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CASSANDRA A. VALENTINE, on behalf of herself and those similarly situated, Plaintiff, vs. UNIFUND CCR, LLC, DISTRESSED ASSET PORTFOLIO III, LLC, and JOHN DOES 1-25, Defendants.	SUPERIOR COURT OF NEW JERSEY LAW DIVISION: BERGEN COUNTY DOCKET NO. BER-L-376-23 CIVIL ACTION **ORDER**

THIS MATTER, having been opened to the Court by the law firm Kaufman Dolowich & Voluck, LLP, on behalf of Defendants Unifund CCR, LLC, and Distressed Asset Portfolio III, LLC (collectively "Defendants"), for the entry of an Order granting Defendants' Motion to Dismiss Plaintiff's Complaint with prejudice, together with such other and further relief as this Court deems just and proper, and the Court having considered the moving papers, any opposition thereto and oral argument on May 8, 2023, and for good cause otherwise shown,

IT IS on this 4th day of October, 2023 **HEREBY ORDERED THAT**:

1. Defendants' Motion to Dismiss Plaintiff's Complaint is **GRANTED.**

2. A copy of this Order shall be served upon all counsel of record within 7 days of receipt.

BY THE COURT:

Hon. Mary F. Thurber, J.S.C.

_X_ Opposed

___ Unopposed

THE COURT'S WRITTEN STATEMENT OF REASONS IS ATTACHED AND INCORPORATED.

NOT TO BE PUBLISHED WITHOUT
THE APPROVAL OF THE COMMITTEE ON OPINIONS

CASSANDRA A. VALENTINE, on behalf of herself and those similarly situated, Plaintiff, vs. UNIFUND CCR, LLC; DISTRESSED ASSET PORTFOLIO III, LLC; and JOHN DOES 1 to 10, Defendants.	SUPERIOR COURT OF NEW JERSEY COUNTY OF BERGEN LAW DIVISION—CIVIL PART DOCKET NO.: BER L-376-23 CIVIL ACTION DECISION ON MOTION TO DISMISS

Decided: October 4, 2023

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

Richard J. Perr, Monica M. Littman, attorneys for defendants (Kaufman, Dolowich & Voluck, LLP).

MARY F. THURBER, J.S.C.

This matter is before the court on defendants' motion to dismiss plaintiff's complaint for failure to state a claim under Rule 4:6-2(e). For purposes of this motion, the court accepts plaintiff's complaint allegations. The court concerns itself only with the sufficiency of the allegations, not whether plaintiff can prove them. Printing Mart-Morristown v. Sharp Elec. Corp., 116 N.J. 739, 746 (1989). The court grants the motion, dismissing all claims.

I

The case arises out of an alleged debt originally owed by plaintiff to Capital One Bank, N.A. Plaintiff does not dispute the original debt for purposes of this motion. Plaintiff claims to have received a letter sent by defendant Unifund CCR, LLC ("Unifund") on April 23, 2019, seeking to collect the Capital One debt on behalf of defendant Distressed Asset Portfolio III, LLC ("DAP III"), who is alleged to have acquired the debt from Capital One after it was past due and defaulted. DAP III assigned the debt to Unifund for collection. Unifund sent the letter to plaintiff.

Plaintiff alleges the debt is void because DAP III was not a licensed consumer lender or sales finance company under the New Jersey Consumer Finance Licensing Act, N.J.S.A. 17:11C-1 to -49 ("NJCFLA"), and the collection activities performed by defendants were fraudulent because they misrepresented the legal status of the debt and their right to collect it. Plaintiff relies on the New Jersey Uniform Declaratory Judgments Law, N.J.S.A. 2A:16-50 to -62 ("NJUDJL"), and seeks relief under the NJCFLA, the Fair Debt Collection Practices Act, 15 U.S.C.A. § 1692 to -1692p, ("FDCPA"), and the Consumer Fraud Act, N.J.S.A. 56:8-1 to -227 ("CFA").

