

Table of Contents

Chapter 1: General Description, History and General Purpose		
	of the CFA	1
1-1	What is the Consumer Fraud Act?	1
1-2	Historical Background	3
	1-2:1 CFA as Originally Adopted	3
	1-2:2 Amendments to CFA	3
1-3	Purpose	6
	1-3:1 Promotion of Truth and Fair Dealing in Marketplace	6
	1-3:2 Compensation of Victim for Actual Loss	7
	1-3:3 Punishment of Wrongdoer	7
	1-3:4 Attraction of Competent Counsel for Private Enforcement	7
Chapter 2: Scope of the CFA		9
2-1	Judicial Interpretation and Invocation of CFA	9
	2-1:1 Law Favors Liberal Interpretation of CFA	9
	2-1:2 Growing Trend Toward Restricting CFA’s Scope	10
	2-1:3 State Court Guidelines for Interpreting CFA	11
	2-1:4 Federal Court Interpretation of the CFA	13
	2-1:5 Courts’ Independent Invocation of the CFA	13
2-2	Cumulative Relief	13
2-3	Severability of Invalid Provisions or Applications	15
2-4	Who is a Claimant Under the CFA?	15
	2-4:1 Standing Generally	15
	2-4:2 Types of Misconduct Constituting Consumer Fraud	17
	2-4:3 Direct and Indirect Acts Covered by CFA	18
	2-4:4 Ascertainable Loss Requirement	18
	2-4:5 “Person” Defined Under the CFA	18
	2-4:6 “Consumers” as CFA Claimants	18
	2-4:7 CFA Victims Qualify if Out-of-State Residents	19
	2-4:8 Ignorance or Sophistication of CFA Victim	20
	2-4:9 Privity of Contract and Indirect Purchasers	20
	2-4:9.1 Privity and Standing to Bring Claim	20
	2-4:9.2 Examples of CFA Cases in Which Privity Not Required	21
	2-4:9.3 Privity, Damages and Dismissal of Claims	23

Table of Contents

2-4:10 Incidental Beneficiaries and Assignees 24

2-4:11 No Requirement That Misrepresentation be in Writing 25

2-4:12 Subsequent Performance..... 25

2-4:13 Customer Dissatisfaction Alone Insufficient
to Provide Standing..... 26

2-4:14 Use of Product Unnecessary for Standing 27

2-4:15 Employees’ and Independent Contractors’ Claims 27

2-4:16 Sellers as Claimants 28

2-4:17 Businesses and Franchisees as Claimants 28

2-4:18 Public Entities Acting as Consumers..... 29

2-4:19 Attorneys as CFA Claimants 29

2-4:20 Discovery Infractions..... 29

2-4:21 Reliance on Advice of Counsel 29

2-4:22 Is a Sale or Purchase Necessary?..... 29

2-4:23 Situations Not Involving Sale or Advertisement of
Goods or Services 32

2-4:24 Custom Ordered Merchandise 32

 2-4:24.1 Generally 32

 2-4:24.2 Examples of Viable CFA Cases
 Involving Custom Ordered Merchandise 33

 2-4:24.3 Example of Unsuccessful CFA Case
 Involving Custom Ordered Merchandise 34

2-5 Who is a Merchant Subject to the CFA?..... 34

 2-5:1 Generally 34

 2-5:2 Out-of-State Merchants 36

 2-5:3 Merchant’s Good Faith Irrelevant..... 36

 2-5:4 Family Transactions..... 36

 2-5:5 Industries and Entities Exempt From the CFA 36

2-6 Internet Advertising and Sales..... 37

2-7 Liability of Corporate Officers, Company Members and Corporate/
Company Employees 37

 2-7:1 Introduction..... 37

 2-7:2 The Corporate Veil Doctrine Generally 37

 2-7:3 Piercing the Corporate Veil and Alter Ego Theory
 of Liability as Equitable Remedies..... 38

 2-7:4 Using Participation Theory of Liability
 to Hold Officers, Managing Members
 and Employees Liable 41

 2-7:5 CFA Definitions Render
 Veil Piercing Irrelevant..... 42

 2-7:6 Imposing Individual Liability on Officers,
 Managing Members and Employees May Have to
 Await Trial 43

 2-7:7 Non-CFA Claims Brought in Tandem With CFA Claims
 May Still Fail Due to Claimant’s Failure to Pierce the
 Corporate Veil as to Non-CFA Claims..... 44

Table of Contents

2-7:8	Examples of Cases in Which Corporate Officers, Managing Members and/or Employees Were Personally Liable or Potentially Liable	44
2-7:9	Examples of Cases Predating <i>Allen</i> in Which Corporate Officers, Managing Members and/or Employees Not Liable.....	49
2-7:10	Examples of Cases After <i>Allen</i> in Which Corporate Officers, Managing Members and/or Employees Not Liable.....	49
2-7:11	Modifying Default Judgments Entered Against Entities to Include Claims Against Officers, Managing Members and Employees	51
2-8	CFA Definitions	52
2-8:1	Statutory Definitions	52
2-8:1.1	“Advertisement”.....	52
2-8:1.2	“Attorney General”.....	52
2-8:1.3	“Merchandise”.....	52
2-8:1.3a	Generally	52
2-8:1.3b	Examples of Cases in Which a Product or Service Is Merchandise Under CFA.....	53
2-8:1.3c	Examples of Cases in Which a Product or Service Is Not Merchandise Under CFA.....	55
2-8:1.4	“Person”	55
2-8:1.5	“Sale”.....	55
2-8:1.6	“Senior citizen”.....	56
2-8:2	Jury Charge Definitions	56
2-8:3	Unlawful Practices Distinguished From Unconscionable Commercial Practices	60
Chapter 3: Per Se Violations.....		61
3-1	Per Se Violations	61
3-1:1	Generally	61
3-1:2	Proof Requirements for Per Se Violations.....	61
3-1:2.1	Generally	61
3-1:2.2	Causal Connection Between Ascertainable Loss and Technical Violation Required for Private Litigants.....	62
3-1:2.3	Substantial Aggravating Circumstances and Per Se Violations.....	62
3-1:2.4	Plaintiff’s Substantial Compliance Sufficient.....	63
3-1:2.5	Adjudicating Technical Violations At Trial.....	63
3-2	Per Se CFA Violations Support TCCWNA Violations	64
3-3	Statutory and Regulatory Violations Outside the CFA as Proof of Consumer Fraud	65
3-3:1	Practices Illegal Outside the CFA Expressly Supporting CFA Liability in Actions Brought by Attorney General	65

Table of Contents

3-3:2	Practices Illegal Outside the CFA That May Support CFA Liability in Actions Brought by All Litigants	65
3-3:3	Examples of Administrative Code or Statutory Violations Outside the CFA Failing to Support CFA Liability	66
3-3:4	Examples of Administrative Code or Statutory Violations Outside the CFA Supporting CFA Liability	68
Chapter 4: Section 2 Violations of the Act		71
4-1	Section 2 Generally	71
4-1:1	The Types of Section 2 Claims	71
4-1:2	Proof of CFA Liability Only Requires Proof of One Type of Section 2 Violation	72
4-1:3	The Different Types of Section 2 Violations Generally	73
4-1:4	Unconscionability, a Commercial Practice That Is Unconscionable or Abusive, and Unlawful Acts Generally	73
4-1:4.1	The Concept of Unconscionability	73
4-1:4.2	Unconscionability Distinguished From Unfair Practices and a Commercial Practice That Is Unconscionable or Abusive	75
4-1:4.2a	Confusion in the Courts' Use of "Unconscionability," "Unfair Practices" and Unconscionable "Commercial Practices"	75
4-1:4.2b	Distinct Meaning of "Unconscionability," "Unfair Practices" and "A Practice That Is Unconscionable or Abusive"	76
4-1:5	Partial Liability Exemption for Advertisers	79
4-2	Affirmative Acts Generally	79
4-2:1	What is an Affirmative Act Under the CFA?	79
4-2:2	The Different Kinds of Affirmative Acts	79
4-2:3	Proof of Intent, Deception and Reliance Irrelevant	80
4-2:4	Mistake No Defense to Affirmative Acts	81
4-3	Affirmative Misrepresentations	82
4-3:1	Affirmative Misrepresentations Generally	82
4-3:2	Affirmative Misrepresentation Does Not Always Have to Occur at the Time of a Sale or Advertisement	83
4-3:3	Causal Connection Required Between Affirmative Misstatement and Ascertainable Loss	83
4-3:4	Affirmative Misrepresentations Defined and Contrasted With Puffery	84
4-3:5	Representations May be Oral or Written	85

Table of Contents

4-3:6	Independent Investigation of Misrepresented Fact Would Not Bar CFA Claim.....	86
4-3:7	Claimant’s Receipt of the Misrepresentation.....	86
4-3:8	Independent Investigation of Misrepresented Fact Would Not Bar CFA Claim.....	86
4-3:9	Claimant’s Receipt of the Misrepresentation.....	86
4-3:9.1	Does the CFA Claimant Have to Receive Misrepresentation and Who Must Make the Misrepresentation?.....	86
4-3:9.2	Example in Which CFA Claimant Did Not Need to Receive Representation to Have a Claim	87
4-3:9.3	Examples in Which Failure to Receive Representation Bars a CFA Claim	88
4-3:10	True Statements May Support CFA Liability.....	88
4-3:10.1	Generally	88
4-3:10.2	True Statements That Could Support CFA Liability.....	89
4-3:10.3	True Statements That Failed to Support CFA Liability.....	90
4-4	A Commercial Practice That Is Unconscionable or Abusive, Deception, Fraud, False Pretense and False Promise.....	90
4-4:1	Generally	90
4-4:2	A Commercial Practice That Is Unconscionable or Abusive.....	93
4-4:3	Unlawful Practices Distinguished From a Commercial Practice That Is Unconscionable or Abusive.....	94
4-5	Examples of Unsuccessful Section 2 Affirmative Act Claims.....	94
4-6	Examples of Successful or Viable Section 2 Affirmative Act Claims.....	100
4-7	Violation of an Obligation Imposed by Law Other Than the CFA or Via Contract Containing Unlawful Term	113
4-8	Discovery Infractions	114
4-9	Advertisements Violating Section 2	114
4-10	Knowing Omissions.....	114
4-10:1	Knowing Omissions Generally.....	114
4-10:2	Distinction Between Omission and Affirmative Acts.....	117
4-10:3	Knowing Omissions Defined.....	118
4-10:4	Pleading a Knowing Omission in Federal Court	119
4-10:5	Knowing Omission Claims Pled Against Manufacturers	121
4-10:6	Examples of Unsuccessful CFA Omission Claims	121
4-10:7	Examples of Cases in Which Omissions Supported or Potentially Supported CFA Liability.....	123

Table of Contents

Chapter 5: State Enforcement of the Act.....	131
5-1 Department of Law and Public Safety.....	131
5-2 Rulemaking	132
5-2:1 DCA Power to Make Regulations.....	132
5-2:2 Public Petitions for Rulemaking.....	132
5-3 Deference Afforded to DCA.....	133
5-4 Actions Brought by Attorney General.....	133
5-4:1 Policy Considerations.....	133
5-4:2 Municipal Court Proceeding on Same Facts No Bar to Suit	134
5-4:3 Investigation and Discovery Powers.....	134
5-4:4 Sanctions for Noncompliance	136
5-4:5 Immunity From Criminal Prosecution	136
5-4:6 Summary Proceedings, Injunctive Relief and Receivership	137
5-4:7 Imposition, Collection and Enforcement of Civil Penalties.....	140
5-4:8 Cease and Desist Orders	143
5-4:9 State’s Recovery of Fees and Costs	143
5-4:10 No Right to Jury Trial	144
5-4:11 Distinction Between Private Causes of Action and Those Brought by Attorney General.....	144
5-4:12 Attorney General’s Intervention in Private CFA Proceedings	145
5-4:13 Municipal Court CFA Proceedings.....	146
5-5 Insurance Claims Ombudsman.....	146
Chapter 6: Defenses and Preliminary Considerations.....	147
6-1 Introduction	147
6-2 Statutes of Limitations and Repose.....	147
6-2:1 Statute of Limitations.....	147
6-2:1.1 Generally	147
6-2:1.2 The Discovery Rule.....	149
6-2:1.3 The Six-Year Statute of Limitations Governing CFA Claims.....	152
6-2:1.4 Equitable Tolling Doctrine.....	154
6-2:1.5 Repair Doctrine	155
6-2:1.6 Contractual Provisions Restricting Statute of Limitations.....	156
6-2:1.7 Statute of Limitations in Foreclosure Defense Cases and Equitable Recoupment Doctrine.....	158
6-2:1.8 CFA Claims Barred by Statute of Limitations.....	158
6-2:1.9 CFA Claims Surviving Statute of Limitations Challenges	164
6-2:2 Statute of Repose.....	166
6-3 Standing	168

Table of Contents

6-4	Choice of Law/Conflicts of Law.....	168
6-4:1	Choice of Law/Conflicts of Law Generally.....	168
6-4:2	Choice of Law Analysis in the District of New Jersey.....	169
6-4:3	Resolving Choice of Law Issues in CFA Cases.....	170
6-4:3.1	Generally	170
6-4:3.2	Choice of Law Analysis on a Motion to Dismiss	170
6-4:3.3	Finding Conflicts Between CFA and Other State Laws.....	171
6-4:3.4	Weighing Restatement Factors.....	171
6-4:3.5	When Governmental-Interest Analysis Still Applies	173
6-4:4	Examples of Choice of Law Decisions Applying New Jersey Law	175
6-4:5	Examples of Choice of Law Decisions Applying Foreign State Law.....	178
6-5	Election of Remedies.....	186
6-6	Equitable Estoppel	187
6-6:1	Generally	187
6-6:2	Examples of CFA Claims Barred by Equitable Estoppel	188
6-6:3	Examples of CFA Claims Not Barred by Equitable Estoppel.....	190
6-7	Choice of Law clauses and Forum Selection Clauses	191
6-7:1	Choice of Law Clauses.....	191
6-7:1.1	Generally	191
6-7:1.2	Examples of Court Decisions Applying Choice of Law Clauses to Select Foreign Law	192
6-7:1.3	Examples of Court Decision Applying Choice of Law Clause to Select New Jersey Law	195
6-7:1.4	Examples of Court Decisions Refusing to Apply Choice of Law Clause Selecting Foreign Law	195
6-7:2	Forum Selection Clauses.....	196
6-7:2.1	Generally	196
6-7:2.2	Enforcing Forum Selection Clauses in the Third Circuit.....	198
6-7:2.3	Examples of Court Decisions Enforcing Forum Selection Clauses.....	200
6-7:2.4	Examples of Court Decisions Refusing to Enforce Foreign Forum Selection Clauses.....	203
6-8	Forum Non Conveniens and Other Jurisdictional Challenges not Based on Forum Selection Clauses.....	204

