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Attorneys for Defendants

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IN THE UNITED STATES DISTRICT COURT  
FOR THE EASTERN DISTRICT OF PENNSYLVANIA

GERRELL MARTIN and CURTIS SAMPSON : CIVIL ACTION  
: :  
v. : NO.: 2:17-cv-01139-JHS  
: :  
BART E. LEVY, ESQUIRE and :  
LEVY LAW, LLC :

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**DEFENDANTS' PRE-TRIAL MEMORANDUM**

**I. Facts.** Defendants Bart E. Levy, Esquire and Levy Law, LLC (collectively, “Levy”) were retained by a landlord, Argentina Perez Irineo (the “Owner”) to file a landlord-tenant complaint against Plaintiffs. The Owner (or her agents) indicated to Levy that the Plaintiffs had not paid rent for three months. Therefore, on November 7, 2016, Levy sent a Notice of Default letter to Plaintiffs. On November 8, 2016, Levy, on behalf of the landlord, filed a landlord-tenant complaint (the “LT Complaint”) against Plaintiffs in the Philadelphia Municipal Court (the “LT Action”). Levy filed the Complaint after having conferred with his client regarding the allegations stated in the LT Complaint.

Other than the Notice of Default and LT Complaint, Levy had no further direct communications with Plaintiffs. Ultimately, the LT Complaint was withdrawn on March 2, 2017.

Mr. Levy began his career as a “tenant lawyer” in landlord-tenant actions, currently represents tenants and landlords, and has represented approximately 7,000 or 8,000 tenants in landlord-tenant matters over his career. Levy files approximately 2,000-3,000 eviction actions

per year. Mr. Levy spends almost every weekday in landlord tenant court for two sessions per day representing either landlords or tenants. Because Mr. Levy spends almost every weekday in landlord tenant court, his staff performs a majority of the client intake. Levy's firm consists of Mr. Levy, two well-trained paralegals, a receptionist, and one associate attorney. Either a paralegal or the associate attorney performs client intake if Mr. Levy is not in the office.

Mr. Levy has a standard procedure for his staff regarding landlord-tenant actions where he has trained his staff to ask clients for the components or elements of the Philadelphia Municipal Court landlord-tenant complaint. Mr. Levy's office procedure at the time included: (1) determining whether there was a landlord-tenant relationship between the parties; (2) determining whether the landlord had a rental license (previously known as a housing inspection license); (3) determining what was owed to the landlord; and (4) obtaining details regarding the lease. Levy has a "Paralegal Training Guide" which includes detail regarding the procedures used by Levy's staff in landlord-tenant matters. Levy also has a "work-flow log" which shows the documents that Levy has obtained and the stage of the litigation in a landlord-tenant action.

Before Levy sends a Notice to Vacate to a tenant, Levy verifies that the landlord has a rental license because a claim will be rejected by the court without a current, valid license. In November 2016, when filing an eviction action, Levy relied on the representations of his clients regarding whether the landlord had a current rental license when the action was filed and for the periods during which the landlord was demanding rent and/or other amounts allegedly owed. In November 2016, when reviewing a demand letter being sent to a delinquent tenant, Mr. Levy checked for a Certificate of Rental Suitability, and if he did not find one, he would ask the landlord whether they had a Certificate of Rental Suitability.

In November 2016, Levy relied on the representations of his client regarding whether the Department of Licenses and Inspections ("L&I") had issued any violations in connection with the property in question. The website [phila.gov/LI](http://phila.gov/LI) allows an individual to check a property in Philadelphia regarding whether there are any outstanding L&I violations. However, this website does not report every L&I violation at a property. Furthermore, entries on the website are often backdated and unreliable. Frequently, the website will show no violations when there are violations and often the website is down as nonfunctional. In November 2016, Mr. Levy would only check the website if his landlord client represented to Levy that the landlord was unable to get a Certificate of Rental Suitability. If the landlord client made this representation, Mr. Levy

suspected that there had to be some reason that the landlord could not get a Certificate of Rental Suitability including but not limited to the fact that there may be violations at the property or that the website did not show that a rental license was renewed when in fact the license was renewed. In November 2016, Levy had to rely on the representation of the landlord regarding whether the property in question was fit for its intended purpose and whether a tenant was actually living in the property.