Plaintiff sued defendants in federal court on April 23, 2020, filing a class action complaint. Valentine v. Unifund CCR, No. 2:20-cv-05024-JMV-JSA, LEXIS 44747 (D.N.J. 2021). That case was dismissed on January 3, 2023, because plaintiff could not show a "concrete" injury to support Article III standing. The dismissal

order granted plaintiff thirty days to file an amended complaint. Plaintiff asserts she also had thirty days, until February 2, 2023, to file a federal appeal.[1] Plaintiff filed this state court class action lawsuit on January 23, 2023, before expiration of the time she could have sought to file an amended federal complaint or, she contends, a federal appeal.

Plaintiff identifies a class of persons against whom defendants "have unlawfully enforced consumer debts after [DAP III] unlawfully took assignment of them without a sales finance company or consumer lending license." Compl. at ¶ 2. Plaintiff's own claim is based on her "receipt and review" of the April 2019 collection letter sent by Unifund.

The complaint includes four counts.

- Count One seeks declaratory judgment and injunctive relief on behalf of plaintiff and the class, based on the claims that defendants lacked the legal right to acquire and collect the debts when DAP III did not hold a license under the NJCFLA, the debts and judgments are void, plaintiff suffered an ascertainable loss under the CFA, and plaintiff and the class members are entitled to relief under the NJUDJL.

- Count Two seeks damages under the CFA on behalf of plaintiff and the class, alleging they purchased "merchandise" within the meaning of the CFA, that defendants engaged in unconscionable commercial practices, deception, fraud, false promises, false pretenses and/or misrepresentations in connection with the sale and subsequent performance of sale of merchandise, all by

[1] Federal Rule of Appellate Procedure ("FRAP") 4(a)(1) allows thirty days for appeals from final orders. FRAP 5(a)(2) states petitions for discretionary appeals must be filed within that time unless a statute or rule authorizing the appeal specifies a different time. Defendants do not dispute the 30-day appeal time.

misrepresenting they had the right to collect on the debts, which plaintiffs contend were void.

- Count Three seeks disgorgement on behalf of plaintiff and the class, based on the claim that defendants were unjustly enriched by the monies they collected on the allegedly void debts.

- Count Four seeks, on behalf of plaintiff and the class, statutory and actual damages under the FDCPA for efforts to collect the allegedly void debts.

Defendants move to dismiss the complaint in its entirety. They argue plaintiff (1) lacks standing to sue because she has not alleged harm, (2) is not entitled to relief under the NJCFLA because it provides no private right of action, (3) cannot use the NJUDJL to circumvent the lack of a private right of action, (4) has not pleaded the necessary elements under the CFA, and (5) does not allege she paid any money from which defendants could have been unjustly enriched. They also argue bases in addition to lack of standing for dismissal of each count, addressed separately.

II

Motion to Dismiss Standard

On a motion to dismiss pursuant to R. 4:6-2(e), the court must treat all factual allegations as true and must carefully examine those allegations "to ascertain whether the fundament of a cause of action may be gleaned even from an obscure statement of claim. . . ." Printing Mart, 116 N.J. at 746. After a thorough examination, should the Court determine that such allegations fail to state a claim upon which relief can be granted, the Court must dismiss the claim. Id.

Motions to dismiss are approached cautiously, but the court must dismiss a complaint if it fails to articulate a legal basis entitling plaintiff to relief. Sickles v. Cabot Corp., 379 N.J. Super. 100, 106 (App. Div. 2005) (citation omitted). "[D]ismissal is mandated where the factual allegations are palpably insufficient to support a claim upon which relief can be granted." Rieder v. State Dep't of Transp., 221 N.J. Super. 547, 552 (App. Div. 1987).

Standing

Defendants challenge plaintiff's right to bring this action, contending she lacks standing. "[S]tanding involves a threshold determination which governs the ability of a party to initiate and maintain an action before the court." Triffin v. Somerset Valley Bank, 343 N.J. Super. 73, 80 (App. Div. 2001) (citing In re Adoption of Baby T., 160 N.J. 332, 340 (1999)). Standing is an element of justiciability that cannot be waived. Id. (citing In re Adoption of Baby T, 160 N.J. at 341).