Table of Contents

6-8:1	Forum Non Conveniens and the Jurisdictional Test	204
6-8:2	Forum Non Conveniens in the Context of the CFA	205
6-8:3	Examples of Cases Dismissed or Transferred Pursuant to Forum Non Conveniens or Some Other Jurisdictional Challenge	206
6-8:4	Examples of Cases Not Dismissed or Transferred Pursuant to Forum Non Conveniens or Some Other Jurisdictional Challenge	208
6-9	Preemption/Subsumption Doctrine	209
6-9:1	Generally	209
6-9:2	Federal Preemption or Subsumption	209
6-9:3	State Preemption or Subsumption	211
6-9:4	Examples Where CFA Was Preempted or Subsumed	212
6-9:5	Examples Where CFA Not Preempted or Subsumed	214
6-9:6	Preemption or Subsumption of CFA Claims Under the Product Liability Act.....	216
6-9:6.1	The Product Liability Act Generally	216
6-9:6.2	The PLA's Subsumption of CFA Claims.....	218
6-9:6.3	Examples of CFA Cases Predating <i>Sun Chemical</i> in Which Court Held Cases were Subsumed by PLA	219
6-9:6.4	Examples of CFA Cases Predating <i>Sun Chemical</i> Not Subsumed by PLA	221
6-9:6.5	Examples of CFA Cases Since <i>Sun Chemical</i> in Which PLA Subsumed Claims	222
6-9:6.6	Examples of CFA Cases Since <i>Sun Chemical</i> in Which PLA Did Not Subsume Claims	223
6-10	Mitigation of Damages	224
6-11	Quantum Meruit, Unjust Enrichment and Collection of Fraudulent Debts.....	225
6-11:1	Quantum Meruit, Unjust Enrichment and the Split of Authority About Whether Merchants May Use Those Causes of Action to Collect Debts That are the Product of Consumer Fraud	255
6-11:2	Quantum Meruit.....	226
6-11:2.1	Generally	226
6-11:2.2	The Elements of Quantum Meruit.....	227
6-11:3	Unjust Enrichment	227
6-11:3.1	Generally	227
6-11:3.2	The Elements of Unjust Enrichment.....	227

Table of Contents

6-11:4	Defeating Quantum Meruit and Unjust Enrichment Claims	227
6-11:4.1	Generally	227
6-11:4.2	Efforts to Collect a Debt That is Product of Consumer Fraud May Prevent Quantum Meruit or Unjust Enrichment Recovery.....	230
6-11:4.3	Courts Sometimes Allow Merchants Committing Consumer Fraud to Recover Via Quantum Meruit or Unjust Enrichment	232
6-11:5	CFA Cases in Which Merchants Were Barred From Collecting Fraudulent Debts in Whole or Part.....	233
6-11:6	Duty to Advise Client of Danger of CFA Counterclaim/Award of Fees and Costs on Successful CFA Defense.....	233
6-12	Spoliation of Evidence in CFA Claims	234
6-12:1	Spoliation Generally	234
6-12:2	Preservation of Evidence of Consumer Fraud	235
6-13	Entire Controversy Doctrine	236
6-13:1	Generally	236
6-13:2	The Court Rules for the Entire Controversy Doctrine	237
6-13:3	Claim Preclusion Under the Entire Controversy Doctrine	239
6-13:4	Examples of CFA Cases Barred by the Entire Controversy Doctrine	240
6-13:5	Examples of CFA Case Not Barred by the Entire Controversy Doctrine	241
6-14	Relevant Contract and Damages Principles and Procedural Issues.....	242
6-15	Dischargeability of CFA Award in Bankruptcy.....	242
6-15:1	Generally	242
6-15:2	Burden of Proof for Nondischargeability of CFA Debt.....	244
6-15:3	Cases in Which CFA Debts Nondischargeable.....	244
6-15:4	Examples of Cases in Which CFA Debts Were Nondischargeable or Potentially Nondischargeable	245
6-15:5	Example of Case in Which CFA Debts Were Nondischargeable.....	246
6-16	Stand-Alone Contractual Jury Trial Waivers	246
6-16:1	Generally	246
6-16:2	Situations Where Standalone Jury Trial Waivers May Be Unenforceable.....	247
6-17	Presuit Demand for Satisfaction	248
6-18	Litigation Privilege	249

Table of Contents

6-18:1	Generally	249
6-18:2	Types of Actions to Which Litigation Privilege Commonly Applies	249
6-18:3	Limits of the Litigation Privilege	250
6-18:4	Litigation Privilege’s Application to CFA Claims.....	251
6-18:5	Examples of CFA Claims Barred by the Litigation Privilege	252
6-18:6	Example of CFA Claims Not Barred by Litigation Privilege	253
6-19	Judicial Estoppel	253
6-20	<i>Res Judicata</i> and Collateral Estoppel.....	254
6-20:1	<i>Res Judicata</i> Generally.....	254
6-20:2	Examples of CFA Cases Barred by <i>Res Judicata</i>	256
6-20:3	Examples of CFA Case Not Barred by <i>Res Judicata</i>	257
6-20:4	Collateral Estoppel Generally	258
6-20:5	Examples of CFA Cases Barred by Collateral Estoppel.....	259
6-20:6	Example of CFA Case Not Barred by Collateral Estoppel	260
6-21	Colorado River Doctrine’s Effect on Parallel Federal Court Proceedings	260
6-22	Defenses to CFA Claims Based on Contract Language	260
Chapter 7: Ascertainable Loss		261
7-1	Introduction	261
7-2	Ascertainable Loss Generally	261
7-2:1	Generally	261
7-2:2	Ascertainable Loss Is Calculated Flexibly Instead of Mechanically.....	262
7-2:3	Ascertainable Loss Doesn’t Require Precise Measurement or the Claimant to Actually Incur the Loss Claimed	262
7-2:4	Ascertainable Loss May Involve Loss of Property Without Any Loss of Money	263
7-2:5	Relationship Between Ascertainable Loss and CFA Damages.....	263
7-2:6	When Does Ascertainable Loss Accrue?	263
7-2:7	When Isn’t Ascertainable Loss is Not Required?.....	264
7-2:7.1	Claimant Reaches the Jury on a CFA Violation But Fails to Prove Ascertainable Loss	264
7-2:7.2	Claimant Defending a Merchant’s Complaint or Counterclaim Proves the Merchant Committed Consumer Fraud.....	265
7-2:7.3	Does a Claimant Seeking CFA Refund Need to Prove Ascertainable Loss?	265
7-3	Establishing Ascertainable Loss: The Causal Connection Between the Loss and the Misconduct.....	266

Table of Contents

7-3:1	Proof Requirements Generally.....	266
7-3:2	Unlawful Practices Don't Have to be Sole Cause of the Loss.....	267
7-3:3	No Need to Show the Fraudulent Conduct Directly Caused Immediate Harm	267
7-3:4	Causal Chain for Ascertainable Loss May Be Broken if Consumer Continues to Receive Benefit of the Bargain	268
7-3:5	Trial Court's Findings of Causal Connection to Ascertainable Loss	268
7-3:6	Causal Connection to Ascertainable Loss for Technical Violations.....	268
	7-3:6.1 Ascertainable Loss for Technical Violations Generally	268
7-4	Pleading Ascertainable Loss	269
	7-4:1 Pleading Ascertainable Loss in State Court.....	269
	7-4:2 Pleading Ascertainable Loss in Federal Court.....	270
7-5	Expert Testimony of Ascertainable Loss	271
7-6	Measuring Ascertainable Loss Generally.....	271
	7-6:1 Amount of Ascertainable Loss Generally Recoverable.....	271
	7-6:2 Ascertainable Loss Need Not Be Exact.....	271
	7-6:3 Methods for Measuring Ascertainable Loss Generally	273
7-7	Diminution in Value as Ascertainable Loss	274
	7-7:1 Diminution in Value Generally	274
	7-7:2 Pleading and Proving Diminution of Value.....	275
	7-7:3 Is Diminution of Value or Cost of Restoration or Repairs the Proper Measure of Damages?	275
	7-7:4 Viable CFA Diminution in Value Claims	276
7-8	Benefit of the Bargain Damages	278
	7-8:1 Benefit of the Bargain Damages Generally	278
	7-8:2 Pleading and Proving Benefit of the Bargain Damages	279
	7-8:3 Calculating Benefit of the Bargain Damages.....	280
	7-8:4 Comparison Between Benefit of the Bargain and Fraud on the Market Damages	282
	7-8:5 Viable CFA Benefit of the Bargain Damage Claims.....	282
7-9	Out-of-Pocket Damages	288
	7-9:1 Out-of-Pocket Damages Generally.....	288
	7-9:2 Proof of Money Actually Expended Not Necessary to Prove Out-of-Pocket Damages	288
	7-9:3 Viable Out-of-Pocket CFA Claims	289
7-10	De Minimis Loss	303
	7-10:1 De Minimis Loss Generally	303
	7-10:2 Viable De Minimis Loss CFA Claims.....	303
7-11	Absence of a Contract Between Parties	304

Table of Contents

7-12	Contractual Disclaimer no Impediment to Recovering Full Ascertainable Loss	304
7-13	Retention of Goods or Continued Use of Goods or Services	305
7-14	Spending Money to Establish Ascertainable Loss.....	305
7-14:1	Generally	305
7-14:2	CFA Claimants Sometimes Benefit From Incurring a Loss Before Filing Suit.....	306
7-14:3	CFA Cases Where Claimants Did Not Have to Spend Money to Establish Ascertainable Loss	307
7-15	Price Paid and Overcharges as Proof of Ascertainable Loss	307
7-15:1	Price Paid Generally.....	307
7-15:2	Overcharges Contrasted With Excessive Prices	308
7-15:3	Damages Resulting From Course of Performance of Contract.....	309
7-15:4	Merchant's Sales Tag as Proof of Ascertainable Loss	309
7-15:5	Price Comparison Proofs May be Necessary to Support Price Paid or Overcharge Damage Model.....	310
7-15:6	Examples Where Price Paid or Overcharges Failed to Support CFA Claims.....	310
7-15:7	Examples Where Price Paid or Overcharges Support or Potentially Support CFA Claims.....	313
7-16	Ascertainable Loss in Failed Real Estate Transaction.....	319
7-16:1	Aborted Closing Costs.....	319
7-16:2	Property Purchased and Thereafter Sold at Profit	319
7-16:3	All Measures of CFA Damages Might be Unavailable	319
7-17	Interest on Monies Wrongfully Held as Ascertainable Loss.....	320
7-17:1	Generally	320
7-17:2	CFA Cases in Which Claimants' Ascertainable Loss Included Interest on Monies Wrongfully Withheld	320
7-18	Improper Debt or Lien as Ascertainable Loss	321
7-18:1	Generally	321
7-18:2	Cases in Which an Alleged Improper Debt or Lien Failed to Support a CFA Claim.....	321
7-18:3	Cases in Which an Alleged Improper Debt or Lien Supported or Potentially Supported a CFA Claim	323
7-19	Loss of Property as Ascertainable Loss	325
7-20	Medical Monitoring Damages.....	326
7-21	Noneconomic Damages Generally Precluded.....	326
7-21:1	Generally	326
7-21:2	Treatment Cost for Therapy.....	327
7-21:3	CFA Cases in Which Economic Losses or Expenses Associated With Economic Losses Failed to Support Ascertainable Loss	327

Table of Contents

7-22 Customer Dissatisfaction Alone Insufficient..... 327
7-22:1 Generally 327
7-22:2 Cases in Which Customer Dissatisfaction
Failed to Support Ascertainable Loss 328

7-23 Fraud on the Market Theory or Price Inflation Theory 328
7-23:1 Generally 328
7-23:2 Fraud in the Market Theory Distinguished From
Benefit of the Bargain Theory..... 330
7-23:3 CFA Cases in Which Courts Found Claimants
Improperly Relied on Fraud in the Market Theory 330
7-23:4 CFA Cases in Which Courts Found Claimants Did
Not Rely on Fraud in the Market Theory 331

7-24 Economic Loss Doctrine in CFA Cases..... 332

7-25 Failure to Deliver Goods or Services Paid for and Wrongful
Retention of Funds as Ascertainable Loss..... 332
7-25:1 Generally 332
7-25:2 CFA Cases in Which Failure to Deliver Goods
or Services Paid for or Retention of Funds
Failed to Support Ascertainable Loss 332
7-25:3 CFA Cases in Which Failure to Deliver Goods or
Services Paid For or Retention of Funds
Supported Ascertainable Loss..... 333

7-26 Refund or Other Remedy Does Not Eliminate Claimant’s
Ascertainable Loss..... 335
7-26:1 Generally 335
7-26:2 Examples of Cases Where Refund or Other
Remedy Didn’t Eliminate Ascertainable Loss 335
7-26:3 CFA Cases in Which Refunds Failed to Eliminate
Ascertainable Loss 336

7-27 Attorney’s Fees And Ascertainable Loss..... 337
7-27:1 Attorney’s Fees Compared With Ascertainable Loss..... 337
7-27:2 Attorney’s Fees as Ascertainable Loss Generally 338
7-27:3 CFA Cases in Which Attorney’s Fees Supported
an Ascertainable Loss 339

7-28 Receipt of Something Worth Less or Different Than Promised 340
7-28:1 Generally 340
7-28:2 CFA Cases in Which Receipt of Something Less
or Different Than Promised Supported
Ascertainable Loss 341

7-29 Prior Substantiation Theory of Liability Claims 343
7-29:1 Generally 343
7-29:2 CFA Cases in Which Prior Substantiation Barred Claims.... 344

7-30 Replacement Costs as Ascertainable Loss..... 345
7-30:1 Generally 345
7-30:2 CFA Cases in Which Replacement Cost of Goods
Supported Ascertainable Loss..... 345

7-31 Condominium Association’s Ability to Aggregate
Ascertainable Loss of Its Members 346

