

Chap	ter 1: Gen	eral Description, History and General Purpose				
		ne CFA				
l-1	What is	s the Consumer Fraud Act?				
1-2	Histori	Historical Background				
	1-2:1	CFA as Originally Adopted				
	1-2:2	Amendments to CFA				
1-3	Purpos	e				
	1-3:1	Promotion of Truth and Fair Dealing				
		in Marketplace				
	1-3:2	Compensation of Victim for Actual Loss				
	1-3:3	Punishment of Wrongdoer				
	1-3:4	Attraction of Competent Counsel				
		for Private Enforcement				
~II	4 2. C	f d CEA				
onap 2-1	ter 2: Scop	pe of the CFA	I.			
2-1	2-1:1	Interpretation and Invocation of CFA				
		Law Favors Liberal Interpretation of CFA				
	2-1:2	Growing Trend Toward Restricting CFA's Scope				
	2-1:3	State Court Guidelines for Interpreting CFA				
	2-1:4	Federal Court Interpretation of the CFA				
	2-1:5	Courts' Independent Invocation of the CFA				
2-2		ative Relief				
2-3		bility of Invalid Provisions or Applications				
2-4		a Claimant Under the CFA?				
	2-4:1	Standing Generally	2			
	2-4:2	Types of Misconduct Constituting	_			
		Consumer Fraud				
	2-4:3	Direct and Indirect Acts Covered by CFA				
	2-4:4	Ascertainable Loss Requirement				
	2-4:5	"Person" Defined Under the CFA				
	2-4:6	"Consumers" as CFA Claimants				
	2-4:7	CFA Victims Qualify if Out-of-State Residents				
	2-4:8	Ignorance or Sophistication of CFA Victim				
	2-4:9	Privity of Contract and Indirect Purchasers				
		2-4:9.1 Privity and Standing to Bring Claim	2			
		2-4:9.2 Examples of CFA Cases				
		in Which Privity Not Required	2			

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023









		2-4:9.3 Privity and Damages, Dismissal	
		of Claims	32
	2-4:10	Incidental Beneficiaries and Assignees	
	2-4:11	No Requirement That Misrepresentation	
		be in Writing	34
	2-4:12	Subsequent Performance	
	2-4:13	Customer Dissatisfaction Alone Insufficient	
		to Provide Standing	36
	2-4:14	Use of Product Unnecessary for Standing	38
	2-4:15	Employees' and Independent Contractors' Claims	38
	2-4:16	Sellers as Claimants	
	2-4:17	Businesses and Franchisees as Claimants	40
	2-4:18	Public Entities Acting as Consumers	
	2-4:19	Attorneys as CFA Claimants	
	2-4:20	Discovery Infractions	
	2-4:21	Reliance on Advice of Counsel	
	2-4:22	Is a Sale or Purchase Necessary?	
	2-4:23	Custom Ordered Merchandise	
		2-4:23.1 Generally	
		2-4:23.2 Examples of Viable CFA Cases	
		Involving Custom Ordered Merchandise	45
		2-4:23.3 Example of Unsuccessful CFA Case	
		Involving Custom Ordered Merchandise	46
2-5	Who is a	a Merchant Subject to the CFA?	46
	2-5:1	Generally	
	2-5:2	Out-of-State Merchants	
	2-5:3	Merchant's Good Faith Irrelevant	
	2-5:4	Family Transactions	
	2-5:5	Industries and Entities Exempt From the CFA	
2-6	Internet	Advertising and Sales	
2-7		y of Corporate Officers, Company Members and Corporate	
		ny Employees	
	2-7:1	Introduction	50
	2-7:2	The Corporate Veil Doctrine Generally	51
	2-7:3	Piercing the Corporate Veil and Alter Ego Theory	
		of Liability as Equitable Remedies	51
	2-7:4	Using Participation Theory of Liability	
		to Hold Officers, Managing Members	
		and Employees Liable	55
	2-7:5	Following Allen, CFA Definitions Render	
		Veil Piercing Irrelevant	56
	2-7:6	Imposing Individual Liability on Officers,	
		Managing Members and Employees May	
		Have to Await Trial	58
	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	59

xvi NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







	2-7:8			which Corporate Officers,	
				and/or Employees	
		Were Pers	sonally Liabl	e or Potentially Liable	60
	2-7:9			redating Allen in Which	
				Ianaging Members	
		and/or E	mployees No	ot Liable	65
	2-7:10	Examples	s of Cases A	fter Allen in Which	
		Corporat	e Officers, M	Ianaging Members	
				ot Liable	60
	2-7:11			idgments Entered Against	
				aims Against Officers,	
				and Employees	68
2-8	CFA De			r . J	
	2-8:1				
	2 0.1	2-8:1.1		ement"	
		2-8:1.2		General"	
		2-8:1.3		idise"	
		2 0.1.5	2-8:1.3a	Generally	
			2-8:1.3b	Examples of Cases in Which	
			2 0.1.50	a Product or Service Is	
				Merchandise Under CFA	70
			2-8:1.3c	Examples of Cases in Which	/ (
			2-0.1.50	a Product or Service	
				Is Not Merchandise Under CFA	73
		2-8:1.4	"Person"	is not interchandise Olider CPA	
		2-8:1.5			
		2-8:1.6		tizen"	
	2-8:2			ons	
	2-8:3			istinguished From	/-
	2-8:3	Uniawiui	Practices D	mercial Practices	70
2.0	CEA C				/>
2-9	Don't set	ompared w	ith Other Sta	ates' Consumer	70
	2-9:1			N V 12 C	/5
	2-9:2			New York's Consumer	0.1
	202			D 1 '1TC'	8
	2-9:3			Pennsylvania's Unfair	0.0
	201			Consumer Protection Law	
	2-9:4	CFA, PA	and NY Co	nsumer Laws Compared	84
Chant	er 3: Per S	Se Violation	S		8
3-1					
<i>J</i> 1	3-1:1			ations	
3-2				nce Sufficient	
3-2 3-3				tions Outside the CFA	00
5-5	as Proof	f of Consu	ner Frand		QΩ
	3-3:1	Generally	iici Taud		Ω(
	J-J.1	Ochicially			03

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xvii







	3-3:2	Violations Outside the	trative Code or Statutory c CFA Failing to Support	
				90
	3-3:3	Examples of Adminis Outside the CFA Sup	trative Code or Statutory Violations	
		CFA Liability		92
3-4	Substan	tial Aggravating Circun		
				94
3-5				
Chapte	er 4: Secti	on 2 Violations of the A	et 1	117
4-1				
	4-1:1		2 Claims 1	
	4-1:2		y Only Requires Proof	
			on 2 Violation 1	118
	4-1:3		f Section 2 Violations	
				119
	4-1:4		nconscionable Commercial	
			ıl Acts Generally1	120
			ept of Unconscionability 1	
			onability Distinguished From	
			actices and Unconscionable	
			al Practices	122
		4-1:4.2a	Confusion in the Courts'	
			Use of "Unconscionability,"	
			"Unfair Practices" and	
			Unconscionable	
			"Commercial Practices" 1	122
		4-1:4.2b	Distinct Meaning of	
		1 1.1.20	"Unconscionability,"	
			"Unfair Practices" and	
			Unconscionable	
			"Commercial Practices" 1	123
	4-1:5	Partial Liability Even	aption for Advertisers	
4-2				
+- 2	4-2:1		e Act Under the CFA? 1	
	4-2:1 4-2:2		of Affirmative Acts	
	4-2.2	Proof of Intent, Dece		121
	4-2.3		1	127
	4-2:4		o Affirmative Acts 1	
4-3			1	
4-3				
	4-3:1		entations Generally	. 30
	4-3:2		entation Does Not Always	121
	4 2 2		Fime of a Sale or Advertisement 1	131
	4-3:3		equired Between Affirmative	122
		Misstatement and Asc	certainable Loss 1	132

xviii NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023



	4-3:4	Affirmati	ve Misrepresentations Defined	
		and Cont	rasted With Puffery	132
	4-3:5	Represen	tations May be Oral or Written	134
	4-3:6		ent Investigation of Misrepresented	
			ld Not Bar CFA Claim	135
	4-3:7		's Receipt of the Misrepresentation	
	4-3:8		ent Investigation of Misrepresented	
		-	ld Not Bar CFA Claim	135
	4-3:9		's Receipt of the Misrepresentation	
	1 3.5	4-3:9.1	Does the CFA Claimant Have	155
			to Receive Misrepresentation	
			and Who Must Make	
			the Misrepresentation?	135
		4-3:9.2	Example in Which CFA Claimant	133
		4-3.7.2	Did Not Need to Receive Representation	
			to Have a Claim	136
		4-3:9.3	Examples in Which CFA Claimants'	150
		T -3.7.3	Failure to Receive Representation	
			Bars Their CFA Claim	137
	4-3:10	True State	ements May Support CFA Liability	
	1 -3.10	4-3:10.1	Generally	
		4-3:10.1	True Statements That Could Support	139
		4-3.10.2	CFA Liability	120
		4-3:10.3	True Statements That Failed to Support	139
		4-3.10.3	CFA Liability	140
4-4	Uncons	cionable Co	mmercial Practices, Deception,	
-			se and False Promise	141
	4-4:1		·	
	4-4:2		Practices Distinguished	
	1 1.2		conscionable Commercial Practices	145
4-5	Examn		uccessful Section 2 Affirmative	1 10
				1/15
4-6			ssful or Viable Section 2	143
4-0	Affirma	tive Act Cla	ims	1/10
4-7	Violetie	n of an Obl	igation Imposed by Law	147
4-7			A or Via Contract Containing	
			A of via Contract Containing	172
4-8			ns	
4-9			lating Section 2	
4-10			S	
4-10	4-10:1		Omissions Generally	
	4-10:1		on Between Omission and Affirmative Acts	
	4-10:2 4-10:3		Omissions Defined	
	4-10:3 4-10:4			
	4-10:4 4-10:5		a Knowing Omission in Federal Court	101
	4-10:3	_	Omission Claims Pled	182
		A CHIEC N	nammachners	10/

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023









	4-10:6		s of Omissions That Do Not	
			te Violations	182
	4-10:7		s of Cases in Which Omissions	
			ed or Potentially Supported	
		CFA Lia	bility	185
Chapt	ter 5: State	Enforceme	ent of the Act	195
5-1	Departr	nent of La	w and Public Safety	195
5-2	Rulema	king	······································	196
	5-2:1	DCA Po	wer to Make Regulations	196
	5-2:2		etitions for Rulemaking	
5-3	Deferen	ce Afforde	d to DCA	197
5-4	Actions	Brought b	y Attorney General	198
	5-4:1		onsiderations	
	5-4:2		al Court Proceeding on Same	
			Bar to Suit	198
	5-4:3		tion and Discovery Powers	
	5-4:4		s for Noncompliance	
	5-4:5		y From Criminal Prosecution	
	5-4:6		y Proceedings, Injunctive	
			d Receivership	202
	5-4:7	Impositi	on, Collection and Enforcement	
		of Civil	Penalties	205
	5-4:8		d Desist Orders	
	5-4:9		ecovery of Fees and Costs	
	5-4:10	No Righ	t to Jury Trial	210
	5-4:11		on Between Private Causes of Action	
			se Brought by Attorney General	210
	5-4:12		General's Intervention in Private	210
	02		ceedings	211
	5-4:13		al Court CFA Proceedings	
5-5			Ombudsman	
			reliminary Considerations	
6-1				
6-2			ions and repose	
	6-2:1		f Limitations	
		6-2:1.1	Generally	
		6-2:1.2	The Discovery Rule	215
		6-2:1.3	The Six-Year Statute of Limitations	
			Governing CFA Claims	219
		6-2:1.4	Equitable Tolling Doctrine	
		6-2:1.5	Repair Doctrine	222
		6-2:1.6	Contractual Provisions Restricting	
			Statute of Limitations	223
		6-2:1.7	Statute of Limitations in Foreclosure	
			Defense Cases and Equitable	
			Recoupment Doctrine	226

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







		6-2:1.8	CFA Claims Barred by Statute	
			of Limitations	226
		6-2:1.9	CFA Claims Surviving Statute of	
			Limitations Challenges	233
	6-2:2	Statute of	Repose	236
6-3	Standin			
6-4		_	iflicts of Law	
	6-4:1		Law/Conflicts of Law Generally	
	6-4:2		Law Analysis in the District	
			ersey	241
	6-4:3		Choice of Law Issues in CFA Cases	
		6-4:3.1	Generally	
		6-4:3.2	Choice of Law Analysis on a Motion	
			to Dismiss	245
		6-4:3.3	Finding Conflicts Between CFA	
			and Other State Laws	245
		6-4:3.4	Weighing Restatement Factors	
		6-4:3.5	When Governmental-Interest	
			Analysis Still Applies	250
	6-4:4	Examples	s of Choice of Law Decisions	
			New Jersey Law	252
	6-4:5	Examples	s of Choice of Law Decisions	
		Applying	Foreign State Law	258
6-5	Election		es	
6-6				
	6-6:1	Generally	·	271
	6-6:2		s of CFA Claims Barred	
			ıble Estoppel	272
	6-6:3	Examples	s of CFA Claims Not Barred	
		by Equita	ıble Estoppel	276
6-7	Statute	of Frauds		278
	6-7:1		·	
	6-7:2		s of CFA Claims Barred	
			e of Frauds	280
6-8	Choice	of Law clau	ses and	
	Forum S	Selection Cl	auses	281
	6-8:1	Choice of	Law Clauses	281
		6-8:1.1	Generally	281
		6-8:1.2	Examples of Court Decisions Applying	
			Choice of Law Clauses to Select	
			Foreign Law	285
		6-8:1.3	Example of Court Decision Applying	
			Choice of Law Clause to Select	
			New Jersey Law	287
		6-8:1.4	Examples of Court Decisions Refusing	
			to Apply Choice of Law Clause Selecting	
			Foreign Law	287