Federal courts have developed a standing rule based on Article III of the United States Constitution. Federal courts look for "concrete and particularized" injury in fact, as the district court did in this case. Valentine v. Unifund CCR, LLC, No. 2:20-cv-05024-JMV-JSA, LEXIS 44747 at 2_ (D.N.J. 2021). Standing in state court, however, is not governed by Article III federal jurisprudence. Thus, the federal court's determination that possible statutory damages under the FDCPA were

not sufficient to confer Article III standing on plaintiff is not necessarily relevant to this court's standing inquiry under state law.[2]

Standing in this court is governed by Rule 4:26-1, which provides, "Every action may be prosecuted in the name of the real party in interest." "The real party in interest rule is ordinarily determinative of standing to prosecute an action." Pressler & Verniero, Current N.J. Court Rules, cmt. 2.1 on R. 4:26-1 (2023).

Entitlement/standing to sue requires: (1) a sufficient stake and (2) real adverseness with respect to the subject matter of the litigation; and (3) a substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision. New Jersey State Chamber of Com. v. New Jersey Election Law Enforcement Comm'n, 82 N.J. 57, 67 (1950). Though courts do not operate in the abstract or render advisory opinions, "New Jersey cases have historically taken a much more liberal approach on the issue of standing than have the federal cases." Crescent Park Tenants Ass'n v. Realty Equities Corp. of New York, 58 N.J. 98, 101 (1971). New Jersey courts will not "entertain proceedings by plaintiffs who are 'mere intermeddlers,' or are merely interlopers or strangers to the dispute." Jen Elec., Inc. v. County of Essex, 197 N.J. 627, 647 (2009) (citations omitted). The Supreme Court has held: "In passing upon a plaintiff's standing the court is properly required

[2] Plaintiff presented federal case authority to suggest the statutory violation would be sufficient to confer standing under federal law, which issue the court need not decide.

to balance conflicting considerations and weigh questions of remoteness and degree." Ibid. (citing Al Walker Inc. v. Stanhope, 23 N.J. 657, 661 (1957)). "Standing may be found as long as the parties seeking relief have a sufficient personal stake in the controversy to assure adverseness and the controversy is capable of resolution by the courts." O'Shea v. New Jersey Schools Const. Corp., 388 N.J. Super. 312 (App. Div. 2006) (citing Crescent Park Tenants Ass'n, 58 N.J. at 103-04).

Defendants claim the third prong, a substantial likelihood of some harm visited upon the plaintiff in the event of an unfavorable decision, requires an actual injury. Plaintiff did not allege monetary losses, financial loss, or harm caused by defendants.

Plaintiff does not dispute that she did not pay Unifund or DAP III in response to their collection letter. Plaintiff argues that she is the only party who can bring an FDCPA claim for defendants' alleged violations of the statute as it affected her, and that the statute allows for nominal damages, capped at $1,000, which only she has standing to pursue. Plaintiff also raised during oral argument that the collection letter, which is part of the record, was not the only action defendants took, and that there was a collection action in Essex County, in which plaintiffs obtained a default judgment and a writ of execution. This was not developed in the motion record, but the complaint includes an allegation that "Defendants commenced the Collection

Lawsuit against Valentine when it was not properly licensed to do so …" Compl. at ¶ 55. Plaintiff then argued that assertion of a debt that is not owed is sufficient to state an ascertainable loss under the CFA, and therefore should be considered sufficient harm for standing, citing Cox v. Sears Roebuck & Co., 138 N.J. 2 (1994). The Cox Court stated, "We conclude that an improper debt or lien against a consumer-fraud plaintiff may constitute a loss under the [CFA], because the consumer is not obligated to pay an indebtedness arising out of conduct that violates the [CFA]." 138 N.J. at 23. The Court went on to hold the improper debt in that case was not an "ascertainable loss" because it was not, in that case, caused by a violation of the CFA, but arose before it. Id.