When Levy sent a Notice to Vacate to a tenant, Levy included a demand for attorney's fees if it was provided for in the lease or if the landlord told Levy that the lease involved was a Pennsylvania Association Realtors Lease (which he knew contained an attorney's fee provision).. Levy did not include a demand for attorney's fees in a Notice to Vacate if there was no basis for doing so.

In October or November, 2016, Levy was retained by the Owner who had recently purchased the property located at 1916 Clarence St., Philadelphia PA 19134 (the "Property"). The Owner is Hispanic and spoke little if any English and Mr. Levy and his staff communicated with the Owner through one or more interpreters, some of whom Mr. Levy believes may have been related to the Owner. Levy was retained by the Owner to represent her in connection with certain defaults under a residential lease by Gerrell Martin and Curtis Sampson (the "Tenants"), who at that time were occupying the Property. In this case, the Owner (or her agents) emailed Levy a current rental license for the Property sometime prior to November 8, 2016, the date when the LT Complaint was filed. Based upon Levy's procedures it is likely that the Owner (or her agent) told Levy that she possessed a Certificate of Rental Suitability prior to November 8, 2016. At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that the Property was fit for its intended purpose, ie. habitable as a rental unit. At some point prior to November 8, 2016, the Owner (or her agent) represented to Levy that she was unaware of any open violation notice issued by L&I. Mr. Levy is sure that the Owner (or her agent) actually made these representations to Levy because of Levy's procedures (described above).

The lease provides for an award of reasonable legal fees. Levy fully anticipated that this eviction action would cost a minimum of \$500 in legal fees. Pursuant to the terms of Levy's engagement as counsel for the Owner, Levy agreed to charge the Owner \$500 for filing the landlord-tenant complaint, appearing at one hearing, obtaining a judgment for possession, obtaining a writ of possession and completing the process by which possession of the Property

would be turned back to the Owner. Pursuant to the terms of Levy's engagement as counsel for the Owner, the Owner was billed and paid Levy \$250 at the commencement of Levy's engagement with the understanding that the additional \$250 would be paid at the time the possession of the Property was turned back over to the Owner. As of 2017, the normal hourly rate charged by Mr. Levy to most clients was \$350 per hour, which is a reasonable and appropriate rate based upon Mr. Levy's knowledge of similarly situated attorneys in Philadelphia with similar age and experience.

In Mr. Levy's practice, he utilizes the services of paralegals who report to him and whose services he reviews and directs. As of 2017, the normal hourly rate which Levy charged to most clients for services provided by Levy's paralegals was \$75 per hour, which is a reasonable and appropriate rate based upon Mr. Levy's knowledge of similarly situated individuals who worked with law firms in Philadelphia, with similar age and experience. Prior to filing the landlord-tenant complaint against the Tenants, Levy's paralegals did the intake for the case, spoke with the Owner through an interpreter on several occasions to obtain the facts necessary in order to prepare the Complaint, prepared the Complaint and then filed the Complaint, which took approximately 3.5 hours of their time. Mr. Levy spent approximately one hour reviewing the file and reviewing their work, including the Complaint, before the Complaint was filed.

Based upon the work which was done by Levy's office prior to filing the Complaint, in excess of \$500 had been earned based on the legal services provided by Levy's office for the Owner. Levy typically does not charge an owner the full amount based upon the number of hours spent on a landlord-tenant case because of the significant competition among attorneys in Philadelphia for this type of work and the need to charge limited, flat fees for this type of work. Because Levy handles a number of these types of landlord-tenant cases, charging this type of limited, flat fee for this type of work is appropriate and advisable. However, this does not mean that Levy had not legitimately earned \$500 by the time Complaint was filed; rather, Levy agreed to take a lesser amount for his own business reasons. The Owner was obliged to pay Levy the full \$500 under any circumstances. Because of the difficulties encountered in this case, Levy ended up not collecting the additional \$250 from the Owner.