Table of Contents

7-32	Failure to Plead or Prove Ascertainable loss	346
7-33	Lost Profits or Income	357
	7-33:1 Generally	357
	7-33:2 CFA Cases in Which Lost Profits or Income Support an Ascertainable Loss.....	357
7-34	Claimant's Failure to use Product or Service	358
7-35	Mitigation of Damages by Reselling Product That is the Subject of a CFA Claim May Provide Proof of Ascertainable Loss	359
	7-35:1 Mitigation of Damages Generally.....	359
	7-35:2 Case in Which Resale Price of Product Provided Measure of Ascertainable Loss.....	360
7-36	Failure to Receive Credit	360
Chapter 8: Treble Damages, Equitable Relief and Special Relief		361
8-1	Introduction	361
8-2	Treble Damages	361
	8-2:1 Authority for and Purpose of Treble Damages.....	361
	8-2:2 Apportionment of Treble Damages.....	362
	8-2:3 No Requirement to Make or Serve Presuit Requirement to Demand to be Made Whole	362
	8-2:4 Windfall Argument Against Treble Damage Awards.....	363
	8-2:5 Situations Where Treble Damages are Precluded	363
	8-2:5.1 Failure to Prove Ascertainable Loss	363
	8-2:5.2 Damages Other Than for Loss of Money or Property	364
	8-2:6 Treble Damages and the Jurisdictional Limit of Special Civil Part.....	364
	8-2:6.1 Special Civil Part Generally	364
	8-2:6.2 Special Civil Part's Jurisdictional Limit Applied to Treble Damages.....	365
	8-2:6.3 Transferring Case From Special Civil Part to Law Division, Civil Part.....	365
	8-2:7 Separation of Treble Damages From Damages Arising Under Other Causes of Action.....	366
	8-2:8 Punitive Damages	367
	8-2:9 Dischargeability of Treble Damages Award in Bankruptcy	368
	8-2:10 Entry of Default Judgment on a CFA Claim	368
	8-2:11 Interest on CFA Awards and Judgments	368
8-3	Equitable Relief Available to Private Litigants	369
	8-3:1 Generally	369
	8-3:2 Injunctive Relief	371
	8-3:2.1 Generally	371
	8-3:2.2 Examples of Cases in Which Courts Awarded Injunctive Relief.....	372
	8-3:3 Declaratory Judgments	375

Table of Contents

8-3:4	Refund	376
8-3:4.1	CFA Refunds Generally and Why They May or May Not Be Desirable	376
8-3:4.2	Refunds for Food-Related CFA Violations	377
8-3:4.3	Refunds for Merchandise Sold At Retail.....	378
8-3:4.4	Refunds for Used Car Lemons.....	378
8-3:4.5	Refunds as Equitable Relief	378
8-3:4.6	Fraud Statutory Refund Remedy Separate From But Cumulative to CFA	378
8-3:4.7	Examples of CFA Cases Decided Before <i>DeSimone</i> In Which Claimants Secured Refunds	379
8-4	Cancellation of Debts Arising From Consumer Fraud and Dismissal of Suits Seeking to Collect Such Debts.....	380
8-4:1	Generally	380
8-4:2	Ascertainable Loss and Debts That are the Product of Consumer Fraud.....	382
8-4:3	Examples of Cases Where Courts Cancelled Fraudulent Debts.....	382
8-4:4	Fraud Statutory Cancellation Remedy Separate From But Cumulative to CFA.....	386
8-5	Special Relief for Senior Citizens and Persons With Disabilities	387
8-5:1	Generally	387
8-5:2	Heightened Penalties for CFA Violations Committed Against Senior Citizens and Persons With Disabilities	388
8-5:3	Penalties to Consumer Fraud Involving Home Solicitations to Senior Citizens	389
Chapter 9: Fees and Costs.....		391
9-1	Counsel Fees.....	391
9-1:1	Authority for and Policy Behind Fee Awards Under the CFA	391
9-1:1.1	Generally	391
9-1:1.2	Prevailing Party Status.....	393
9-1:2	Counsel Fees as Outside the Class of Recoverable Damages	395
9-1:3	Fee Awards Mandatory Upon Proof of Ascertainable Loss	395
9-1:4	Fee Awards in the Absence of Ascertainable Loss.....	396
9-1:5	Fee Awards Mandatory for Technical Violations	397
9-1:6	Fee Awards Recoverable Where Act Raised as a Defense	397
9-1:7	Fee Awards Recoverable on Settlement Contemplating Fee Application	399

Table of Contents

9-1:8	Fee Award Independent of Fee Arrangement or Pro Bono Capacity	400
9-1:9	Attorney's Recovery of Fees as Pro Se CFA Litigant	401
9-1:10	Fees Awards Exceeding the Special Civil Part's Jurisdictional Limit.....	402
9-1:11	Simultaneous Negotiation of Merits and Fees by Public Interest Attorneys.....	403
9-1:12	Fee Awards For Class Action Intervenor	403
9-1:13	Recovering Fee Awards on an Appeal.....	404
9-1:14	The Two Methods for Evaluating Fee Awards	404
	9-1:14.1 Introduction.....	404
	9-1:14.2 The Lodestar Method	405
	9-1:14.3 The Percentage of Recovery Evaluation	406
9-1:15	The Fee Application.....	409
	9-1:15.1 Application Requirements under New Jersey Court Rules	409
	9-1:15.2 Timing of the Fee Application	412
	9-1:15.3 The Lodestar Calculation	413
	9-1:15.4 The Court's Role in Deciding Fee Applications.....	416
	9-1:15.5 District Court's Evaluation of Fee Applications.....	420
	9-1:15.6 Compensable Tasks.....	421
	9-1:15.7 Proportionality of Award to Results	422
	9-1:15.8 Vigorous Defense May Justify Fee Expenditure or Increase of Lodestar.....	426
	9-1:15.9 Impact of Other Causes of Action or Limited Success on Fee Award.....	426
	9-1:15.10 Deduction of the Lodestar.....	429
	9-1:15.11 Enhancement of the Lodestar.....	430
	9-1:15.12 Apportionment of Fees According to Liability	432
	9-1:15.13 Class Action Settlement Fee Awards in the District of New Jersey.....	433
	9-1:15.14 Reasonable Hourly Billing Rates for Fee Applications.....	433
	9-1:15.15 Examples of Fee Awards in CFA Cases	434
	9-1:15.16 Example of Fee Award Reversed for Errors	442
	9-1:15.17 Opposing Fee Applications	442
	9-1:15.18 Counsel Fees for Collecting CFA Judgment.....	444
	9-1:15.19 Counsel Fees After Securing Settlement That Fails to Discuss a Fee Award	445
9-1:16	Apportionment of Fees According to Liability	445
9-1:17	Fee Application Appeals.....	445

Table of Contents

9-2	Costs of Suit.....	447
	9-2:1 Reasonable Costs Recoverable	447
	9-2:2 Costs of Collection of a Consumer Fraud Judgment Recoverable.....	448
	9-2:3 Recovery of Expert Witness Fees Precluded.....	448
Chapter 10: Pleading Consumer Fraud.....		449
10-1	Burden of Proof for Private CFA Claims	449
10-2	Consumer Fraud, Common Law Fraud and Negligent Misrepresentation Causes of Action Compared	452
	10-2:1 Common Law Fraud.....	452
	10-2:1.1 Generally	452
	10-2:1.2 Legal Fraud	454
	10-2:1.3 Equitable Fraud.....	457
	10-2:2 Negligent Misrepresentation.....	458
	10-2:3 Comparison of CFA, Legal Fraud, Equitable Fraud and Negligent Misrepresentation.....	459
	10-2:4 Actions Where Both Consumer Fraud and Common Law Fraud Causes of Action are Pled	460
10-3	Economic Loss Doctrine in CFA Cases.....	460
	10-3:1 The Doctrine Generally	460
	10-3:2 The <i>Alloway</i> Decision.....	463
	10-3:3 The <i>Marrone</i> and <i>Dean</i> Decisions	464
	10-3:4 Application of the Economic Loss Doctrine to State Court CFA Claims.....	464
	10-3:5 Application of the Economic Loss Doctrine in the District of New Jersey Cases	466
	10-3:6 Examples of CFA Cases Not Barred by Economic Loss Doctrine.....	467
10-4	Joint and Several Liability, Comparative Negligence and Concert of Action.....	469
	10-4:1 Joint and Several Liability for Consumer Fraud Treble Damages.....	469
	10-4:2 The Comparative Negligence Act's Application to CFA Cases	470
	10-4:2.1 The Comparative Negligence Act Generally	470
	10-4:2.2 How the Comparative Negligence Act Is Applied to CFA Claims.....	470
	10-4:2.3 Examples of CFA Cases Applying the Comparative Negligence Act.....	471
	10-4:3 Conspiracy to Commit Consumer Fraud and Concert of Action Under the Restatement of the Law, Second, Torts, § 876.....	472
	10-4:4 Cases in Which Courts Refused to Apply the Comparative Negligence Doctrine	474
	10-4:5 CFA Litigants' Use of Concert of Action Theory.....	475
	10-4:6 Apportionment of Fees According to Liability	476
10-5	Right to Jury Trial of Private CFA Claims	477

Table of Contents

10-5:1	Generally	477
10-5:2	No Right to Jury Trial in CFA Case Prosecuted by Attorney General	478
10-5:3	Demanding a Jury Trial in a CFA Case.....	478
10-5:4	Waiver of Jury Trial in Summary Actions	479
10-5:5	Consensual Waiver of Jury Trial Following Demand and Refusal to Waive Demand	479
10-5:6	Waiver of Jury Trial Demand Via Conduct.....	480
10-5:7	Stand-Alone Contractual Jury Trial Waivers.....	481
10-6	Federal Amount in Controversy Requirement	481
10-7	Considerations for Special Civil Part Actions	481
10-8	Duty to Plead CFA Claims and Defenses	483
10-8:1	Whether CFA Can be Pled Via Crossclaims and Affirmative Defenses in Addition to Complaint and Counterclaim	483
10-8:2	Duty to Timely Plead CFA Claims.....	485
10-8:3	Duty to Timely Plead Affirmative Defenses to CFA Claims	486
10-9	Affirmative Defenses to CFA Claims	487
10-9:1	Affirmative Defenses Generally.....	487
10-9:2	Affirmative Defenses to Pleadings Where Arbitration Clause Exists.....	490
10-10	Amending Pleadings to Add CFA Claims and Defenses.....	491
10-10:1	The Standard for Amending Pleadings	491
10-11	Compliance With Notice Requirement	492
10-12	Pleading Fraud In State Court.....	493
10-12:1	Pleading Fraud With Particularity	493
10-12:2	Standard for Motions to Dismiss for Failure to State a Claim	494
10-12:3	Removal of Action From State to Federal Court At Pleading Stage.....	495
10-13	Pleading Fraud in the District of New Jersey	496
10-13:1	Establishing Federal Jurisdiction.....	496
10-13:2	Article III Standing.....	497
10-13:2.1	Generally	497
10-13:3	Initial Pleadings—Plausibility Standard	499
10-13:4	Initial Pleading—Rule 9(b) Particularity Standard	501
10-13:4.1	Heightened Pleading Standard Generally	501
10-13:4.2	Particularity Required.....	502
10-13:4.3	Pleading Fraud Against Multiple Parties	504
10-13:4.4	Pleading in State Court to Anticipate Removal to Federal Court.....	505
10-13:5	Pleading Fraud by Knowing Omission.....	506
10-13:6	Rule 12(b)(6) Motions to Dismiss for Failure to State a Claim	506

Table of Contents

10-13:6.1	The Standard For Deciding Rule 12(b)(6) Motions.....	506
10-13:6.2	While Supposedly Difficult to Win, Most Rule 12(b)(6) Motions are Granted.....	510
10-13:7	Party Inadvertently Admitting in Responsive Pleading That They Committed a CFA Violation.....	511
Chapter 11: Pretrial and Trial Proceedings		513
11-1	Compliance With Notice Requirement	513
11-2	Sealing of Records in CFA Case.....	513
11-3	Spoliation of Evidence in CFA Claims.....	513
11-4	Expert Testimony for CFA Claims.....	514
11-4:1	Generally	514
11-4:2	Expert Testimony Not Always Required to Prove Ascertainable Loss	516
11-4:3	Expert Proofs in Real Estate Disputes.....	516
11-4:4	Cases in Which Expert Proof of Ascertainable Loss Unnecessary	517
11-4:5	Cases in Which Expert Testimony Necessary	519
11-4:6	Expert Testimony Insufficient	519
11-5	Summary Judgment.....	520
11-5:1	Timeframe for Seeking Summary Judgment	520
11-5:2	Seeking Summary Judgment Following a Decision on a Motion to Dismiss for Failure to State a Claim.....	520
11-5:3	The Standard for Securing Summary Judgment Against CFA Claimants.....	521
11-5:4	Examples of Cases in Which CFA Claimants Were Granted Summary Judgment	522
11-5:5	Examples of CFA Claims Dismissed Via Summary Judgment	524
11-5:6	Examples of Summary Judgment Denied	532
11-6	Offers of Judgment.....	539
11-6:1	The Offer of Judgment Generally	539
11-6:2	Making the Offer	540
11-6:3	Acceptance of the Offer	540
11-6:4	Subsequent Offers.....	540
11-6:5	Consequences of Failure to Accept a Claimant's Offer	541
11-6:6	Consequences of Failure to Accept a Nonclaimant's Offer.....	541
11-6:7	Miscellaneous Provisions of the Offer of Judgment Rule.....	542
11-6:8	Offer of Judgment Fee Applications	542
11-6:9	Using Offer of Judgments Against CFA Claimants	543
11-6:10	CFA Claimant's Use of Offer of Judgment	545
11-7	Avoiding Damage Verdicts	546
11-8	Fact-Finding Issues	546
11-9	Motion for Judgment at Trial	549
11-9:1	The Types of Motions for Judgment at Trial.....	549

Table of Contents

11-9:2	Erroneous Dismissal of CFA Case at Trial	550
11-9:3	Motions to Dismiss Made Against a Merchant Seeking to Collect a Debt That Is the Product of Consumer Fraud	551
11-9:4	Example of CFA Claimants Surviving Motion to Dismiss Made at Trial.....	551
11-10	Issues that Constitute Questions for the Jury.....	552
11-11	Jury Instructions and Jury Interrogatories in CFA Claims.....	552
11-11:1	Jury Instructions Generally.....	552
11-11:2	When Fraud May be Viewed as Affirmative Act or Omission.....	555
11-11:3	Failure to Instruct Jury on Both Affirmative Misrepresentation and Knowing Omission	555
11-11:4	Breach of Warranty in the Context of an Unconscionable Commercial Practice.....	556
11-11:5	Instructions on Amount of Damages to Award.....	556
11-11:6	Right to Ultimate Outcome Charge.....	556
11-11:7	Trial Court's Application of Incorrect Burden of Proof	557
11-11:8	Joint and Several Liability, Comparative Negligence and Concert of Action.....	557
11-11:9	Jury Interrogatories in CFA Cases	558
11-12	Arguments During Openings and Closings.....	558
11-13	Default Judgment	559
11-13:1	Generally	559
11-13:2	Defaulted Party's Right to Appear and Contest Proof Hearing.....	562
11-13:3	Entry of Default Judgment on CFA Claim	563
11-13:4	Examples of CFA Cases in Which Courts Refused to Enter Final Judgments Against Defaulted Parties or Reversed the Judgment	563
11-13:5	Modifying Default Judgments to Include Individual Liability	564
11-13:6	During Proof Hearing, Trial Court May Reinstate CFA Claim Previously Dismissed	565
11-14	Mitigation of Damages in CFA Cases	566
Chapter 12: Class Actions.....		567
12-1	Class Certification of CFA Claims	567
12-1:1	Class Actions Generally	567
12-1:2	Purpose of Class Action Certification.....	567
12-1:3	Liberal Construction of Class Certification Rule	568
12-2	CFA Claim Certification in NJ State Courts.....	569
12-2:1	The Test for CFA Claim Certification in New Jersey State Courts Generally.....	569

