UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF PENNSYLVANIA

GERRELL MARTIN and CURTIS SAMPSON, Plaintiffs, vs. LEVYLAW, LLC and BART E. LEVY, Defendants.	CIVIL ACTION No.: 17-1139

PLAINTIFFS' MEMORANDUM OF LAW IN SUPPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT

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I. INTRODUCTION

In 2016, a Philadelphia family of eight, living in a home without heat and which authorities had deemed unfit for human occupancy, was withholding rent in an attempt to force their landlord to make basic repairs. Rather than make sufficient repairs, however, their landlord hired a debt collection attorney to evict them. That collection attorney, Bart E. Levy, in turn, sued the family, demanding money and possession of their home.

The eviction lawsuit was meritless: none of the money claimed due was owed under controlling law. Accordingly, after four months, multiple court dates, and considerable distress for the family, Levy withdrew the eviction proceeding. The eviction complaint and Defendants' related debt collection efforts were not only meritless; the undisputed facts demonstrate they were clear-cut violations of the Fair Debt Collection Practices Act.

II. FACTS OF THE CASE[1]

a. The Plaintiffs Start Their Life Together at 1916 Clarence Street

In 2013, Plaintiff Gerrell Martin, then a single mother of two, moved into a home at 1916 Clarence Street ("the Property"). SUF ¶ 4. The Property's owner at the time, Gabriela Manzano, did not have a Philadelphia Housing Rental License ("License") and never provided Ms. Martin with a Certificate of Rental Suitability. SUF ¶¶ 5-6.

The Property had considerable deficiencies. After the owner failed to honor Ms. Martin's requests to cure the Property's deficiencies, Ms. Martin notified the Philadelphia Department of Licenses and Inspections ("L&I"). SUF ¶ 7. In turn, L&I cited the Property's owner for failing to

[1] This is a summary of the more detailed Statement of Undisputed Facts ("SUF"). For brevity's sake, Plaintiffs will, where possible, reference paragraphs in the SUF, rather than the documents, declarations or deposition testimony listed in the SUF.

have a License, for violating the fire code, and for a leaking roof and windows, loose electrical outlets, and an unsecured front door. SUF ¶ 8.

In the years that followed, Plaintiff Curtis Sampson and Ms. Martin began their life together. Mr. Sampson and his two children moved into the Property with Ms. Martin, and the couple had two additional children of their own. SUF ¶ 9. In April 2016, the Property was purchased by Argentina Perez Irineo. SUF ¶ 10. On June 1, 2016, after Irineo had her agent tour the Property and promise to make needed repairs, Ms. Martin and Mr. Sampson entered into a lease agreement with Irineo. SUF ¶¶ 11-12. Irineo did not secure a License at that time. SUF ¶ 13. And like the previous owner, Irineo did not provide a Certificate of Rental Suitability to Ms. Martin or Mr. Sampson. SUF ¶ 14.

Irineo failed to make all the repairs she promised. SUF ¶ 15. By September 2016, Ms. Martin and Mr. Sampson withheld their rent and called L&I. SUF ¶ 16. In turn, L&I visited the Property and issued citations for many of the same violations it noted in 2014, including a leaking roof and deteriorated windows. SUF ¶ 17. L&I sent notices of these violations to 6282 Kindred Street, Philadelphia, PA, the record address for Irineo. SUF ¶ 23.

A graver problem loomed: the heating system was inoperable. As the weather grew cold, Ms. Martin and Mr. Sampson could therefore not provide sufficient warmth for their family. By October 2016, L&I returned and cited Irineo for the Property's lack of working heat, and as a result, declared the Property unfit for human occupancy. SUF ¶¶ 20-21.

On October 14, 2016, fearing that Irineo was going to try to evict her in retaliation for withholding rent and for reporting the Property's conditions to L&I, Ms. Martin filed a complaint with the Philadelphia Fair Housing Commission, a statutorily-authorized administrative agency, which holds hearings, adjudicates disputes, and ensures "that renters have safe places to live and

that landlords follow housing laws." City of Philadelphia Fair Housing Commission, *What We Do*, https://beta.phila.gov/departments/fair-housing-commission (last visited Feb. 16, 2018); SUF ¶ 24.