If the full amount of the legal fees being charged is not included as part of the damages being claimed in the Complaint, the Owner would not be able to recover the full amount of the attorney's fees incurred without filing a new and separate civil action, which would certainly be

a waste of time and not be cost effective. If the landlord-tenant case was litigated through the entry of judgment and the issuance of the writ of possession, there is no question that the \$500 total legal fee would not only have been earned but would also have been paid. If the landlord-tenant case had settled prior to the entry of judgment or prior to the issuance of the writ of possession, the parties would have negotiated and agreed to all, some, or none of the attorney's fees being recovered as part of the settlement and therefore the Tenants would have a specific say, either individually or through counsel, as to how much attorney's fees they would be paying to the Owner. The Tenants in this case were not misled as to the amount of attorney's fees earned and recoverable in the landlord-tenant case, based upon the inclusion of \$500 as recoverable attorney's fees in the Complaint.

Levy verified the information in the LT Complaint verbally with the Owner (or her agent). Levy was unaware of any open L&I violations at the Property prior to filing the LT Complaint. When Levy received notice of the L&I violations, he informed the Owner of the violations.

The Fair Housing Commission issued a final order on February 7, 2017. The final order did not prevent the Owner from obtaining a Certificate of Rental Suitability and presenting it to the tenant prior to the March 2, 2017 hearing date in LT Action. The final order did not prevent the Owner from demanding rent for any period of time after which the Owner obtained and presented to the tenants a Certificate of Rental Suitability. Levy, on behalf of the Owner, withdrew the landlord tenant action on March 2, 2017. Levy could not withdraw the landlord-tenant action until the Owner authorized him to do so. Levy was not authorized by his client to withdraw the landlord-tenant action until March 2, 2017.

Plaintiffs received a copy of Levy's Notice to Vacate dated November 7, 2016. The November 7, 2016 letter was the first time that Plaintiffs were ever contacted by Levy. Plaintiffs could not remember contacting or being contacted by Levy other than through the Notice to Vacate. Plaintiffs were never contacted by Levy via telephone. Plaintiff Gerrell Martin ("Martin") is unaware of the substance of conversations between Levy and the Owner (or her agents). Martin does not know whether the Owner ever received a violation notice issued by L&I.

Levy never stated or even suggested to Plaintiffs that the fact they were not paying rent could or would result in their arrest. Levy never represented to Plaintiffs that the fact that they

were withholding rent could or would result in the seizure or sale of any of their property. Levy never represented to Plaintiffs that the fact that they were withholding rent would prevent them from asserting a claim or defense to defend themselves in the landlord/tenant action. Levy never communicated to Plaintiffs that they had in any way committed a crime. Levy never represented to Plaintiffs that Levy would disclose Plaintiffs' credit information to anyone. At her deposition, Martin was unsure whether "Bart Levy" was the name of the attorney who represented her landlord.

Plaintiff Curtis Sampson ("Sampson") never filed any fair housing complaints, never appeared for any court hearings, never contacted L&I, and was not aware of any outstanding violations issued by L&I in 2014. Sampson does not remember seeing the Notice to Vacate sent by Levy in November 2016. Sampson does not remember receiving the LT Complaint.

Plaintiffs initiated this action on March 15, 2017 by filing a complaint. Defendants filed an answer to the complaint on May 15, 2017. The parties participated in a Pre-Trial Conference on July 13, 2017. The parties participated in a Settlement Conference on October 16, 2017. Discovery has been completed. Plaintiffs filed a Motion for Partial Summary Judgment on March 2, 2018. Defendants filed an Answer to the Motion for Partial Summary Judgment on March 20, 2018. The parties have exchanged copies of Trial Exhibits and proposed stipulations. There is a Pre-Trial Conference scheduled for July 30, 2018 at 10:00am before the Honorable Joel H. Slomsky.

