

**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' PRETRIAL MEMORANDUM

Pursuant to the Rules of Civil Procedure and this Court's scheduling order, Plaintiffs submit the following pretrial memorandum.

a. DETAILED FACTS OF THE CASE

1. 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"). 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.

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"). In turn, L&I cited the Property's owner for failing to have a License, for violating the fire code, and for a leaking roof and windows, loose electrical outlets, and an unsecured front door.

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. In April 2016, the Property was purchased by

Argentina Perez Irineo. 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. Irineo did not secure a License at that time. And like the previous owner, Irineo did not provide a Certificate of Rental Suitability to Ms. Martin or Mr. Sampson.

Irineo failed to make all the repairs she promised. By September 2016, Ms. Martin and Mr. Sampson withheld their rent and called L&I. 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. L&I sent notices of these violations to 6282 Kindred Street, Philadelphia, PA, the record address for Irineo.

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.

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).

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. Second, she hired Defendants Bart E. Levy and LevyLaw, LLC (collectively “Levy”), to prosecute an eviction case against Ms. Martin and Mr. Sampson.

2. 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. As a result of his large caseload, Levy is often in court each day of the week pursuing evictions. Levy manages this all by “rarely” speaking with clients before filing eviction lawsuits on their behalf. 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.

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. 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.

3. 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.

ECF No. 31-6, 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. 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.

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," when, in fact, L&I had issued multiple violations, sent to the address at which she registered her property license. And the eviction complaint stated that "the subject premises [was] fit for its intended purpose," when L&I had already declared the Property "unfit for human occupancy," because it lacked heat.

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, because Irineo had not complied with Philadelphia law. *See* Phila. Code § 9-3901(4)(e). 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. *Id.*

4. 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.

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. ECF No. 31-6, Ex. J at 85:11-22.

5. Levy’s Meritless Eviction Action is Withdrawn after Four Months

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. 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, 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.

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.

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.

b. PLAINTIFFS’ EXPECTED WITNESSES

1. Gerrell Martin. Ms. Martin will testify about her tenancy at the Property, the conditions at the Property, her attempts to have those conditions remedied, the debt collection activities of Defendants, the impact those activities had on her, and the damages she suffered.

2. Curtis Sampson. Martin will testify about her tenancy at the Property, the conditions at the Property, her attempts to have those conditions remedied, the debt collection activities of Defendants, the impact those activities had on her, and the damages she suffered.
3. City of Philadelphia Department of Licenses and Inspections will testify about the condition of 1916 Clarence Street, violations issued by L&I as a result of those conditions, and the notification of various parties of those violations.
4. Ashley Shomo. Ms. Shomo will testify about her first-hand observations and her perception of the stress and anguish caused to Ms. Martin and Mr. Sampson by the actions of Defendants, based upon her regular interactions with Ms. Martin and Ms. Sampson and their family.
5. Dawn Jasinski. Ms. Jasinski will testify about her first-hand observations and perceptions of the stress and anguish caused to Ms. Martin by the actions of Defendants, based upon her regular interactions with Ms. Martin and Ms. Sampson.
6. Bart E. Levy. Mr. Levy will testify about all manners relating to his debt collection activities, his policies and procedures, his legal practice, and all facts surrounding the attempted eviction of Gerrell Martin and Curtis Sampson.

c. IDENTITY OF EACH EXPERT WITNESS

None.

d. CURRICULUM VITAE FOR EACH EXPERT WITNESS

None.

e. DESIGNATION OF VIDEOTAPED TRIAL TESTIMONY

None.

f. DESIGNATION OF DEPOSITION TESTIMONY

Plaintiffs will not use deposition testimony in their case in chief. Plaintiffs reserve the right to use deposition for impeachment purposes and to refresh recollection, in accordance with the Rules of Evidence.

g. MONETARY DAMAGES CLAIMED

Section 1692k of the FDCPA provides that “any debt collector” in violation of the FDCPA is liable to a consumer for “any actual damage sustained by such person as a result of such failure,” statutory damages not to exceed \$1,000, and costs and attorney’s fees. 15 U.S.C. § 1692k. “Actual damages under the FDCPA are recognized to include damages for emotional distress as well as out-of- pocket expenses.” *Meier v. Law Offices of Weltman, Weinberg & Reis Co., L.P.A.*, Civil Action No. 10-262, 2011 U.S. Dist. LEXIS 55264, at *6 n.2 (W.D. Pa. May 5, 2011); *see also McNally v. Client Servs.*, No. 06-1104, 2008 U.S. Dist. LEXIS 50456, at *5 (W.D. Pa. June 11, 2008).