Defendants argue that potential statutory damages, alone, are not sufficient to confer standing in the absence of actual harm. Because plaintiff paid no monies to defendants, she has not alleged actual financial harm. Defendants cite no state court case so holding, but draw this inference from the several cases they cite that find standing when there is actual injury other than a statutory violation.

Plaintiff points out that if defendants were correct that statutory violations for which penalties are available to a plaintiff are not sufficient to confer standing, that would invalidate a substantial body of cases under which private citizens are entitled to bring claims for statutory violations. The court finds plaintiff has standing to assert the FDCPA claims.

Plaintiff's opposition brief offered no arguments addressing standing for the CFA or unjust enrichment claims. Plaintiff concedes she has no standing to assert unjust enrichment, and that count is dismissed. The court will discuss CFA standing with the later discussion of that claim.

Statute of Limitations

Defendants argue plaintiff's FDCPA claims are barred by a one-year statute of limitations. FDCPA claims must be brought "within one year from the date on which the violation occurs." 15 U.S.C. § 1692k. Plaintiff filed her federal lawsuit within that statutory period (exactly one year from the sending of the allegedly violative letter), but she filed this state action long after it ended. Defendants argue that at most the statute of limitations was tolled while the federal case was pending, but that plaintiff had to file that state court action, if she chose to do that rather than seek to amend the federal complaint, on the date of the federal dismissal.

Plaintiff argues the time for filing this state action is deemed extended until the time for appeal of the federal action expired, which was February 2, 2023. She filed her complaint on January 23, 2023.

New Jersey courts make "frequent reference to equitable principles to relieve the harshness of statutes of limitations," and have held that "a defendant cannot rely on the passage of time alone but must demonstrate that the claimed sense of repose reasonably existed under all the circumstances." Mitzner v. West Ridgelawn

Cemetery, Inc., 311 N.J. Super 233, 237 (citing Galligan v. Westfield Centre Service, Inc., 82 N.J. 188, 191 (1980)). "A 'just accommodation' of individual justice and public policy requires that 'in each case the equitable claims of opposing parties must be identified, evaluated and weighed.'" Galligan, 82 N.J. at 193 (quoting Lopez v. Swyer, 62 N.J. 267, 274 (1973)). "It has been recognized that a mistake in the selection of a court having questionable or defective jurisdiction should not defeat tolling of the statute when all other purposes of the statute of limitations have been satisfied." Ibid. (citing Burnett v. N.Y. Cent. R. Co., 380 U.S. 424 (1965)).

The Supreme Court of the United States, as well as the Appellate Division of this State, have determined that tolling a statute of limitations at least until the time for appeal has expired is "fair to both plaintiff and defendant." Mitzner, 311 N.J. Super. at 238 (quoting Burnett, 380 U.S. at 435-36). This court strikes the same balance in the interest of justice, applying equitable principles. This action is not barred by the applicable statute of limitations.

II

New Jersey Consumer Finance Licensing Act

All counts of the complaint are founded on plaintiff's contention that the debts purchased by DAP III were void once DAP III purchased them while not licensed under the NJCFLA, making the actions to collect them violative of the various statutory provisions and common law on which plaintiff relies. Plaintiff argues DAP III was 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), and that its 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 and plaintiff concedes 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 cannot circumvent the lack of a private cause of action under the NJCFLA by seeking relief under the NJUDJL. 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 she is entitled to injunctive relief under the FDCPA and CFA. On reviewing Count One of the complaint, it is clear it seeks impermissible declarations based on the NJCFLA, and bootstraps the other claims to the requested finding that defendants violated the NJCFLA.

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.]

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).

Unlawful Conduct

Defendants argue plaintiff's complaint is insufficient to 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.

> 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).]