Table of Contents

12-2:2	Proof of Misrepresentation as to All Class Members Unnecessary	573
12-2:3	Class Certification When Prospective Members’ Reactions to Misrepresentations Differ	573
12-2:4	Proving Allegations of Deception Based on Series of Oral and Written Misrepresentations and Omissions of Material Fact	573
12-2:5	Ascertainable Loss Requirement in Class Certification Context	574
12-2:6	Incentive Award or Stipend for CFA Class Action Intervenor	575
12-2:7	Examples of Successful Class Certifications or Potentially Viable Putative Class Actions in State Court	575
12-2:8	Examples of Unsuccessful Class Certifications in State Court	577
12-3	The Class Action Fairness Act	581
12-3:1	CAFA Generally	581
12-3:2	The Paradoxes of Removal	581
12-3:3	The Mechanics of Removal	582
12-3:4	The Remand Test	583
	12-3:4.1 Generally	583
	12-3:4.2 The Local Controversy Exception	585
12-3:5	CFA Actions Brought By the AG Not Subject to Removal ...	585
12-4	Certification of Class Actions in the District of New Jersey	586
12-4:1	Rule 23(a) Requirements	586
12-4:2	Generally	586
12-4:3	Rule 23(a)’s Specific Requirements	588
12-4:4	The Judicially Created Ascertainability Requirement	591
12-4:5	Rule 23(b) Categories	592
12-4:6	Court’s Analysis of Pleadings Under Rule 23 Requirements	594
12-4:7	Article III Standing in Class Actions	599
12-4:8	Rule 23’s Test for Certifying a Class Action for Settlement	601
12-4:9	Damage Proofs for Class Certification in District of New Jersey	601
12-4:10	Timing for Challenging Putative Class Actions	602
12-4:11	Examples of Class Action Certifications Granted in Federal District Court of New Jersey	603
12-4:12	Examples of Class Action Certifications Denied in Federal District Court of New Jersey	607
12-5	Contractual Class Action Waivers	612
12-5:1	Generally	612
12-5:2	Class Action Waivers Overcome Class Action Court Rules	613
12-5:3	Successful Contractual Class Action Waivers	614
12-5:4	Unsuccessful Class Action Waivers	615

Table of Contents

12-6 Settlement of Class Action CFA Claims..... 616
12-6:1 Generally 616
12-6:2 Class Settlements in the Third Circuit..... 617
12-7 Preclusive Effect of Class Action Settlements..... 619
12-8 Class Members’ Incentive Awards 619
Chapter 13: Advertisements 621
13-1 CFA Applicability to Advertisements 621
13-1:1 What Constitutes an “Advertisement”
Under the CFA 621
13-1:2 CFA Not Applicable to Advertisement
Publishers 621
13-2 Advertising Expressly Prohibited by CFA..... 622
13-3 Advertisements Violating Section 2 622
13-3:1 Generally 622
13-3:2 Misleading Statements and Puffery Distinguished 625
13-4 Subsequent Performance 626
13-5 CFA Regulations Governing Advertising 626
13-5:1 Generally 626
13-5:2 Definitions 626
13-5:3 Application of Regulation..... 630
13-5:4 Prohibitions Applicable to All Advertisements..... 631
13-5:5 Prohibition on Fictitious Pricing and Methods of
Substantiation..... 635
13-5:6 Example of Viable Claims for Violations of the
CFA’s General Advertising Regulation 637
13-5:7 Examples of Unsuccessful Alleged Violations of the
CFA’s General Advertising Regulations 638
13-6 Prizewinning Advertisement 639
13-7 Scheme Not to Sell Item Advertised 639
13-8 CFA Liability for Advertising in Specific Industries..... 639
13-9 Musical Performance Advertisements..... 640
13-9:1 Generally 640
13-9:2 Definitions Relative to Deceptive Practices
in Musical Performances..... 640
13-9:3 Per Se Liability..... 640
Chapter 14: Lenders and Loan Servicers 643
14-1 Generally..... 643
14-1:1 Lenders Potentially Liable for CFA Violations..... 643
14-1:2 Lack of Fiduciary Duty Between Lenders and
Borrowers Irrelevant to CFA Liability 644
14-1:3 Hesitancy of Courts to Impose CFA Liability on Lenders..... 644
14-2 Bank Deposits and Bank Collections 645
14-3 Liability for Unsolicited Checks and Credit Cards 646
14-3:1 Definitions 647

Table of Contents

	14-3:2 Limitation on Liability for Unsolicited Checks/Credit Cards	648
14-4	Violations of Lending Laws Outside the CFA as the Basis of CFA Violations	648
14-5	Coin Redemption Machines	649
	14-5:1 Generally	649
	14-5:2 Definitions	649
	14-5:3 Notification of Fees for Use of Machine.....	650
	14-5:4 Penalties.....	650
	14-5:5 Prohibition on Class Actions	650
	14-5:6 Adoption of Rules and Regulations by the DCA	650
14-6	Banks Selling Real Estate	650
14-7	Non-Mortgage Cases Where Lenders Faced No CFA Liability	650
14-8	Non-Mortgage Cases Where Lenders Faced Potential or Actual CFA Liability	658
14-9	Mortgages, Loan Modifications And Foreclosures	662
	14-9:1 CFA Pled for Misconduct in Foreclosure Sale or in Defense or Response to Foreclosure Complaint.....	662
	14-9:1.1 Generally	662
	14-9:1.2 Impact of Rooker-Feldman Doctrine on Mortgage Disputes Raised in Federal Courts Generally.....	664
	14-9:1.3 Examples of CFA Cases Dismissed Under the Rooker-Feldman Doctrine	665
	14-9:1.4 Entire Controversy's Effect on Post Foreclosure CFA Suit Generally	669
	14-9:1.5 Examples of Post Foreclosure Cases Barred by Entire Controversy Doctrine, <i>Res Judicata</i> , Collateral Estoppel and/or Issue Preclusion	670
	14-9:1.6 Examples of Post-Foreclosure Cases Not Barred by Entire Controversy Doctrine, <i>Res Judicata</i> , Collateral Estoppel and/or Issue Preclusion	677
	14-9:1.7 Colorado River Doctrine's Effect on Parallel Federal Court Proceedings Generally	679
	14-9:1.8 District Court Cases Filed Parallel to State Court Foreclosure Cases That Were Barred by Colorado River Doctrine.....	680
14-9:2	Loan Modifications.....	680
14-9:3	New Jersey Home Ownership Security Act	683
	14-9:3.1 Introduction to HOSA.....	683
	14-9:3.2 Definitions Under HOSA	684
	14-9:3.3 Scope and Prohibitions of HOSA	685
	14-9:3.4 Notice Under HOSA	687
	14-9:3.5 Points and Fees High-Cost Home Loan HOSA Violations.....	687

Table of Contents

- 14-9:3.6 CFA Remedies for HOSA Violation 690
- 14-9:4 Mortgage Rescue Plans 691
- 14-9:5 Lenders Selling a Mortgage the Borrower Cannot Afford a.k.a Predatory Lending 691
 - 14-9:5.1 Generally 691
 - 14-9:5.2 Reverse Redlining 692
 - 14-9:5.3 Equity Stripping 693
- 14-9:6 Examples of Unsuccessful CFA Mortgage, Home Equity Loan, Foreclosure and Loan Modification Cases 694
- 14-9:7 Examples of Viable CFA Cases Involving Mortgages, Mortgage Rescue Plans, Home Equity Loans, Loan Modification or Foreclosure Issues 721
- 14-10 Preemption of CFA Claims Involving Lenders 729
 - 14-10:1 Introduction 729
 - 14-10:2 Examples of Preempted CFA Claims Involving Lenders... 729
 - 14-10:3 Examples of CFA Claims Involving Lenders That Were Not Preempted 730
- Chapter 15: Contract and Warranties..... 733**
- 15-1 Introduction 733
- 15-2 Breach of Contract and Breach of Warranty..... 734
 - 15-2:1 Common Law and Statutory Breach of Contract and Warranty Claims Differentiated..... 734
 - 15-2:2 Proof of a Breach of Contract..... 734
 - 15-2:3 Proof of a Breach of Warranty..... 734
 - 15-2:3.1 Generally 734
 - 15-2:3.2 Proof of Breach of Express Warranty..... 735
 - 15-2:3.3 Proof of Breach of Implied Warranty of Merchantability..... 737
 - 15-2:3.4 Proof of Breach of Implied Warranty of Fitness for a Particular Purpose 737
 - 15-2:3.5 Proof of Breach of Implied Warranty of Good Title..... 738
 - 15-2:3.6 Proof of Breach of Implied Warranty of Good Workmanship 739
 - 15-2:3.7 Proof of Breach of Implied Warranty of Habitability 740
 - 15-2:4 Breach of Contract and Breach of Warranty May Exist Alongside CFA Claim..... 741
 - 15-2:5 Avoiding Liability for CFA Claims Via Warranties and Their Disclosures 742
 - 15-2:6 Substantial Aggravating Circumstances Requirement for CFA Claims Predicated on Breach of Contract and Breach of Warranty 742
 - 15-2:6.1 Generally 742
 - 15-2:6.2 When Is Proof of Substantial Aggravating Circumstances Unnecessary? 745

Table of Contents

	15-2:6.3 What Constitute “Substantial Aggravating Circumstances”?	746
15-2:7	Substantial Aggravating Circumstances Not Found	746
15-2:8	Substantial Aggravating Circumstances Found	753
15-3	Contracts Required to be Provided to Consumer	758
15-3:1	Generally	758
15-3:2	Contracts Not Provided by Merchant May be Unenforceable	759
15-3:3	CFA Case in Which Merchant’s Failure to Give Contract Supported Liability	760
15-3:4	Failure to Give Contract Where the Parties Never Draw Up a Contract and There Is No Independent Requirement for the Merchant to Do So.....	760
15-4	Applicability of Contract Law Principles.....	760
15-4:1	No Requirement that Misrepresentation be in Writing	760
15-4:2	Privity of Contract and Indirect Purchasers.....	761
15-4:3	Enforcement of “Valid Contracts” and the Parol Evidence Rule	761
15-4:3.1	Generally	761
15-4:3.2	Examples of Cases Where Parol Evidence Inadmissible.....	765
15-4:3.3	Cases in Which Parol Evidence Admissible.....	766
15-4:4	Merchant Refusing to Cancel a Contract or Demanding Performance of the Contract.....	767
15-5	Subsequent Performance	767
15-6	Truth in Consumer Contract, Warranty, and Notice Act Claims Based on CFA Violations.....	767
15-6:1	TCCWNA’s Purpose and Interpretation	767
15-6:2	TCCWNA Is an Unwaivable Cumulative Statute.....	769
15-6:3	Who Has Standing Under the TCCWNA?	769
15-6:3.1	Requirement That Claimant be a “Consumer”.....	769
15-6:3.2	Transactions to Which TCCWNA Does Not Apply.....	771
15-6:3.3	Requirement That a Consumer Must be “Aggrieved”	772
15-6:3.4	Anticipated Impact of TCCWNA’s “Aggrieved” Requirement	778
15-6:4	The Different Subsections of TCCWNA that Support Claims.....	779
15-6:5	Elements of a TCCWNA Claim	780
15-6:5.1	Elements of a Section 15 TCCWNA Claim	780
15-6:5.2	Language in a Contract, Warranty or Notice Violating Consumer Rights or Merchant Responsibilities Under the	

Table of Contents

	CFA or its Regulations Supports a TCCWNA Claim	781
15-6:5.3	Omission of Language Required by the CFA and its Regulations May Support a TCCWNA Claim	782
15-6:5.4	Elements of a Section 16 TCCWNA Claim	782
15-6:5.5	Statute of Limitations for TCCWNA Claims.....	784
15-6:6	Relief Under TCCWNA	784
15-6:7	Comparison of CFA and TCCWNA	784
15-6:8	Proving a TCCWNA Claim Does Not Require a Viable CFA Claim	787
15-6:9	Examples of Potential or Successful TCCWNA Claims Predicated on CFA Violations.....	788
15-6:10	Examples of Unsuccessful TCCWNA Cases Based on CFA Violations.....	791
15-6:10.1	Examples of Unsuccessful TCCWNA Cases Based on CFA Violations Decided Before <i>Spade</i>	791
15-6:10.2	Examples of Unsuccessful TCCWNA Cases Based on CFA Violations Decided After <i>Spade</i>	793
15-7	CFA Violations for Performance of Arbitration Agreements	794
15-8	Service Contracts.....	794
15-8:1	Generally	794
15-8:2	Definitions	795
15-8:3	Certain Types of Documents Exempt From the SCA.....	799
15-8:4	Service Contracts Distinguished From Insurance and Permitted Names for Service Contract Providers	800
15-8:5	Registration and Renewal Requirements for Service Contract Providers and Administrators and Disclosure and Use of Information.....	802
15-8:6	Assurance of Faithful Performance of Service Contracts	803
15-8:7	Seller's Joint and Several Liability for Noncompliance With SCA	805
15-8:8	Appointment of Service Contract Administrator	805
15-8:9	Requirements for Issuance of Reimbursement Insurance Policy.....	805
15-8:10	Service Contracts Not Offered by Public Entity but Advertised by Any Entity, Including an Entity Affiliated With a Public Utility, Using a Public Utility's Trade Name or Other Identifying Information	806
15-8:11	Mandatory Service Contract Contents.....	807

Table of Contents

15-8:	12 Mandatory Recordkeeping Requirements.....	810
15-9	CFA Claims and Defenses to CFA Claims Focusing on Contract Language.....	811
	15-9:1 Generally	811
	15-9:2 Mere Agreement to Contract Terms Does Not Necessarily Bar a CFA Claim.....	811
	15-9:2.1 Supreme Court Allows CFA Claims Despite Claimant Agreeing to Contract Terms	811
	15-9:2.2 Certain Courts Hold That Agreement to Contract Terms Bar CFA Claims.....	814
	15-9:2.3 Examples of Cases Where Claimants’ Agreement to Contract Terms Bar CFA Claims	815
	15-9:2.4 Examples of Cases Where Claimants’ Agreement to Contract Terms Didn’t Bar CFA Claims	816
15-9:3	Exculpatory Causes—Contractual Limitations of Liability, As Is Disclaimers and Waiver of Defenses Clauses.....	817
	15-9:3.1 Generally	817
	15-9:3.2 Unequal Bargaining Power May Invalidate Exculpatory Clauses	819
	15-9:3.3 Cases Outside CFA in Which Courts Refused to Enforce Exculpatory Clauses, “As Is” Disclaimers or Contract Waivers.....	819
	15-9:3.4 CFA Cases in Which Courts Refused to Enforce Exculpatory Clauses or Found That They Potentially Violated the CFA	821
	15-9:3.5 Examples of CFA Case in Which Court Enforced Exculpatory Clauses	822
15-9:4	Liquidated Damages and Excessive Fees As The Basis of CFA Claims	823
	15-9:4.1 Generally	823
	15-9:4.2 The Test for Distinguishing Between a Valid Liquidated Damages Clause and a Penalty	823
	15-9:4.3 Cases in Which Liquidated Damages Clauses or Excessive Fees Might or Did Support CFA Violations	824
	15-9:4.4 Cases in Which Liquidated Damages Clauses or Excessive Fees Failed to Support CFA Violations.....	825
15-9:5	Contract Failing to Include an Express Term Implied by Law	826
15-9:6	Contracts Containing Unlawful Terms	826
	15-9:6.1 Generally	826

