

SUPREME COURT OF NEW JERSEY  
DOCKET NO. 078611

DAVID SPADE AND KATINA SPADE, : Question of Law Certified by the  
H/W, INDIVIDUALLY AND AS A : U.S. Court of Appeals for the Third  
CLASS REPRESENTATIVE ON : Circuit  
BEHALF OF OTHERS SIMILARLY : Docket No.: 16-1558  
SITUATED, :  
Plaintiffs/Appellants, : Sat Below:

v. : Hon. Thomas L. Ambro  
: Hon. Patty Shwartz  
: Hon. Julio M. Fuentes

SELECT COMFORT CORPORATION : On Appeal from:  
D/B/A SLEEP NUMBER, LEGGETT & : United States District Court for  
PLATT, INCORPORATED AND JOHN : the District of New Jersey  
DOE INDIVIDUALS AND : Docket No. 3:15-cv-01826  
BUSINESSES 1-20, :  
Defendants/Appellees. : Sat Below:

: Hon. Peter G. Sheridan

CHRISTOPHER D. WENGER & : Question of Law Certified by the  
EILEEN MULLER, ON BEHALF OF : U.S. Court of Appeals for the Third  
THEMSELVES AND THOSE : Circuit  
SIMILARLY SITUATED, : Docket No.: 16-1572

Plaintiffs/Appellants, : Sat Below:  
: Hon. Thomas L. Ambro  
v. : Hon. Patty Shwartz  
: Hon. Julio M. Fuentes

BOB'S DISCOUNT FURNITURE, : On Appeal from:  
LLC, : United States District Court for  
Defendant/Appellee. : the District of New Jersey  
: Docket No. 3:14-cv-07707

: Sat Below:  
: Hon. Peter G. Sheridan

: CIVIL ACTION

BRIEF OF THE NEW JERSEY BUSINESS & INDUSTRY ASSOCIATION AS  
AMICUS CURIAE

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### PRELIMINARY STATEMENT

The Truth-in-Consumer Contract, Warranty, and Notice Act, N.J.S.A. 56:12-14 et seq. ("TCCWNA") is a highly extraordinary statute that was enacted over 35-years ago to prevent consumers from being harmed by unenforceable provisions in consumer contracts. TCCWNA specifically sets forth as an element of a cause of action that the consumer be "aggrieved" by the alleged deception. As such, a plaintiff can recover damages under TCCWNA only if the plaintiff has sustained some adverse consequences as a result of the TCCWNA violation.

In this matter, the plaintiffs seek to rewrite TCCWNA to eliminate any requirement that a plaintiff demonstrate that they suffered any adverse consequences as a result of being deceived by the offending document. The plaintiffs assert that a mere technical violation of a clearly established right - - with no harm flowing from the violation - - allows a plaintiff to obtain a TCCWNA recovery. Plaintiffs' position would convert TCCWNA to virtually absolute liability. As such, plaintiffs are not seeking to vindicate any of their clearly established rights, but are seeking solely to function as private attorneys general. In short, plaintiffs seek to eliminate the express requirement that a plaintiff be "aggrieved" in order to establish a TCCWNA claim.

In urging this Court to allow TCCWNA claims where plaintiffs have suffered no harm as a result of a defendant's alleged violation of a clearly established right, the plaintiffs ignore: (1) the plain language of TCCWNA; (2) the Legislative history of TCCWNA; (3) interpretation of the term "aggrieved" in numerous other New Jersey statutes; and (4) the case law interpreting TCCWNA.

The elimination of the requirement that a plaintiff be "aggrieved" is also bad public policy. TCCWNA is a statute with almost no elements. Moreover, TCCWNA claims can be based on an alleged violation of any New Jersey law or Federal regulation, no matter how insignificant or obscure. A potential plaintiff does not even need to demonstrate that the defendant had any intent to harm the consumer. Indeed, a wholly innocent mistake by a business, including something as insignificant as a typographical error, can arguably support a TCCWNA violation. Moreover, TCCWNA violations are most often asserted as class actions. Indeed, in the last 18 months over 65 putative class actions have been filed in the New Jersey State and Federal courts alleging TCCWNA violations. Accordingly, elimination of the "aggrieved" element from a TCCWNA cause of action would be unfair to businesses, and would greatly expand the exposure of businesses to TCCWNA liability well beyond what the Legislature contemplated.