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 x









	6-8:2	Forum Se	election Clauses	289
		6-8:2.1	Generally	289
		6-8:2.2	Enforcing Forum Selection Clauses	
			in the Third Circuit	292
		6-8:2.3	Examples of Court Decisions Enforcing	
			Forum Selection Clauses	294
		6-8:2.4	Examples of Court Decisions Refusing	27 1
		0 0.2.1	to Enforce Foreign Forum Selection	
			Clauses	201
6-9	Forum 1	Van Canva	niens and Other Jurisdictional Challenges	301
0-9			n Selection Clauses	202
	6-9:1		on Conveniens and the	302
	0-9:1		on Conveniens and the onal Test	202
	6 O O			302
	6-9:2	Forum N	on Conveniens in the Context	20.4
			FA	304
	6-9:3		s of Cases Dismissed or Transferred	
			to Forum Non Conveniens or Some	
			risdictional Challenge	305
	6-9:4	Examples	s of Cases Not Dismissed	
			erred Pursuant to Forum	
			veniens or Some Other	
		Jurisdicti	onal Challenge	307
6-10	Preempt	tion Doctrii	ne	308
	6-10:1	Federal P	reemption	308
	6-10:2		emption	
	6-10:3	Examples	where CFA Was Preempted	311
	6-10:4		Where CFA Not Preempted	
	6-10:5		on of CFA Claims Under	
	0 10.0		act Liability Act	317
		6-10:5.1	The Product Liability Act	517
		0 10.5.1	Generally	317
		6-10:5.2	The PLA's Subsumption of CFA	517
		0-10.5.2	Claims	319
		6-10:5.3	Examples of CFA Cases Predating	510
		0-10.5.5	Sun Chemical in Which Court Held Cases	
			were Subsumed by PLA	220
		6 10.5 4		320
		6-10:5.4	Examples of CFA Cases Predating	222
		C 10 7 7	Sun Chemical Not Subsumed by PLA	323
		6-10:5.5	Examples of CFA Cases Since	
			Sun Chemical in Which PLA	
			Subsumed Claims	324
		6-10:5.6	Examples of CFA Cases Since	
			Sun Chemical in Which PLA	
			Did Not Subsume Claims	
6-11	Remova	l of Action	From State to Federal Court	326
6-12	Mitigati	on of Dam	ages	328

xxii NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023



6-13	Quantum Meruit, Unjust Enrichment			
	and Co		raudulent Debts	329
	6-13:1		Meruit, Unjust Enrichment and the Split	
		of Author	rity About Whether Merchants May Use	
		Those Ca	uses of Action to Collect Debts That	
		are the Pr	oduct of Consumer Fraud	329
	6-13:2	Quantum	Meruit	330
		6-13:2.1	Generally	
		6-13:2.2	The Elements of Quantum Meruit	
	6-13:3	Uniust Er	nrichment	
		6-13:3.1	Generally	
		6-13:3.2	The Elements of Unjust Enrichment	
	6-13:4		Quantum Meruit	551
	0-13.4		st Enrichment Claims	337
		6-13:4.1	Generally	
		6-13:4.2	Efforts to Collect a Debt That is Product	, 332
		0-13.4.2		
			of Consumer Fraud May Prevent	
			Quantum Meruit or Unjust	227
		6 12 4 2	Enrichment Recovery	335
		6-13:4.3	Courts Sometimes Allow Merchants	
			Committing Consumer Fraud to	
			Recover Via Quantum Meruit or	
			Unjust Enrichment	337
	6-13:5		es in Which Merchants Were Barred	
			lecting Fraudulent Debts	
			or Part	338
	6-13:6	Duty to A	Advise Client of Danger of CFA	
			aim/Award of Fees and Costs	
		on Succes	sful CFA Defense	342
6-14	Spoliati	on of Evide	nce in CFA Claims	343
	6-14:1	Spoliation	Generally	343
	6-14:2		on of Evidence of Consumer Fraud	
6-15	Entire C		Doctrine	
	6-15:1			
	6-15:2		t Rules for the Entire	
		Controve	rsy Doctrine	346
	6-15:3	Claim Pre	eclusion Under the Entire	
	0 10.5		rsy Doctrine	348
	6-15:4		of CFA Cases Barred by the Entire	5 10
	0-13.4		rsy Doctrine	350
	6-15:5	Evamples	of CFA Case Not Barred by the Entire	550
	0-13.3		rsy Doctrine	250
6-16	Dalarian		and Damages Principles	, 332
0-10	Kelevan		les	252
6-17				332
0-1/	Dischar	geadinty of	CFA Award	2.52
		ruptcy		333
	6-17:1	Generally		353

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxiii









	6-17:2	Burden of Proof for Nondischargeability	
		of CFA Debt	
	6-17:3	Cases in Which CFA Debts Nondischargeable	356
	6-17:4	Examples of Cases in Which CFA Debts Were	
		Nondischargeable or Potentially Nondischargeable	357
	6-17:5	Example of Case in Which CFA Debts	
		Were Nondischargeable	
6-18	Stand-A	Alone Contractual Jury Trial Waivers	
	6-18:1	Generally	
	6-18:2	Merchants' Use of Jury Trial Waivers	
6-19	Presuit 1	Demand for Satisfaction	362
6-20	Litigatio	on Privilege	362
	6-20:1	Generally	362
	6-20:2	Types of Actions to Which Litigation Privilege	
		Commonly Applies	363
	6-20:3	Limits of the Litigation Privilege	364
	6-20:4	Litigation Privilege's Application to CFA Claims	365
	6-20:5	Examples of CFA Claims Barred	
		by the Litigation Privilege	367
	6-20:6	Example of CFA Claims Not Barred	
		by Litigation Privilege	368
6-21	Judicial	Estoppel	
6-22		icata and Collateral Estoppel	
	6-22:1	Res Judicata Generally	
	6-22:2	Examples of CFA Cases Barred by Res Judicata	
	6-22:3	Examples of CFA Case Not Barred	
		by Res Judicata	376
	6-22:4	Collateral Estoppel Generally	
	6-22:5	Examples of CFA Cases Barred	
	0 22.0	by Collateral Estoppel	378
	6-22:6	Example of CFA Case Not Barred by Collateral Estoppel	
6-23		lo River Doctrine's Effect on Parallel	
0 20		Court Proceedings	380
6-24		es to CFA Claims Based on Contract Language	
		ages	
7-1		ction	
7-2	Ascertai	inable Loss Generally	381
	7-2:1	Defined	381
	7-2:2	Relationship Between Ascertainable	
		Loss and CFA Damages	
	7-2:3	When Ascertainable Loss is Not Required	
		7-2:3.1 Claimant Reaches the Jury on a CFA Violation	on
		But Fails to Prove	
		A 11 T	200

xxiv NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







		7-2:3.2 Claimant Defending a Merchant's Complain	nt
		or Counterclaim Proves the Merchant	
		Committed Consumer Fraud	384
		7-2:3.3 Claimant Seeking CFA Refund	385
	7-2:4	When Does Ascertainable Loss Accrue?	
7-3		shing Ascertainable Loss: The Causal Connection	
	Between	n the Loss and the Misconduct	387
	7-3:1	Proof Requirements Generally	387
	7-3:2	Ascertainable Loss Is Calculated Flexibly Instead of	
		Mechanically	389
	7-3:3	Proof That Claimant Actually Suffered	
		Ascertainable Loss Unnecessary	389
	7-3:4	Ascertainable Loss in the Context	
		of Technical Violations	390
		7-3:4.1 Ascertainable Loss for Technical	
		Violations Generally	390
		7-3:4.2 CFA Cases Where Technical Violations	
		Failed to Support CFA Claims	391
	7-3:5	Trial Court's Findings of Ascertainable	
		Loss	395
	7-3:6	No Need to Show the Fraudulent Conduct	
		Directly Caused Immediate Harm	395
	7-3:7	Examples of Cases in Which Proximate	20
	7.20	Cause Was Insufficient	39:
	7-3:8	Examples of Cases in Which Proximate Cause Was Sufficient	407
7-4	Dlagdin		
/-4	7-4:1	g Ascertainable Loss	
	7-4:1 7-4:2	Pleading Ascertainable Loss in State Court Pleading Ascertainable Loss in Federal Court	
7-5		Testimony of Ascertainable Loss	
7-6		ring Ascertainable Loss Generally	
7-0	7-6:1	Amount of Ascertainable Loss Generally	411
	7-0.1	Recoverable	411
	7-6:2	Ascertainable Loss Need Not Be Exact	
	7-6:3	Methods for Measuring Ascertainable Loss	ті
	7 0.5	Generally	413
7-7	Diminu	tion in Value as Ascertainable Loss	
,	7-7:1	Diminution in Value Generally	
	7-7:2	Pleading and Proving Diminution of Value	
	7-7:3	Is Diminution of Value or Cost of Restoration or	
		Repairs the Proper Measure of Damages?	416
	7-7:4	Viable CFA Diminution in Value Claims	
7-8	Benefit	of the Bargain Damages	
	7-8:1	Benefit of the Bargain Damages Generally	
	7-8:2	Pleading and Proving Benefit of the Bargain	
		Damages	
	7-8:3	Calculating Benefit of the Bargain Damages	

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 x







	7-8:4	Comparison Between Benefit of the Bargain	
		and Fraud on the Market Damages	424
	7-8:5	Viable CFA Benefit of the Bargain Damage	
		Claims	424
7-9	Out-of-	Pocket Damages	433
	7-9:1	Out-of-Pocket Damages Generally	433
	7-9:2	Proof of Money Actually Expended Not Necessary	
		to Prove Out-of-Pocket Damages	433
	7-9:3	Viable Out-of-Pocket CFA Claims	434
7-10	De Min	imis Loss	455
	7-10:1	De Minimis Loss Generally	455
	7-10:2	Viable De Minimis Loss CFA Claims	456
7-11	Absence	e of a Contract Between Parties	457
7-12	Contrac	ctual Disclaimer no Impediment to Recovering	
	Full As	certainable Loss	457
7-13		on of Goods or Continued Use	
	of Good	ds or Services	458
7-14	Spendin	ng Money to Establish Ascertainable Loss	458
	7-14:1	Generally	
	7-14:2	CFA Claimants Sometimes Benefit From Incurring	
		a Loss Before Filing Suit	460
	7-14:3	CFA Cases Where Claimants Did Not Have to	
		Spend Money to Establish Ascertainable Loss	460
7-15	Price Pa	aid and Overcharges as Proof	
		rtainable Loss	462
	7-15:1	Price Paid Generally	
	7-15:2	Overcharges Contrasted With Excessive Prices	
	7-15:3	Damages Resulting From Course	
		of Performance of Contract	463
	7-15:4	Merchant's Sales Tag as Proof of Ascertainable Loss	
	7-15:5	Price Comparison Proofs May be Necessary to Support	
		Price Paid or Overcharge Damage Model	465
	7-15:6	Examples Where Price Paid or Overcharges	
		Failed to Support CFA Claims	466
	7-15:7	Examples Where Price Paid or Overcharges	
		Support or Potentially Support CFA Claims	469
7-16	Ascerta	inable Loss in Failed Real Estate	
	Transac	tion	476
	7-16:1	Aborted Closing Costs	
	7-16:2	Property Purchased and Thereafter Sold	
		at Profit	477
	7-16:3	All Measures of CFA Damages Might be	
	,	Unavailable	477
7-17	Interest	on Monies Wrongfully Held as Ascertainable	
, -,			479
		Generally	

xxvi NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







	/-1/:2	CFA Cases in which Claimants Ascertainable Loss	
		Included Interest on Monies Wrongfully Withheld	
7-18	Improp	er Debt or Lien as Ascertainable Loss	480
	7-18:1	Generally	480
	7-18:2	Cases in Which an Alleged Improper Debt	
		or Lien Failed to Support a CFA Claim	481
	7-18:3	Cases in Which an Alleged Improper Debt	
		or Lien Supported or Potentially Supported	
		a CFA Claim	484
7-19	Loss of	Property as Ascertainable Loss	
7-20	Medical	Monitoring Damages	487
7-21	Noneco	nomic Damages Generally Precluded	488
	7-21:1	Generally	488
	7-21:2	Treatment Cost for Therapy	
	7-21:3	CFA Cases in Which Economic Losses or Expenses	
		Associated With Economic Losses Failed to	
		Support Ascertainable Loss	489
7-22	Custom	er Dissatisfaction Alone Insufficient	
	7-22:1	Generally	
	7-22:2	Cases in Which Customer Dissatisfaction	
		Failed to Support Ascertainable Loss	49
7-23	Fraud o	on the Market Theory or Price Inflation Theory	492
	7-23:1	Generally	
	7-23:2	Fraud in the Market Theory Distinguished From	
	, 23.2	Benefit of the Bargain Theory	491
	7-23:3	CFA Cases in Which Courts Found Claimants	
	, 25.5	Improperly Relied on Fraud in the Market Theory	494
	7-23:4	CFA Cases in Which Courts Found Claimants Did	
	7 23.1	Not Rely on Fraud in the Market Theory	494
7-24	Fconor	nic Loss Doctrine in CFA Cases	
7-25		to Deliver Goods or Services Paid for and Wrongful	
, 25		on of Funds as Ascertainable Loss	496
	7-25:1	Generally	
	7-25:2	CFA Cases in Which Failure to Deliver Goods	
	1 23.2	or Services Paid for or Retention of a Deposit	
		Failed to Support Ascertainable Loss	496
	7-25:3	CFA Cases in Which Failure to Deliver Goods or	
	1-23.3	Services Paid for or Retention of a Deposit	
		Supported Ascertainable Loss	101
7-26	Refund	or Other Remedy Does Not Eliminate Claimant's	····· ¬ノ
7-20		inable Loss	500
	7-26:1	Generally	
	7-26:2	CFA Cases in Which Refunds Failed to Eliminate	500
	7-20.2	Ascertainable Loss	501
7-27	Attorno	y's Fees And Ascertainable Loss	
1-21	7-27:1	Attorney's Fees Compared With Ascertainable Loss	504
	7-27:1	Attorney's Fees as Ascertainable Loss Generally	
	1-21.2	Attorney's rees as Ascertainable Loss Geliefally	500