Table of Contents

- 15-9:6.2 Examples of Viable CFA Cases
Involving Contracts Allegedly
Containing Unlawful Terms..... 827
- 15-9:6.3 Examples of Unsuccessful CFA Cases
Involving Contracts Allegedly
Containing Unlawful Terms 829
- 15-9:7 As Is Disclaimer Does Not Absolve Merchant of
Liability 830
- 15-9:7.1 Generally 830
- 15-9:7.2 Example of CFA Case Where As Is
Disclaimer Failed to Bar Liability 830
- Chapter 16: Cats and Dogs..... 831**
- 16-1 Pet Purchases..... 831
- 16-2 Definitions..... 831
- 16-3 No Limitation on other Remedies, Rules or Regulations 832
- 16-4 Statutory Per Se Violations..... 832
- 16-5 Per Se Violations Under Regulations..... 840
- 16-6 Sickness or Death of Pet Following Date of Purchase
and Revocation of License..... 849
- 16-7 Disclosure of PPPA Requirements 851
- 16-8 Investigation and Enforcement by Director 852
- 16-9 Example of CFA Case Involving Pet Sales 852
- 16-10 Leasing of Dogs and Cats 853
- 16-10:1 Generally 853
- 16-10:2 Applicability 853
- 16-10:3 Conduct Regulated and Liability 853
- Chapter 17: Foodstuffs..... 855**
- 17-1 Introduction 855
- 17-2 FDA Preemption of Food Regulation 855
- 17-2:1 Generally 855
- 17-2:2 Cases in Which CFA Foodstuff Claims
Were Preempted 855
- 17-2:3 Cases in Which CFA Foodstuff Claims Weren't
Preempted 858
- 17-3 Restaurant Menus 859
- 17-4 Infant Formula and Baby Food Subject to FDA Expiration
Dating Requirements..... 860
- 17-5 Halal Foods..... 861
- 17-5:1 Halal Defined..... 861
- 17-5:2 Per Se Violations..... 861
- 17-5:3 Administrative Rules..... 863
- 17-5:4 Definitions 863
- 17-5:5 Disclosures Required 864
- 17-5:6 Good Faith Reliance on Representation 866
- 17-5:7 Recordkeeping Requirements..... 867
- 17-5:8 Presumption of Possession of Nonconforming Food..... 867
- 17-5:9 Dealer Inspections 867

Table of Contents

17-6	Kosher Foods	868
	17-6:1 Kosher Defined	868
	17-6:2 Disclosures and Per Se Violations	868
	17-6:3 Administrative Rules	868
	17-6:4 Definitions	872
	17-6:5 Disclosures Required	874
	17-6:6 Labeling Requirements	876
	17-6:7 Filing Requirements	881
	17-6:8 Dealer Inspections	882
17-7	Meat Sold at Retail	882
	17-7:1 Definitions	882
	17-7:2 Labeling and Advertising Requirements	891
	17-7:3 Fabricated Steak Preparation	894
	17-7:4 Supply of Meat Advertised	894
	17-7:5 Frozen Meat	894
	17-7:6 Per Se Violations	894
17-8	Unsuccessful CFA Foodstuff Claims	894
17-9	Foodstuff Cases that Were Viable or Successful	896
17-10	Return of Groceries and Foodstuffs During State of Emergency	898
	17-10:1 Generally	898
	17-10:2 Definitions	898
	17-10:3 Conduct Regulated and Per Se CFA Liability	898
17-11	Third-Party Takeout Food and Delivery Services	899
	17-11:1 Generally	899
	17-11:2 Definitions	899
	17-11:3 Regulated Conduct and Per Se CFA Liability	899
Chapter 18: Health and Safety		901
18-1	Introduction	901
18-2	Health Clubs	901
	18-2:1 Definitions	901
	18-2:2 Per Se Violations	902
	18-2:3 Registration Requirements	902
	18-2:4 Bond Requirements	903
	18-2:5 Contract Requirements	904
	18-2:6 Administrative Rules	908
	18-2:7 Notice of Registration	909
	18-2:8 Exemption From Registration	910
	18-2:9 Examples of Unsuccessful Health Club CFA Cases	910
	18-2:10 Examples of Successful or Potentially Successful CFA Claim Against Health Clubs	911
18-3	Safety Professionals	912
	18-3:1 Generally	912
	18-3:2 Definitions	912
	18-3:3 Per Se Violations	913
18-4	Industrial Hygiene	913
	18-4:1 Generally	913
	18-4:2 Definitions	913
	18-4:3 Per Se Violations	915

Table of Contents

18-5 Hazardous Products 915
 18-5:1 Per Se CFA Violations 915
 18-5:2 Definitions 915
 18-6 Non-Prescription Diabetes Test Devices Distributed
 In New Jersey 916

Chapter 19: Home Appliances, Furniture and Furnishings 917

19-1 Home Appliances 917
 19-1:1 DCA Regulations and Definitions 917
 19-1:2 Required Disclosures at Sale 918
 19-1:3 Per Se Violations 918
 19-1:4 Exceptions 920
 19-2 Household Furniture and Furnishings 920
 19-2:1 Per Se CFA Violations 920
 19-2:2 Definitions 921
 19-2:3 Delivery Practices 921
 19-2:3.1 Generally 921
 19-2:3.2 Delivery of Damaged or Nonconforming
 Merchandise 921
 19-2:3.3 Example of Unsuccessful HFR Case 922
 319-2:3.4 Example of Successful
 or Viable HFR Case 922

Chapter 20: Home Improvement Contractors 925

20-1 Home Improvement Contractors’
 CFA Liability Generally 925
 20-1:1 Introduction 925
 20-1:2 What Types of Structures are Covered by
 the CRA, HIP and HICR? 927
 20-1:3 Services Not Subject to the CRA, HIP, or HICR 929
 20-1:4 Services Subject to the CRA, HIP, and HICR 930
 20-1:5 Landscapers’ Liability Under the CFA 932
 20-1:5.1 Generally 932
 20-1:5.2 Limited Exemptions for Landscapers 933
 20-1:5.3 Examples of Cases in Which Landscapers
 Faced Potential or Actual CFA Liability 934
 20-1:6 Treble Damages Unavailable Without a Causal
 Nexus Between Contractor’s Misconduct
 and Ascertainable Loss 935
 20-1:7 Examples of Cases Holding Home Repair
 Contractors Not Liable for Consumer Fraud 935
 20-1:8 CFA Cases in Which Contractors Were Liable
 or Potentially Liable for Consumer Fraud
 Violations 939
 20-1:9 Home Repair Contractors’ Efforts to Collect
 Bills When They Commit Consumer Fraud 948
 20-1:9.1 Generally 948
 20-1:9.2 Examples of CFA Cases in Which
 Contractors Were Barred From Collection 950

Table of Contents

	20-1:9.3	Examples of Cases in Which Contractors Were Not Barred From Collection	952
	20-1:9.4	Warning to Contractor Before Suing to Collect on Home Repair Contract and Before Filing Lis Pendens.....	954
20-2		Contractor Registration Act	954
	20-2:1	Introduction.....	954
	20-2:2	Definitions	955
	20-2:3	Scope	957
	20-2:4	Supersedure of Municipal Ordinance and Regulations	959
	20-2:5	Per Se Violations.....	959
	20-2:6	Registration of Contractors.....	960
	20-2:7	Insurance Requirements	962
	20-2:8	Display of Registration Numbers and Other Mandatory Disclosures.....	963
	20-2:9	Customer’s Right to Cancel Contract	963
	20-2:10	Requirements for Contracts Over \$500	964
20-3		Home Improvement Contractor Registration Rules	965
	20-3:1	Definitions	965
	20-3:2	Registration Requirements.....	968
	20-3:3	Disclosure and Other Requirements.....	968
	20-3:4	Insurance Requirements.....	967
	20-3:5	Contracts Must Comply With HIP and CRA	970
20-4		Home Elevation Contractor Registration Rules.....	970
	20-4:1	Definitions	970
	20-4:2	Requirements for Elevation Contractors.....	972
20-5		Home Improvement Practices Rules	974
	20-5:1	Definitions	974
	20-5:2	Scope	976
	20-5:3	Per Se Violations.....	977
	20-5:4	Warranty Disclosures	982
	20-5:5	Contract Requirements	982
		Chapter 21: Insurance.....	985
	21-1	Introduction	985
	21-2	CFA Applicability to Insurance Industry.....	986
	21-2:1	Generally	986
	21-2:2	Split of Authority on Whether CFA Applies to Handling and Payment of Insurance Claims.....	986
	21-2:2.1	Historical Reluctance to Apply CFA to Handling and Payment of Insurance Claims and Appellate and District Courts’ Refusal to Apply CFA to Those Claims	986
	21-2:2.2	Supreme Court’s Failure to Address CFA to Handling and Payment of Insurance Claims Leaves Issue Open for Reinterpretation.....	987

Table of Contents

	21-2:2.3	Third Circuit’s Position on CFA’s Application to Handling and Payment of Insurance Claims	988
21-2:3		Distinction Between CFA Cases Involving Under payment of Insurance Benefits Versus Nonpayment	991
21-2:4		Examples of Unsuccessful CFA Claims Against Insurance Carriers	991
21-2:5		Examples of Insurance Cases in Which the CFA Was Applicable or Viable	1001
21-2:6		Statute of Limitations Relative to Insurance Claims	1006
21-3		Insurance Brokers Exempt.....	1006
21-4		Credit Insurance	1007
21-5		Title Insurance and Title Agencies.....	1007
	21-5:1	Generally	1007
	21-5:2	Examples of Potential CFA Claims Against Title Insurance Businesses and Title Agencies.....	1008
	21-5:3	Examples of Unsuccessful CFA Claims Against Title Agencies	1009
21-6		Availability of Insurance Coverage For Consumer Fraud Claims.....	1011
	21-6:1	Types of Insurance Policies A Merchant May Have	1011
	21-6:2	Scope of Coverage	1012
	21-6:3	Duty to Defend and Exclusions	1013
		21-6:3.1 Generally	1013
		21-6:3.2 Business Risk Claims v. Occasion Claims	1013
		21-6:3.3 No Indemnification Coverage Available for Consumer Fraud Liability	1015
		21-6:3.4 Duty to Defend.....	1016
	21-6:4	Examples Where Insurer Not Required to Defend CFA Claim	1016
21-7		Preemption of CFA Claims Involving Insurance	1018
	21-7:1	Introduction	1018
	21-7:2	Examples of Preempted CFA Claims Involving Insurance	1018
	21-7:3	Example of CFA Claims Involving Insurance That Were Not Preempted	1021
21-8		Prescription Drug Benefits.....	1021
21-9		Pharmacy Benefits Managers	1022
21-10		Medical Insurance Benefits.....	1023
Chapter 22: Internet Dating			1025
22-1		Internet Dating Safety Act	1025
	22-1:1	Purpose of the Act	1025
	22-1:2	Definitions	1025
	22-1:3	Applicability of the Act	1027
	22-1:4	Safety Notifications.....	1027
	22-1:5	Criminal Background Screenings	1027

Table of Contents

Chapter 23: Learned Professionals and Licensed Semiprofessionals.....	1031
23-1 Applicability of CFA Generally.....	1031
23-1:1 All Professionals Previously Exempt From CFA Liability	1031
23-1:2 The Learned Professional Doctrine as an Outgrowth of the Preemption Doctrine	1032
23-1:3 Learned Professional Doctrine’s Protection	1035
23-1:4 When are Learned Professionals Not Protected by Doctrine?	1036
23-1:5 Licensed Professionals and Semiprofessionals Expressly Subject to CFA.....	1039
23-2 CFA Applicability to Specific Professions.....	1040
23-2:1 Accountants.....	1040
23-2:2 Architects.....	1041
23-2:3 Attorneys.....	1041
23-2:4 Insurance Brokers	1042
23-2:5 Physicians, Hospitals, Medical Diagnostics Providers, Nursing Homes and Veterinarians.....	1043
23-2:6 Real Estate Appraisers	1045
23-2:7 Environmental Engineers and Consultants	1045
23-2:8 Shorthand Reporters.....	1046
23-2:9 Financial Planners	1046
23-2:10 Home Inspectors.....	1046
23-2:11 Schools	1048
23-2:12 Securities Brokers.....	1049
23-2:13 Ambulance Services	1050
23-2:14 Home Inspectors.....	1050
Chapter 24: Manufacturers.....	1051
24-1 Manufacturers’ CFA Liability.....	1051
24-1:1 Generally	1051
24-1:2 Knowing Omission Claims Pleaded Against Manufacturers	1053
24-1:2.1 Generally	1053
24-1:2.2 Manufacturer’s Duty to Disclose for Warranted Products.....	1054
24-1:2.3 Does a Manufacturer Have a Duty to Warn of Defects That Occur After a Product’s Warranty Expires?	1055
24-1:3 Avoiding Liability for CFA Claims Via Warranties and Their Disclosures	1056
24-1:4 CFA Cases Against Manufacturers Preempted or Subsumed	1056
24-1:5 Product Problems Arising After a Warranty’s Expiration	1057
24-1:5.1 Post Warranty Defect CFA Claims Often Fail.....	1057
24-1:5.2 Situations Where Post Warranty Defect CFA Claims Might Succeed	1057