IDENTITY OF AMICUS CURIAE AND INTEREST IN CASE

Founded in 1910, NJBIA is the nation's largest single statewide employer organization, with more than 19,000 member companies in all industries and in every region of our State. The members of the NJBIA range from very small businesses to large companies. Its mission is to provide information, services, and advocacy for its member companies to build a more prosperous New Jersey. NJBIA's members include most of the top one hundred employers in the State, as well as thousands of small to medium-sized employers, from every sector of New Jersey's economy. One of NJBIA's goals is to reduce the costs of doing business in New Jersey, including unwarranted litigation burdens, in an effort to promote economic growth and to create jobs, to the benefit of all of New Jersey.

NJBIA's specific interests are directly implicated by this case because the TCCWNA issues raised in this case are of significant public interest. As set forth in this *amicus curiae* brief, NJBIA believes that the standard for "aggrieved" as suggested by the Plaintiffs/Appellants is contrary to the Legislative intent in enacting TCCWNA. NJBIA further believes that adoption of the standard for "aggrieved" as advocated by the Plaintiffs/Appellants would adversely affect the public interest by imposing costs on all citizens, including large and small businesses that are the targets of these suits; consumers

who pay for excessive awards through higher prices; employees who lose their jobs; and taxpayers who pay more when businesses leave the State.

NJBIA therefore submits this brief as *amicus curiae* to provide a broader perspective than has been provided by the parties regarding the effect that adoption of plaintiffs' standard for "aggrieved" would have on New Jersey's economy and on the businesses that choose to transact business in this State.

#### PROCEDURAL HISTORY AND STATEMENT OF FACTS

NJBIA adopts and incorporates by reference the Procedural History and Statement of Facts set forth in the Third Circuit briefs of Appellees/Defendants.

#### ARGUMENT

##### I. THE INTENT OF TCCWNA IS TO PREVENT CONSUMERS FROM BEING DECEIVED ABOUT THEIR RIGHTS.

TCCWNA provides that no seller may offer to any consumer, or enter into any written consumer contract, or give or display any written consumer warranty, notice or sign, which includes provisions that violate clearly established legal rights of the consumer:

56:12-15. Consumer contract, warranty, notice or sign; violation of legal right of consumer or responsibility of seller, lessor, etc.; prohibition; exemptions

No seller, lessor, creditor, lender or bailee shall in the course of his business

offer to any consumer or prospective consumer or enter into any written consumer contract or give or display any written consumer warranty, notice or sign after the effective date of this act which includes any provision that violates any clearly established legal right of a consumer or responsibility of a seller, lessor, creditor, lender or bailee as established by State or Federal law at the time the offer is made or the consumer contract is signed or the warranty, notice or sign is given or displayed. Consumer means any individual who buys, leases, borrows, or bails any money, property or service which is primarily for personal, family or household purposes. The provisions of this act shall not apply to residential leases or to the sale of real estate, whether improved or not, or to the construction of new homes subject to "The New Home Warranty and Builders' Registration Act," P.L.1977, c. 467 (C. 46:3B-1 et seq.). N.J.S.A. 56:12-15

It is plain from Section 15 quoted above that TCCWNA is intended to protect consumers from being deceived by legal provisions in contracts that violate their clearly established legal rights. Moreover, the Legislative history makes clear that the Legislature's intent in enacting TCCWNA was to protect consumers against provisions that are unenforceable in contracts and hence deceitful to the consumer:

#### STATEMENT

Far too many consumer contracts, warranties, notices and signs contain provisions which clearly violate the rights of consumers. Even though these provisions are legally invalid or unenforceable, their very inclusion in a contract, warranty, notice or sign deceives a consumer into thinking that

they are enforceable and for this reason the consumer often fails to enforce his rights.

Examples of such provisions are those that deceptively claim that a seller or lessor is not responsible for any damages caused to a consumer, even when such damages are the result of the seller's or lessor's negligence. These provisions provide that the consumer assumes all risks and responsibilities, and even agrees to defend, indemnify and hold harmless the seller from all liability. Other provisions claim that a lessor has the right to cancel the consumer contract without cause and to repossess its rental equipment from the consumer's premises without liability for trespass. Still other provisions arbitrarily assert the consumer cannot cancel the contract for any cause without punitive forfeiture of deposits and payment of unfounded damages. Also, the consumer's rights to due process is often denied by deceptive provisions by which he allegedly waives his right to receive legal notices, waives process of law in the repossession of merchandise and waives his rights to retain certain property exempted by State or Federal law from a creditor's reach.