As Ms. Martin was calling Philadelphia officials, Irineo was taking a parallel track: hiring a collection lawyer to evict Ms. Martin, Mr. Sampson, and their children. First, on October 1, 2016, Irineo registered a License for the Property, using the same Kindred Street address to which L&I sent its violation notices. SUF ¶¶ 18-19. Second, she hired Defendants Bart E. Levy and LevyLaw, LLC (collectively "Levy"), to prosecute an eviction case against Ms. Martin and Mr. Sampson. SUF ¶ 26. As will be shown below, because Irineo failed to comply with Philadelphia law, no rent was owed, and no eviction was permissible.

b. The Levy Defendants

Bart E. Levy is a high-volume debt collection attorney with an office in Philadelphia. Through his firm, LevyLaw, LLC, Levy files two to three *thousand* eviction cases in Philadelphia Municipal Court each year. SUF ¶ 27. As a result of his large caseload, Levy is often in court each day of the week pursuing evictions. SUF ¶ 49. Levy manages this all by "rarely" speaking with clients before filing eviction lawsuits on their behalf. SUF ¶ 50. Instead, his support staff interviews landlords, takes down allegedly relevant information, inputs the information into court filings, and then files the complaint online with the court. SUF ¶ 51; *see also* Ex. J 30:11-14 ("Q: Well, you file[d] 2 to 3,000 evictions last year; correct? A: Didn't we establish that my paralegals did?"). Levy believes evictions are "not that hard. . . . [I]t's a fairly standardized procedure, which the courts reduce to just data entry on a certain level." SUF ¶ 52.[2]

[2] Levy instructs his staff in his training manual that it is their "responsibility" to assist his clients without him "getting involved." SUF ¶ 54.

The impact of this large caseload had a predictable impact: Levy could not recall any communications with Irineo or her agents prior to initiating his eviction against Ms. Martin and Mr. Sampson. SUF ¶ 30-31. He was unsure if he personally communicated with anyone, or whether his support staff did, and he could not recall whether those communications were by phone or by email. *Id.*

c. Levy's Attempt to Evict Plaintiffs Begins

On November 7, 2016, Levy began the eviction process against Ms. Martin and Mr. Sampson. First, he mailed Plaintiffs a notice to vacate the Property, stating:

> Please be advised that I represent the owner of the premises in which you currently reside. Your right to possession under the lease is in jeopardy due [sic] breaches in your lease. Your Landlord has decided to file suit in Landlord/Tenant court in the amount of your arrearage totaling in [sic]:
>
> **$2,900** amount includes unpaid rent, late fees, legal fees, and any other expenses you are responsible for per your lease. Pursuant to the above, you must vacate the premises and deliver possession to the owner twenty (20) days from the date of this letter.

Ex. E. (emphasis in original). Levy's $2,900 demand included September, October, and November rent (at $750 per month), plus $150 in late fees, and $500 flat sum in attorney fees. SUF ¶ 33. One day later, Levy filed an eviction lawsuit against Ms. Martin and Mr. Sampson, demanding the same back rent, late fees, and attorney's fees, and again demanding possession of the Property. SUF ¶¶ 35-37.

The eviction complaint was rife with false and misleading statements. It stated that Irineo was "unaware of any open notice issued by the Department of Licenses and Inspections alleging that the property at issue is in violation of one or more provisions of the Philadelphia Code," SUF ¶ 39, when, in fact, L&I had issued multiple violations, sent to the address at which she registered her property license, SUF ¶ 23. And the eviction complaint stated that "the subject

premises [was] fit for its intended purpose," SUF ¶ 41, when L&I had already declared the Property "unfit for human occupancy," because it lacked heat, SUF ¶ 42.

The notice to vacate and the complaint made two other crucial misstatements: First, they demanded $2,900 in back rent and attorney fees that were not owed. And second, Levy demanded possession of the Property—and therefore the eviction of Plaintiffs and their children—when Philadelphia law says no possession could be granted. That law is explained next.

d. Philadelphia Law Sets Preconditions on the Legal Collection of Rent and Those Preconditions Were Not Met

In order to protect public safety and ensure rental properties are safe and habitable, Philadelphia City Council has enacted a number of requirements that property owners must follow as a precondition to collecting rent. First, a landlord must possess a valid License for periods in which he is renting a property. Ex. N, Phila. Code § 9-3902(1)(a). Second, a landlord must provide tenants with a "a Certificate of Rental Suitability that was issued by … [L&I] no more than sixty days prior to the inception of the tenancy." *Id.* at § 3903(1)(a). Moreover, the Certificate of Rental Suitability requirement creates a chokepoint to force landlords to make their properties habitable: L&I may only issue a Certificate if there are no outstanding violations related to the Property. *Id.* at § 3903(2)(b)(ii). Landlords, in other words, must make the repairs needed to make their properties habitable and compliant in order to collect rent. [3]

[3] The habitability problems suffered by Plaintiffs are all too common for low-income renters in Philadelphia. *See, e.g.*, Claudia Vargas, *Hundreds of properties in Philadelphia are 'unfit for human habitation'*, Phila. Inquirer, July 8, 2017, available at http://www.philly.com/philly/news/politics/hundreds-of-properties-in-philadelphia-are-unfit-for-human-habitation-20170709.html; Nan Feyler, Phila. Dep't of Public Health, *The Impact of Housing Quality on Children's Health* (Feb. 2015) (presentation demonstrating low-income renters are often cost-burdened and often living in substandard properties).