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxvii









	7-27:3		es in Which Attorney's Fees Supported	
			ainable Loss	
7-28	Receipt of Something Worth Less or Different Than Promised			
	7-28:1			507
	7-28:2		es in Which Receipt of Something Less	
		or Differe	nt Than Promised Supported	
		Ascertaina	able Loss	509
7-29	Prior Su	bstantiation	Theory of Liability Claims	512
	7-29:1	Generally		512
	7-29:2	CFA Case	s in Which Prior Substantiation Barred Claims	s 513
7-30	Replacer	ment Costs	as Ascertainable Loss	515
	7-30:1	Generally		515
	7-30:2	CFA Case	es in Which Replacement Cost of Goods	
		Supported	Ascertainable Loss	515
7-31	Condon	ninium Asso	ciation's Ability to Aggregate	
	Ascertai	nable Loss	of Its Members	516
7-32	Failure t	o Plead or l	Prove Ascertainable loss	516
7-33			me	
	7-33:1			
	7-33:2		es in Which Lost Profits or Income	
		Support a	n Ascertainable Loss	536
7-34	Treble D			
	7-34:1		for and Purpose of Treble Damages	
	7-34:2		nment of Damages	
	7-34:3		equirement to Demand to be Made	
				539
	7-34:4		Where Treble Damages are Precluded	
	7-34:5		Prove Ascertainable Loss	
	7-34:6		Other Than for Loss of Money	
		or Propert	ty	540
	7-34:7		onal Limit of Special Civil Part	
		7-34:7.1	Special Civil Part Generally	
		7-34:7.2	Special Civil Part's Jurisdictional Limit	
			Applied to Treble Damages	541
		7-34:7.3	Transferring Case From Special Civil	
			Part to Law Division, Civil	
			Part	542
	7-34:8	Separation	n of Treble Damages From Damages	
	,	Arising U	nder Other Causes of Action	543
	7-34:9	Punitive I	Damages	544
	7-34:10		ability of CFA Award in Bankruptcy	
	7-34:11	Entry of Default Judgment on CFA claim		
7-35			ards and Judgments	
7-36			for Senior Citizens and Persons	0 10
, 50				54

xxviii NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023









	7-30:2	Heightened Penalties for CFA violations Committed	
		Against Senior Citizens and Persons With Disabilities	548
	7-36:3	Penalties to Consumer Fraud Involving Home	
		Solicitations to Senior Citizens	549
7-37	Windfa	ll Argument Against Treble Damage Awards	
7-38		nt's Failure to use Product or Service	
7-39		ion of Damages by Reselling Product	
, 55		the Subject of a CFA Claim May Provide Proof	
		ertainable Loss	551
	7-39:1	Mitigation of Damages Generally	
	7-39:2	Case in Which Resale Price of Product Provided	551
	1-37.2	Measure of Ascertainable Loss	550
7-40	Failur	e to Receive Credit	
,			
-		table Relief	
8-1		ble Relief Available to Private Litigants	
8-2		ive Relief	
	8-2:1	Generally	555
	8-2:2	Examples of Cases in Which Courts	
		Awarded Injunctive Relief	
8-3		of Money	
	8-3:1	The Refund Provisions Generally	559
	8-3:2	Examples of Cases Where CFA Claimants	
		Were Awarded Refunds	563
	8-3:3	Examples of Cases Where CFA Claimants	
		Were Denied Refunds	
	8-3:4	Treble Damages on Refunds Unavailable	566
	8-3:5	Fraud Statutory Refund Remedy Separate	
		From But Cumulative to CFA	567
8-4	Cancell	ation of Debts Arising From Consumer Fraud and	
	Dismiss	sal of Suits Seeking to Collect Such Debts	568
	8-4:1	Generally	568
	8-4:2	Ascertainable Loss and Debts That are the	
		Product of Consumer Fraud	570
	8-4:3	Examples of Cases Where Courts Cancelled	
		Fraudulent Debts	570
	8-4:4	Fraud Statutory Cancellation Remedy Separate	
		From But Cumulative to CFA	575
Chant	or O. Foos	and Costs	577
9-1		l Fees.	
<i>)</i> -1	9-1:1	Authority for and Policy Behind Fee Awards	577
	<i>y</i> -1.1	Under the CFA	577
		9-1:1.1 Generally	
		9-1:1.2 Prevailing Party Status	
	9-1:2	Counsel Fees as Outside the Class of Recoverable	380
	9-1:2	Damages	500
		Damages	382

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxix





9-1:3	Fee Awar	ds Mandatory Upon Proof of	
		able Loss	582
9-1:4	Fee Awar	ds in the Absence of Ascertainable Loss	583
9-1:5		ds Mandatory for Technical Violations	
9-1:6		ds Recoverable Where Act Raised	
		ise	588
9-1:7		ds Recoverable on Settlement	
	Contempl	ating Fee Application	590
9-1:8		d Independent of Fee Arrangement	
, 1.0		no Capacity	592
9-1:9		Recovery of Fees as Pro Se	
	CFA Litie	ant	593
9-1:10		rds That Exceed the Special	
, 1,10		's Jurisdictional Limit	594
9-1:11		ous Negotiation of Merits and Fees	0, .
	by Public	Interest Attorneys	596
9-1:12	Fee Awar	ds For Class Action Intervenor	596
9-1:13		g Fee Awards on an Appeal	
9-1:14	The Two	Methods for Evaluating Fee Awards	590 597
7 1.11	9-1:14.1	Introduction	
	9-1:14.2	The Lodestar Method	
	9-1:14.3	The Percentage of Recovery	570
	7 1.1 1.5	Evaluation	599
9-1:15	The Fee A	Application	
7 1.13	9-1:15.1	Application Requirements under	002
	7 1.13.1	New Jersey Court Rules	602
	9-1:15.2	Timing of the Fee Application	
	9-1:15.3	The Lodestar Calculation	
	9-1:15.4	The Court's Role in Deciding Fee	007
	7 1.13.1	Applications	610
	9-1:15.5	District Court's Evaluation of Fee	010
	7 1.13.3	Applications	616
	9-1:15.6	Compensable Tasks	
	9-1:15.7	Proportionality of Award to Results	
	9-1:15.8	Vigorous Defense May Justify Fee	017
	, 1,10,10	Expenditure or Increase of Lodestar	623
	9-1:15.9	Impact of Other Causes of Action or	020
	, 1.13.,	Limited Success on Fee Award	623
	9-1:15.10	Deduction of the Lodestar	
	9-1:15.11	Enhancement of the Lodestar	
	9-1:15.12	Apportionment of Fees According to	020
	, 1,10,12	Liability	631
	9-1:15.13	Class Action Settlement Fee Awards in the	551
	, 1.15.15	District of New Jersey	632
	9-1:15.14	Reasonable Hourly Billing Rates for Fee	0.5.2
) 1,1J,1T	Applications	632
	9-1:15.15	Examples of Fee Awards in CFA Cases	633
	7 1.13.13	Limitples of 1 ce / imaids in C1/1 Cases	055

XXX NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023



		9-1:15.16 Opposing Fee Applications	. 644
		9-1:15.17 Counsel Fees for Collecting CFA Judgment	. 647
		9-1:15.18 Counsel Fees After Securing Settlement	
		That Fails to Discuss a Fee Award	. 648
	9-1:16	Apportionment of Fees According to Liability	
	9-1:17	Fee Application Appeals	
9-2		f Suit	
, _	9-2:1	Reasonable Costs Recoverable	
	9-2:2	Costs of Collection of a Consumer Fraud	. 050
	7-2.2	Judgment Recoverable	651
	9-2:3	Recovery of Expert Witness Fees Precluded	
		ading Consumer Fraud	
10-1		of Proof for Private CFA Claims	. 653
10-2	Consun	ner Fraud, Common Law Fraud and Negligent	
		resentation Causes of Action Compared	. 656
	10-2:1	Common Law Fraud	
		10-2:1.1 Generally	
		10-2:1.2 Legal Fraud	. 659
		10-2:1.3 Equitable Fraud	. 663
	10-2:2	Negligent Misrepresentation	. 664
	10-2:3	Comparison of CFA, Legal Fraud, Equitable	
		Fraud and Negligent Misrepresentation	. 665
	10-2:4	Actions Where Both Consumer Fraud and Common Law	
		Fraud Causes of Action are Pled	
10-3	Econon	nic Loss Doctrine in CFA Cases	
	10-3:1	The Doctrine Generally	. 667
	10-3:2	The Alloway Decision	
	10-3:3	The Marrone and Dean Decisions	
	10-3:4	Application of the Economic Loss Doctrine	
	10 0	to State Court CFA Claims	671
	10-3:5	Application of the Economic Loss Doctrine	
	10 5.5	in the District of New Jersey Cases	673
	10-3:6	Examples of CFA Cases Not Barred	. 075
	10 3.0	by Economic Loss Doctrine	675
10-4	Ioint an	ad Several Liability, Comparative Negligence	. 075
10 1		ncert of Action	676
	10-4:1	Joint and Several Liability for Consumer	. 070
	10-7.1	Fraud Treble Damages	676
	10-4:2	The Comparative Negligence Act Generally	
	10-4.2	Concert of Action Under the Restatement	. 0//
	10-4.3		602
	10.4.4	of the Law, Second, Torts, § 876	. 083
	10-4:4	Cases in Which Courts Refused to Apply	(0)
	10 4 5	the Comparative Negligence Doctrine	. 686
	10-4:5	CFA Litigants' Use of Concert of Action Theory	
	10-4:6	Apportionment of Fees According to Liability	
10-5	Right to	Jury Trial of Private CFA Claims	. 690

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxxi









	10-5:1	Generally	690
	10-5:2	No Right to Jury Trial in CFA Case Prosecuted	
		by Attorney General	692
	10-5:3	Demanding a Jury Trial in a CFA Case	692
	10-5:4	Waiver of Jury Trial in Summary Actions	
	10-5:5	Consensual Waiver of Jury Trial Following	
		Demand and Refusal to Waive Demand	693
	10-5:6	Waiver of Jury Trial Demand Via Conduct	694
	10-5:7	Stand-Alone Contractual Jury Trial Waivers	
10-6	Federal	Amount in Controversy Requirement	695
10-7	Conside	rations for Special Civil Part Actions	695
10-8		Plead CFA Claims and Defenses	
	10-8:1	Whether CFA Can be Pled Via Crossclaims	
		and Affirmative Defenses in Addition	
		to Complaint and Counterclaim	69′
	10-8:2	Duty to Timely Plead CFA Claims	
	10-8:3	Duty to Timely Plead Affirmative Defenses to	
		CFA Claims	701
10-9	Affirmat	tive Defenses to CFA Claims	
10,	10-9:1	Affirmative Defenses Generally	
	10-9:2	Affirmative Defenses to Pleadings Where	,
	10 7.2	Arbitration Clause Exists	701
10-10	Amendi	ng Pleadings to Add CFA Claims and Defenses	701
10 10	10-10:1	The Standard for Amending Pleadings	
	10-10:2	Examples of Cases Where Parties Were Denied	, 0
	10 10.2	Leave to Amend Pleadings	. 710
	10-10:3	CFA Cases in Which Parties Were Permitted to	,
	10 1010	Amend Pleadings	712
10-11	Complia	unce With Notice Requirement	713
10-12	Pleading	g Fraud In State Court	714
10 1 2	10-12:1	Pleading Fraud With Particularity	
	10-12:2	Standard for Motions to Dismiss for Failure	, .
	10 12.2	to State a Claim	71
	10-12:3	Pleading in State Court to Avoid Dismissal in	,
	10 12.0	Federal Court if Case is Removed There	713
10-13	Pleading	Fraud in the District of New Jersey	
	10-13:1	Establishing Federal Jurisdiction	
	10-13:2	Article III Standing	
		10-13:2.1 Generally	
		10-13:2.2 Circumventing Article III Standing Challenges.	
		10-13:2.3 Federal CFA Claims Dismissed for a	
		Lack of Article III Standing	. 72.
		10-13:2.4 Federal CFA Claims Surviving an	,
		Article III Standing Challenge	. 726
	10-13:3	Initial Pleadings—Plausibility Standard	
	10-13:4	Initial Pleading—Rule 9(b) Particularity	,(
		Standard	. 73
		~	,

xxxii NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







		10-13:4.1 Heightened Pleading Standard	
		Generally	731
		10-13:4.2 Particularity Required	
		10-13:4.3 Pleading Fraud Against Multiple Parties	
		10-13:4.4 Pleading in State Court to Anticipate	
		Removal to Federal Court	736
	10-13:5	Pleading Fraud by Knowing Omission	
	10-13:6	Pleading Ascertainable Loss	
	10-13:7	Rule 12(b)(6) Motions to Dismiss for Failure	
		to State a Claim	738
		10:13-7.1 The Standard For Deciding	
		Rule 12(b)(6) Motions	738
		10:13-7.2 While Supposedly Difficult to Win,	
		Most Rule 12(b)(6) Motions are Granted	743
	10-13:8	Party Inadvertently Admitting in Responsive	
		Pleading That They Committed a CFA Violation	745
CI.	44 D /		
	er II: Pret	trial and Trial Proceedings	747
11-1		ance With Notice Requirement	
11-2		of Records in CFA Case	
11-3		on of Evidence in CFA Claims	
11-4	-	Testimony for CFA Claims	
	11-4:1	Generally	/48
	11-4:2	Expert Testimony Not Always Required	7.40
	11 4 2	to Prove Ascertainable Loss	
	11-4:3	Expert Proofs in Real Estate Disputes	/50
	11-4:4	Cases in Which Expert Proof of Ascertainable	7.50
	11 4.5	Loss Unnecessary	
	11-4:5	Cases in Which Expert Testimony Necessary	
11 5	11-4:6	Expert Testimony Insufficient	
11-5	11-5:1	ry Judgment Timeframe for Seeking Summary Judgment	
	11-5:1		/34
	11-5:2	Seeking Summary Judgment Following a Decision on a Motion to Dismiss for Failure to State a Claim	754
	11 5.2		/ 34
	11-5:3	The Standard for Securing Summary Judgment Against CFA Claimants	755
	11-5:4	Examples of Cases in Which CFA Claimants	133
	11-3.4		757
	11-5:5	Were Granted Summary Judgment Examples of CFA Claims Dismissed Via	/3/
	11-5.5		750
	11-5:6	Summary Judgment Examples of Summary Judgment Denied	769
11-6		f Judgment	
11-0	11-6:1	The Offer of Judgment Generally	
	11-6:1	Making the Offer	
	11-6:2	Acceptance of the Offer	
	11-6:3	Subsequent Offers	
	11-6:5	Consequences of Failure to Accept a Claimant's Offer	
	11 0.5	Compagnetices of Fundiction recept a Claimant 8 Office	, , 0

