charged-off account, which is what is at issue in this case.

The District Court in Chulsky provided a comprehensive survey of New Jersey case law relevant to this issue, as well as a broad discussion of authority from other jurisdictions. Chulsky v. Hudson Law Offices, P.C., 777 F. Supp. 2d 823 (D.N.J. 2011). The court addressed all the cases that might support a conclusion that the CFA applies to third-party debt-collectors and distinguished them. The court also found support in an unpublished Appellate Division opinion, as to which the Supreme Court denied certification. The Chulsky court drew a reasoned distinction between assignees that acquired loans before default and those who acquired them strictly for collection, as defendants here:

> Moreover, assignees that purchase the loan pre-default from a commercial lender and service that loan stand on a different footing than debt buyers who will never "perform," execute, or seek to maintain the relationship contemplated by the original agreement. While it would be inapt to blindly import the policy underlying the FDCPA, a federal statute, into state law, that there is New Jersey state and federal case law applying the NJCFA to assignees who purchase pre-default, yet declining to apply the NJCFA to debt buyers, suggests that the distinction noted in the FDCPA context is also relevant under the NJCFA. Reading the aforesaid cases together in this fashion also "eliminate[s] inconsistency between the

> federal and state courts in the application of [New Jersey] law."
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> [Chulsky v. Hudson Law Offices, P.C., 777 F. Supp. 2d 823, 847 (D.N.J. 2011) (internal citations omitted).]

Depolink, a published Appellate Division decision post-dating Jefferson Loan, Gonzalez, and Lemmeledo, held the actions of which plaintiff complains were not unlawful under the CFA:

> Here, the CFA is inapplicable to defendant's claim against the collection agency because any misrepresentations by the collection agency, even if made, were not in connection with the sale of merchandise to defendant. The alleged prohibited conduct occurred later on, when the collection agency was attempting to collect the debt from defendant. The collection agency's contacts with defendant were not an offer to sell merchandise, nor did defendant buy anything from the collection agency. Debt collection activities on behalf of a third party who may have sold merchandise are not unconscionable activities "in connection with the sale" of merchandise. See, e.g., Chulsky v. Hudson Law Offices, P.C., 777 F. Supp. 2d 823, 847 (D.N.J. 2011) (holding that the CFA does not cover the debt collection activities of a third party that purchases consumer debt); Joe Hand Promotions, Inc. v. Mills, 567 F. Supp. 2d 719, 723-24 (D.N.J. 2008) (finding that a letter demanding payment of a settlement did not fall within the CFA because plaintiff was not induced to purchase merchandise or real estate).
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> [DepoLink, 430 N.J. Super. at 339.]

Plaintiff does not contend defendants sold anything to him. He does not base his CFA claim on a misrepresentation made to induce him into purchasing credit, cf. Gennari v. Weichert Co. Realtors, 148 N.J. 582, 607 (1997), but on an alleged

misrepresentation made after he had incurred the debt and defaulted on it. Plaintiff was not "lured into a purchase" by any action or representation by defendant. See Daaleman v. Elizabethtown Gas Co., 77 N.J. 267, 271 (1978). Plaintiff's CFA claim fails and is dismissed for failure to satisfy the unlawful conduct element.

2. Ascertainable Loss

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

> Any person who suffers any ascertainable loss of moneys or property, real or personal, as a result of the use or employment by another person of any method, act, or practice declared unlawful under this act or the act hereby amended and supplemented may bring an action or assert a counterclaim therefor in any court of competent jurisdiction.
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> [N.J.S.A. 56:8-19.]

Our Supreme Court has discussed and emphasized this requirement in numerous cases. See, e.g., Weinberg v. Sprint Corp., 173 N.J. 233, 250 (2002) (collecting cases and stating "[I]n contrast to the Attorney General, a private plaintiff must have an ascertainable loss in order to bring an action under the [CFA] . . . [and, the CFA] requires causal relationship between ascertainable loss and unlawful

practice . . . ascertainable loss, particularly proximate to a misrepresentation or other unlawful act of the defendant condemned by the Consumer Fraud Act.") (internal citations omitted). Ascertainable loss means the plaintiff must suffer a definite, certain, and measurable loss, rather than one that is merely theoretical. Bosland, 197 N.J. at 558.

"An ascertainable loss under the CFA is one that is 'quantifiable or measurable,' not 'hypothetical or illusory.'" Johnson v. McClellan, 468 N.J. Super. 562, 587 (App. Div. 2021) (quoting D'Agostino v. Maldonado, 216 N.J. 168, 185 (2013)). A plaintiff can demonstrate ascertainable loss by showing an "out-of-pocket loss or the loss of the value of his or her interest in property[,]" or by demonstrating "that he or she has been deprived of the 'benefit of the bargain' because of a CFA violation." Johnson, 486 N.J. Super. at 587 (quoting D'Agostino, 216 N.J. at 190–92).

Defendants argue plaintiff has not demonstrated an ascertainable loss, because he paid only the debt he actually owed, and he received a satisfaction of judgment. To the extent plaintiff relies on Cox, 138 N.J. at 23, for the proposition that imposition of an improper debt or lien against a consumer-fraud plaintiff may constitute a loss under the CFA, this fails because plaintiff cannot establish the debt is improper. He does not dispute the original debt owed to Fleet/Bank of America,

and he cannot establish his claim under NJCFLA that the debt became void by its transfer.

3. Causal Relationship

Because plaintiff cannot establish the first element, unlawful conduct, he cannot establish a causal connection to any alleged loss, even if the court were to determine he had sufficiently pleaded an ascertainable loss.

Plaintiff's CFA claims (Count 2) are dismissed.

Unjust Enrichment

Plaintiff has named a subclass of people who have paid defendants in response to collection efforts and seeks on their behalf treble damages under the CFA (dismissed) and disgorgement based on unjust enrichment. Based on the court's determination that the collection efforts were not unlawful, the claims for unjust enrichment fail on their merits. To state a claim for unjust enrichment, a plaintiff must show that the defendant (1) received a benefit, and (2) retention of that benefit without compensation would be unjust. VRG Corp. v. GKN Realty Corp., 135 N.J. 59, 554 (1994). This cannot apply if collection of the debt was proper.

Plaintiff's complaint is dismissed in its entirety.