Table of Contents

- 24-1:6 Manufacturer Reports as Proof of
Manufacturer’s Knowledge of Product Problems 1058
- 24-1:7 Complaints of Customers Other Than
Claimant May Provide Proof of Manufacturer’s
Knowledge of Product Problems 1059
- 24-1:8 Examples of Cases Where Manufacturers
Avoided CFA Liability 1060
- 24-1:9 Examples of Cases Where Manufacturers
Faced Potential or Actual CFA Liability 1075
- 24-2 Manufacturer’s CFA Liability and the Lemon Law 1084
 - 24-2:1 Introduction 1084
 - 24-2:2 Notice of Consumer Rights 1085
 - 24-2:3 CFA Violations Under NCLL 1086
- Chapter 25: Personal Information Security 1089**
 - 25-1 Introduction 1089
 - 25-2 Security of Personal Information Handled By Businesses Generally 1089
 - 25-3 Definitions 1089
 - 25-4 Per Se Violations 1091
 - 25-5 Destruction of Personal Information 1091
 - 25-6 Notice of Security Breaches 1092
 - 25-7 Prohibitions Against Disclosure of Social Security Numbers 1094
 - 25-8 Prohibitions About Publishing Certain Information
on Internet 1095
 - 25-9 Personal Information Security Applicable to Health
Insurance Carriers 1096
 - 25-9:1 Definitions 1096
 - 25-9:2 Restrictions for Health Insurance Carrier
Relative to Certain Computerized Records 1098
 - 25-9:3 Per Se Liability 1098
- Chapter 26: Public Entities and Public Utilities 1099**
 - 26-1 Public Entities and Public Utilities 1099
 - 26-1:1 Immunity From CFA Liability Generally 1099
 - 26-1:2 Eleventh Amendment Immunity
From CFA Claims 1100
 - 26-2 Derivative State Immunity for Merchants 1100
 - 26-3 Examples of Cases Where Public Entities or Public Utilities or
Merchants Claiming Derivative State Immunity Were not
Liable for Consumer Fraud 1100
 - 26-4 Claims Against Private Merchants Claiming That They
Acted Under Government Immunity 1103
 - 26-5 Political Parties’ Fundraising 1103
 - 26-6 Public Entities Acting As Consumers 1103
- Chapter 27: Real Estate Sales and Services 1105**
 - 27-1 CFA’s Applicability to Real Estate Sales 1105
 - 27-1:1 CFA’s Application to Real Estate Transactions 1105
 - 27-1:1.1 Generally 1105

Table of Contents

	27-1:1.2 Examples in Which CFA Claimants Do Not Receive Representations From Merchant.....	1106
27-1:2	Real Estate Builders and Developers	1108
	27-1:2.1 Introduction.....	1108
	27-1:2.2 New Residential Construction Off-Site Conditions Disclosure Act.....	1108
	27-1:2.3 Election of Remedies Under HOW.....	1109
	27-1:2.4 Examples of Unsuccessful Claims Against Builders/Developers.....	1111
	27-1:2.5 Examples of Potential or Successful Claims Against Builders/Developers.....	1118
27-1:3	Real Estate Brokers, Agents and Salespersons	1121
	27-1:3.1 Generally	1121
	27-1:3.2 Fiduciary Relationship Between Real Estate Broker and Clients	1121
	27-1:3.3 Limitations on Scope of Real Estate Broker and Agent Liability.....	1122
	27-1:3.4 Seller's Obligation to Complete Property Disclosure Statement and to Disclose About Flood Hazards and Risks	1124
	27-1:3.5 New Jersey Real Estate Commission Regulation Violations	1128
	27-1:3.6 Could a Seller Bring a CFA Claim Against Their Real Estate Broker or Agent?	1130
	27-1:3.7 Examples of Cases Where Real Estate Brokers, Agents and Salespersons Faced No CFA Liability	1130
	27-1:3.8 Examples of Cases Where Real Estate Brokers, Agents and Salespersons Faced Potential or Actual CFA Liability	1139
27-1:4	Nonprofessional Sellers of Real Estate	1145
	27-1:4.1 Generally	1145
27-1:5	Caveat Emptor, Merger Doctrine, "As Is" and "No Warranties" Clauses, Presale Investigations and Acceptance of Property With Known Defects	1146
	27-1:5.1 Generally	1146
	27-1:5.2 Caveat Emptor.....	1147
	27-1:5.3 Merger Doctrine	1148
	27-1:5.4 "As Is" and "No Warranties" Clauses	1150
	27-1:5.5 Buyer's Independent Investigation of Property or Knowledge of Presale Defects.....	1151
	27-1:5.6 CFA and Other Cases in Which Courts Refused to Bar Real Estate Suits Because of Contract Clauses or Investigations	1152
	27-1:5.7 CFA and Other Cases in Which Courts Barred Real Estate Suits Because of Contract Clauses or Investigations.....	1155

Table of Contents

27-2 Real Estate Resale and Management1158
 27-2:1 Generally1158
 27-2:2 Examples of Cases Where Real Estate Resellers
 or Managers Faced Actual or Potential CFA Liability1158
 27-2:3 Examples of Cases Where Real Estate Resellers or
 Managers Faced No CFA Liability1160
 27-3 Tenancies1162
 27-3:1 Generally1162
 27-3:2 Summary Dispossess Eviction Actions
 Do Not Preclude Separate Actions
 For CFA Claims1162
 27-3:3 CFA Liability of Landlords For Violating
 Rent Protection Emergency Act1164
 27-3:4 CFA Cases in Which Landlord
 Not Liable1164
 27-3:5 CFA Cases in Which Landlord Potentially
 or Actually Liable1167
 27-4 Condominium Complexes, Units and Associations1169
 27-4:1 The Condominium Act Generally1169
 27-4:2 Standing to Bring CFA Suits1171
 27-4:3 Examples of Viable CFA Cases Involving
 Condominiums1175
 27-4:4 Example of Unsuccessful CFA Case Involving
 Condominiums1179
 27-5 Real Estate Appraisers1179
 27-6 Home Inspectors1179
 27-7 Title Insurance and Title Agencies1184
 27-8 Escrow Agent Evaluation Services1184
 27-9 Banks Selling Real Estate1184
 27-10 Proof of Damages In CFA Real Estate Disputes1186
 27-10:1 Expert Testimony in Real Estate Disputes1186
 27-10:2 Different Measures of Ascertainable
 Loss in Real Estate CFA Cases1189
 27-11 Real Estate Information Businesses1189
 27-12 Public Adjusters1190
 27-12:1 Generally1190
 27-12:2 Example of Viable CFA Case Against
 a Public Adjuster1191
 27-13 Deed Procurement Services1191
 27-13:1 Generally1191
 27-13:2 Definitions1191
 27-13:3 Conduct Regulation and Liability1192
 27-13:4 Rulemaking by DCA1192
Chapter 28: Sales and Merchandise1193
 28-1 Sales and Merchandise Defined1193
 28-1:1 Generally1193
 28-1:2 What Constitutes “Merchandise” Under the CFA1193

Table of Contents

28-1:3	What Constitutes a “Sale” Under the CFA	1195
28-2	Charitable/Nonprofit Organization Solicitations/Sales	1196
28-3	Disclosure of Profit-Making Nature of Sale	1196
28-4	Disclosure of Raincheck Policy	1196
28-5	Disclosure of Refund Policies	1198
28-6	Geographic Origin of Business	1200
28-7	Gift Cards/Gift Certificates	1201
28-7:1	Definitions	1201
28-7:2	Per Se Violations and Restrictions	1202
28-7:3	Gift Card Fraud Detection, Prevention and Training.....	1203
28-8	“Going Out of Business” Sale	1204
28-9	Mail Order Sales.....	1204
28-9:1	Parties to Whom Rules Apply	1204
28-9:2	Per Se Violations	1204
28-10	Money Orders	1207
28-11	Operation Simulating Government Agency and Solicitations by Nongovernmental Entity	1207
28-11:1	Simulating Government Agency	1207
28-11:2	Solicitation by Nongovernmental Entity	1209
28-12	Price of Merchandise During State of Emergency.....	1209
28-12:1	Definitions	1209
28-12:2	Per Se Violations	1210
28-13	Resale of Entertainment Tickets	1210
28-13:1	Definitions	1210
28-13:2	Applicability	1212
28-13:3	Registration	1212
28-13:4	Ticket Resale Requirements	1213
28-13:5	DCA Rules and Regulations	1214
28-13:5.1	Definitions	1214
28-13:5.2	Remedies for Violations	1215
28-13:5.3	Ticket Broker Operations.....	1216
28-13:5.4	Ticket Sales	1216
28-13:5.4a	Sales Generally.....	1216
28-13:5.4b	Ticket Resales.....	1217
28-13:5.4c	Special Orders	1217
28-13:5.4d	Requiring Purchase of Additional Tickets as Condition of Resale or Exchange Prohibited.....	1217
28-13:5.4e	Disclosure of Information Via Receipt.....	1217
28-13:5.4f	Failure to Receive Ticket as Promised	1218
28-13:5.4g	Requirements for Ticket Sellers.....	1218
28-13:5.5	Records.....	1219
28-13:5.6	Advertising	1220

Table of Contents

28-13:6 Examples of CFA Cases Involving
Event Ticket Sales.....1221

28-14 Scheme Not to Sell Item or Service Advertised.....1223

28-14:1 Generally1223

28-14:2 Example of Unsuccessful Bait and Switch CFA Claim1223

28-14:3 Example of Viable Bait and Switch CFA Claim.....1223

28-15 Tagless Merchandise1224

28-16 Unit Price Disclosure1225

28-17 Sale of Expired Baby Food, Non-Prescription Drugs, Cosmetics1226

28-18 Baby Monitors.....1227

28-18:1 Generally1227

28-18.2 Requirements and Liability1227

28-19 Discrimination Against Cash-Paying Customers1228

28-20 Credit Card Surcharges1229

28-20:1 Generally1229

28-20:2 Definitions1229

28-20:3 Disclosure of Specific Limitations on
Credit Card Surcharges 1229

Chapter 29: Securities.....1231

29-1 Securities Outside CFA Scope1231

29-1:1 Generally1231

29-1:2 Examples of Securities Cases in Which CFA
Claims Barred1232

29-1:3 Example of a Securities Case With Viable
CFA Claims1233

Chapter 30: Telecommunications1235

30-1 Information Services.....1235

30-1:1 Definitions1235

30-1:2 CFA Violations1236

30-1:2.1 Generally1236

30-1:2.2 Per Se Violations1237

30-1:3 Subscriber Right to Block Access1238

30-1:4 Enforcement1238

30-2 Junk Faxes.....1238

30-2:1 Definitions1238

30-2:2 JFA Compared With Federal Law1239

30-2:3 Prohibited Conduct.....1240

30-2:4 Private Cause of Action, Penalties
and Per Se Violations1243

30-2:5 Example of an Unsuccessful CFA Claim1244

30-3 Prepaid Telephone Calling Cards1244

30-3:1 Definitions1244

30-3:2 Requirements1247

30-3:2.1 Disclosures.....1247

30-3:2.2 Restrictions on Rates1248

30-3:3 Per Se Violations1249

Table of Contents

	30-3:4 Dormancy Fees.....	1249
30-4	Telemarketing Calls.....	1249
	30-4:1 Definitions and Applicability	1249
	30-4:2 Violations and Penalties	1251
	30-4:3 Telemarketer Registration	1252
	30-4:3.1 Registration Requirements.....	1252
	30-4:3.2 Failure to Comply With Registration Requirements.....	1252
	30-4:3.3 Effect of Registration.....	1253
	30-4:4 Do Not Call List.....	1253
	30-4:5 Prohibited Conduct.....	1254
	30-4:6 Collection of Fees.....	1255
	30-4:7 Information Submitted to Division.....	1255
	30-4:8 Administrative Regulations.....	1255
30-5	The Filed Rate Doctrine’s Preemption of CFA Telecommunication Cases.....	1256
	30-5:1 The Doctrine Generally	1256
	30-5:2 Case in Which the Filed Rate Doctrine Preempted CFA Claims.....	1256
	30-5:3 Cases in Which the Filed Rate Doctrine Did Not Preempt CFA Claims.....	1257
30-6	Example of Successful or Viable Claim Against Telephone Service Providers	1257
30-7	Inmate Calling Services	1258
Chapter 31: Temporary Help Services.....		1259
31-1	CFA Amendment for Temporary Help Services	1259
31-2	CFA Regulations	1261
31-3	Temporary Help Service Firms, Employment Agencies, and Consulting Firms Compared With One Another.....	1261
	31-3:1 Temporary Help Service Firms Dealt With Differently Than Employment Agencies.....	1261
	31-3:2 Temporary Help Firm Defined	1264
	31-3:3 “Employment Agency” Defined.....	1265
	31-3:4 Consulting Firm Defined	1265
	31-3:5 Examples of Cases in Which Business Found Not to Be Temporary Help Service Firms.....	1266
	31-3:6 Examples of Cases in Which Businesses Found to be Temporary Help Service Firms	1266
31-4	General Requirements	1267
31-5	Transportation Requirements	1267
31-6	Wage Requirements.....	1268
31-7	Unlicensed Agencies Estopped From Collecting Debts	1268
31-8	Unlicensed Agencies Barred From Litigating Non-Debt Collection Claims.....	1273
31-9	Failure to Secure Contract Position Fails to Support CFA Claim	1273

Table of Contents

Chapter 32: Toys1275

32-1 Toy Safety and Notification Requirements1275

 32-1:1 Statutory Requirements1275

 32-1:2 Administrative Rule Requirements1276

 32-1:2.1 Definitions1276

 32-1:2.2 Administrative Reporting Requirements1276

 32-1:2.3 Toy Recall Notices1277

 32-1:3 Amended Child Product Safety Law1277

 32-1:3.1 Objective1277

 32-1:3.2 Definitions1279

 32-1:3.3 Unlawful Practices1280

 32-1:3.4 Retrofitting1280

 32-1:3.5 Public List of Unsafe Child’s Products1281

 32-1:3.6 Administrative Regulations.....1281

32-2 Bicycle Safety Notices1281

Chapter 33: Vehicle Sales and Services.....1283

33-1 Automotive Advertising and Sales Practices1283

 33-1:1 Introduction.....1283

 33-1:2 Automotive Advertising Practices Regulations1284

 33-1:2.1 Introduction.....1284

 33-1:2.2 Advertisements to Which Regulations Apply1284

 33-1:2.3 Definitions1284

 33-1:2.4 Bait and Switch Advertising Prohibited1287

 33-1:2.5 Mandatory Disclosure Requirements in All Sale Advertisements1288

 33-1:2.6 Mandatory Disclosure Requirements in All Lease Advertisements1289

 33-1:2.7 Unlawful Advertising Practices1292

 33-1:2.8 Mandatory Disclosures in Certain Credit and Installment Sale Advertisements1294