This bill prohibits businesses from offering or using provisions in consumer contracts, warranties, notices and signs that violate any clearly established right of a consumer. If such a violation occurs, the injured consumer could collect civil damages of not less than \$100.00. The consumer also would have the right to petition the court to terminate a contract which violates the provisions of this bill: L.1981, c.454, SPONSORS' STATEMENT TO No. 1660 (May 1, 1980).

Similarly, this Court has also followed this Legislative history and held that a TCCWNA violation must have ". . . caused the consumer to be substantially confused about the right,

obligations or remedies of the contract period." *Alloway v. General Marine*, 149 N.J. 620, 641 (1997). Likewise, courts have long recognized that TCCWNA is intended to protect consumers who have been deceived. See e.g., *Bohus v. Restaurant.com*, 784 F.3d 918, 930 (3d Cir. 2015) (holding that TCCWNA is designed only to address *deceptive* conduct that affects a consumer, not technical violations that cause no effect) (emphasis added); *Walters v. Dream Cars Nat'l LLC*, No. L-9571, 2016 WL 890783, at \*6 (Law Div. Mar. 7, 2016) (recognizing that "[i]n spite of TCCWNA's expansive protections, the Legislature intended that TCCWNA only target those vendors that engage in a *deceptive* practice and sought to only punish those vendors that in fact deceived the consumer, causing harm to the consumer") (emphasis added); *Wright v. Bank of America, Inc.*, No. L-433-15, 2016 WL 631910, at \*7 (Law Div. Jan. 28, 2016) (holding that "whether intent is shown or not, facts demonstrating potential for the consumer to be misled or *deceived must be in place* for the TCCWNA to be relevant" and "'deception' or some form of fraud is integral to the TCCWNA claim") (emphasis added).

## II. TCCWNA REQUIRES THAT THE CONSUMER BE AGGRIEVED.

It is also plain from the statute that that a consumer must be "aggrieved" to have a right of action under TCCWNA. Indeed, the "aggrieved" requirement was included *twice* by the legislature in N.J.S.A. 56:12-17:

56:12-17. Violations; civil liability to aggrieved consumer; action; termination of contract

Any person who violates the provisions of this act shall be liable to the aggrieved consumer for a civil penalty of not less than \$100.00 or for actual damages, or both at the election of the consumer, together with reasonable attorney's fees and court costs. This may be recoverable by the consumer in a civil action in a court of competent jurisdiction or as part of a counterclaim by the consumer against the seller, lessor, creditor, lender or bailee or assignee of any of the aforesaid, who aggrieved him. A consumer also shall have the right to petition the court to terminate a contract which violates the provisions of section 2 of this act and the court in its discretion may void the contract. N.J.S.A. 56:12-17 (emphasis added) (footnote omitted)

The requirement that a consumer be "aggrieved" is thus foundational to bringing a TCCWNA claim because the statute contains virtually no elements to establish a cause of action. Given the relatively few elements that a plaintiff must prove in a TCCWNA action, and given that TCCWNA cases are often filed as class actions, the Legislature surely intended that a plaintiff be harmed in some way as a result of the TCCWNA violation.

In the cases at hand, however, the record is clear that the plaintiffs are not aggrieved:

- The plaintiffs did not sustain any monetary damages as a result of the alleged TCCWNA violation;
- The plaintiffs were not deceived by the alleged violations of the Furniture Regulations;

- The plaintiffs did not sustain an actual injury or damages as a result of the alleged violations of the Furniture Regulations;
- The plaintiffs sustained no adverse consequences as a result of the alleged TCCWNA violation;
- The plaintiffs were not affected in any way by the alleged TCCWNA violation.

As such, the plaintiffs attempt to assert that a bare technical violation of a consumer's clearly established right without any harm to the consumer constitutes a TCCWNA violation, even when the consumer is not seeking to vindicate any underlying rights. Indeed, plaintiffs are asserting a public-based violation -- a role the Legislature has delegated to the Attorney General.

Adoption of plaintiffs' arguments would require the Court to rewrite TCCWNA to eliminate TCCWNA's express "aggrieved" requirement and to ignore the express Legislative history of TCCWNA. In short, it was provisions in consumer contracts that *deceive* the consumer that were intended to be covered by TCCWNA. If a consumer was not deceived and was not negatively impacted by the violation, the consumer was not "aggrieved" and, as such, TCCWNA would not apply. Defendants' mere act of presenting plaintiff with an allegedly non-TCCWNA compliant document is insufficient to confer "aggrieved consumer" status upon plaintiffs.