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxxiii









	11-6:6	Consequences of Failure to Accept	
		a Nonclaimant's Offer	. 779
	11-6:7	Miscellaneous Provisions of the Offer	
		of Judgment Rule	. 780
	11-6:8	Offer of Judgment Fee Applications	
	11-6:9	Using Offer of Judgments Against CFA Claimants	
	11-6:10	CFA Claimant's Use of Offer of Judgment	
11-7	Avoiding	g Damage Verdicts	
11-8		iding Issues	
11-9		for Judgment at Trial	
	11-9:1	The Types of Motions for Judgment at Trial	
	11-9:2	Erroneous Dismissal of CFA	
		Case at Trial	. 788
	11-9:3	Motions to Dismiss Made Against a Merchant	
		Seeking to Collect a Debt That Is the Product	
		of Consumer Fraud	. 789
	11-9:4	Example of CFA Claimants Surviving Motion	
		to Dismiss Made at Trial	. 790
11-10	Issues th	at Constitute Questions for the Jury	
11-11	Jury Inst	tructions and Jury Interrogatories in CFA Claims	. 791
	11-11:1	Jury Instructions Generally	
	11-11:2	When Fraud May be Viewed as Affirmative	
		Act or Omission	. 794
	11-11:3	Failure to Instruct Jury on Both Affirmative	
		Misrepresentation and Knowing Omission	. 794
	11-11:4	Breach of Warranty in the Context of an Unconscionable	
		Commercial Practice	
	11-11:5	Instructions on Amount of Damages	
		to Award	. 795
	11-11:6	Right to Ultimate Outcome Charge	
	11-11:7	Trial Court's Application of Incorrect	
		Burden of Proof	. 796
	11-11:8	Joint and Several Liability, Comparative	
		Negligence and Concert of Action	. 797
	11-11:9	Jury Interrogatories in CFA Cases	. 797
11-12	Argumen	nts During Openings and Closings	
11-13		Judgment	
	11-13:1	Generally	
	11-13:2	Defaulted Party's Right to Appear	
		and Contest Proof Hearing	. 802
	11-13:3	Entry of Default Judgment on CFA Claim	
	11-13:4	Examples of CFA Cases in Which Courts Refused	
		to Enter Final Judgments Against Defaulted Parties	
		or Reversed the Judgment	. 803
	11-13:5	Modifying Default Judgments to Include	
		Individual Liability	804

xxxiv NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023



	11-13:6	During Proof Hearing, Irial Court May	
		Reinstate CFA Claim Previously Dismissed	
11-14	Mitigati	on of Damages in CFA Cases	. 806
Chapte		ss Actions	
12-1	Class Ce	ertification of CFA Claims	. 807
	12-1:1	Class Actions Generally	. 807
	12-1:2	Purpose of Class Action Certification	. 808
	12-1:3	Liberal Construction of Class Certification Rule	. 808
12-2	CFA Cla	aim Certification in NJ State Courts	
	12-2:1	The Test for CFA Claim Certification in New Jersey State	
		Courts Generally	. 811
	12-2:2	Proof of Misrepresentation as to All Class	
		Members Unnecessary	. 816
	12-2:3	Class Certification When Prospective Members'	
		Reactions to Misrepresentations Differ	. 816
	12-2:4	Proving Allegations of Deception Based on Series	
		of Oral and Written Misrepresentations and	
		Omissions of Material Fact	. 816
	12-2:5	Ascertainable Loss Requirement in Class	
		Certification Context	. 817
	12-2:6	Incentive Award or Stipend for	
		CFA Class Action Intervenor	. 819
	12-2:7	Examples of Successful Class Certifications or Potentially	
		Viable Putative Class Actions in State Court	
	12-2:8	Examples of Unsuccessful Class Certifications	
		in State Court	. 823
12-3	The Clas	ss Action Fairness Act	
	12-3:1	CAFA Generally	
	12-3:2	The Paradoxes of Removal	
	12-3:3	The Mechanics of Removal	
	12-3:4	The Remand Test	
	12 0	12-3:4.1 Generally	
		12-3:4.2 The Local Controversy Exception	
	12-3:5	CFA Actions Brought By the AG Not Subject to Removal	
12-4		tion of Class Actions in the District	. 050
		Jersey	837
	12-4:1	Rule 23(a) Requirements	
	12-4:2	Generally	
	12-4:3	Rule 23(a)'s Specific Requirements	
	12-4:4	The Judicially Created Ascertainability Requirement	
	12-4:5	Rule 23(b) Categories	
	12-4:6	Court's Analysis of Pleadings Under Rule 23	. 0-1-1
	14-7.0	Requirements	8/17
	12-4:7	Article III Standing in Class Actions	
	12-4:7	Rule 23's Test for Certifying a Class	, 032
	12-4.0	Action for Settlement	057
		ACTION FOR SCHICINGIL	. 01/

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxxv









	12-4:9	Damage Proofs for Class Certification	
		in District of New Jersey	858
	12-4:10	Timing for Challenging Putative Class Actions	859
	12-4:11	Examples of Class Action Certifications Granted	
		in Federal District Court of New Jersey	860
	12-4:12	Examples of Class Action Certifications Denied	
		in Federal District Court of New Jersey	867
12-5	Contrac	ctual Class Action Waivers	875
12-6	Settleme	ent of Class Action CFA Claims	
	12-6:1	Generally	
	12-6:2	Class Settlements in the Third Circuit	
12-7	Preclusi	ve Effect of Class Action Settlements	879
12-8	Class M	lembers' Incentive Awards	879
		vertisements	
13-1	-	oplicability to Advertisements	881
	13-1:1	What Constitutes an "Advertisement"	
		Under the CFA	881
	13-1:2	CFA Not Applicable to Advertisement	
		Publishers	881
13-2		sing Expressly Prohibited by CFA	
13-3	Advertis	sements Violating Section 2	
	13-3:1	Generally	
	13-3:2	Misleading Statements and Puffery Distinguished	
13-4		uent Performance	
13-5	CFA Re	egulations Governing Advertising	
	13-5:1	Generally	
	13-5:2	Definitions	887
	13-5:3	Application of Regulation	
	13-5:4	Prohibitions Applicable to All Advertisements	893
	13-5:5	Prohibition on Fictitious Pricing and Methods of	
		Substantiation	898
	13-5:6	Example of Violation of the CFA's General	
		Advertising Regulations	900
	13-5:7	Example of Unsuccessful Alleged Violation of the	
		CFA's General Advertising Regulations	
13-6		nning Advertisement	
13-7		Not to Sell Item Advertised	
13-8		ability for Advertising in Specific Industries	
13-9	Musical	Performance Advertisements	904
	13-9:1	Generally	904
	13-9:2	Definitions Relative to Deceptive Practices	
		in Musical Performances	904
	13-9:3	Per Se Liability	904
Chapt	er 14: Len	ders and Loan Servicers	907
		1v	

xxxvi NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







	14-1:1	Lenders P	otentially Liable for CFA Violations	907
	14-1:2		iduciary Duty Between Lenders and	
			s Irrelevant to CFA Liability	908
	14-1:3		of Courts to Impose CFA Liability on Lenders	
14-2	Bank D		Bank Collections	
14-3			cited Checks and Credit Cards	
	14-3:1		IS	
	14-3:2		n on Liability for Unsolicited	
	1.0.2	Checks/C	redit Cards	. 912
14-4	Violatio		ng Laws Outside the CFA as the Basis	
	of CFA	Violations.		913
14-5			Tachines	
	14-5:1			
	14-5:2		ıs	
	14-5:3	Notificati	on of Fees for Use of Machine	914
	14-5:4			
	14-5:5		on on Class Actions	
	14-5:6		of Rules and Regulations by the DCA	
14-6	Banks S		Estate	
14-7			es Where Lenders Faced No CFA Liability	
14-8			es Where Lenders Faced Potential or	
			y	924
14-9			odifications And Foreclosures	
	14-9:1		in Defense or Response to Foreclosure	
			t	930
		14-9:1.1	Generally	
		14-9:1.2	Impact of Rooker-Feldman Doctrine on	
			Mortgage Disputes Raised in Federal	
			Courts Generally	936
		14-9:1.3	Examples of CFA Cases Dismissed	
			Under the Rooker-Feldman Doctrine	937
		14-9:1.4	Entire Controversy's Effect on Post	
			Foreclosure CFA Suit Generally	941
		14-9:1.5	Examples of Post Foreclosure Cases	
			Barred by Entire Controversy	
			Doctrine, Res Judicata, Collateral	
			Estoppel and/or Issue Preclusion	942
		14-9:1.6	Examples of Post-Foreclosure Cases	
			Not Barred by Entire Controversy	
			Doctrine, Res Judicata, Collateral	
			Estoppel and/or Issue Preclusion	948
		14-9:1.7	Colorado River Doctrine's Effect on	
			Parallel Federal Court Proceedings Generally	950
		14-9:1.8	District Court Cases Filed Parallel to	
			State Court Foreclosure Cases That	
			Were Barred by Colorado River	
			Doctrine	951

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxxvii









	14-9:2	Loan Moo	difications	952
	14-9:3		y Home Ownership Security Act	
		14-9:3.1	Introduction to HOSA	
		14-9:3.2	Definitions Under HOSA	
		14-9:3.3	Scope and Prohibitions of HOSA	
		14-9:3.4	Notice Under HOSA	
		14-9:3.5	Points and Fees High-Cost Home Loan	
			HOSA Violations	967
		14-9:3.6	CFA Remedies for HOSA Violation	
	14-9:4	Mortgage	Rescue Plans	
	14-9:5		elling a Mortgage the Borrower Cannot	
			a.a Predatory Lending	974
		14-9:5.1	Generally	
		14-9:5.2	Reverse Redlining	
		14-9:5.3	Equity Stripping	
	14-9:6	Examples	of Unsuccessful CFA Mortgage,	
			uity Loan, Foreclosure and Loan	
			ion Cases	977
	14-9:7		of Viable CFA Cases Involving	
	1.7.7		s, Home Equity Loans, Loan	
			ion or Foreclosure Issues	1016
14-10	Preempt		Claims Involving Lenders	
	14-10:1		on	
	14-10:2		of Preempted CFA Claims Involving Len-	
	14-10:3		of CFA Claims Involving Lenders	
			Not Preempted	1027
Chante	ar 15: Con	tract and W	arranties	1031
15-1			arranues	
15-1			and Breach of Warranty	
13-2	15-2:1		Law and Statutory Breach	1032
	13-2.1		ct and Warranty Claims Differentiated	1032
	15-2:2		Breach of Contract	
	15-2.2		Breach of Warranty	
	13-2.3	15-2:3.1	Generally	
		15-2:3.1	Proof of Breach of Express Warranty	
		15-2:3.2	Proof of Breach of Implied Warranty	1033
		13-2.3.3	of Merchantability	1026
		15-2:3.4	Proof of Breach of Implied Warranty	1030
		13-2.3.4		1027
		15 2.2 5	of Fitness for a Particular Purpose Proof of Breach of Implied Warranty	103/
		15-2:3.5	-	1020
		15 2.2 6	of Good Title	1038
		15-2:3.6	Proof of Breach of Implied Warranty	1020
		15 2.2 7	of Good Workmanship	1039
		15-2:3.7	Proof of Breach of Implied Warranty	1040
			of Habitability	1040

xxxviii NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







	15-2:4	Breach of Contract and Breach of Warranty	
		May Exist Alongside CFA Claim	1041
	15-2:5	Avoiding Liability for CFA Claims Via	
		Warranties and Their Disclosures	1042
	15-2:6	The Romano Case	1042
	15-2:7	Substantial Aggravating Circumstances Requirement	
		for CFA Claims Predicated on Breach of Contract	
		and Breach of Warranty	1046
		15-2:7.1 Generally	
		15-2:7.2 When Is Proof of Substantial	
		Aggravating Circumstances	
		Unnecessary?	1051
		15-2:7.3 What Constitute "Substantial	
		Aggravating Circumstances"?	1052
	15-2:8	Substantial Aggravating Circumstances	
		Not Found	1053
	15-2:9	Substantial Aggravating Circumstances Found	
15-3		ets Required to be Provided to Consumer	
100	15-3:1	Generally	
	15-3:2	Contracts Not Provided by Merchant May be	1071
	10 0.2	Unenforceable	1072
	15-3:3	CFA Case in Which Merchant's Failure to Give	1072
	10 0.0	Contract Supported Liability	1073
	15-3:4	Failure to Give Contract Where the Parties Never	1075
	15 5.1	Draw Up a Contract and There Is No Independent	
		Requirement for the Merchant to Do So	1074
15-4	Applica	bility of Contract Law Principles	
15 1	15-4:1	No Requirement that Misrepresentation	1071
	15 1.1	be in Writing	1074
	15-4:2	Privity of Contract and Indirect Purchasers	
	15-4:3	Enforcement of "Valid Contracts" and the	
	10 1.0	Parol Evidence Rule	1076
		15-4:3.1 Generally	
		15-4:3.2 Examples of Cases Where Parol	1070
		Evidence Inadmissible	1081
		15-4:3.3 Cases in Which Parol Evidence Admissible.	
	15-4:4	Merchant Refusing to Cancel a Contract	1002
	15-4.4	or Demanding Performance of the Contract	1084
15-5	Subsequ	ent Performance	
15-6		Consumer Contract, Warranty,	100-
13-0		tice Act Claims Based on CFA Violations	1085
	15-6:1	TCCWNA's Purpose and Interpretation	
	15-6:2	TCCWNA is an Unwaivable Cumulative	1003
	13-0.2	Statute	1097
	15-6:3	Who Has Standing Under the TCCWNA?	
	13-0.3	15-6:3.1 Requirement That Claimant be a "Consumer"	
		13-0.3.1 Requirement That Claimant be a Consumer	100/