 33-1:2.9 Mandatory On-Site Disclosures1295

 33-1:2.10 Mandatory Recordkeeping Requirements1296

 33-1:3 Automotive Sales Practices Regulations1296

 33-1:3.1 Introduction.....1296

 33-1:3.2 Definitions1297

 33-1:3.3 Per Se Violations.....1298

 33-1:4 Odometer Mileage Misrepresentation Cases1299

 33-1:4.1 Generally1299

 33-1:4.2 Damages in an Odometer Rollback Case1300

 33-1:4.2a Generally1300

 33-1:4.2b The *Romano* Case.....1300

Table of Contents

33-1:5	Examples of Unsuccessful CFA Vehicle Advertising and/or Sales and/or Services Cases.....	1304
33-1:6	Examples of Successful or Viable CFA Vehicle Advertising and/or Sales and/or Services Cases.....	1307
33-2	Vehicle Leasing and Subleasing	1315
33-2:1	Leasing	1315
33-2:2	Subleasing.....	1315
33-3	Lemon Law for New Car Purchase.....	1315
33-3:1	Introduction	1315
33-3:2	Notice of Consumer Rights	1316
33-3:3	CFA Violations Under NCLL	1317
33-3:4	Example of Potentially Viable CFA Case Based on NCLL Violation	1319
33-4	Lemon Law — Used Car.....	1319
33-4:1	Definitions	1319
33-4:2	Applicability to Dealer/Lessors.....	1321
33-4:3	Per Se Violations.....	1321
33-4:4	Minimum Warranties for Certain Vehicles	1322
33-4:5	Dealer’s Obligation to Buy Back Vehicle.....	1324
33-4:6	Affirmative Defenses.....	1324
33-4:7	Presumptive Lemon	1324
33-4:8	Warranty Extended While Vehicle Undergoing Repairs.....	1325
33-4:9	Bond Requirement.....	1325
33-4:10	Administrative Regulations.....	1325
33-4:11	Service of Pleading upon Used Car Lemon Law Unit.....	1325
33-5	Vehicle Repairs.....	1325
33-5:1	Definitions	1325
33-5:2	Applicability	1326
33-5:3	Per Se Violations.....	1327
33-5:4	Examples of Viable or Successful CFA Vehicle Repair Cases	1332
33-5:5	Examples of Unsuccessful CFA Vehicle Repair Cases	1336
33-6	Municipal Storage Charges for Automobiles.....	1338
33-7	Tire Regulations	1338
33-7:1	Definitions	1338
33-7:2	Per Se Violation	1339
33-8	Vehicle Protection Products.....	1339
33-8:1	Vehicle Protection Product Defined	1339
33-8:2	Registration Required for Sale of Vehicle Protection Products.....	1341
33-8:3	Requirements for Issuance of Vehicle Protection Product Warranty	1342
33-8:4	Registration Requirements.....	1342

Table of Contents

- 33-8:5 Prohibition Against Requiring Purchase of Vehicle Protection Product for Sale or Financing 1344
- 33-9 Watercraft Repairs..... 1344
 - 33-9:1 Definitions 1344
 - 33-9:2 Per Se Violations 1345
- 33-10 Window Tinting 1350
 - 33-10:1 CFA Violations 1350
 - 33-10:2 Enforcement by Director..... 1351
- 33-11 Private Property and Non-Consensual Towing Companies 1351
 - 33-11:1 The Predatory Towing Prevention Act (PTPA) and Its Regulations Generally 1351
 - 33-11:2 Procedural Considerations for PTPA Claims 1354
 - 33-11:2.1 Presuit Dispute Resolution Effort 1354
 - 33-11:2.2 No Derivative Immunity for Tow Operators 1354
 - 33-11:2.3 Potential for Class Action PTPA Claims 1354
 - 33-11:3 Definitions 1354
 - 33-11:4 Requirement to Maintain Liability Insurance 1356
 - 33-11:5 Consent to Tow Vehicles From Private Property 1356
 - 33-11:6 Schedule of Services Eligible for Charging a Fee and Reasonable Fees 1358
 - 33-11:7 Requirements for Storage Facility Used By a Towing Company 1359
 - 33-11:8 Per Se CFA Liability and DCA's Refund Power 1360
 - 33-11:9 Availability of Records..... 1362
 - 33-11:10 Establishment of a Towing and Storage Administration and Enforcement Fund 1362
 - 33-11:11 DCA's Right to Make Rules and Regulations..... 1362
 - 33-11:12 PTPA's Effect on Local Government, Toll Road Authority, Law Enforcement Powers 1363
 - 33-11:13 Severability 1363
 - 33-11:14 Predatory Towing Prevention Act and Related Regulations (PTPAR) Definitions 1363
 - 33-11:15 PTPAR Mandatory Minimum Insurance Requirements 1366
 - 33-11:16 PTPAR Towing Fee Schedule..... 1367
 - 33-11:17 Fees Declared Unreasonable by the PTPAR 1370
 - 33-11:18 PTPAR Restrictions on Towing Motor Vehicles From Private Property 1371
 - 33-11:19 PTPAR Storage Facility Requirements 1373
 - 33-11:20 PTPAR Private Property Towing Practices..... 1373
 - 33-11:21 PTPAR Recordkeeping Requirements..... 1374
 - 33-11:22 Per Se CFA Liability for PTPAR Violations 1375
 - 33-11:23 Examples of Successful or Potentially Successful PTPA Cases 1375
 - 33-11:24 Example of an Unsuccessful PTPA Case 1375

Table of Contents

33-12	Vehicle Service Contracts.....	1376
33-13	Vehicle Rentals	1376
	33-13:1 Generally	1376
	33-13:2 Example of Unsuccessful CFA Claim Against Rental Vehicle Business.....	1376
	33-13:3 Examples of Viable CFA Claims Against Rental Vehicle Businesses.....	1377
33-14	Marinas.....	1378
	33-14:1 Generally	1378
	33-14:2 Unsuccessful CFA Claims Against Marinas.....	1378
33-15	Motor Vehicle Payment Assurance Devices.....	1379
	33-15:1 Generally	1379
	33-15:2 Definitions	1379
	33-15:3 Prohibited Conduct.....	1380
33-16	Vehicle Inspection Services	1381
Chapter 34: International Labor Matching Organizations and International Matchmaking Organizations		1383
34-1	Introduction	1383
34-2	Scope	1383
34-3	Definitions	1384
34-4	Registration Requirements and Procedures	1386
34-5	Disqualifying Crimes and Petition for Review	1389
34-6	Information Provided to Recruits	1391
34-7	Recordkeeping Requirements	1392
Chapter 35: Pharmaceutical and Dietary Supplement Products and Services.....		1393
35-1	Introduction	1393
35-2	Preemption of CFA Pharmaceutical Claims.....	1393
	35-2:1 Generally	1393
	35-2:2 Cases in Which CFA Pharmaceutical Claims Were Preempted	1394
35-3	Prior Substantiation Theory of Liability Claims.....	1395
	35-3:1 Generally	1394
	35-3:2 CFA Pharmaceutical Cases Barred by Prior Substantiation Doctrine.....	1396
35-4	Third-Party Payors Bringing CFA Claims	1398
	35-4:1 Generally	1398
	35-4:2 Examples of Unsuccessful CFA Claims Brought by Third-Party Payors	1398
35-5	Unsuccessful CFA Pharmaceutical Cases.....	1399
35-6	Viable CFA Pharmaceutical Cases.....	1405
35-7	Pharmacies	1408
35-8	Medical Marijuana Distribution	1409
	35-8:1 Introduction.....	1409
	35-8:2 Scope of Regulations	1410
	35-8:3 Physician Reporting Requirements	1410

Table of Contents

35-8:4	Alternative Treatment Center Reporting Requirements	1410
35-8:5	Electronic Format Requirements for Information Transmitted.....	1411
35-8:6	Frequency Requirements for Transmitting Information and Confidentiality of Information	1412
35-8:7	DCA's Ability to Waive Requirements	1412
35-9	Sale of Expired Baby Food, Non-Prescription Drugs, Cosmetics	1412
35-10	Pharmacy Benefits Managers	1413
Chapter 36: Arbitration of CFA Claims Outside the Courts		1415
36-1	Introduction	1415
36-2	Overview of Arbitration Process	1417
36-2:1	What is Out-of-Court Arbitration?	1417
36-2:2	Arbitration Derives From a Contract.....	1417
36-2:3	Benefits of Arbitration.....	1417
36-2:3.1	Generally	1417
36-2:3.2	Arbitration's Potential Benefits for Merchants Responding to Claims	1418
36-2:3.3	Arbitration's Potential Benefits for CFA Claimants	1418
36-2:4	Disadvantages of Arbitration	1419
36-2:5	Arbitration Issues May Require Application of Another State's Substantive Law	1423
36-2:6	Arbitration Agreements Might Exclude CFA Claims.....	1423
36-3	Legislation Puts Arbitration on Equal Footing With Litigation	1423
36-4	Use of Arbitration Agreements	1424
36-5	Effect of Arbitration Clauses Upon CFA Claims	1425
36-5:1	Generally	1425
36-5:2	Obstacles to Enforcing Arbitration Clauses	1425
36-5:2.1	Generally	1425
36-5:2.2	Supreme Court Encourages Litigation Over the Enforceability of Arbitration Clauses	1425
36-5:2.3	Sophisticated Parties May Bind Themselves to Arbitration Via Clauses Lacking Explicit Waivers	1426
36-5:2.4	Specific Conditions Potentially Weighing Against Enforcing an Arbitration Clause.....	1427
36-5:3	Wrap Arbitration Agreements.....	1427
36-6	Drafting Arbitration Clauses.....	1430
36-7	Federal Arbitration Act's Application	1433
36-8	Ruaa's Application	1434
36-8:1	Generally	1434
36-8:2	Issues Not Subject to Alteration in Arbitration Agreements	1435
36-9	Who Decides Arbitrability?	1435
36-9:1	Generally	1435
36-9:2	When a Court Decides Arbitrability	1435

Table of Contents

36-9:3	Delegation of Arbitrability to Arbitrator	1436
36-9:3.1	Valid Delegation Clauses Require That Arbitrators Decide Arbitrability	1436
36-9:3.2	Imprecise Delegation Clauses are Unenforceable.....	1437
36-9:4	Validity of Parties' Contract	1437
36-9:5	Drafting Clear Delegation Clauses.....	1438
36-9:6	Examples of Unsuccessful Delegation Clauses	1438
36-10	Summary Actions to Determine Whether an Action Must Be Arbitrated	1438
36-11	Motions to Dismiss Suit and Compel Arbitration	1439
36-11:1	Generally	1439
36-11:2	Motions to Compel Arbitration Where Clauses Require Out-of-State Arbitration	1439
36-11:3	Motions to Compel Arbitration in the District of New Jersey.....	1440
36-11:4	Appealing Orders Deciding Motions to Compel Arbitration.....	1442
36-12	Determining if a CFA Claim Must Be Arbitrated	1444
36-12:1	New Jersey State Court Test for Deciding If a CFA Claim Requires Arbitration	1444
36-12:2	Are the Parties Bound to a Valid Arbitration Clause?.....	1444
36-12:2.1	Assent to Arbitration	1444
36-12:2.2	The Standard Used to Interpret the Arbitration Agreement's Language	1448
36-12:2.3	Adhesion Doesn't Automatically Invalidate Arbitration Clause	1448
36-12:2.4	Placement of Arbitration Clause in a Contract.....	1449
36-12:2.5	Failure to Read Arbitration Clause Before Signing Contract.....	1449
36-12:2.6	Use of Arbitration Agreements Separate From the Parties' Contracts.....	1449
36-12:2.7	Challenging Arbitration Agreements on Grounds Existing at Law or in Equity.....	1450
36-12:2.7a	Challenging Arbitration Agreements For Lack of Consideration.....	1450
36-12:2.7a1	Generally.....	1450
36-12:2.7a2	Examples of Arbitration Agreements Unenforceable in the Absence of Consideration	1451
36-12:2.7b	Challenging Arbitration Agreements on the Basis of Unconscionability	1452

Table of Contents

	36-12:2.7c	Challenging Arbitration Agreements on the Basis of Fraud	1453
	36-12:2.7d	Challenging Arbitration Agreements on the Basis of Adhesion.....	1455
	36-12:2.8	Reasonable Notice of Existence of an Arbitration Clause and Repercussions of Merchant’s Failure to Call Attention or Provide Arbitration Clause	1456
	36-12:2.9	Should the Sophistication of the Parties or Representation by Counsel Play a Role in Deciding if They Agreed to Arbitrate Disputes?.....	1458
	36-12:3	Does the CFA Claim Fall Within the Scope of the Arbitration Clause?	1459
36-13	Waiver of Arbitration Rights.....		1461
	36-13:1	Generally	1461
	36-13:2	Presumption Against Waiver of Arbitration Rights	1462
	36-13:3	Failure to Pay Arbitration Fees Waives Right to Compel Arbitration.....	1463
	36-13:4	Examples of Situations in Which Arbitration Was Not Waived	1465
	36-13:5	Examples of Situations in Which Arbitration Was Waived.....	1466
36-14	Compelling Nonsignatories to Arbitration Agreements to Arbitrate Claims.....		1469
	36-14:1	Generally	1469
	36-14:2	Situations Which May Allow Enforcement of Arbitration Against Nonsignatories.....	1470
	36-14:3	Compelling Nonsignatories to Arbitrate in the District of New Jersey.....	1470
	36-14:4	Compelling Nonsignatories to Arbitrate Claims Via Equitable Estoppel	1471
	36-14:5	Examples of CFA Case in Which Court Compelled Nonsignatories to Arbitrate Claims	1472
	36-14:6	Examples of CFA Cases in Which Courts Refused to Compel Nonsignatories to Arbitrate Claims	1473
36-15	Examples of CFA Cases in Which Courts Enforced Arbitration Agreements.....		1475
36-16	Examples of CFA Cases in Which Arbitration Agreements Were Circumvented.....		1489
36-17	Handling Arbitrations Outside the Court System.....		1502
	36-17:1	Initiating Arbitration	1502
	36-17:2	Scope of Arbitrator’s Authority	1502
	36-17:3	Rules Applied to Arbitration Proceeding	1503

Table of Contents

36-17:4 Consequences for Failing to Participate
in Arbitration Proceeding 1504

36-18 Judicial Review of Arbitration Awards Rendered Outside
the Court System 1504

36-18:1 Generally 1504

36-18:2 Judicial Review of Arbitration Awards
by District Courts 1505

36-18:3 Consequences of Failing to Vacate an Arbitration
Award in the District of New Jersey 1506

36-18:4 Judicial Review of Arbitration Awards Under RUAA 1506

36-18:5 State Court Appeals of Motions Compelling
or Denying Arbitration 1509

36-19 Consumer Fraud Claims Brought Against Arbitration
Providers 1509

Chapter 37: Charitable Institutions 1511

37-1 Introduction 1511

37-2 Charitable/Nonprofit Organization Solicitations/Sales 1511

37-3 Charitable Immunity 1511

37-3:1 The Charitable Immunity Act Generally 1511

37-3:2 Does the Entity Qualify for Charitable Immunity? 1512

37-4 Charitable Immunity Only Bars Negligence Claims and
Therefore Does Not Bar Consumer Fraud 1514

37-5 Example of CFA Claim Brought Against a Nonprofit Institution 1515

Chapter 38: Private Utility Services and Fuel Suppliers 1517

38-1 Private Utility Services 1517

38-1:1 Generally 1517

38-1:2 Examples of Unsuccessful CFA Claims Involving
Utility Services 1518

38-1:3 Examples of Viable CFA Claims Involving Utility
Services 1522

Chapter 39: Private Education 1525

39-1 Generally 1525

39-2 Cases In Which Private Education Services Were
Potentially or Actually Liable for CFA Violations 1526

39-3 Cases in Which Private Education Services Were Not Liable
for CFA Violations 1527