When Defendants deposed Plaintiffs, they inquired into their damages sustained as a result of Defendants’ debt collection activity. Ms. Martin described the eviction as a black cloud over her family:

I suffered a lot of distress. Getting these notices in the mail. Wondering how I’m going to defend myself to prove what’s stated on here is not true. You know, being intimidated that – you know, it’s like I felt I was going up against a lawyer.

And having go to court on my wedding day for something that he didn't even have grounds to take me to court for. But, you know, waited, of course, until the day to, you know, withdraw it. Continuing to receive all these letters in the mail even after, you know, getting the orders from the Fair Housing Commission. Even after I had my own lawyer, I still continued to get these letters in the mail.

Worrying about my family. The stress I was under with getting the letters in the mail. Going to court back and forth. He just put, you know, a black cloud over my family with these letters.

ECF No. 31-6, Ex. K at 134:3-135:2.

Mr. Sampson described it in similar ways:

[E]ver since that incident with Mr. Levy, it was like me and my wife was having sleepless nights, a whole lot of tension going on, you know, kids.

I was feeling helpless, you know, because I couldn't maintain nothing for my kids, because, you know, once you get these letters, it's like stress. That's all you think about is like letters and letters.

My focus wasn't on my kids. I couldn't sleep. It was like me and wife would stay up late nights bickering back and forth, you know, about the complaint of -- Mr. Bart Levy was just -- at that time, it was like too much.

Especially when you dealing with a whole lot of -- like a whole lot of kids. You can't really contain [sic] to the kids, you know. You got letters getting sent to you, and you can't focus.

I was like losing sleep.

Q What did you and your wife talk about regarding the complaint?

A Mainly, like, you know, you know what can we do about this? How can we find shelter, you know, you know, like, just going about, you know, like what's next? What can we do, you know? We have all these kids, you know. We can't move at a, you know, a fast pace as we would like because we still have kids, two sick babies.

It was like -- I felt like I couldn't, you know -- felt like I couldn't do, you know, do the man duties at that time. I was stressed. It caused a whole lot of stress.

ECF No. 31-6, Ex. L at 41:23-43:6.

Accordingly, Plaintiffs seek statutory damages, and an unspecified amount of money to compensate for their emotional distress, anguish, worry, stress, and embarrassment as actual damages under the FDCPA.

h. STIPULATIONS

At this time, the parties have agreed to the following stipulations:

1. Plaintiffs Gerrell Martin and Curtis Sampson are Pennsylvania residents. (Ex. B,

Answer ¶¶ 10-11.¹)

¹ All Exhibits referred herein are Exhibits as attached to Plaintiffs' Motion for Summary Judgment, ECF No. 31.

2. Defendant Bart E. Levy is a licensed Pennsylvania attorney and principal shareholder of LevyLaw, LLC. (Ex. B, Answer ¶ 13.)
3. Defendant LevyLaw, LLC is a Pennsylvania corporation registered at 1515 Market Street, Suite 805, Philadelphia, PA 19102. (Ex. B, Answer ¶ 12.)
4. Levy and LevyLaw, LLC are debt collectors under the Fair Debt Collection Practices Act. (Ex. J, Levy Dep. 7:23-8:1; Defs.' SUF ¶ 48.)
5. Plaintiffs Gerrell Martin and Curtis Sampson are consumers under the Fair Debt Collection Practices Act. 15 U.S.C. § 1692a.
6. The November 7, 2016 notice to vacate sent to Plaintiffs by Defendants was debt collection activity under the Fair Debt Collection Practices Act. (Ex. E.)
7. The November 8, 2016 eviction action filed by Defendants against Plaintiffs was debt collection activity under the Fair Debt Collection Practices Act. (Ex. F.)
8. In October 2013, Ms. Martin signed a lease to rent a home at 1916 Clarence Street, 19134 ("the Property"). (Ex. B, Answer ¶ 14; D's SUF ¶ 4.)
9. The owner of 1916 Clarence Street, Gabriela Manzano, did not have a Philadelphia Housing Rental License in October 2013. (Ex. B, Answer ¶ 16.)
10. The owner of 1916 Clarence Street did not provide Ms. Martin with a Certificate of Rental Suitability or Partners for Good Housing Handbook when she moved into the property, nor any time thereafter. (Ex. B, Answer ¶ 19.)
11. The property at 1916 Clarence Street was purchased by Argentina Perez Irineo in April of 2016. (Ex. B, Answer ¶ 24.)

12. No Certificate of Rental Suitability was provided to Ms. Martin and Mr. Sampson when they signed a new lease for the Property in June of 2016. (Ex. B, Answer ¶ 27; Defs.' SUF ¶ 14.)

13. On September 28, 2016, the Philadelphia Department of Licenses and Inspections issued citations for violations of the Philadelphia Property Maintenance Code, including for a leaking roof and deteriorated windows. (Ex. C, L&I Case No. 468651, at 19;; Ex. J, Levy Dep. 95-99 (examining Ex. P); Defs.' SUF ¶ 17.)