Finally, the Certificate of Rental Suitability provision requires landlords to deliver a City of Philadelphia Partners for Good Housing Handbook ("Handbook"), which explains to tenants in practical terms the law governing Philadelphia rental properties. *Id.* § 9-3903(1)(a).

To make these requirements meaningful, the Code provides a serious consequence:

> Any owner who fails to obtain a rental license as required by § 9-3902, or to comply with § 9-3903 regarding a Certificate of Rental Suitability, . . . shall be denied the right to recover possession of the premises or to collect rent during or for the period of noncompliance or during or for the period of license suspension.

Phila. Code § 9-3901(4)(e).

There is no dispute that Levy's client was unlicensed until October 2016 and that Ms. Martin and Mr. Sampson were never provided a Certificate of Rental Suitability during any relevant time period. Levy readily admitted the consequence of such a failure:

> Q. Does a landlord need to do anything specific to be able to legally collect rent in Philadelphia?
> A. Yes.
> Q. What does a landlord need to do?
> A. They need to have a license and they need to have a Certificate of Rental Suitability. And they need to have a -- they need to have given a Partners of Good Housing Handbook to the tenant.

SUF ¶ 57. That is, Levy "know[s] that it's a violation to collect rent without [a license]." SUF ¶ 58. The same goes for noncompliance with the Certificate of Rental Suitability provision: "the language [about collecting rent] is shall not[:]" "it's prohibited." SUF ¶ 58.

Despite this knowledge, Levy's practice when he represented landlords like Irineo was that he did not ask whether his clients had valid licenses for the periods in which he was demanding back rent and he did not ask his clients for their Certificate of Rental Suitability:

> Q. Did you also ask your clients in November of 2016 whether they had a license for the periods in which you were demanding back rent?
> A. No.
> Q. In November of 2016, did you ask your clients for a Certificate of Rental Suitability?

A. No.

SUF ¶ 56; Levy Dep. 45:6-45:12.

e. Levy Demands Attorney Fees Not Incurred

If Ms. Martin and Mr. Sampson did not owe rent—and they did not—then Levy had no right to demand attorney fees as a result of that alleged non-payment. But Levy also misrepresented the amount Ms. Martin and Mr. Sampson owed to him in an additional manner.

In both his letter and his eviction complaint, Levy demanded $500 from Ms. Martin and Mr. Sampson for his alleged legal fees. Discovery revealed, however, that on October 24, 2016, shortly before he filed the eviction, Levy charged his client $250 dollars, rather than the $500 he demanded from Plaintiffs. SUF ¶¶ 28, 38.

When asked to explain the discrepancy between the $500 he twice demanded from Ms. Martin and Mr. Sampson and the $250 he seemed to be charging his client, Levy stated that he was "anticipat[ing]" how much he might eventually charge Ms. Martin and Mr. Sampson, but that it was not owed when he demanded it. Ex. J, 85:11-22; SUF ¶ 38.

As explained in section IV(e), this demand is a further violation of the FDCPA.

f. Levy's Meritless Eviction Action Creates a Black Cloud Over Plaintiffs, and After Four Months, Is Finally Withdrawn

Being faced with the prospect of the forced relocation of their family caused considerable distress for Ms. Martin and Mr. Sampson. Ms. Martin described it as a black cloud over her family. SUF ¶¶ 60-62. Mr. Sampson described it as causing stress, sleepless nights, and tension. *Id.*[4]

[4] Scholarship in recent years has echoed the harms caused by eviction, particularly low-income mothers. *See, e.g.*, Matthew Desmond and Rachel Tolbert Kimbro, *Eviction's Fallout: Housing, Hardship, and Health* (Sept. 2015) (concluding that "mothers who were evicted in the previous year experienced more material hardship, were more likely to suffer from depression,

Over the next four months, Ms. Martin and Mr. Sampson worked to unravel the attempted eviction. First up was the Fair Housing Commission process, which began after Ms. Martin filed her October 2016 complaint. SUF ¶ 43. In a preliminary order issued on December 20, 2016, and in a final order issued on January 25, 2017, the Commission cited ongoing L&I violations,[5] and held that Ms. Martin and Ms. Sampson *owed no rent as a matter of law*, for familiar reasons: Levy's client's failure to comply with the Certificate of Rental Suitability provision of the Philadelphia Code. SUF ¶ 44. Irineo never appealed the Fair Housing Commission decision, rendering it final. SUF ¶ 45.