39-4 Online Educational Services 1529

39-4:1 Generally 1529

39-4:2 Definitions 1529

39-4:3 Conduct Prohibited 1531

39-4:4 Conduct Required 1533

39-4:5 Use of De-Identified Data 1534

39-4:6 Construction of the Subsection 1534

39-4:7 Rulemaking Authority 1535

39-4:8 Per Se CFA Liability 1535

39-5 Higher Education Collections 1535

Table of Contents

39-5:1	Generally	1535
39-5:2	Definitions	1536
39-5:3	Per Se CFA Liability	1537
39-6	Private Career School Collections.....	1538
39-6:1	Generally	1538
39-6:2	Definitions	1538
39-6:3	Per Se CFA Liability	1539
Chapter 40: Business CFA Claims.....		1540
40-1	Generally	1540
40-2	The Test for Applying the CFA to Business Transactions	1543
40-2:1	The Test Generally	1543
40-2:2	The Purpose Behind the Purchase	1544
40-2:3	The Nature of the Goods or Services	1545
40-2:4	The Parties' Sophistication or Complexity of Negotiations	1546
40-2:5	When Should a Challenge to Standing be Decided?	1547
40-3	Unfair Competition Between Businesses	1547
40-4	Examples of Cases Where Businesses Lack Standing to Bring CFA Claims	1551
40-5	Examples of Cases Where Businesses Have or Might Have Standing to Bring CFA Claims	1559
40-6	Annual Report Filing Services	1564
40-6:1	Generally	1564
40-6:2	Definitions	1565
40-6:3	Conduct Regulated and Per Se CFA Violations	1565
40-6:4	Rulemaking Authority	1566
Chapter 41: Transportation.....		1567
41-1	Introduction	1567
41-2	Preemption of CFA Transportation Claims	1567
41-2:1	Preemption of CFA Cases Involving Transportation Generally	1567
41-2:2	Examples of Preempted CFA Claims Involving Transportation	1567
41-3	Examples of Unsuccessful Claims Against Transportation or Moving Businesses for Reasons Other Than Preemption.....	1571
41-3:1	Examples of Preempted CFA Claims Involving Freight Transportation or Moving Services.....	1571
Chapter 42: Debt Collectors, Debt Buyers and Debt Settlement Businesses		1573
42-1	Debt Collectors Generally	1573
42-1:1	The <i>Gonzalez</i> Case	1574
42-1:2	Examples of CFA Cases Decided Before <i>Gonzalez</i> in Which Debt Collectors Faced No Liability	1576
42-1:3	Examples of CFA Cases Decided After <i>Gonzalez</i> in Which Debt Collectors and Debt Buyers/ Assignees Faced No Liability	1577

Table of Contents

42-1:4	Examples of CFA Cases in Which Debt Collectors or Debt Buyers/Assignees Faced Actual or Potential CFA Liability	1580
42-2	Licensed Professionals Collecting Debts	1582
42-3	Higher Education Debt Collection	1582
42-4	Private Career School Debt Collections.....	1582
42-5	Debt Settlement Businesses	1582
42-5:1	Generally	1582
42-5:2	Example of Potentially Viable Debt Settlement CFA Case	1583
Chapter 43: Tax Preparation Services.....		1585
43-1	Generally	1585
43-2	Prohibited Actions Imposing Per Se CFA Liability	1586
43-3	Mandatory Compliance Disclosures About Refund Anticipation Loans and Per Se CFA Liability for Noncompliance	1587
43-4	Obligation to Furnish Itemized Statement of Service Charges	1589
Chapter 44:Veterans Benefits Advisors		1591
44-1	Veterans Benefits Advisors.....	1591
44-1:1	Generally	1591
44-1:2	Definitions	1592
44-1:3	Prohibited Practices and Per Se CFA Liability	1592
Table of Cases.....		1595
Index		1747

Forms Online

The following Forms are available online. See the Digital Access page at the front of this book for details about how to access the Forms.

PRESUIT FORMS

Form 1-001	Consumer Fraud Case Intake
Form 1-002	Plaintiff’s Contingent Fee Agreement for Attorney’s Fees Only
Form 1-003	Presuit Demand Letter Alleging Consumer Fraud Act Violations (Generic)
Form 1-004	Plaintiff’s Attorney’s Letter to Client Transmitting Presuit Demand
Form 1-005	Agreement to Provide Legal Services—Hourly Fee
Form 1-006	Agreement to Provide Legal Services—Contingent Fee
Form 1-007	Defense Fee Agreement—Hourly Fee

PLAINTIFF’S INITIAL PLEADING FORMS

Form 2-001	CFA Litigation Checklist
Form 2-002	Complaint and Jury Demand Alleging All 3 Types of CFA Violations on a Contract for Sale of Goods and/or Services

Table of Contents

Form 2-003	Complaint and Jury Demand Alleging All 3 Types of CFA Violations on a Contract for Sale of Goods and/or Services with Civil Conspiracy To Commit Tort/Concert of Action and Joint Enterprise/Venture Causes of Action
Form 2-004	Complaint and Jury Demand Alleging Per Se CFA Violation and Section 2 CFA Violations—Odometer Rollback Fraud Against Used Car Dealer
Form 2-005	Complaint with Jury Demand Alleging CFA Violation in the Sale of Real Estate (Defective Septic System, Claim Against Seller, Agent and Broker)
Form 2-006	Complaint with Jury Demand Alleging Section 2 CFA Violations in the Sale of Real Estate—Sale of New Home Involving Claim against New Home Contracting Company, Architect, Building Materials Supply Company, Real Estate Brokerage Agency and Real Estate Agent
Form 2-007	Generic Class Action Complaint by New Jersey Residents Against Sellers of Goods/Services
Form 2-008	Complaint and Jury Demand Alleging All 3 Types of CFA Violations on Contract for Sale/Lease of Vehicle with Predelivery Defects

DEFENSE INITIAL PLEADING FORMS¹

Form 4-001	Letter to Plaintiff's Counsel Transmitting Proposed Stipulation Extending Time to File Responsive Pleading
Form 4-002	Stipulation Extending Time to File Responsive Pleading
Form 4-003	Letter to Plaintiff's Counsel Transmitting Proposed Consent Order Extending Time to File Responsive Pleading
Form 4-004	Consent Order Enlarging Time to File Responsive Pleading
Form 4-005	Letter Forwarding Executed Consent Order to Pretrial Judge Assigned to Case
Form 4-006	Sample Affirmative Defenses to CFA Complaint
Form 4-007	Defendant/Third Party's Complaint With Jury Demand (Automobile Auction Purchase)

DISCOVERY DOCUMENTS

Form 5-001	Letter Transmitting Plaintiff's Discovery Demands to Defense Counsel
Form 5-002	Plaintiff's Demand for Certification of Insurance Information to Defendants
Form 5-003	Plaintiff's First Set of Interrogatories Directed to Defendants—CFA Violations in Sale of Goods and/or Services
Form 5-004	Plaintiff's First Notice to Produce Directed to Defendants—CFA Violation in Sale of Goods and/or Services

¹ Note that the forms are numbered based on the chapters of the book that they accompany, therefore since there are no forms to accompany Chapter 3, Form 2-008 is followed by Form 4-001.

Table of Contents

Form 5-005	Plaintiff's First Set of Interrogatories Directed to Defendant— CFA Violations in Sale of Preowned Home with Defective Septic System
Form 5-006	Plaintiff's First Notice to Produce Directed to Defendants— CFA Violations in Sale of Preowned Home with Defective Septic System
Form 5-007	Letter Transmitting Defendant's Discovery Demands to Plaintiffs' Counsel
Form 5-008	Defendant's Demand for Statement of Damages to Plaintiffs
Form 5-009	Defendant's Demand for Copies of Documents Referred to in Complaint Pursuant to Rule 4:18-2
Form 5-010	Defendant's First Set of Interrogatories Directed to Plaintiff in a Consumer Fraud Case—CFA Violation in Sale of Goods and/ or Services
Form 5-011	Defendants' First Notice to Produce Directed to Plaintiffs—CFA Violation in Sale of Goods and/or Services
Form 5-012	Defendant's First Set of Interrogatories Directed to Plaintiff in a Consumer Fraud Case (Fraud in Real Property Sale Relative to Defective Septic System)
Form 5-013	Defendant's First Notice to Produce Directed to Plaintiffs— CFA Violation in Preowned Home Relative to Defective Septic System
Form 5-014	Letter Transmitting Notice in Lieu of Subpoena for Deposition
Form 5-015	Notice in Lieu of Subpoena for Deposition
Form 5-016	Defense Counsel's Letter Transmitting Subpoena for Records Deposition Upon Nonparty
Form 5-017	Letter to Client Forwarding Adversary's Discovery Demands for Completion
Form 5-018	Letter to Opponent Transmitting Discovery Responses
Form 5-019	Draft Interrogatory Answers with General Objections Interposed
Form 5-020	Letter to Opponent Transmitting Amendments to Discovery Responses
Form 5-021	Letter Demanding Overdue Responses to Interrogatories and Notice to Produce
Form 5-022	Subpoena for Records Deposition of Nonparty
Form 5-023	First Set of Interrogatories to Third Party Defendants (Automobile Auction Purchase)
Form 5-024	First Notice to Produce to Third Party Defendants (Automobile Auction Purchase)
PRETRIAL MOTION PRACTICE	
Form 6-001	Notice of Motion to Suppress Responsive Pleading for Failure to Make Discovery
Form 6-002	Order Granting Motion to Suppress Responsive Pleading for Failure to Make Discovery
Form 6-003	Certification of Counsel in Support of Motion to Suppress Responsive Pleading for Failure to Make Discovery

Table of Contents

Form 6-004	Certification of Service to Motion to Suppress Responsive Pleading for Failure to Make Discovery
Form 6-005	Notice of Motion to Dismiss Complaint for Failure to Make Discovery
Form 6-006	Order Granting Motion to Dismiss Complaint for Failure to Make Discovery
Form 6-007	Certification of Counsel in Support of Motion to Dismiss Complaint for Failure to Make Discovery
Form 6-008	Certification of Service to Motion to Dismiss Complaint for Failure to Make Discovery
Form 6-009	Letter to Client Pursuant to Rule R. 4:23-5(a)(1)
Form 6-010	Letter to Pro Se Party Pursuant to Rule R. 4:23-5(a)(1)
Form 6-011	Letter to Client Pursuant to Rule R. 4:23-5(a)(2)
Form 6-012	Letter to Pro Se Party Pursuant to Rule R. 4:23-5(a)(2)
Form 6-013	Letter to Opponent Requesting Consent to Extend Discovery 60 Days
Form 6-014	Letter to Court Requesting 60-Day Extension of Discovery
Form 6-015	Notice of Motion to Extend Discovery Pursuant to Rule 4:24-1(C)
Form 6-016	Order Granting Motion to Extend Discovery Pursuant to Rule 4:24-1(C)
Form 6-017	Certification of Counsel in Support of Motion to Extend Discovery Pursuant to Rule 4:24-1(C)
Form 6-018	Certification of Service to Motion to Extend Discovery Pursuant to Rule 4:24-1(C)
Form 6-019	Order Extending Discovery for Joinder of New Party and Setting new Discovery End Date Pursuant to R.4:24-1(b)

MEDIATION DOCUMENTS

Form 7-001	Letter to Plaintiffs Advising Same of Mediation
Form 7-002	Letter Transmitting Mediation Statement
Form 7-003	Mediation Settlement

ARBITRATION DOCUMENTS

Form 8-001	Letter to Plaintiffs Advising Same of Arbitration Hearing
Form 8-002	Letter Transmitting Uniform Commercial Arbitration Statement
Form 8-003	Plaintiff's Uniform Commercial Arbitration Statement
Form 8-004	Defendant's Uniform Commercial Arbitration Statement
Form 8-005	Plaintiff's Notice of Motion to Confirm Arbitration Award, Enter Award of Fees and Costs and Enter Judgment
Form 8-006	Proposed Order Confirming Arbitration Award, Entering Award of Fees and Costs and Entering Judgment
Form 8-007	Certification of Service to Plaintiffs' Motion to Confirm Arbitration Award, to Enter an Award of Counsel Fees and to Enter Judgment
Form 8-008	Certification of Counsel in Support of Motion to Confirm Arbitration Award, to Enter Award of Fees and Costs and to Enter Judgment

Table of Contents

TRIAL DOCUMENTS

Form 9-001	Letter to Plaintiff Advising Same of Trial
Form 9-002	Letter Transmitting Notice in Lieu of Subpoena for Appearance at Trial
Form 9-003	Notice in Lieu of Subpoena for Appearance at Trial
Form 9-004	Notice in Lieu of Subpoena for Appearance at Trial
Form 9-005	Letter Transmitting Subpoena for Trial Testimony to Nonparty
Form 9-006	Subpoena to Nonparty for Trial Testimony and the Production of Documents
Form 9-007	Letter Transmitting Pretrial Information Exchange to Opponent
Form 9-008	Plaintiff's Pretrial Information Exchange
Form 9-009	Defendant's Pretrial Information Exchange
Form 9-010 ²	Jury Charges
Form 9-011	Jury Interrogatories—CFA in Sale of Goods/Services
Form 9-012	Consent Order for Expedited Jury Trial
Form 9-013	Consent Order or Summary Jury Trial
Form 9-014	Plaintiff's Pretrial Memorandum Submitted Pursuant to R. 4:25-3

SETTLEMENT AND POST TRIAL DOCUMENTS

Form 10-001	Letter to Court Reporting Settlement
Form 10-002	Stipulation of Dismissal Without Prejudice as to One Defendant Only
Form 10-003	Stipulation of Dismissal with Prejudice as to All Parties
Form 10-004	Letter Forwarding Stipulation of Dismissal to Court for Filing
Form 10-005	Plaintiff's Attorney's Letter Confirming Terms of Settlement with Client and Forwarding Release of Claims (w/encl.)
Form 10-006	Release of Claims
Form 10-007	Letter Transmitting Warrant to Satisfy Judgment Recorded as Lien to Court for Filing
Form 10-008	Warrant to Satisfy Judgment
Form 10-009	Letter Transmitting Warrant to Satisfy Judgment Never Recorded as Lien to Court for Filing
Form 10-010	Warrant to Satisfy Judgment Never Recorded as Lien
Form 10-011	Letter Serving Time Stamped Copy of Warrant to Satisfy Judgment on Defense Counsel
Form 10-012	Plaintiff's Attorney's Letter to Client Forwarding Closing Statement
Form 10-013	Closing Statement
Form 10-014	Plaintiff's Attorney's Letter to Client Closing File
Form 11-001	Letter Serving Judgment on Opponent
Form 11-002	Letter Transmitting Judgment to Court for Recording as Statewide Lien

² The model jury charges have been renumbered and the latest version of the model CFA charge may be found at <https://www.njcourts.gov/courts/civil/model-civil-jury-charges>.