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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' OFFER OF PROOF REGARDING THE TESTIMONY OF DAVID  
DENENBERG**

David Denenberg, Esquire is a lawyer who has practiced in the Philadelphia area for over 30 years, including 2016 and 2017. A significant area of Mr. Denenberg's practice includes landlord-tenant matters in Philadelphia Municipal Court. Mr. Denenberg is very familiar with the relatively small group of attorneys who focus their practices on Philadelphia Municipal Court landlord-tenant matters, including Bart E. Levy, Esquire. Mr. Denenberg has also observed the practices and procedures of both the Philadelphia Municipal Court and Philadelphia Municipal Court attorneys regarding landlord-tenant matters. Mr. Denenberg will testify regarding his own practices and procedures in Philadelphia Municipal Court regarding landlord-tenant matters in 2016 and 2017 and the practices and procedures of other attorneys and municipal court judges who worked within that system in that time frame. Specifically, Mr. Denenberg will testify that in Philadelphia Municipal Court in 2016 and 2017, it was acceptable practice for an attorney to rely on representations made by his or her landlord client regarding the habitability of the premises at issue, whether the client possessed a certificate of rental suitability, and whether

there were any outstanding Department of Licenses and Inspections violations with respect to the premises which were the subject of the landlord/tenant action to be filed in the Philadelphia Municipal Court. Mr. Denenberg will testify that in 2016 and 2017, under the Philadelphia Municipal Court Rules and Philadelphia Municipal Court mandated landlord-tenant complaint form, an attorney was only required to attach a copy of a current, valid Rental License to a Philadelphia Municipal Court landlord-tenant complaint in order to initiate a landlord-tenant action. Mr. Denenberg will testify that it was acceptable practice for an attorney to rely on the representations of his or her client regarding the other factual statements contained in the Philadelphia Municipal Court landlord-tenant complaint form. Mr. Denenberg will testify that in 2016 and 2017, attorneys in the Philadelphia Municipal Court would regularly demand back-rent on behalf of their landlord clients and that if it then turned out that for some of those time periods the landlord was not in compliance with the Philadelphia Property Maintenance Code and/or Administrative Code (specifically that the landlord did not possess a valid Rental License during the times for which the landlord was demanding back-rent), the tenant had the ability and frequently would raise the lack of compliance as a defense in the landlord/tenant action. Mr. Denenberg will also testify that in his cases as well as other landlord-tenant cases that he personally observed, Philadelphia Municipal Court judges would often award back-rent to the landlords even when the landlord did not possess a valid Rental License for the time periods during which the landlord was demanding back-rent. Mr. Denenberg will testify that the practice and procedure of the Philadelphia Municipal Court in 2016 and 2017 required only that a landlord possess a valid Rental License at the time of filing a landlord-tenant complaint.

Mr. Denenberg's testimony will be offered because it will help the jury to determine facts at issue regarding the bona fide error defense to the Fair Debt Collection Practices Act ("FDCPA"). Under the FDCPA, a debt collector defendant may invoke the bona fide error defense to the FDCPA when a state or federal law other than the FDCPA is unclear or when a governmental entity who regulates a state or federal law interprets a state or federal law other than the FDCPA and causes confusion or ambiguity regarding that state or federal law. *See Defendants' Brief Contra Plaintiffs' Motion in Limine to Exclude Evidence of Mistake of Law and Industry Practices for Defendants' Liability, ECF Document 54:2*. The trend in case law appears to allow the bona fide error defense to insulate a debt collector from liability under the FDCPA where the law is unclear regarding a statute or law at issue. *See Gray v. Suttell &*

Assocs., 123 F.Supp. 3d 1283, 1289 (E.D. Wash. 2015); McCorriston v. L.W.T., Inc. 536 F.Supp. 2d 1268 (M.D. Fl. 2008). When a debt collector reasonably relies on inaccurate information provided to the debt collector by his client the creditor and uses that information in an attempt to collect a debt, the debt collector is entitled to the FDCPA's bona fide error defense and is insulated from liability under the FDCPA. Edwards v. McCormick, 136 F.Supp.2d 795, 804 (S.D. Ohio 2001). Mr. Denenberg's testimony will highlight the fact that the law was unclear regarding the Philadelphia Property Maintenance Code and/or Administrative Code as well as Philadelphia landlord-tenant law in 2016 and 2017. The policies and procedures of the Philadelphia Municipal Court contributed to the unclear nature of these laws. Mr. Denenberg's testimony will also show that it was acceptable practice to rely on the representations of landlord clients when filing a landlord-tenant complaint in Philadelphia Municipal Court in 2016 and 2017. Mr. Denenberg will also testify that in January, 2018, the Philadelphia Municipal Court Local Rules were amended to specifically require a creditor filing a landlord-tenant complaint in Philadelphia municipal court to attach to that complaint not only a current rental license but also the rental license which was in effect for all time periods for which back rent was being claimed. This change in the Philadelphia Municipal Court Local Rules was apparently necessary in order to clarify what was previously a standard which was subject to multiple interpretations and which was being applied unevenly and inconsistently by many of the Municipal Court judges. Based upon the industry practice and procedure to which Mr. Denenberg will testify, the jury will be able to make an informed decision regarding whether Defendants should be able to invoke the protections of the bona fide error defense to the FDCPA.

CLEMM AND ASSOCIATES, LLC

Dated: July 31, 2018

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