Finally, on the morning of March 2, 2017, almost four months after Levy filed the eviction, and after three court dates in landlord-tenant court, Levy admitted defeat, withdrawing the eviction proceeding. SUF ¶ 47.[6]

On March 15, 2017, Ms. Martin and Mr. Sampson brought this action, alleging actual damages for Levy's violations of the FDCPA. Two weeks later, in apparent response, Levy's clients finally acquired a Certificate of Rental Suitability.

III. SUMMARY JUDGMENT STANDARD

Summary judgment is appropriate when "there is no genuine issue as to any material fact and . . . the moving party is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are limited to those that may affect the outcome of the suit. *Anderson v. Liberty*

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reported worse health for themselves and their children, and reported more parenting stress"). Should summary judgment on liability be awarded to Plaintiffs, and the parties are unable to reach settlement, the scope of this harm will be determined in a damages-only trial.

[5] By the final Fair Housing Commission hearing heat had been temporarily restored, but several serious code violations remained.

[6] Levy admitted that by the time of the March 2, 2017 hearing, he knew the case was not going to be successful. SUF ¶ 47. He excused his failure to withdraw the eviction before that date by stating that he had not received the approval of his client. *Id*.

Lobby, Inc., 477 U.S. 242, 248 (1986). An issue of material fact is only genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*.

When the moving party establishes the absence of a genuine issue of material fact, the burden shifts to the non-moving party to "do more than simply show that there is some metaphysical doubt as to the material facts." *Matsushita Elec. Indus., Ltd. Co. v. Zenith Radio Corp*., 475 U.S. 574, 586 (1986). If the non-moving party bears the burden of persuasion at trial, "the moving party may meet its burden on summary judgment by showing that the nonmoving party's evidence is insufficient to carry that burden." *Kaucher v. County of Bucks*, 455 F.3d 418, 423 (3d Cir. 2006) (quoting *Wetzel v. Tucker*, 139 F.3d 380, 383 n.2 (3d Cir. 1998)). The court views the record in the light most favorable to the non-moving party and draws all reasonable inferences in that party's favor. *Nicini v. Morra*, 212 F.3d 798, 806 (3d Cir. 2000).

IV. ARGUMENT

Stripped down to its basics, this matter presents straightforward questions of law: First, whether a debt collector violates federal law when he threatens and then initiates litigation over money that consumers do not legally owe. Second, whether a debt collector violates federal law when he misrepresents the amount consumers allegedly owe, and misrepresents that consumers could lose their home as a result of that alleged debt. Third, whether a debt collector violates federal law when he demands attorney fees that by his own admission were not owed. The answer to each of those questions is indisputably yes.

a. The FDCPA and the Least Sophisticated Consumer

Congress enacted the FDCPA "to eliminate abusive debt collection practices by debt collectors." 15 U.S.C. § 1692(e)). "Abusive debt collection practices," Congress found,

"contribute to the number of personal bankruptcies, to marital instability, to the loss of jobs, and to invasions of individual privacy." *Id.* § 1692(a).

"To effectuate these purposes, Congress proscribed the use of 'any false, deceptive, or misleading representation or means in connection with the collection of any debt' and provided a list of sixteen examples of such prohibited conduct." *Tatis v. Allied Interstate, LLC*, ____ F.3d _____, No. 16-4022, 2018 U.S. App. LEXIS 3238, at *4-5 (3d Cir. Feb. 12, 2018) (citing 15 U.S.C. § 1692e). This includes "making false representation[s]" about "the character, amount, or legal status of any debt," 15 U.S.C. § 1692e(2)(A), and using "any false representation or deceptive means to collect or attempt to collect any debt," *id.* at § 1692e(10). Moreover, because § 1692e's "list of the sixteen subsections is non-exhaustive, a debt collection practice can be a false, deceptive, or misleading practice in violation of section 1692e even if it does not fall within any of the subsections." *Lesher v. Law Offices of Mitchell N. Kay, PC*, 650 F.3d 993, 997 (3d Cir. 2011) (internal quotation marks omitted).