14. On October 1, 2016, Argentina Perez Irineo obtained a rental license for the property at 1916 Clarence Street for the first time. (Ex. B, Answer ¶ 27; Defs.' SUF ¶ 18.)

15. In October 2016, Philadelphia Department of Licenses and Inspections issued a violation to Argentina Perez Irineo for "no heat" at the Property at 1916 Clarence Street. (Ex. C, L&I Case No. 560154 at 31-38; Ex. J, Levy Dep. 95-99 (examining Ex. P); Defs.' SUF ¶ 20.)

16. On November 8, 2016, the property at 1916 Clarence Street had several open code violations. (Ex. C, L&I Case Nos. 468651, 560154, at 20-24, 31-38; Ex. J, Levy Dep. 95-99 (Examining Ex. P); Defs.' SUF ¶ 40.)

17. Ms. Martin and Mr. Sampson received the November 7, 2016 notice to vacate sent by Levy. (Ex. K, Martin Dep. 64:1-9; Ex. L, Sampson Dep. 30:5-8; Defs.' SUF ¶ 60.)

18. Levy did not ask his clients in November of 2016 for a Certificate of Rental Suitability. (Defs.' SUF ¶ 56.)

19. When Mr. Levy filed an eviction action in November, 2016 on behalf of his landlord client naming Ms. Martin and Mr. Sampson as defendants, that landlord client did not have a Certificate of Rental Suitability.

i. OBJECTIONS TO ANY EVIDENCE EXPECTED TO BE OFFERED AT TRIAL

Plaintiffs have filed a motion to preclude the testimony of David Denenberg, ECF No. 44, and will file motions in limine regarding other specific evidentiary issues. However, while reserving the right to object in at trial in accordance with the Rules of Evidence, Plaintiffs have no objections at this time to the exhibits proffered by Defendants.

j. ANTICIPATED LEGAL ISSUES ON WHICH THE COURT WILL BE REQUIRED TO RULE

1. The Legal Consequence of the Failure to Follow Philadelphia Law

As this Court knows, 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. 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). 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. *See* Stipulations 14, 19, § h, *supra*. Accordingly, this Court will first have to determine as a matter of law the status of the alleged back rent that Defendants demanded,

including whether it was unowed or whether Defendants' client's failure to follow the law provided Plaintiffs a complete defense to an attempt to collect that back rent. It will then, second, have to instruct the jury on the consequences of this point for the FDCPA claim. *See Huertas v. Galaxy Asset Mgmt.*, 641 F.3d 28, 32-33 (3d Cir. 2011) (holding that to threaten or initiate litigation for a debt for which a consumer "has a complete legal defense against having to pay" violates §1692e of the FDCPA).

Similarly, there is no serious dispute that the Property lacked heat and was designated unfit for human occupancy at the time of the eviction proceeding. *See* Stipulation 15, § h, *supra*; ECF No. 35-2, Defs.' SUF ¶ 42 (admitting that "The Property remained designated unfit for human occupancy on the day Defendants filed the Landlord-Tenant Complaint against Plaintiffs."). Philadelphia law and Pennsylvania common law make clear that this failure precludes a tenant from owing rent for any periods of time that such a designation was in place. *See* Phila Code. Title 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"). Accordingly, the Court will have to decide how the impact of the Property's lack of heat and unfit designation impacted the rent demanded by Levy, and instruct the jury on the consequences of this for the FDCPA claim.

Plaintiffs anticipate filing a pre-charge jury instruction for these points.

Date: June 27, 2018

Respectfully submitted,

/s/ Cary L. Flitter

Cary L. Flitter (Bar No. 35047)
Andrew M. Milz (Bar No. 207715)
FLITTER MILZ, P.C.
450 N. Narberth Ave, Suite 101
Narberth, PA 19072
(610) 822-0782
cflitter@consumerslaw.com

/s/ Daniel Urevick-Ackelsberg

Daniel Urevick-Ackelsberg (Bar No. 307758)
Mary M. McKenzie (Bar No. 47434)
George A. Donnelly (Bar No. 321317)
PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway, 2nd Floor
Philadelphia, PA 19103
(267) 546-1316
dackelsberg@pubintl.org

CERTIFICATE OF SERVICE

I hereby certify that on June 27, 2018 service of a true and correct copy of the enclosed memorandum was served to counsel for Defendants via the electronic filing system.

/s/ Daniel Urevick-Ackelsberg
Daniel Urevick-Ackelsberg
PUBLIC INTEREST LAW CENTER
1709 Benjamin Franklin Parkway
2nd Floor
Philadelphia, PA 19103