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 v. Benefit Mgmt. Corp., 150 N.J. 255, 265 (1997) ("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:

> a. Misrepresenting in its dunning letters that it had the legal right to collect on the account when it lacked the proper license to do so;
> b. Filing civil collection complaints against Plaintiff and those similarly situated when it lacked the proper license to do so;
> c. Representing, explicitly or impliedly, in the collection complaints and related communications with Plaintiff and those similarly situated that it was properly licensed giving it the right to collect and file the actions such that the collection complaints could be properly filed and maintained; and

> d. Demanding and accepting payments from Plaintiff and those similarly situated on the accounts and the judgments obtained from actions filed when the Defendants lacked the proper license to do so.
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> [Compl. at ¶ 99.]

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. 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. 397 N.J. Super. 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. The court addressed all the cases that might support a conclusion that the NJCFA 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 her. She does not base her CFA claim on a misrepresentation made to induce her into purchasing credit, cf. Gennari, 148 N.J. at 607, but on an alleged misrepresentation made after she had incurred the debt. 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.

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 (N.J. 2002), and cases cited therein. ("[I]n contrast to the Attorney General, a private plaintiff must have an ascertainable loss in order to bring an action under the [CFA] . . . [and, the CFA] requires causal relationship between ascertainable loss and unlawful practice . . . ascertainable loss, particularly proximate to a misrepresentation or other unlawful act of the defendant condemned by the Consumer Fraud Act.") (internal citations omitted). Ascertainable loss means the plaintiff must suffer a definite, certain, and measurable loss, rather than one that is merely theoretical. Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 558 (2009).

"An ascertainable loss under the CFA is one that is 'quantifiable or measurable,' not 'hypothetical or illusory.'" Johnson v. McClellan, 468 N.J. Super.

562, 587 (App. Div. 2021) (quoting D'Agostino, 216 N.J. 168, 185 (2013)). A plaintiff can demonstrate ascertainable loss by showing an "out-of-pocket loss or the loss of the value of his or her interest in property[,]" or by demonstrating "that he or she has been deprived of the 'benefit of the bargain' because of a CFA violation." Id. (quoting D'Agostino, 216 N.J. at 190-92).

Plaintiff has not demonstrated an ascertainable loss. She has not paid any money. To the extent she relies on Cox, 138 N.J. at 23, for the proposition that imposition of an improper debt or lien against a consumer-fraud plaintiff may constitute a loss under the CFA, that fails because plaintiff cannot establish the debt is improper. She does not dispute the original debt owed to Capital One, and she cannot establish her claim under NJCFLA.

Causal Relationship

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

Plaintiff's CFA claims are dismissed.

Fair Debt Collection Practices Act

The FDCPA establishes a consumer's private right of action against violating debt collectors. 15 U.S.C. § 1692k(a). It imposes strict liability, and permits actual and statutory damages, attorney's fees, and costs. Id. "To prevail, a debtor must

prove: "(1) she is a consumer, (2) the [party seeking payment] is a debt collector, (3) the . . . challenged practice involves an attempt to collect a 'debt' as the Act defines it, and (4) the [collector] has violated a provision of the FDCPA in attempting to collect the debt." Midland Funding LLC v. Thiel, 446 N.J. Super. 537, 549 (App. Div. 2016) (quoting Douglass v. Convergent Outsourcing, 765 F.3d 299, 303 (3d Cir. 2014)). Among the FDCPA's prohibitions is a ban on "any false, deceptive, or misleading representation or means in connection with the collection of any debt," including "[t]he false representation of – (A) the character, amount, or legal status of any debt. . . ." 15 U.S.C. § 1692e.

Plaintiff has pled that she is a consumer from whom defendants attempted to collect a debt without being licensed as required under New Jersey statutory law. Her claim relies on a finding that failure to obtain a license rendered plaintiff's debt void by operation of law, and that subsequent collection activity misrepresented the legal status of that debt in violation of the FDCPA. Those claims are barred.

Unjust Enrichment

Plaintiff has divided the class into subclasses of people who have paid defendants in response to collection efforts and people who have not. Plaintiff does not dispute that she has not made any payments. Plaintiff cannot represent this class. Furthermore, 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.