In addition, even in those cases in which the plaintiff has sustained a monetary loss, the plaintiff's additional claim for the \$100 statutory penalty can be significant. *Dugan v. TGI Fridays, Inc.*, 445 N.J. Super. (App. Div. 2016), *certif. granted*, 226 N.J. 543 (2016), (plaintiff who alleged that she was overcharged for a beverage by \$1.59 sought a \$100 TCCWNA statutory penalty, or a penalty that is over 50 times plaintiff's alleged monetary damages).<sup>1</sup> Against this background, it is clear that the Legislature included the requirement that a plaintiff be "aggrieved" to insure that defendants not be subjected to absolute liability for TCCWNA violations.

Furthermore, limiting a private right of action under TCCWNA to those consumers who are "aggrieved" is logical. Often, certain conduct is regulated but the remedies are limited, such as in the context of the Consumer Fraud Act, which regulates consumer activity but provides a private right of action only to those with an "ascertainable loss." N.J.S.A. 56:8-19. Similarly, while the Plain Language Act regulates all contracting parties, it provides a remedy only to those who were "substantively confused about the rights, obligations or remedies of the contract." N.J.S.A. 56:12-3. Likewise, TCCWNA regulates consumer contracts, notices or signs, but provides a remedy only to "aggrieved consumers." N.J.S.A. 56:12-17.

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<sup>1</sup> *Dugan* was argued in this Court on April 4, 2017.



As the maxim *de minimus non curat lex* states, "the law does not concern itself with trifles," which is a principle that is "part of the established background of legal principles against which all enactments are adopted . . . ." *Wis. Dep't of Revenue v. William Wrigley, Jr., Co.*, 505 U.S. 214, 231 (1992). The application of TCCWNA without a requirement that a consumer be "aggrieved" would violate this fundamental, guiding principle. Defendants' mere act of allegedly presenting plaintiff a non-TCCWNA compliant document is insufficient to confer "aggrieved consumer" status upon plaintiffs.

III. PRINCIPLES OF STATUTORY CONSTRUCTION DEMONSTRATE THAT TCCWNA REQUIRES PLAINTIFF BE AGGRIEVED BY DEMONSTRATING ACTUAL HARM OR INJURY.

Plaintiffs' interpretation of TCCWNA is contrary to clear principles of statutory construction requiring that words be interpreted to have an effect, and that parts of statutes may not be construed so as to render language meaningless. Yet, that is exactly what plaintiffs ask this Court to do.

In defining the term "aggrieved" in TCCWNA a Court must "begin with the text of the statute itself." *Watkins v. DineEquity, Inc.*, 591 Fed. Appx. 132, 135 (3d Cir. 2014). This Court has held that it "violate[s] well-established canons of statutory interpretation" to construe a statute so as to "render any part of a statute inoperative, superfluous, or meaningless." *Innes v. Innes*, 117 N.J. 496, 509 (1990). The basic assumption

is that the Legislature did not use "unnecessary or meaningless language." *Patel v. N.J. Motor Vehicle Comm'n*, 200 N.J. 413, 418-19 (2009); *Med. Soc'y of N.J. v. N.J. Dep't of Law & Pub. Safety, Div. of Consumer Affairs*, 120 N.J. 18, 26-27 (1990) (citations omitted); *Cast Art Indus., LLC v. KPMG LLP*, 209 N.J. 208, 222 (2012); *United States v. Brown*, 740 F.3d 145, 149 (3d Cir. 2014); see also *TRW Inc. v. Andrews*, 534 U.S. 19, 31 (2001).

A court should not "rewrite a plainly-written enactment of the Legislature or presume that the Legislature intended something other than that expressed by way of the plain language." *DiProspero v. Penn*, 183 N.J. 477, 492 (2005) (citation omitted). The court's role is to construe the statutory language in a manner consistent with the statutory context in which it appears. *DiProspero v. Penn*, 183 N.J. 477 (2005); *Prop. Asset Mgmt., Inc., v. Momanyi*, A-2713-09T2, 2011 WL 4056076, at \*5 (App Div. Sept. 14, 2011) (citation omitted).

