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Via Electronic Filing & LREX

The Honorable Evelyn Padin, U.S.D.J.
United States District Court District of New Jersey
MLK Building & U.S. Courthouse
50 Walnut Street, Newark, NJ 07102

**Re: Richard Zelma v. Aaron Ram, et. al.
Docket No. 2:25-cv-15701-EP-JSA**

Dear Judge Padin:

This firm represents Defendants in the above-mentioned matter. Defendants hereby request permission to file an F.R.C.P. 12(c) motion seeking the dismissal of the Complaint in this matter.

The basis for Defendants' Motion is that: (1) the facts pled in Plaintiff's Complaint cannot support the causes of action pled; and (2) the record will demonstrate that Plaintiff cannot succeed on the claims, therefore this action must be dismissed. Rule 12(c) is designed to eliminate excessive litigation. If upon reviewing the pleadings, it is clear that the plaintiff would not be entitled to relief under the facts, even if proven, the Court should dismiss the Complaint. Sikkelee v. Precision Airmotive Corp., 731 F. Supp. 2d 429, 431 (M.D. Pa. 2010). Here, Plaintiff is not entitled to relief and therefore Defendants seek consent to file a 12(c) motion.

More specifically, the basis of the Complaint rests on the allegations that Defendants violated the Telephone Consumer Protection Act (T.C.P.A.), 47 U.S.C. §§ 227(c), by calling Plaintiff twice on his residential phone line. The record will show that Plaintiff attempted to manufacture this claim by calling Defendants, misrepresenting that he was interested in selling his home, and providing a false phone number and name in furtherance of soliciting information from the Defendants in support of the claims made in this action.

Additionally, Plaintiff alleges a violation of the FCC Caller Identification Rules on the basis that he received two telephone calls from Defendants, neither of which were answered. FCC Caller Identification Rules prohibit telemarketers from knowingly transmitting false or misleading Caller ID information with intent to defraud or harm a consumer. Under the rules, callers must display their name, the company's name, or a valid callback number on Caller ID. Here, in the Complaint, Plaintiff concedes that Defendants identified the company name (REMAX) and that he was able to identify a number to call back, which he did in fact call back. Accordingly, this claim is subject to dismissal.

Lastly, Plaintiff alleges violations of the New Jersey Consumer Fraud Act. To establish a *prima facie* case under the New Jersey Consumer Fraud Act, a plaintiff must demonstrate three key elements: 1) unlawful conduct by the defendant, 2) an ascertainable loss by the plaintiff, and 3) a causal relationship between the defendant's unlawful conduct and the

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plaintiff's ascertainable loss. Bosland v. Warnock Dodge, Inc., 197 N.J. 543, 557 (2009). Here, Plaintiff has not asserted, and cannot assert, any loss as a result of the two unanswered calls from Defendants.

Based on the foregoing, Defendants seek Your Honor's approval to file an F.R.C.P 12(c) Motion on the Pleadings.

Thank you for Your Honor's attention to this matter.

Respectfully submitted,

HATFIELD SCHWARTZ LAW GROUP LLC

By: /s/ Stefani C Schwartz
STEFANI C SCHWARTZ, ESQ.

cc: The Honorable Jessica S. Allen, U.S.M.J., via electronic filing and LREX
Plaintiff, via electronic filing and regular mail