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Via Facsimile and U.S. Mail

December 29, 2014

Louis A. Zayas, Esq.
8901 Kennedy Boulevard, 5th Floor
North Bergen, New Jersey 07047

Re: Garcia v. Zimmer, et al.
Docket Nos. HUD-L-3818-13 and HUD-L-4714-14

Dear Mr. Zayas:

I am in receipt of the lawsuit filed by plaintiff Carmelo Garcia in the matter of Garcia v. Zimmer, et al., Docket No. HUD-L-4714-14 ("Garcia II"), and will be representing defendant Hoboken Housing Authority, as well as defendants Chairwoman Dana Wefer and Vice-Chairman David Mello, in the official capacities (collectively, the "HHA Defendants") in this litigation. I am also in receipt of the R. 1:4-8(b) frivolous pleading letter, dated December 11, 2014, issued to plaintiff by defendants Mayor Dawn Zimmer and the City of Hoboken (collectively, the "City Defendants"). Please be advised that we hereby join in, and incorporate by reference the contents of the City Defendants' frivolous pleading letter and reciprocally demand retraction of the Garcia II lawsuit for the reasons stated therein, within 28 days from the date hereof.

Beyond the reasons set forth in the City Defendants' correspondence, please be advised that additional grounds exist with respect to the HHA Defendants which render the Garcia II litigation frivolous. Notably, Mr. Garcia already sued the HHA Defendants in a case bearing the same caption – Garcia v. Zimmer, et al. – under a different docket number, HUD-L-3813-13 ("Garcia I") which was recently dismissed without prejudice because Mr. Garcia defaulted in responding to the HHA Defendants' discovery requests. Moreover, despite his overheated and patently offensive rhetoric that defendants had engaged in "ethnic cleansing," and despite the defamatory public accusations that were made by plaintiff against defendants, Mr. Garcia undertook no action whatsoever to actually prosecute the Garcia I litigation. Prior to the dismissal of that case upon his default, Mr. Garcia did not propound a single interrogatory, did not issue a single document request nor did he take a single deposition. Indeed, it appears that the Garcia I litigation, like the present lawsuit, amounted to nothing more than a cheap publicity stunt.

It is entirely improper to engage in an abuse of the justice system, and the harassment of the defendants in this case for pecuniary gain. Equally improper is plaintiff's apparent effort to evade his discovery obligations, the Court's preclusive rulings in, and the dismissal of the Garcia I litigation by filing an entirely new lawsuit arising out of the same transactional facts, and presenting substantially identical legal claims. Such conduct clearly violates the entire controversy doctrine and stands in open defiance of a long line of case law which presumptively speaks against claim splitting of this nature. Simply put, it defies logic for plaintiff to be simultaneously litigating two lawsuits against the same defendants, based upon the same facts and legal claims, in the same court. For this reason, the Garcia II litigation is subject to dismissal.

Furthermore, it appears that plaintiff is attempting to improperly resuscitate claims which were already dismissed in the Garcia I litigation. Specifically, Judge Maron dismissed the LAD claim in the Garcia I litigation because plaintiff had failed to plead any facts whatsoever supporting a claim of discrimination, yet Mr. Garcia has now pled an identical claim, based upon the same facts, in Counts II, III and IV in the Garcia II litigation. The LAD claim is as without basis now as it was then, given that once again there are no facts pled sufficient to evidence discrimination against plaintiff on the basis of any protected class within the meaning of the statute.

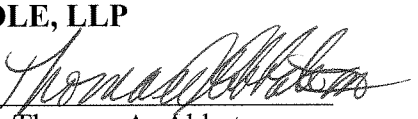
Plaintiff also attempts to assert a new Civil RICO claim in Counts VI and VII of the Garcia II complaint. This appears to be a misguided attempt to resuscitate the essence of the dismissed CEPA count from the Garcia I litigation. In that case, you will recall, plaintiff attempted to plead a CEPA claim on the basis that he had suffered from retaliation after he objected to conduct by defendants which he reasonably believed constituted bribery, extortion, and corruption of a public resource, contrary to various Title 2C offenses. The CEPA claim was dismissed on the merits by the court in Garcia I, yet we now find those same underlying Title 2C offenses pled as RICO predicate acts. It seems that plaintiff is simply attempting to engage in creative legal maneuvering in order to escape the dismissal of his CEPA claim.

Likewise, in Count V of the Garcia II complaint, plaintiff alleges that HHA has not remitted his contractual severance amount, yet it cannot be disputed as a matter of fact that plaintiff has already been paid, and willfully accepted the 120 days' salary as stipulated by his contract, and that a proper calculation of the accrued, but unpaid vacation days was provided to plaintiff upon his termination. With respect to the vacation days, HHA has asked plaintiff to confirm the calculation as a condition of releasing the funds – as required by the HHA personnel manual that plaintiff himself promulgated while still employed as HHA's Executive Director – but plaintiff has refused to cooperate in that endeavor and instead advanced a specious argument that he is owed a six-figure payout that is not only wholly inconsistent with, and a gross distortion of HHA's mission to provide housing for the economically disadvantaged, but which is completely divorced from the plain language of the employment agreement. In any event, since plaintiff apparently cannot trouble himself to adhere to his own personnel policy and has refused to undertake the precedent contractual obligation of stipulating to the severance amount, and since he has already accepted 120 days' salary, any claim for breach of contract is completely lacking in any good faith factual basis, and is subject to dismissal.

For all of these reasons, and the additional reasons stated in the City Defendants' correspondence, the Garcia II complaint is frivolous and we demand its retraction forthwith. If the complaint is not withdrawn, the HHA Defendants reserve their right to file a dispositive motion and seek appropriate monetary sanctions upon the dismissal of the complaint, in whole or in part. Please be guided accordingly.

Very truly yours,

DECOTIIS, FITZPATRICK, & COLE, LLP

By: 
Thomas A. Abbate

cc: Victor A. Afanador, Esq. (via electronic mail and U.S. Mail)