The Legislature selected the term "aggrieved" - a term that has an established meaning in New Jersey law - with purpose and intent. New Jersey courts have consistently defined an aggrieved party as an individual "whose personal or pecuniary interests or property rights, have been injuriously affected." *Ex parte Van Winkle*, 3 N.J. 348, 361-62 (1950) (citation omitted); see also *Howard Sav. Inst. v. Peep*, 34 N.J. 494, 499

(1961) ("It is the general rule that to be aggrieved a party must have a personal or pecuniary interest or property right adversely affected . . ."); *Advanced Dev. Grp. L.L.C. v. Bd. of Adjustment of N. Bergen*, Nos. A-4576-12T2, A-1275-13T2, 2015 WL 3511942, at \*5 (App. Div. June 5, 2015) (citing *Peep* for the proposition that an aggrieved party has a personal or pecuniary right or interest adversely affected by the judgment); *United Property Owners Ass'n of Belmar v. Borough of Belmar*, 343 N.J. Super. 1, 41-42 (App. Div. 2001) (defining an "aggrieved person" under the Fair Housing Act as someone who has been or is about to be injured by a discriminatory housing practice).<sup>2</sup>

Furthermore, New Jersey courts that have interpreted "aggrieved" in other circumstances have also come to a similar conclusion. For instance in *State v. A.L.*, 440 N.J. Super. 400, 417 (App. Div. 2015), the court examined what it means to be aggrieved by a judgment for the purpose of having standing to appeal from the judgment. The court reasoned that the general

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<sup>2</sup> Other courts that have addressed the term "aggrieved" have also defined the term as requiring some sort of injury. See, e.g., *Thompson v. North Am. Stainless, LP*, 562 U.S. 170, 177 (2011) (explaining that an "aggrieved" person under Title VII is a person with an interest arguably sought to be protected by the statute); *Warth v. Seldin*, 422 U.S. 490, 513 (1975) (finding a person "aggrieved" under the Civil Rights Act if they have a claim of injury by discriminatory housing practices); *Gelbard v. United States*, 408 U.S. 41, 59 n. 18 (1972) (an "aggrieved person" under the anti-wiretap statute is defined as "a party to any intercepted wire or oral communication or a person against who the interception was directed"); see also *Goode v. City of Philadelphia*, 539 F.3d 311, 321 (3d Cir. 2008); *Travelers Ins. Co. v. H.K. Porter Co.*, 45 F.3d 737, 741 (3d Cir. 1995); *Walls v. Am. Tobacco Co.*, 11 P.3d 626, 629 (Okla. 2000); *Johnson v. MKA Enters., Inc.*, No. 112,049, 2015 WL 4487037, at \*5 (Ct. App. Kan. June 17, 2015); *Teague v. Bandy*, 793 S.W.2d 50, 57 (Tex. Ct. App. 1990).

rule is that "to be aggrieved a party must have a personal or pecuniary interest or property right adversely affected by the judgment in question." *Id.* at 418 (citing *Howard Sav. Inst. v. Peep*, 34 N.J. 494, 499 (1961)) (emphasis added); see also *Martin v. Bd. of Adjustment of Paramus*, No. A-0053-06T3, 2007 WL 1930447, at \*4 (App. Div. July 05, 2007) (only a party aggrieved by a judgment may appeal from it) (citations omitted); *Popow v. Wink Assocs.*, 269 N.J. Super. 518, 528 (App. Div. 1993) (same).<sup>3</sup>

Because the Legislature is presumed to be aware of how courts interpret terms in the context of other statutes and is entitled to rely on the consistency of that interpretation, this Court should apply the definition of "aggrieved" outlined in *Van Winkle* and *Peep* in evaluating plaintiff's claims under TCCWNA. See *In re Petition for Referendum on City of Trenton*

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<sup>3</sup> Plaintiffs' reliance on the interpretation of "aggrieved" under the New Jersey Junk Fax Act ("NJJFA") is misplaced. (Plaintiff Spade's Br. at 17 & Plaintiff Wegner's Brief at 7 & 18-21.) TCCWNA is distinguishable because it does not target specific conduct and, instead, is premised on a violation of other clearly established legal rights. See N.J.S.A. 56:12-15. In contrast, because the NJJFA makes it a violation to send unsolicited junk faxes, the receipt of an unsolicited junk fax is presumably an injury to the recipient. In fact, N.J.S.A. 56:8-159 specifically references sending and receipt of an unsolicited fax in connection with recovery by an aggrieved person: "Any person aggrieved by a violation of this act may bring an action in the Superior Court in the county where the transmission was sent or was received, or in which the plaintiff resides, for damages or to enjoin further violations of this act." Thus, while the NJJFA allows recovery of \$500 or actual damages suffered, it still requires some sort of conduct prohibited by the NJJFA, i.e., receipt of an unsolicited junk fax. (And, of course, there is at least some minimal loss associated with a junk fax - the phone line is temporarily tied up, a sheet of paper is wasted, a few drops of ink are spilled.) Thus, the NJJFA requires some sort of injury as a result of conduct prohibited by the act. So, too, does TCCWNA. But Plaintiffs here did not and cannot demonstrate that they were affected by conduct prohibited by TCCWNA. Concluding otherwise would be akin to allowing an individual who does not allege receiving an unsolicited junk fax to maintain a suit for the receipt of an unsolicited junk fax.