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xxxix









		15-6:3.2	Transactions to Which TCCWNA	
			Does Not Apply	1092
		15-6:3.3	Requirement That a Consumer	
			Must be "Aggrieved"	1093
		15-6:3.4	Anticipated Impact of TCCWNA's	
		10 0.01.	"Aggrieved" Requirement	1096
	15-6:4	The Differ	rent Subsections of TCCWNA	
	13 0.1		ort Claims	1099
	15-6:5		of a TCCWNA Claim	
	13-0.3	15-6:5.1	Elements of a Section 15 TCCWNA Claim	
		15-6:5.2	Language in a Contract, Warranty or	1093
		13-0.3.2		
			Notice Violating Consumer Rights or	
			Merchant Responsibilities Under the	
			CFA or its Regulations Supports a	1100
		15650	TCCWNA Claim	1100
		15-6:5.3	Omission of Language Required by	
			the CFA and its Regulations May	
			Support a TCCWNA Claim	1101
		15-6:5.4	Elements of a Section 16	
			TCCWNA Claim	1102
		15-6:5.5	Statute of Limitations for	
			TCCWNA Claims	1103
	15-6:6		der TCCWNA	
	15-6:7	Comparis	on of CFA and TCCWNA	1104
	15-6:8		TCCWNA Claim Does Not Require	
			FA Claim	1106
	15-6:9	Examples	of Potential or Successful TCCWNA	
		Claims Pro	edicated on CFA Violations	1108
	15-6:10		of Unsuccessful TCCWNA Cases	
			CFA Violations	1113
		15-6:10.1	Examples of Unsuccessful TCCWNA	
		10 0.10.1	Cases Based on CFA Violations	
			Decided Before Spade	1113
		15-6:10.2	Examples of Unsuccessful TCCWNA	1 1 1 .
		13-0.10.2	Cases Based on CFA Violations	
			Decided After Spade	1114
15-7	Danfanna	ones of Aub		
15-8			itration Agreements	
13-8				
	15-8:1			
	15-8:2		s	1118
	15-8:3		ypes of Documents Exempt	
		From the	SCA	1121
	15-8:4	Service Co	ontracts Distinguished	
			rance	1122
	15-8:5		of Faithful Performance of	
		Service Co	ontracts	1123

xl NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023









15-8:6		int and Several Liability for					
		liance With SCA	1124				
15-8:7		nent of Service Contract					
	Administr	ator	1125				
15-8:8		ents for Issuance of Reimbursement					
		Policy					
15-8:9	Mandator	ry Service Contract Contents	1126				
15-8:10	Mandator	ry Recordkeeping Requirements	1130				
CFA Cla	ims and De	efenses to CFA Claims Focusing					
on Conti	act Langua	age	1131				
15-9:1	Generally		1131				
15-9:2	Mere Agr	eement to Contract Terms Does Not					
	Necessaril	ly Bar a CFA Claim	1131				
	15-9:2.1	Supreme Court Allows CFA					
		Claims Despite Claimant Agreeing to					
		Contract Terms	1131				
	15-9:2.2	Certain Courts Hold That Agreement					
		to Contract Terms Bar CFA Claims	1135				
	15-9:2.3	Examples of Cases In Which Courts					
		Held That Claimants' Agreement to					
		Contract Terms Bar CFA Claims	1137				
15-9:3	Exculpato	ory Causes—Contractual Limitations					
		of Liability, As Is Disclaimers and Waiver of					
	Defenses (Clauses	1138				
	15-9:3.1	Generally	1138				
	15-9:3.2	Unequal Bargaining Power May					
		Invalidate Exculpatory Clauses	1140				
	15-9:3.3	Cases Outside CFA in Which Courts					
		Refused to Enforce Exculpatory Clauses,					
		"As Is" Disclaimers or Contract Waivers	1141				
	15-9:3.4	CFA Cases in Which Courts Refused					
		to Enforce Exculpatory Clauses					
		or Found That They Potentially					
		Violated the CFA	1142				
	15-9:3.5	Examples of CFA Case in Which Court					
		Enforced Exculpatory Clauses	1144				
15-9:4	Liquidate	d Damages and Excessive Fees					
	As The Ba	asis of CFA Claims	1145				
	15-9:4.1	Generally	1145				
	15-9:4.2	The Test for Distinguishing Between a Valid	l				
		Liquidated Damages Clause and a Penalty.	1146				
	15-9:4.3	Cases in Which Liquidated Damages					
		Clauses or Excessive Fees Might					
		or Did Support CFA Violations	1147				
	15-9:4.4	Cases in Which Liquidated Damages					
		Clauses or Excessive Fees Failed					
		to Support CFA Violations	1150				

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023



15-9





	15-9:5	Contract Failin	ng to Include an Express Term	
			w	1151
	15-9:6		taining Unlawful Terms	
		15-9:6.1 Ge	nerally	1152
		15-9:6.2 Ex	amples of Viable CFA Cases	
		Inv	volving Contracts Allegedly	
		Co	ntaining Unlawful Terms	1152
		15-9:6.3 Ex	amples of Unsuccessful CFA Cases	
		Inv	volving Contracts Allegedly	
		Co	ntaining Unlawful Terms	1155
	15-9:7	As Is Disclaim	er Does Not Absolve Merchant of	
		Liability		1156
		15-9:7.1 Ge	nerally	1156
			ample of CFA Case Where As Is	
			sclaimer Failed to Bar Liability	1156
-			•	
-		_		
16-1				
16-2				
16-3			Remedies, Rules or Regulations	
16-4			ons	
16-5			Regulations	1168
16-6			Following Date of Purchase	
			ise	
16-7			uirements	
16-8			ement by Director	
16-9			nvolving Pet Sales	
16-10	Leasing	of Dogs and Ca	ts	1183
	16-10:1	Generally		1183
	16-10:2			
	16-10:3	Conduct Regu	lated and Liability	1184
C I 4	17. E			1105
_				
17-1			1 D1-4'	
17-2			od Regulation	
	17-2:1		L CEA E 1.4C Cl.:	1185
	17-2:2		h CFA Foodstuff Claims	1107
15.0	D .		ed	
17-3			E 10.11 A EDAE A	1189
17-4			y Food Subject to FDA Expiration	
17-5				
	17-5:1			
	17-5:2		ons	
	17-5:3		e Rules	
	17-5:4			
	17-5-5	Disclosures Re	equired	1196

xlii NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023









	17-3:0	Good Faith Reliance on Representation	
	17-5:7	Recordkeeping Requirements	1198
	17-5:8	Presumption of Possession of Nonconforming Food	1199
	17-5:9	Dealer Inspections	1199
17-6	Kosher l	Foods	1200
	17-6:1	Kosher Defined	1200
	17-6:2	Disclosures and Per Se Violations	1200
	17-6:3	Administrative Rules	1201
	17-6:4	Definitions	1205
	17-6:5	Disclosures Required	
	17-6:6	Labeling Requirements	1209
	17-6:7	Filing Requirements	
	17-6:8	Dealer Inspections	
17-7	Meat So	ld at Retail	1216
	17-7:1	Definitions	1217
	17-7:2	Labeling and Advertising Requirements	1228
	17-7:3	Fabricated Steak Preparation	
	17-7:4	Supply of Meat Advertised	
	17-7:5	Frozen Meat	
	17-7:6	Per Se Violations	
17-8	Unsucce	ssful CFA Foodstuff Claims	
17-9		ff Cases that Were Viable or Successful	
17-10		of Groceries and Foodstuffs During State of Emergency	
	17-10:1	Generally	
	17-10:2	Definitions	
	17-10:3	Conduct Regulated and Per Se CFA Liability	
17-11	Third-Pa	arty Takeout Food and Delivery Services	
	17-11:1	Generally	
	17-11:2	Definitions	
	17-11:3	Regulated Conduct and Per Se CFA Liability	
Chant	10. H.a.	lth and Safety	
18-1		etion	
18-2		Clubs	
10-2	18-2:1	Definitions	
	18-2:1	Per Se Violations	
	18-2:3	Registration Requirements	
	18-2:4	Bond Requirements	
	18-2:5	Contract Requirements	
	18-2:6	Administrative Rules	
	18-2:7	Notice of Registration	
	18-2:8	Exemption From Registration	
	18-2:9	Examples of Unsuccessful Health Club CFA Cases	
	18-2:10	Examples of Successful or Potentially Successful	1240
	10-2.10	CFA Claim Against Health Clubs	12/10
18-3	Safety D	rofessionals	
10-3	10 2.1	Conception	

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xliii









	18-3:2	Definition	ıs	1250
	18-3:3		olations	
18-4	Industri			
	18-4:1			
	18-4:2		ıs	
	18-4:3		olations	
18-5	Hazardo		S	
	18-5:1	Per Se CF	A Violations	1254
	18-5:2		ıs	
18-6	Non-Pro	escription D	iabetes Test Devices Distributed	
				1255
Chant			es, Furniture and Furnishings	
19-1			es, Furniture and Furnishings	
17-1	19-1:1		ulations and Definitions	
	19-1:1		Disclosures at Sale	
	19-1:3		plations	
	19-1:4		S	
19-2		old Furnitu	e and Furnishings	1261
1, 2	19-2:1		A Violations	
	19-2:1		IS	
	19-2:3		Practices	
	17 2.3	19-2:3.1	Generally	
		19-2:3.2	Delivery of Damaged or Nonconforming	1202
		17 2.3.2	Merchandise	1262
		19-2:3.3	Example of Unsuccessful HFR Case	1263
		19-2:3.4	Example of Successful	1203
		17 2.3.1	or Viable HFR Case	1263
	ter 20: Hoi	me Improven	nent Contractors	1265
20-1	Home I	mprovement	Contractors'	1065
			rally	
	20-1:1		on	1265
	20-1:2		es of Structures are Covered by	
			HIP and HICR?	
	20-1:3		Not Subject to the CRA, HIP, or HICR	
	20-1:4		ubject to the CRA, HIP, and HICR	
	20-1:5	-	ers' Liability Under the CFA	
		20-1:5.1	Generally	
		20-1:5.2	Limited Exemptions for Landscapers	1277
		20-1:5.3	Examples of Cases in Which Landscapers	
			Faced Potential or Actual CFA Liability	1277
	20-1:6		mages Unavailable Without a Causal	
			tween Contractor's Misconduct	
			tainable Loss	1279
	20-1:7		of Cases Holding Home Repair	
		Contracto	ors Not Liable for Consumer Fraud	1282

xliv NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023



	20-1:8		in which Contractors were Liable	
		or Potentia	lly Liable for Consumer Fraud	
		Violations		1288
	20-1:9	Home Repa	air Contractors' Efforts to Collect	
		Bills When	They Commit Consumer Fraud	1300
			Generally	
			Examples of CFA Cases in Which	
			Contractors Were Barred From Collec	tion1303
			Examples of Cases in Which Contract	
			Were Not Barred From Collection	
			Warning to Contractor Before Suing to	
		20 1.5	Collect on Home Repair Contract	
20-2	Contract	tor Registrati	ion Act	
20 2	20-2:1		on	
	20-2:2			
	20-2:3			
	20-2:4		e of Municipal Ordinance	
	20 2.1		tions	1311
	20-2:5		ations	
	20-2:6		n of Contractors	
	20-2:7	_	Requirements	
	20-2:7		Registration Numbers and Other	1313
	20-2.0		Disclosures	1315
	20-2:9		Right to Cancel Contract	
	20-2:10		nts for Contracts Over \$500	
20-3			Contractor Registration Rules	
20-3	20-3:1			
	20-3.1		n Requirements	
	20-3.2		Requirements	
	20-3.3		Requirements	
	20-3.4		Must Comply With HIP and CRA	
20-4			Practices Rules	
20-4	20-4:1	•	ractices Rules	
	20-4:1			
	20-4.2		ations	
	20-4:3		Disclosures	
	20-4.4	•	equirements	
			1	
Chapte	er 21: Insu	rance		1337
21-1	Introduc	tion		1337
21-2	CFA Ap	plicability to	Insurance Industry	1337
	21-2:1		······	
	21-2:2	Split of Au	thority on Whether CFA Applies to	



NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023

Handling and Payment of Insurance Claims.......1339

xlv



		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	1339
		21-2:2.2	Supreme Court's Failure to Address CFA to	
			Handling and Payment of Insurance Claim	
			Leaves Issue Open for Reinterpretation	
		21-2:2.3	Third Circuit's Position on CFA's	
			Application to Handling and	
			payment of Insurance Claims	1341
	21-2:3	Distinction	n Between CFA Cases Involving Under	
			f Insurance Benefits Versus Nonpayment	1345
	21-2:4		of Unsuccessful CFA	
			ainst Insurance Carriers	1346
	21-2:5		of Insurance Cases in Which the CFA	
			cable or Viable	1357
	21-2:6		Limitations Relative to Insurance Claims	
21-3			xempt	
21-4			r	
21-5			Title Agencies	
	21-5:1			
	21-5:2		of Potential CFA Claims Against Title	
			Businesses and Title Agencies	1366
	21-5:3		of Unsuccessful CFA Claims Against	
			cies	1367
21-6	Availab		ance Coverage For Consumer	
				1369
	21-6:1		nsurance Policies A Merchant	
				1369
	21-6:2		Coverage	
	21-6:3		efend and Exclusions	
		21-6:3.1	Generally	
		21-6:3.2	Business Risk Claims v. Occasion Claims	
		21-6:3.3	No Indemnification Coverage Available	
		21 0.0.0	for Consumer Fraud Liability	1375
		21-6:3.4	Duty to Defend	
	21-6:4		Where Insurer Not Required	
	21 0		CFA Claim	1377
21-7	Preemp		Claims Involving Insurance	
	21-7:1		on	
	21-7:2		of Preempted CFA Claims Involving	
				1379
	21-7:3		of CFA Claims Involving Insurance	
	21 7.5		Not Preempted	1383
21-8	Prescrir		enefits	
21-0			Janagere	

xlvi NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023









Chapt	er 22: Inte	rnet Dating	•••••	1385
22-1			ety Act	
	22-1:1		of the Act	
	22-1:2		ns	
	22-1:3		lity of the Act	
	22-1:4		otifications	
	22-1:5	Criminal	Background Screenings	1388
Chapt	er 23: Lea	rned Profes	sionals and Licensed Semiprofessionals	1391
23-1	Applical		A Generally	1391
	23-1:1		ssionals Previously Exempt	
			A Liability	1391
	23-1:2		ned Professional Doctrine as an	
		Outgrowt	h of the Preemption Doctrine	1392
	23-1:3	Learned I	Professional Doctrine's Protection	1395
	23-1:4		Learned Professionals	
			ected by Doctrine?	1396
	23-1:5		Professionals and Semiprofessionals	
			Subject to CFA	
23-2	CFA Ap	plicability t	o Specific Professions	1401
	23-2:1	Accounta	nts	1401
	23-2:2		S	
	23-2:3		S	
	23-2:4		Brokers	1403
	23-2:5		s, Hospitals, Medical Diagnostics	
			and Nursing Homes	
	23-2:6		te Appraisers	
	23-2:7		ental Engineers and Consultants	
	23-2:8		d Reporters	
	23-2:9		Planners	
	23-2:10		spectors	
	23-2:11	Schools		1409
	23-2:12		Brokers	
	23-2:13		ce Services	
	23-2:14	Home Ins	spectors	1412
Chapt				
24-1	Manufa		A Liability	
	24-1:1			1413
	24-1:2		Omission Claims Pleaded Against	
			urers	
		24-1:2.1	Generally	1416
		24-1:2.2	Manufacturer's Duty to Disclose	
			for Warranted Products	1417
		24-1:2.3	Does a Manufacturer Have a Duty	
			to Warn of Defects That Occur After	
			a Product's Warranty Expires?	1418

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xlvii









	24-1:3	Avoiding Liability for CFA Claims Via Warranties	
		and Their Disclosures	1420
	24-1:4	CFA Cases Against Manufacturers Preempted or	
		Subsumed	
	24-1:5	Product Problems Arising After a Warranty's Expiration .	1421
		24-1:5.1 Post Warranty Defect CFA Claims	
		Often Fail	1421
		24-1:5.2 Situations Where Post Warranty Defect	
		CFA Claims Might Succeed	1421
	24-1:6	Manufacturer Reports as Proof of	
		Manufacturer's Knowledge of Product Problems	1422
	24-1:7	Complaints of Customers Other Than	
		Claimant May Provide Proof of Manufacturer's	
		Knowledge of Product Problems	1423
	24-1:8	Examples of Cases Where Manufacturers	
		Avoided CFA Liability	1425
	24-1:9	Examples of Cases Where Manufacturers	
		Faced Potential or Actual CFA Liability	1448
24-2	Manufa	cturer's CFA Liability and the Lemon Law	1461
	24-2:1	Introduction	1461
	24-2:2	Notice of Consumer Rights	1462
	24-2:3	CFA Violations Under NCLL	1463
Chant	or 25. Dore	sonal Information Security	1467
спари 25-1		ction	
25-1 25-2		of Personal Information Handled By Businesses Generally	
25-2 25-3		on Tersonal Information Handled By Businesses Generally	
25-3 25-4		Violations	
25- 4 25-5		tion of Personal Information	
25-5 25-6		of Security Breaches.	
25-0 25-7		ions Against Disclosure of Social Security Numbers	
25-7 25-8		ions About Publishing Certain Information	14/2
23-0		net	1474
25-9		l Information Security Applicable to Health	14/4
23-9		e Carriers	1475
	25-9:1	Definitions	
	25-9:1		14/2
	23-9.2	Relative to Certain Computerized Records	1470
	25-9:3	Per Se Liability	
		•	
Chapt		lic Entities and Public Utilities	
26-1	Public E	Entities and Public Utilities	1479
	26-1:1	Immunity From CFA Liability Generally	1479
	26-1:2	Eleventh Amendment Immunity	
		From CFA Claims	1480
26-2	Example	es of Cases Where Public Entities or Utilities	
	Were no	t Liable for Consumer Fraud	1480

xlviii NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023







26-3			vate Merchants Claiming That They	
			rnment Immunity	
26-4	Political	l Parties' Fu	ndraising	1483
26-5	Public I	Entities Acti	ng As Consumers	1483
Chapt	ter 27: Rea	l Estate Sal	es and Services	1485
27-1			y to Real Estate Sales	
	27-1:1		plication to Real Estate Transactions	
		27-1:1.1	Generally	
		27-1:1.2	Examples in Which CFA Claimants	
			Do Not Receive Representations	
			From Merchant	1486
	27-1:2	Real Esta	te Builders and Developers	
		27-1:2.1	Introduction	
		27-1:2.2	New Residential Construction Off-Site	
		_,	Conditions Disclosure Act	1488
		27-1:2.3	Election of Remedies Under HOW	
		27-1:2.4	Examples of Unsuccessful Claims	
		_,	Against Builders/Developers	1492
		27-1:2.5	Examples of Potential or Successful	
		2, 1,2,0	Claims Against Builders/Developers	1500
	27-1:3	Real Esta	te Brokers, Agents and Salespersons	
	2, 1.0	27-1:3.1	Fiduciary Relationship Between	
		_,	Real Estate Broker and Clients	1503
		27-1:3.2	Limitations on Scope of Real Estate	
		_, 1.5	Broker and Agent Liability	1504
		27-1:3.3	New Jersey Real Estate Commission	
			Regulation Violations	1507
		27-1:3.4	Could a Seller Bring a CFA Claim Against	
			Their Real Estate Broker or Agent?	1509
		27-1:3.5	Examples of Cases Where Real Estate	
			Brokers, Agents and Salespersons	
			Faced No CFA Liability	1510
		27-1:3.6	Examples of Cases Where Real Estate	
			Brokers, Agents and Salespersons Faced	
			Potential or Actual CFA Liability	1519
	27-1:4	Nonprofe	essional Sellers of Real Estate	
		27-1:4.1	Generally	1526
	27-1:5	Caveat E	mptor, Merger Doctrine, "As Is" and "No	
		Warrantie	es" Clauses, Presale Investigations and	
		Acceptan	ce of Property With Known Defects	1528
		27-1:5.1	Generally	1528
		27-1:5.2	Caveat Emptor	1528
		27-1:5.3	Merger Doctrine	1530
		27-1:5.4	"As Is" and "No Warranties" Clauses	
		27-1:5.5	Buyer's Independent Investigation of	
			Property or Knowledge of Presale Defects	1533

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 xlix





NJ_CFA_TOC_2023.indd 49



		27-1:5.6 C	CFA and Other Cases in Which Courts	
		R	Refused to Bar Real Estate Suits Because	
		О	f Contract Clauses or Investigations	1534
			CFA and Other Cases in Which Courts	
		В	Barred Real Estate Suits Because of	
		C	Contract Clauses or Investigations	1538
27-2	Real Est		Management	
	27-2:1			
	27-2:2		Cases Where Real Estate Resellers	
			Faced Actual or Potential CFA Liability	1541
	27-2:3		Cases Where Real Estate Investors	
			Faced No CFA Liability	1543
27-3	Tenancie			
	27-3:1	Generally		1546
	27-3:2	Summary Di	spossess Eviction Actions	
		Do Not Prec	lude Separate Actions	
		For CFA Cla	iims	1546
	27-3:3		y of Landlords For Violating	
		Rent Protect	ion Emergency Act	1548
	27-3:4		n Which Landlord	
				1548
	27-3:5		n Which Landlord Potentially	
			Liable	
27-4	Condom		exes, Units and Associations	
	27-4:1		ninium Act Generally	
	27-4:2		Bring CFA Suits	1555
	27-4:3		CFA Cases Involving	
			ms	
27-5				
27-6				
27-7			tle Agencies	
27-8			ion Services	
27-9			ate	
27-10	Proof of		CFA Real Estate Disputes	
	27-10:1		mony in Real Estate Disputes	1572
	27-10:2		easures of Ascertainable	
			Estate CFA Cases	
27-11			n Businesses	
27-12	Public A			
	27-12:1			1576
	27-12:2		Viable CFA Case Against	
			uster	
27-13	Deed Pro		vices	
	27-13:1	-		
	27-13:2			
	27-13:3		gulation and Liability	
	27-13:4	Rulemaking	by DCA	1579

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023









Chapte	r 28: Sal	es and Merch	andise		158
28-1	Sales an	nd Merchand	ise Defined.		1581
	28-1:1	What Cons	stitutes "Me	rchandise" Under the CFA	1581
	28-1:2	What Cons	stitutes a "S	ale" Under the CFA	1583
28-2	Charita	ble/Nonprofi	t Organizati	on Solicitations/Sales	1584
28-3	Disclosi	ure of Profit-	Making Nat	ture of Sale	1584
28-4					
28-5	Disclosi	ure of Refund	d Policies		1587
28-6	Geogra	phic Origin o	f Business		1589
28-7	Gift Ca	rds/Gift Cert	ificates		1590
	28-7:1	Definitions	s		1590
	28-7:2	Per Se Vio	lations and l	Restrictions	1591
28-8	"Going	Out of Busin	ness" Sale		1592
28-9					
	28-9:1			s Apply	
	28-9:2				
28-10	Money				
28-11				ent Agency and	
				al Entity	1596
				Agency	
				rnmental Entity	
28-12				ate of Emergency	
	28-12:1				
	28-12:2	Per Se Vio	lations		1599
28-13	Resale o				
	28-13:1	Definitions	s		1600
	28-13:2	Applicabili	ity		1601
	28-13:3				
	28-13:4			ments	
	28-13:5			ations	
		28-13:5.1			
		28-13:5.2	Remedies f	or Violations	1606
		28-13:5.3	Ticket Brol	ker Operations	1606
		28-13:5.4		S	
				Sales Generally	
			28-13:5.4b	Ticket Resales	1607
				Special Orders	
				Requiring Purchase of Addition	
				Tickets as Condition of Resale	
				or Exchange Prohibited	1608
			28-13:5.4e	Disclosure of Information	
				Via Receipt	1608
			28-13:5.4f	Failure to Receive Ticket as	
				Promised	1608
			28-13:5.4g	Requirements for Ticket	
			\mathcal{C}	. 	









		28-13:5.5 Records	
		28-13:5.6 Advertising	1612
	28-13:6	Examples of CFA Cases Involving	
		Event Ticket Sales	1612
28-14	Scheme	Not to Sell Item Advertised	1615
28-15	Tagless I	Merchandise	1615
28-16	Unit Pri	ce Disclosure	1616
28-17		Expired Baby Food, Non-Prescription Drugs, Cosmetics	
28-18	Baby Mo	onitors	1619
	28-18:1	Generally	
	28-18.2	Requirements and Liability	1619
28-19	Discrimi	ination Against Cash-Paying Customers	1620
Chant	or 20. Soor	ırities	1622
29-1		es Outside CFA Scope	
27-1	29-1:1	Generally	
	29-1:1	Examples of Securities Cases in Which CFA	1022
	27-1.2	Claims Barred	1624
	29-1:3	Example of a Securities Case With Viable	102
	27 1.3	CFA Claims	1626
-		communications	
30-1		tion Services	
	30-1:1	Definitions	
	30-1:2	CFA Violations	
		30-1:2.1 Generally	
	20.1.2	30-1:2.2 Per Se Violations	
	30-1:3	Subscriber Right to Block Access	
20.2	30-1:4	Enforcement	
30-2		Xes	
	30-2:1 30-2:2	Definitions	
	30-2:2	Prohibited Conduct	
	30-2:3	Private Cause of Action, Penalties	1033
	30-2.4	and Per Se Violations	1636
	30-2:5	Example of an Unsuccessful CFA Claim	
30-3		Telephone Calling Cards	
50-5	30-3:1	Definitions	
	30-3:2	Requirements	
	30 3.2	30-3:2.1 Disclosures	
		30-3:2.2 Restrictions on Rates	
	30-3:3	Per Se Violations	
	30-3:4	Dormancy Fees.	
30-4		keting Calls	
	30-4:1	Definitions and Applicability	
	30-4:2	Violations and Penalties	
	30-4:3	Telemarketer Registration	
		30-4:3.1 Registration Requirements	







		30-4:3.2 Failure to Comply with Registration	
		Requirements	164
		30-4:3.3 Effect of Registration	1648
	30-4:4	Do Not Call List	1648
	30-4:5	Prohibited Conduct	1649
	30-4:6	Collection of Fees	
	30-4:7	Information Submitted to Division	
	30-4:8	Administrative Regulations	
30-5	The File	ed Rate Doctrine's Preemption of CFA	
		munication Cases	165
	30-5:1	The Doctrine Generally	
	30-5:2	Case in Which the Filed Rate Doctrine	
		Preempted CFA Claims	1652
	30-5:3	Cases in Which the Filed Rate Doctrine	
		Did Not Preempt CFA Claims	165
30-6	Example	e of Successful or Viable Claim Against	
		ne Service Providers	165
30-7		Calling Services	
		nporary Help Services	
31-1		mendment for Temporary Help Services	
31-2		gulations	165
31-3		ary Help Service Firms, Employment Agencies,	
	and Cor	nsulting Firms Compared With One Another	1658
	31-3:1	Temporary Help Service Firms Dealt	
		With Differently Than Employment Agencies	1658
	31-3:2	Temporary Help Firm Defined	166
	31-3:3	"Employment Agency" Defined	1662
	31-3:4	Consulting Firm Defined	
	31-3:5	Examples of Cases in Which Business Found	
		Not to Be Temporary Help Service Firms	1663
	31-3:6	Examples of Cases in Which Businesses Found	
		to be Temporary Help Service Firms	166
31-4	General	Requirements	
31-5		ortation Requirements	
31-6		equirements	
31-7		sed Agencies Estopped From Collecting Debts	
31-8		sed Agencies Barred From Litigating	
		ebt Collection Claims	167
31-9		to Secure Contract Position Fails	
		ort CFA Claim	167
		s	
32-1	Toy Safe	ety and Notification Requirements	
	32-1:1	~ ······	
	32-1:2	Administrative Rule Requirements	167