As a remedial statute, "the FDCPA must be broadly construed in order to give full effect to these purposes." *Caprio v. Healthcare Revenue Recovery Grp.*, LLC, 709 F.3d 142, 148 (3d Cir. 2013). One part of that remedial scheme is that the FDCPA "is a strict liability statute to the extent it imposes liability without proof of an intentional violation" by a debt collector. *Allen v. LaSalle Bank*, 629 F.3d 364, 368 (3d Cir. 2011). Another is that in analyzing debt collection communications, courts use a consumer-friendly lens: the least sophisticated consumer, which seeks "to protect all consumers, the gullible as well as the shrewd, the trusting as well as the suspicious, from abusive debt collection practices." *Brown v. Card Serv. Ctr.*, 464 F.3d 450, 454 (3d Cir. 2006) (internal quotation marks omitted). "The standard is an objective one, meaning that the specific plaintiff need not prove that *she* was actually confused or misled, only that the

objective least sophisticated debtor would be." *Jensen v. Pressler & Pressler*, 791 F.3d 413, 419 (3d Cir. 2015). In this way, "the FDCPA enlists the efforts of sophisticated consumers as private attorneys general to aid their less sophisticated counterparts, who are unlikely themselves to bring suit under the Act, but who are assumed by the Act to benefit from the deterrent effect of civil actions brought by others." *Id*. (internal alterations and quotation marks omitted). And because this is an objective standard, courts are often able to resolve whether a communication is misleading as a matter of law. *See, e.g.*, *Caprio*, 709 F.3d at 147.

b. Levy Violated the FDCPA by Making Misrepresentations to Plaintiffs While Attempting to Evict Them

To prevail on an FDCPA claim, plaintiffs "must prove that (1) [they are] a consumer, (2) the defendant is a debt collector, (3) the defendant's challenged practice involves an attempt to collect a 'debt' as the Act defines it, and (4) the defendant has violated a provision of the FDCPA in attempting to collect the debt." *Douglass v. Convergent Outsourcing*, 765 F.3d 299, 303 (3d Cir. 2014).

Defendants threatened and then initiated a lawsuit against Plaintiffs, a married couple, and parents of six, over rent alleged to be due. By the plain terms of the statute, Plaintiffs are therefore consumers, defined as "any natural person obligated or allegedly obligated to pay any debt." 15 U.S.C. § 1692a. Moreover, Levy stipulated that he is a debt collector.[7] Accordingly, the only questions outstanding to determine Levy's liability are a) whether his challenged practice involved an attempt to collect a debt, and b) whether in that practice, he violated a stricture of the FDCPA.

[7] He had no choice. The "debt collector" label attaches to attorneys who "regularly engage in consumer-debt-collection activity, even when that activity consists of litigation." *Hoffmann v. Wells Fargo Bank, N.A.*, 242 F. Supp. 3d 372, 382 (E.D. Pa. 2017) (quoting *Heintz v. Jenkins*, 514 U.S. 291, 299 (1995)). At his deposition Levy testified that he initiates two to three *thousand* eviction cases each year. SUF ¶ 27.

c. Levy's Notice to Vacate and Eviction Lawsuit Were Debt Collection Activity

The FDCPA "covers conduct taken in connection with the collection of any debt." *McLaughlin v. Phelan Hallinan & Schmieg, LLP*, 756 F.3d 240, 245 (3d Cir. 2014) (internal quotation marks omitted). "Put differently, activity undertaken for the general purpose of inducing payment constitutes debt collection activity." *Id.* Levy deemed his initial communication with Plaintiffs as "an attempt to collect a debt." Case law makes clear his assertion was accurate.

First, the FDCPA's "broad definition" of debt, *Kaymark v. Bank of Am., N.A.*, 783 F.3d 168, 179 (3d Cir. 2015), includes any debt that "aris[es] out of a transaction in which the money . . . which [is] the subject of the transaction [is] primarily for personal, family, or household purposes." 15 U.S.C. § 1692a(5); *see also Pollice v. Nat'l Tax Funding, L.P.*, 225 F.3d 379, 401 (3d Cir. 2000) (definition "applies to all obligations to pay money which arise out of consensual consumer transactions"). Given that residential rent is by definition for personal, family, and household purposes, "under the FDCPA, back rent is debt." *Romea v. Heiberger & Assocs.*, 163 F.3d 111, 116 (2d Cir. 1998); s*ee also, e.g., Wenrich v. Robert E. Cole, P.C.*, No. 00-2588, 2000 U.S. Dist. LEXIS 18687, at *7 (E.D. Pa. Dec. 21, 2000) ("There being no dispute that the lease giving rise to the alleged debt was residential, the Court concludes that the nature of the transaction underlying the action does not bar applicability of the FDCPA.").