*Ordinance 09-02*, 201 N.J. 349, 359 (2010) ("The Legislature is presumed to be familiar with its own enactments, with judicial declarations relating to them, and to have passed or preserved cognate laws with the intention that they be construed to serve a useful and consistent purpose") (citation omitted); see also *Miah v. Ahmed*, 179 N.J. 511, 520 (2004). This is what the Legislature intended by requiring that the consumer be "aggrieved," and this requirement should not be written out of the statute as suggested by plaintiffs.

IV. CASE LAW EVALUATING TCCWNA LAWSUITS MAKES CLEAR THAT ONLY AN AGGRIEVED CONSUMER HAS A RIGHT OF ACTION.

The recognition that only an "aggrieved consumer" may bring a TCCWNA claim is further supported by the case law evaluating other TCCWNA claims. All courts that have considered the issue of whether a plaintiff is aggrieved in the factual scenario present here, where a plaintiff's claim is based on allegedly violative terms that have not deceived and harmed the plaintiff, have found that the plaintiff was not aggrieved. See, e.g., *Friest v. Luxottica Grp. S.P.A.*, No. 16-03327, 2016 WL 7668453, at \*8-9 (D.N.J. Dec. 16, 2016); *Baker v. Inter National Bank*, No. 08-5668, 2012 WL 174956, at \*9-10 (D.N.J. Jan. 19, 2012) ; *Shah v. American Express Co.*, No. 09-00622, 2009 WL 3234594, at \*3 (D.N.J. Sept. 30, 2009); *Cameron v. Monkey Joe's Big Nut Co.*, No. L-2201-07, 2008 WL 6084192 , at \*5,8 (Law Div. Aug. 4,

2008); see also *Dugan v. TGI Fridays, Inc.*, 445 N.J. Super. 59, 69 (App. Div.), certif. granted, 226 N.J. 543 (2016) (holding that only aggrieved consumers can sue for civil penalties under TCCWNA, and consumers who were not exposed to the allegedly violative document - in *Dugan*, a restaurant menu - were not aggrieved); *Hecht v. Hertz Corp.*, No. 16-1485, 2016 WL 6139911, at \*2 (D.N.J. Oct. 20, 2016); *Hite v. Lush Intent*, No. 16-01533, 2017 WL 1080906 at \* (D.N.J. March 22, 2017); *Candelario v. Rip Curl, Inc.*, No. 16-00963, 2016 WL 6820403, at \*3. (C.D. Cal. Sept. 7, 2016).

Plaintiffs here have failed to allege or identify any adverse consequences as a result of any allegedly deceptive statements contained in the receipts provided by Defendants to Plaintiffs. At a bare minimum, a consumer must have suffered an adverse effect caused by the alleged violation to be considered an "aggrieved consumer." A finding that consumers, like Plaintiffs, are "aggrieved" would ignore well-established TCCWNA case law defining that term.

TCCWNA is an expansive statute, but the plain language of the statute, the Legislative history of the statute, statutory interpretation of the term "aggrieved" and numerous other New Jersey statutes and decisional law interpretation TCCWNA all demonstrate that TCCWNA does is not operate to redress a plaintiff who does is not aggrieved as a result of the alleged

TCCWNA violation. If this Court were to hold on this record that these plaintiffs were aggrieved, that interpretation would be unsound as a matter of public policy in addition to being contrary to statutory interpretation and established case law. Companies both large and small could potentially be devastated by these types of no-injury claims. Such an outcome would contravene the legislative intent of TCCWNA to limit private causes of action only to those actually aggrieved, and would ignore well-established law defining that term.

CONCLUSION

The NJBIA respectfully asks this Court hold that a plaintiff asserting a TCCWNA cause of action can only do so when the plaintiff is "aggrieved" by showing that the plaintiff was deceived and harmed by the allegedly unenforceable provisions in the contract. Such a finding would be consistent with legislative intent and with other cases in which this issue has been addressed. This Court should find no differently, and should confirm that the statutory term "aggrieved" has meaning.

Respectfully submitted,

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Dated: 4/20/17