		32-1:2.2	Administrative Reporting	
			Requirements	1675
		32-1:2.3	Toy Recall Notices	
	32-1:3	Amended	Child Product Safety Law	1676
		32-1:3.1	Objective	1676
		32-1:3.2	Definitions	
		32-1:3.3	Unlawful Practices	1679
		32-1:3.4	Retrofitting	1680
		32-1:3.5	Public List of Unsafe Child's Products	1680
		32-1:3.6	Administrative Regulations	1680
32-2	Bicycle	Safety Notic	es	
Chapte	er 33: Veh	icle Sales an	d Services	1683
33-1			sing and Sales Practices	
00 1	33-1:1		on	
	33-1:2		ve Advertising Practices Regulations	
	00 1.2	33-1:2.1	Introduction	
		33-1:2.2	Advertisements to Which Regulations	
		33 1.2.2	Apply	1684
		33-1:2.3	Definitions	
		33-1:2.4	Bait and Switch Advertising	
		20 1.2	Prohibited	1688
		33-1:2.5	Mandatory Disclosure Requirements	
		33 1.2.3	in All Sale Advertisements	1689
		33-1:2.6	Mandatory Disclosure Requirements	1002
		33 1.2.0	in All Lease Advertisements	1691
		33-1:2.7	Unlawful Advertising Practices	
		33-1:2.8	Mandatory Disclosures in Certain	
		33 1.2.0	Credit and Installment Sale	
			Advertisements	1696
		33-1:2.9	Mandatory On-Site Disclosures	
		33-1:2.10	Mandatory Recordkeeping	
		33 1.2.10	Requirements	1698
	33-1:3	Automotiv	ve Sales Practices Regulations	
	33 1.3	33-1:3.1	Introduction	
		33-1:3.2	Definitions	
		33-1:3.3	Per Se Violations	
	33-1:4		of Unsuccessful CFA Vehicle	1701
	33 1.1		g and/or Sales and/or Services Cases	1702
	33-1:5		of Successful or Viable CFA Vehicle	1 / 02
	33 1.3	Advertisin	g and/or Sales and/or Services Cases	1706
33-2	Vehicle		Subleasing	
33-2	33-2:1		Subleasing	
	33-2:2		<u> </u>	
33-3			Car Purchase	
55-5			on	



	33-3:2	Notice of Consumer Rights	
	33-3:3	CFA Violations Under NCLL	1717
	33-3:4	Example of Potentially Viable CFA Case Based on	
		NCLL Violation	1719
33-4	Lemon I	Law — Used Car	
	33-4:1	Definitions	1719
	33-4:2	Applicability to Dealer/Lessors	
	33-4:3	Per Se Violations	
	33-4:4	Minimum Warranties for Certain Vehicles	
	33-4:5	Dealer's Obligation to Buy Back Vehicle	
	33-4:6	Affirmative Defenses	
	33-4:7	Presumptive Lemon	
	33-4:8	Warranty Extended While Vehicle	
		Undergoing Repairs	1726
	33-4:9	Bond Requirement	
	33-4:10	Administrative Regulations	
	33-4:11	Service of Pleading upon Used Car	
		Lemon Law Unit	1726
33-5	Vehicle F	Repairs	
	33-5:1	Definitions	
	33-5:2	Applicability	
	33-5:3	Per Se Violations	
	33-5:4	Examples of Viable or Successful CFA	
	00 0	Vehicle Repair Cases	1735
	33-5:5	Examples of Unsuccessful CFA Vehicle	
		Repair Cases	1739
33-6	Municip	al Storage Charges for Automobiles	
33-7		ulations	
	33-7:1	Definitions	
	33-7:2	Per Se Violation	
33-8	Vehicle F	Protection Products	
	33-8:1	Vehicle Protection Product Defined	
	33-8:2	Registration Required for Sale of Vehicle	
	0.2	Protection Products	1746
	33-8:3	Requirements for Issuance of Vehicle Protection	
		Product Warranty	1746
	33-8:4	Registration Requirements	
	33-8:5	Prohibition Against Requiring Purchase	
	0.0	of Vehicle Protection Product for	
		Sale or Financing	1749
33-9	Watercra	of Repairs	
	33-9:1	Definitions	
	33-9:2	Per Se Violations	
33-10		Tinting	
	33-10:1	CFA Violations	
	33-10:2	Enforcement by Director	









33-11	Private P	Property and Non-Consensual Towing	
	Compar	nies	1758
	33-11:1	The Towing Act and Its Regulations Generally	1758
	33-11:2	Procedural Considerations for Towing Act Claims	1761
	33-11:3	Examples of Successful or Potentially Successful	
		Predatory Towing Cases	1761
33-12	Vehicle S	Service Contracts	
33-13		Rentals	
	33-13:1	Generally	1762
	33-13:2	Example of Unsuccessful CFA Claim Against	
		Rental Vehicle Business	1762
	33-13:3	Examples of Viable CFA Claims Against	
		Rental Vehicle Businesses	1763
33-14	Marinas	S	
	33-14:1	Generally	
	33-14:2	Unsuccessful CFA Claims Against Marinas	
33-15	Motor V	Vehicle Payment Assurance Devices	
	33-15:1	Generally	
	33-15:2	Definitions	
	33-15:3		
33:16	Vehicle 1	Inspection Services	
C 1		•	
Chapte		ernational Labor Matching Organizations and ernational Matchmaking Organizations	1760
34-1		ction	
34-2		CHOIL	
34-3		ons	
34-4		tion Requirements and Procedures	
34-5		ifying Crimes and Petition for Review	
34-6		tion Provided to Recruits	
34-7		teeping Requirements	
Chapte		rmaceuticals and Dietary Supplements	
35-1		ction	
35-2	Preempt	tion of CFA Pharmaceutical Claims	
	35-2:1	Generally	1781
	35-2:2	Cases in Which CFA Pharmaceutical	
		Claims Were Preempted	1782
35-3		bstantiation Theory	
	of Liabi	lity Claims	1784
	35-3:1	Generally	1784
	35-3:2	CFA Pharmaceutical Cases Barred by Prior	
		Substantiation Doctrine	
35-4	Third-Pa	arty Payors Bringing CFA Claims	1787
	35-4:1	Generally	1787
	35-4:2	Examples of Unsuccessful CFA Claims Brought	
		by Third-Party Payors	1787



35-5	Unsucce	essful CFA	Pharmaceutical Cases	1788	
35-6	Viable C	CFA Pharma	aceutical Cases	1795	
35-7	Pharma	cies		1798	
35-8	Medical	Marijuana	Distribution	1800	
	35-8:1	Introduct	ion	1800	
	35-8:2	Scope of	Regulations	1800	
	35-8:3	3 Physician Reporting Requirements			
	35-8:4		ve Treatment Center Reporting		
			ents	1801	
	35-8:5		Format Requirements for Information		
			ed	1802	
	35-8:6	Frequency	Requirements for Transmitting		
			on and Confidentiality of Information	1802	
	35-8:7		bility to Waive Requirements		
35-9			by Food, Non-Prescription Drugs, Cosmet		
		•			
-			CFA Claims Outside the Courts		
36-1					
36-2			ation Process		
	36-2:1		out-of-Court Arbitration?		
	36-2:2	Arbitratio	on Derives From a Contract	1806	
	36-2:3	Benefits of	f Arbitration		
		36-2:3.1	Generally	1807	
		36-2:3.2	Arbitration's Potential Benefits for		
			Merchants Responding to Claims	1807	
		36-2:3.3	Arbitration's Potential Benefits for		
			CFA Claimants	1808	
	36-2:4	Disadvan	tages of Arbitration	1809	
	36-2:5	Arbitratio	on Issues May Require Application		
		of Anoth	er State's Substantive Law	1813	
	36-2:6	Arbitratio	on Agreements Might Exclude CFA Claim	s1813	
36-3	Courts a	and Legislat	ures Favor Arbitration	1814	
36-4	Use of A	Arbitration	Agreements	1815	
36-5	Effect of	f Arbitratio	n Clauses Upon CFA Claims	1815	
	36-5:1	Generally		1815	
	36-5:2		to Enforcing Arbitration Clauses		
		36-5:2.1	Generally		
		36-5:2.2	Supreme Court Encourages Litigation C		
			the Enforceability or Arbitration Clause		
		36-5:2.3	Specific Conditions Potentially Weighing		
			Against Enforcing an Arbitration Claus		
	36-5:3	Wrap Arl	pitration Agreements		
		36-5:3.1	Generally		
		36-5:3.2	Cases In Which Courts Enforced		
			Arbitration or Other Clauses		
			in Wrap Agreements	1823	
			т д		

lvii







		36-5:3.3	Cases In Which Courts Refused	
			to Enforce Arbitration or Other	
			Clauses in Wrap Agreements	1825
36-6	Drafting	Arbitration	ı Clauses	
36-7	Federal .	Arbitration	Act's Application	1830
36-8	Ruaa's A	application .		1832
	36-8:1			
	36-8:2	Issues Not	Subject to Alteration in Arbitration	
		Agreemen	ts	1833
36-9	Who De		ability?	
	36-9:1	Generally		1834
	36-9:2	When a Co	ourt Decides Arbitrability	1834
	36-9:3	Delegation	n of Arbitrability to Arbitrator	1835
		36-9:3.1	Valid Delegation Clauses Require	
			That Arbitrators Decide Arbitrability	1835
		36-9:3.2	Imprecise Delegation Clauses are	
			Unenforceable	1836
	36-9:4	Validity of	Parties' Contract	1837
	36-9:5	Drafting C	Clear Delegation Clauses	1837
	36-9:6		of Unsuccessful Delegation Clauses	1837
36-10			Determine Whether an Action	
36-11	Motions	to Dismiss	Suit and Compel Arbitration	1839
	36-11:1			
	36-11:2		to Compel Arbitration Where Clauses Requi	
			ate Arbitration	1839
	36-11:3		o Compel Arbitration in the District	
		of New Je	rsey	1840
	36-11:4		Orders Deciding Motions to Compel	
			n	
36-12			A Claim Must Be Arbitrated	1845
	36-12:1		y State Court Test for Deciding If a CFA	
			uires Arbitration	1845
	36-12:2		arties Bound to a Valid	
			n Clause?	
			Assent to Arbitration	1845
		36-12:2.2	The Standard Used to Interpret the	
			Arbitration Agreement's Language	1850
		36-12:2.3	Agreements Read Liberally in Favor of	
			Arbitration	1851
		36-12:2.4	Placement of Arbitration Clause	40.55
		06.10.0.	in a Contract	1852
		36-12:2.5	Failure to Read Arbitration Clause	
		06.100	Before Signing Contract	1852
		36-12:2.6	Use of Arbitration Agreements	
			Separate From the Parties'	
			Contracts	1852









		36-12:2.7	Challenging A	Arbitration Agreements on	
			Grounds Exi	sting at Law or in Equity	1854
			36-12:2.7a	Challenging Arbitration	
				Agreements For Lack of	
				Consideration	1856
			36-12:2.7a1	Generally	1856
			36-12:2.7a2	Examples of Arbitration	
				Agreements Unenforceable	
				in the Absence	
				of Consideration	1857
			36-12:2.7b	Challenging Arbitration	
				Agreements on the Basis	
				of Unconscionability	1858
			36-12:2.7c	Challenging Arbitration	
				Agreements on the Basis	
				of Fraud	1860
			36-12:2.7d	Challenging Arbitration	
				Agreements on the Basis	
				of Unconscionability	1862
		36-12:2.8	Reasonable N	Notice of Existence of	
			an Arbitratio	n Clause and Repercussions	
			of Merchant'	s Failure to Call	
			Attention or	Provide Arbitration Clause	1863
		36-12:2.9	Should the So	ophistication of the Parties or	
				on by Counsel Play a Role in	
			Deciding if T	They Agreed to	
			Arbitrate Dis	sputes?	1865
	36-12:3	Does the (CFA Claim Fal	ll Within the Scope	
		of the Arb	oitration Claus	e?	1869
	36-12:4	Third Circ	cuit's Broad Int	terpretation of Arbitration	
		Clauses			1871
36-13	Waiver o	of Arbitratio	on Rights		1871
	36-13:1	Generally			1871
	36-13:2	Presumpti	on Against Wa	niver	
	36-13:3	Failure to	Pay Arbitratio	n Fees Waives Right to Compo	el
		Arbitratio	n		1875
	36-13:4	Examples	of Situations i	n Which Arbitration	
		Was Not V	Waived		1876
	36-13:5			n Which Arbitration	
					1878
36-14				itration Agreements	
	to Arbiti	rate Claims.			1881
	36-14:1				1881
	36-14:2	Situations	Which May A	llow Enforcement of	
		Arhitratio	n Against Nor	eignatories	1882