Second, Levy's letter and his complaint are covered communications under the law, broadly defined as "the conveying of information regarding a debt directly or indirectly to any person through any medium." 15 U.S.C. § 1692a(2). A communication "need not contain an explicit demand for payment to constitute debt collection activity." *McLaughlin*, 756 F.3d at 245-46. Rather, courts must conduct a "commonsense inquiry of whether a communication from a debt collector is made in connection with the collection of any debt." *Id.* (quoting *Gburek v.*

Litton Loan Servicing LP, 614 F.3d 380, 385 (7th Cir. 2010)). That commonsense inquiry makes clear that Levy's letter—demanding money and threatening suit—was indeed debt collection. *See, e.g.*, *McLaughlin*, 756 F.3d at 246 (holding that a debt collector's letter under virtually identical circumstances is debt collection).

The eviction complaint itself is similarly covered. The FDCPA "applies to the litigating activities of lawyers." *Heintz v. Jenkins*, 514 U.S. 291, 294 (1995). For good reason: "Abuses by attorney debt collectors are more egregious than those of lay collectors because a consumer reacts with far more duress to an attorney's improper threat of legal action than to a debt collection agency committing the same practice." *Crossley v. Lieberman*, 868 F.2d 566, 570 (3d Cir. 1989).[8] The coverage of those "litigating activities" includes pleadings generally, and complaints specifically. *See, e.g.*, *Kaymark*, 783 F.3d 168, 177 ("[A] communication cannot be uniquely exempted from the FDCPA because it is a formal pleading or, in particular, a complaint."). Levy's eviction complaint, which demands the very same alleged debt as the notice to vacate he issued only one day earlier, is therefore debt collection activity. That is, "[w]hatever else they may have been seeking, [the debt collectors] were clearly attempting to collect money that Plaintiffs allegedly owed." *Lipscomb v. Raddatz Law Firm, P.L.L.C.*, 109 F. Supp. 3d 251, 260 (D.D.C. 2015).

d. Levy's Notice to Vacate and Eviction Complaint Deceptively Misrepresented the Character, Amount, and Legal Status of the Debt

Debts are a creation of state law. It is therefore little surprise that in order to evaluate whether a FDCPA communication was false or misleading, courts often first examine

[8] Ms. Martin explained this clearly: "I felt like I was going up against somebody maybe on the level as a cop or someone with some type of authority that people look at as going to . . . be honest." Ex. K, Martin Dep. 150:22-151:1.

substantive state law. "The illegality of [the debt collector's] behavior," in other words, "must be viewed in context with Pennsylvania law governing" the underlying debt allegedly owed. *Crossley*, 868 F.2d at 570; *see also Lipscomb*, 109 F. Supp. 3d at 264 (holding consumer stated claim in § 1692e action because "whether rental properties are subsidized is relevant to the availability of statutory and regulatory defenses to eviction").[9]

Here that law is unambiguous:

> Any owner who fails to obtain a rental license as required by § 9-3902, or to comply with § 9-3903 regarding a Certificate of Rental Suitability, . . . **shall be denied the right to recover possession of the premises or to collect rent during or for the period of noncompliance** or during or for the period of license suspension.

Phila. Code § 9-3901(4)(e) (emphasis added). The consequence is therefore clear: Irineo did not possess a license during September 2016, and accordingly had no legal right to September's rent. Phila. Code § 9-3901(4)(e); *accord Goldstein v. Weiner*, Nov. 2010, No. 3964, slip op. at 5 (C.P. Phila. Dec. 14, 2011), Ex. O ("The clear and express language of [the Philadelphia Code] unequivocally provides that no landlord may collect rent while he or she does not possess a Housing License, or for the period during which the landlord failed to maintain such a license.").[10]

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[9] This Court is well familiar with the interplay of the FDCPA and state law. In *Benner v. Bank of America*, 917 F. Supp. 2d 338, 354 (E.D. Pa. 2013), for example, the Court heard an FDCPA claim which involved the interplay between the FDCPA and Pennsylvania's Act 6. The Court dismissed the claim there because that the alleged debts at issue were "not barred from being collected by any law." *Id.* Here the situation is the polar opposite: the law is explicit that landlords are "denied the right. . . to collect rent" for periods in which they did not comply with the law. Phila. Code § 9-3901(4)(e).

[10] After *Goldstein*, the City of Philadelphia amended the law and split out the License provision and the Certificate provision into the subsections of the Code they reside today. The consequences for failing to comply have not changed. *See* Phila. Bill 140892-A Text, available: http://bit.ly/2lnXvrZ (enacted Feb. 11, 2015).