**II. Witnesses.** It is anticipated that all Defendants' witnesses will be called as live witnesses.

**Bart E. Levy, Esquire**

Levy Law, LLC  
1515 Market Street, Suite 950  
Philadelphia, PA 19102  
(267) 687-8000  
Fact and liability witness regarding his law practice, policies, and procedures and all facts surrounding the landlord-tenant matter involving Gerrell Martin and Curtis Sampson.

**Gerrell Martin**

c/o Daniel Urevick-Ackelsberg, Esquire  
Public Interest Law Center  
1709 Benjamin Franklin Parkway, 2<sup>nd</sup> Floor  
Philadelphia, PA 19103  
(267) 546-1316  
Fact, liability, and damages witness regarding the landlord-tenant matter involving Gerrell Martin and Curtis Sampson.

**Curtis Sampson**

c/o Daniel Urevick-Ackelsberg, Esquire  
Public Interest Law Center  
1709 Benjamin Franklin Parkway, 2<sup>nd</sup> Floor  
Philadelphia, PA 19103  
(267) 546-1316  
Fact, liability, and damages witness  
regarding the landlord-tenant matter  
involving Gerrell Martin and Curtis  
Sampson.

**David H. Denenberg, Esquire**

Abramson & Denenberg, P.C.  
1315 Walnut Street, Floor 12  
Philadelphia, PA 19107  
(215) 531-5011  
Fact witness regarding the Philadelphia  
Municipal Court landlord-tenant industry  
customs and practices in 2016 and 2017

Any and all witnesses listed in Plaintiffs' Pre-Trial Memorandum.

Defendants' reserve the right to call rebuttal witnesses as and when necessary.

**III. Expert Witnesses.** None.

**IV. Curriculum Vitae for Expert Witnesses.** None.

**V. Designation of Videotaped Trial Testimony.** None.

**VI. Designation of Deposition Testimony to be Offered at Trial.** None. It is anticipated that all witnesses will be called as live witnesses.

**VII. Damages.** Defendants contend that there are no damages in this case.

**VIII. Stipulations.** See stipulations in Plaintiffs' Pre-Trial Memorandum.

**IX. Objections to Admissibility of Plaintiffs' Trial Evidence.**

- Objection to the relevance of Trial 000001-Trial 000020, Trial 000066-Trial 000074 because all of these notices are from a time period when the landlord client of Levy did not own the Property.
- Objection to Trial 000080-000085 as duplicative.
- Objection to Trial 000194-Trial000222 under Federal Rule of Evidence 403. Plaintiffs are attempting to ascribe the alleged bad conduct of the landlord to Levy in a case which

was brought solely against Levy. The text messages and pictures will be used to inflame the passions of the jury as opposed to simply using the basic existence of the violations to establish the criteria for the cause of action being asserted against Levy. Defendants will stipulate to the fact that certain housing code violations existed at the time the landlord-tenant complaint was filed. Levy will not stipulate to, and Levy specifically denies, that he had knowledge of those housing code violations at that time. The fact of the existence of housing code violations is not in dispute. The extent and severity of those violations is not relevant.

- Objection to the relevance of Plaintiffs' proposed trial exhibits cb, cc, cd, ce, cf, and cg and objection to these exhibits under Federal Rule of Evidence 403.

**X. Statement of Anticipated Legal Issues on which the Court will be Required to Rule.** The question of whether the least sophisticated debtor would be confused or misled by a debt collector's notice is a question of law. Szczurek v. Professional Management, Inc., 59 F.Supp.3d 721, 724, 728 (E.D. Pa. 2014). In other words, whether language in a collection letter violates the FDCPA is a question of law. Balon v. Enhance, (citing Szczurek, 59 F.Supp.3d at 724). Whether a communication that is alleged to be false or misleading under the FDCPA is properly handled as a question of law. Id. (referencing Leshner v. Law Offices of Mitchell N. Kay, PC, 650 F.3d 993 (3d Cir. 2011)).

CLEMM AND ASSOCIATES, LLC

Dated: June 27, 2018

By: /s/ Mark C. Clemm  
Mark C. Clemm, Esquire  
Katie M. Clemm, Esquire  
Attorneys for Defendants