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023

1:-







	36-14:3	Compelling Nonsignatories to Arbitrate	
		in the District of New Jersey	1883
	36-14:4	Compelling Nonsignatories to Arbitrate Claims	
		Via Equitable Estoppel	1884
	36-14:5	Examples of CFA Case in Which Court	
		Compelled Nonsignatories to Arbitrate Claims	1886
	36-14:6	Examples of CFA Cases in Which Courts	
		Refused to Compel Nonsignatories	
		to Arbitrate Claims	1887
36-15	Example	es of CFA Cases in which Courts	
	Enforced	d Arbitration Agreements	1890
36-16	Example	es of CFA Cases in which Arbitration	
	Agreeme	ents Were Circumvented	1910
36-17		ction Arbitration Waivers	
	36-17:1	Generally	1938
	36-17:2	Differences Between Class Arbitration	
		and Bipolar Arbitration	1938
	36-17:3	Enforceability	1940
	36-17:4	Successful Contractual Class Action Waivers	1945
	36-17:5	Unsuccessful Class Action Waivers	1951
36-18	Handlin	g Arbitrations Outside the Court System	1954
	36-18:1	Initiating Arbitration	1954
	36-18:2	Scope of Arbitrator's Authority	
	36-18:3	Rules Applied to Arbitration Proceeding	
	36-18:4	Consequences for Failing to Participate	
		in Arbitration Proceeding	1956
36-19		Review of Arbitration Awards Rendered Outside	
	the Cour	rt System	1957
	36-19:1	Generally	
	36-19:2	Judicial Review of Arbitration Awards	
		by District Courts	1957
	36-19:3	Consequences of Failing to Vacate an Arbitration	
		Award in the District of New Jersey	1958
	36-19:4	Judicial Review of Arbitration Awards Under RUAA	1959
	36-19:5	State Court Appeals of Motions Compelling	
		or Denying Arbitration	1962
36-20	Consum	er Fraud Claims Brought Against	
	Arbitrat	ion Providers	1963
Chapte	er 37: Cha	ritable Institutions	1965
37-1		tion	
37-2	Charitab	le/Nonprofit Organization Solicitations/Sales	1965
37-3	Charitab	ole Immunity	1965
	37-3:1	The Charitable Immunity Act Generally	
	37-3:2	Does the Entity Qualify for Charitable Immunity?	1966
37-4		ole Immunity Only Bars Negligence Claims and	
	Therefor	re Does Not Bar Consumer Fraud	1969









37-3	Exampl	ie of CFA Claim Brought Against a Nonprofit Institutio	n19/0
Chapt	er 38: Pri	vate Utility Services and Fuel Suppliers	1971
38-1	Private	Utility Services	1971
	38-1:1	Generally	
	38-1:2	Examples of Unsuccessful CFA Claims Involving	
		Utility Services	1972
	38-1:3	Examples of Viable CFA Claims Involving Utility	
		Services	1977
Chapt	er 39: Pri	vate Education	1979
39-1		1ly	
39-2		n Which Private Education Services Were	
	Potentia	ally or Actually Liable for CFA Violations	1980
39-3		n Which Private Education Services Were Not Liable	
		A Violations	1982
39-4		Educational Services	
	39-4:1	Generally	
	39-4:2	Definitions	
	39-4:3	Conduct Prohibited	
	39-4:4	Conduct Required	
	39-4:5	Use of De-Identified Data	
	39-4:6	Construction of the Subsection	
	39-4:7	Rulemaking Authority	
	39-4:8	Per Se CFA Liability	
39-5	Higher	Education Collections	
0, 0	39-5:1	Generally	
	39-5:2	Definitions	
	39-5:3	Per Se CFA Liability	
39-6		Career School Collections.	
., .	39-6:1	Generally	
	39-6:2	Definitions	
	39-6:3	Per Se CFA Liability	
~		•	
Chapt 40-1		siness CFA Claimslly	
40-1		st for Applying the CFA to Business Transactions	
40-2			
	40-2:1 40-2:2		
		The Purpose Behind the Purchase	
	40-2:3	The Nature of the Goods or Services	2001
	40-2:4	The Parties' Sophistication or Complexity of	2002
10.2	I I C. :	Negotiations	
40-3		Competition Between Businesses	2004
40-4		les of Cases Where Businesses Lack	2007
40. 7		ng to Bring CFA Claims	2007
40-5		les of Cases Where Businesses Have Standing	2016
10.6		g CFA Claims	
40-6	Annual	Report Filing Services	2023









	40-6:1	Generally	2023
	40-6:2	Definitions	
	40-6:3	Conduct Regulated and Per Se CFA Violations	2024
	40-6:4	Rulemaking Authority	
Chapt		nsportation	
41-1	Introdu	ction	2025
41-2	Preemp	tion of CFA Transportation Claims	2025
	41-2:1	Preemption of CFA Cases Involving the Transport	
		of Freight and Moving Services Generally	2025
	41-2:2		
		Freight Transportation or Moving Services	2025
41-3	Examp	les of Unsuccessful Claims Against	
	Transp	ortation or Moving Businesses for Reasons	
		Than Preemption	2029
	41-3:1	Examples of Preempted CFA Claims Involving	
		Freight Transportation or Moving Services	2029
Chapt	er 42: Del	ot Collectors, Debt Buyers and Debt Settlement Businesse	s2031
42-1		ollectors Generally	
	42-1:1	The Gonzalez case	
	42-1:2	Examples of CFA Cases Decided Before Gonzalez	
		in Which Debt Collectors Faced No Liability	2035
	42-1:3	Examples of CFA Cases Decided After Gonzalez	
		in Which Debt Collectors and Debt Buyers/	
		Assignees Faced No Liability	2036
	42-1:4	Examples of CFA Cases in Which Debt Collectors	
		or Debt Buyers/Assignees Faced Actual or	
		Potential CFA Liability	
42-2		d Professionals Collecting Debts	
42-3	Higher	Education Debt Collection	2040
42-4	Private	Career School Debt Collections	2040
42-5	Debt Se	ettlement Businesses	
	42-5:1	Generally	2041
	42-5:2	. r	
		CFA Case	2041
Table	of Cases		2043

Forms and Appendices Online

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



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
	INITIAL PLEADING FORMS
Form 2-001	CFA Litigation Checklist
Form 2-002	Letter to Attorney General Pursuant to N.J.S.A. 56:8-20
Form 2-003 ¹	Universal Letter for Filing and/or Service of Process of
	Pleadings and Papers
Form 2-004	Case Information Statement (Front Page)
Form 2-005	Complaint and Jury Demand Alleging All 3 Types of CFA
	Violations on a Contract for Sale of Goods and/or Services
Form 2-006	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 2-007	Complaint and Jury Demand Alleging Per Se CFA Violation
	and Section 2 CFA Violations—Odometer Rollback Fraud
	Against Used Car Dealer
Form 2-008	Complaint with Jury Demand Alleging CFA Violation in the
	Sale of Real Estate (Defective Septic System, Claim Against
	Seller, Agent and Broker)
Form 2-009	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 2-010	Generic Class Action Complaint by New Jersey Residents
	Against Sellers of Goods/Services
Form 2-011	Complaint and Jury Demand Alleging All 3 Types of CFA
	Violations on Contract for Sale/Lease of Vehicle with
	Predelivery Defects
	-

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 | Ixiii





^{1.} This letter is adapted for a variety of filing/service situations. Therefore, when using this form, the practitioner or their staff checks off the appropriate lines/boxes appearing and fills out appropriate numbers where necessary. The "Other" line requires a description of the miscellaneous pleadings/papers being submitted/forwarded. The letter is prepared so that, where appropriate, the author may include reference to forwarding a carbon copy of the letter and its enclosures upon the author's adversaries.



DEFENSE INITIAL PLEADING FORMS ²	
Form 4-001 ³	Universal Letter for Filing and/or Service of Process of
Form 4-002	Pleadings and Papers Letter to Plaintiff's Counsel Transmitting Proposed Stipulation
F01111 4-002	Extending Time to File Responsive Pleading
Form 4-003	Stipulation Extending Time to File Responsive Pleading
Form 4-004	Letter to Plaintiff's Counsel Transmitting Proposed Consent Order Extending Time to File Responsive Pleading
Form 4-005	Consent Order Enlarging Time to File Responsive Pleading
Form 4-006	Letter Forwarding Executed Consent Order to Pretrial Judge Assigned to Case
Form 4-007	Sample Affirmative Defenses to CFA Complaint
Form 4-008	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
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
T	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







 $^{^2}$ 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 2-011 is followed by Form 4-001.

^{3.} This letter is adapted for a variety of filing/service situations. Therefore, when using this form, the practitioner or their staff checks off the appropriate lines/boxes appearing and fills out appropriate numbers where necessary. The "Other" line requires a description of the miscellaneous pleadings/papers being submitted/forwarded. The letter is prepared so that, where appropriate, the author may include reference to forwarding a carbon copy of the letter and its enclosures upon the author's adversaries.



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 N	MOTION PRACTICE
Form 6-001 ⁴	Universal Letter for Filing and/or Service of Process of Pleadings and Papers
Form 6-002	Notice of Motion to Suppress Responsive Pleading for Failure to Make Discovery
Form 6-003	Order Granting Motion to Suppress Responsive Pleading for Failure to Make Discovery
Form 6-004	Certification of Counsel in Support of Motion to Suppress Responsive Pleading for Failure to Make Discovery
Form 6-005	Certification of Service to Motion to Suppress Responsive Pleading for Failure to Make Discovery
Form 6-006 ⁵	Universal Letter for Filing and/or Service of Process of Pleadings and Papers





^{4.} This letter is adapted for a variety of filing/service situations. Therefore, when using this form, the practitioner or their staff checks off the appropriate lines/boxes appearing and fills out appropriate numbers where necessary. The "Other" line requires a description of the miscellaneous pleadings/papers being submitted/forwarded. The letter is prepared so that, where appropriate, the author may include reference to forwarding a carbon copy of the letter and its enclosures upon the author's adversaries.

^{5.} This letter is adapted for a variety of filing/service situations. Therefore, when using



Form 6-007	Notice of Motion to Dismiss Complaint for Failure to Make
	Discovery
Form 6-008	Order Granting Motion to Dismiss Complaint for Failure to
	Make Discovery
Form 6-009	Certification of Counsel in Support of Motion to Dismiss
	Complaint for Failure to Make Discovery
Form 6-010	Certification of Service to Motion to Dismiss Complaint for
	Failure to Make Discovery
Form 6-011	Letter to Client Pursuant to Rule R. 4:23-5(a)(1)
Form 6-012	Letter to Pro Se Party Pursuant to Rule R. 4:23-5(a)(1)
Form 6-013	Letter to Client Pursuant to Rule R. 4:23-5(a)(2)
Form 6-014	Letter to Pro Se Party Pursuant to Rule R. 4:23-5(a)(2)
Form 6-015	Letter to Opponent Requesting Consent to Extend Discovery 60
	Days
Form 6-016	Letter to Court Requesting 60-Day Extension of Discovery
Form 6-017 ⁶	Universal Letter for Filing and/or Service of Process of
	Pleadings and Papers
Form 6-018	Notice of Motion to Extend Discovery Pursuant to Rule 4:24-1(C)
Form 6-019	Order Granting Motion to Extend Discovery Pursuant to Rule
	4:24-1(C)
Form 6-020	Certification of Counsel in Support of Motion to Extend
	Discovery Pursuant to Rule 4:24-1(C)
Form 6-021	Certification of Service to Motion to Extend Discovery
	Pursuant to Rule 4:24-1(C)
Form 6-022	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

this form, the practitioner or their staff checks off the appropriate lines/boxes appearing and fills out appropriate numbers where necessary. The "Other" line requires a description of the miscellaneous pleadings/papers being submitted/forwarded. The letter is prepared so that, where appropriate, the author may include reference to forwarding a carbon copy of the letter and its enclosures upon the author's adversaries.

⁶ This letter is adapted for a variety of filing/service situations. Therefore, when using this form, the practitioner or their staff checks off the appropriate lines/boxes appearing and fills out appropriate numbers where necessary. The "Other" line requires a description of the miscellaneous pleadings/papers being submitted/forwarded. The letter is prepared so that, where appropriate, the author may include reference to forwarding a carbon copy of the letter and its enclosures upon the author's adversaries.



Form 8-004	Defendant's Uniform Commercial Arbitration Statement	
Form 8-005 ⁷	Universal Letter for Filing and/or Service of Process of	
	Pleadings and Papers	
Form 8-006	Plaintiff's Notice of Motion to Confirm Arbitration Award,	
	Enter Award of Fees and Costs and Enter Judgment	
Form 8-007	Proposed Order Confirming Arbitration Award, Entering	
	Award of Fees and Costs and Entering Judgment	
Form 8-008	Certification of Service to Plaintiffs' Motion to Confirm	
	Arbitration Award, to Enter an Award of Counsel Fees and to	
	Enter Judgment	
Form 8-009	Certification of Counsel in Support of Motion to Confirm	
	Arbitration Award, to Enter Award of Fees and Costs and	
	to Enter Judgment	
TRIAL DOCI	IMENTS	
Form 9-001	Letter to Plaintiff Advising Same of Trial	
Form 9-002	Letter Transmitting Notice in Lieu of Subpoena for Appearance	
101111 7 002	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	
101111 7 000	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 9-0108	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 10-001	Stipulation of Dismissal Without Prejudice as to One	
1.01111 10-002		
	Defendant Only	

NEW JERSEY CONSUMER FRAUD ACT & FORMS 2023 | lxvii

Stipulation of Dismissal with Prejudice as to All Parties





Form 10-003



^{7.} This letter is adapted for a variety of filing/service situations. Therefore, when using this form, the practitioner or their staff checks off the appropriate lines/boxes appearing and fills out appropriate numbers where necessary. The "Other" line requires a description of the miscellaneous pleadings/papers being submitted/forwarded. The letter is prepared so that, where appropriate, the author may include reference to forwarding a carbon copy of the letter and its enclosures upon the author's adversaries.

^{8.} The model jury charges have been renumbered and the latest version of the model CFA charge may be found at https://njcourts.gov/attorneys/civilcharges.html.



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
APPENDICES	
Appendix A	Consumer Fraud Act Subsections Index Organized by Order of Citation
Appendix B	Division of Consumer Affairs Administrative Code Rules Index Organized by Order of Citation
Appendix C	Subject Heading Index for Consumer Fraud Act Subsections, Related Statutes Outside the CFA and Division of Consumer Affairs Administrative Code Rules
Appendix D Appendix E ⁹	Per Se Consumer Fraud Act Violation Civil Liability Index New Jersey Consumer Fraud Act, N.J.S.A. 56:8-1 through N.J.S.A. 56:8-195.227





^{9.} To check for updates to the Consumer Fraud Act Statute, visit http://www.nj.gov/oag/ca/ocp/statsregs.htm.