The same is true for the Certificate of Rental Suitability and Handbook requirements: Because Ms. Martin and Mr. Sampson had not been provided a Certificate of Rental Suitability at all, September, October, and November's rent—the entire alleged delinquency—were not owed either. *See* Phila. Code § 9-3901(4)(e); Memo. § II(d), *infra*. Moreover, the law denied Irineo "the right to recover possession of the premises . . . during or for the period of noncompliance." *Id.* In other words, Levy was threatening a family of eight with forcible removal from their home when the law made clear that his clients were not owed money and not entitled to possession.

Accordingly, "[b]ecause of the protective provisions of" the Philadelphia Code, Levy's debt collection activities "violated the federal statute in several ways," *Crossley*, 868 F.2d at 571, including by making "making false representation[s]" about "the character, amount, or legal status of any debt," 15 U.S.C. § 1692e(2)(A), and using "any false representation or deceptive means to collect or attempt to collect any debt," *id.* at § 1692e(10).

First, when money is not owed or merely not enforceable, a debt collector "must not deceive or mislead the least-sophisticated debtor into believing that she has a legal obligation to pay." *Tatis*, ____ F.3d at ____, 2018 U.S. App. LEXIS 3238, at *14. While there are a variety of ways a debt collector could mislead a consumer about an "unenforceable" debt for which a consumer "has a complete legal defense against having to pay," the law in this Circuit unequivocally prohibits two: "initiat[ing] or threaten[ing] legal action." *Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 32-33 (3d Cir. 2011) (holding such action to violate §1692e).

Huertas's command came in the context of a debt collector threatening to sue over a debt that was legally owing but became unenforceable as a function of a state's statute of limitations. Ms. Martin and Mr. Sampson's claim is even stronger, because Levy threatened and then

initiated litigation for money that they did not owe in the first instance. Phila. Code § 9-3901(4)(e). The amount of actual damages caused by Levy's actions is a jury question. His liability, however, is not. In making his threat and then initiating suit, Levy violated §§ 1692e(2) and (10).

Second, regardless of any litigation threat, debt collectors may not misrepresent the amount the least sophisticated consumer owes. *See McLaughlin*, 756 F.3d at 246 ("If the amount actually owed as of [the date a debt collector demanded it] was less than the amount listed, then, . . . [a consumer] has stated a claim that the Letter misrepresents the amount of the debt in violation of § 1692e(2) and (10)."). Such conduct "plainly violate[s]" § 1692e. *Jensen*, 791 F.3d at 422. Levy did this in the notice to vacate and the complaint: informing Ms. Martin and Mr. Sampson they owed $2,900 when they owed *nothing*. *See* Phila. Code § 9-3901(4)(e). In making those misrepresentations, Levy therefore violated § 1692e(2) and (10).

Third, debt collectors may not make other false representations about the character or legal status of a debt or use any false representation or deceptive means to collect that debt. 15 U.S.C. §§ 1692e(2)(A), e(10). "As [Third Circuit] jurisprudence in this area has shown, this is not a particularly high bar." *Jensen*, 791 F.3d at 421. Here, however, Levy made as serious a misrepresentation as can be made: that he would take possession of Ms. Martin and Mr. Sampson's home, despite Irineo not providing them a Certificate of Rental Suitability, and therefore having no legal right to do so. *See* Phila. Code § 9-3901(4)(e); *Crossley*, 868 F.2d at 571 (affirming a debt collector violated § 1692e(10) when letter "implied that nonpayment of the debt would result in the imminent sale of her home" and when debt collector threatened to take action within one week, despite state law providing at least thirty days before he was legally entitled to do so). "In Pennsylvania, as elsewhere, the home is an especially significant type of

property. The loss of one's home, regardless of its monetary value, not only impacts the owner, but may impact other family members, and one's livelihood." *Commonwealth v. 1997 Chevrolet*, 160 A.3d 153, 197 (Pa. 2017). In threatening to evict a family from their home as part of his collection efforts, despite unequivocal law prohibiting that outcome, Levy violated § 1692e(2) and (10).

Moreover, Levy falsely asserted that "the subject premises [was] fit for its intended purpose," despite the fact that it lacked heat, and L&I had declared it unfit for human occupancy. Tenants living in properties without heat or which have been declared unfit for human occupancy have absolute defenses to paying rent, under both statute and common law. *See* Phila Code. Chap. 4, § PM-109.1 (defining an unfit dwelling as one which lacks heating facilities); *id.* at PM-109.1.1 ("Where a dwelling is designated as unfit for human habitation . . . **the owner shall be denied the right to collect rent for the duration of such unfit designation**.") (emphasis added); *Kuriger v. Cramer*, 498 A.2d 1331, 1338 (Pa. Super. Ct. 1985) (stating tenants entitled to withhold rent when "a landlord withholds heat"); *Shaffer v. Alexander*, No. LT 11-355, 2011 Pa. Dist. & Cnty. Dec. LEXIS 262, at *2-3 (C.P. Allegheny Sep. 27, 2011) ("The failure to provide a working furnace or the failure to promptly repair or replace a furnace that stops working is a breach of the implied warranty that a residential residence is fit for human habitation."). Because "few unsophisticated consumers would be aware" of the import of these misrepresentations, "such consumers would unwittingly acquiesce to such lawsuits." *Phillips v. Asset Acceptance, LLC*, 736 F.3d 1076, 1079 (7th Cir. 2013) (analyzing import within context of time-barred suits); *see also Crossley*, 868 F.2d at 570-71 (examining whether conduct misstated state law); *Lipscomb*, 109 F. Supp. 3d at 264-65 (holding consumer stated claim because "whether rental properties are subsidized is relevant to the availability of statutory and regulatory defenses to

eviction"). In falsely asserting that the Property was fit for its intended purpose, when it lacked heat and was declared unfit for human occupancy, Levy violated § 1692e(2) and (10).[11]

As a strict liability statute, the FDCPA does not consider a defendant's lack of knowledge or intent. *Glover v. FDIC*, 698 F.3d 139, 149 (3d Cir. 2012); *accord Allen*, 629 F.3d at 368. But Levy admitted he knows the consequence for failing to comply with the law: "it's a violation to collect rent without [compliance]," "it's prohibited. SUF ¶ 58. Despite that, his practice was to not ensure the money he was demanding was legally owing. SUF ¶¶ 55-56. The FDCPA holds him accountable for that failure.

e. Levy Admitted to an Additional Violation of the FDCPA by Demanding Attorney Fees that Plaintiffs Did Not Owe Him

In addition to Levy's demand for money and possession when his client was entitled to neither, Levy admitted to facts demonstrating another violation of the FDCPA: He demanded $500 in attorney fees from Ms. Martin and Mr. Sampson when he admits $500 was not owed, but was instead what he estimated would eventually be owed.

The Third Circuit first addressed this issue in *McLaughlin*. There a consumer sued a collections attorney under § 1692e(2) and (10), arguing that attorney fees demanded from the consumer were not owed as of the date the collections firm demanded them. 756 F.3d at 243-44. After the District Court dismissed the case, the Third Circuit reversed, holding it impermissible to represent that a specific amount is actually owed where that alleged amount is actually an estimate. *Id.* at 246. One year later, in *Kaymark*, the Court of Appeals faced this question again, but in the context of a complaint, and again ruled in favor of the consumer, holding virtually

[11] Levy's own paralegal training manual identifies heat as one of "three essential things" a landlord must supply. SUF ¶ 59. As Levy tells his own staff, the "[f]ailure to provide a tenant with one of these essential things could result in a reduction of the judgment or winning the case for the tenant." *Id.*

identical conduct violated the law. 783 F.3d at 175. In other words, regardless of the communication, "[d]ebt collectors may not, consistent with § 1692e, represent estimates of the amount that the debtor would ultimately owe as the *actual* amount owed as of the date of the communication." *Jensen*, 791 F.3d at 421-22.

Levy admitted he did this very thing. When asked to explain why he charged his own clients $250, while demanding $500 from Plaintiffs, he conceded his fee demand was an *estimate* of what he thought might he might be able to charge Plaintiffs, not what was owed at the time:

> Q. If we turn back to Levy 1 [the eviction complaint]--
> A. Uh-huh.
> Q. -- the $500 demanded is an estimate of what you anticipate will be incurred?
> A. Yes.
> Q. But it's not what was owed at the time of filing?
> A. No.

Ex. J, Levy Dep. 86:6-13 (examining Ex. G, Levy 27 Invoice).

Accordingly, Levy committed an additional, clear violation of §§ 1692e(2) and (10).

V. CONCLUSION

Levy demanded money from Ms. Martin and Mr. Sampson that they did not owe under law. He threatened Ms. Martin and Mr. Sampson with eviction from their home when no eviction could be granted. And he demanded attorney fees that he was not owed. In doing so, he violated the Fair Debt Collection Practices Act, and Plaintiffs therefore respectfully ask that summary judgment as to liability be entered in their favor.

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Respectfully submitted,

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