DISTRICT COURT, CITY AND COUNTY
OF DENVER, STATE OF COLORADO
City and County Building
1437 Bannock Street, Rm. 256
Denver, CO 80202



CONSUMER CRUSADE, INC., a
Colorado corporation,

Plaintiff,

vs.

MBA FINANCIAL GROUP, INC., a
Colorado corporation, *et al.*,

Defendants.

COURT USE ONLY

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Case No. 04CV4841

Division 5

# PLAINTIFF'S RESPONSE TO MOTION FOR ATTORNEYS FEES

Plaintiff, Consumer Crusade, Inc., by and through its attorneys, The Demirali Law Fi P.C., submits the following in response to Defendant's Motion For Attorneys Fees:

1. On or about May 26, 2004, Plaintiff filed its Complaint against Defendants, alleging violations of the Telephone Consumer Protection Act of 1991, 47 U.S.C. §227 ("TCPA").

2. On October 15, 2004, this Court, referencing a decision by Judge Egelhoff in another TCPA matter, dismissed the Complaint.

3. Defendants thereafter filed their motion requesting more than $2,909.92.

4. On November 15, 2004, Plaintiff filed its Notice Of Appeal pursuant to Colorado Appellate Rule C.A.R. 3 (d). This matter, consequently, is now within the appellate jurisdiction of the Colorado Court of Appeals.

5. The TCPA is a federal statute based upon the alleged interference by telemarketers with interstate commerce. *See, Int'l. Sci. & Tech. Inst., Inc. v. Inacom Communications, Inc.*, 106 F.3d 1146, 1150 (quoting S. Rep. No. 102-178, at 1 (1991)). It is neither a common law tort nor a claim for "property damages." Thus, the statute does not contemplate the existence of physical harm to a person or property. *See, Houdek v. Mobil Oil Corp.*, 879 P.3d 417 (Colo. App. 1994).

6. Moreover, as this Court has indicated, the rationale for the dismissal of this action was the decision of Judge Egelhoff in *Consumer Crusade, Inc. v. Affordable Health Care Solutions*, Civil Action No. 04CV0803. That opinion, however, has not been followed by other District Court Judges. *See, e.g. Consumer Crusade, Inc. v. New York Deli News, Inc., et al.*, Civil Action No. 04CV5151 (Denver District Court Judge Bayless); *USA Tax Law Center, Inc. v. Tessem, et al.*, Civil Action No. 03CV986 (Douglas County District Court Judge King). Thus, it is unclear whether Colorado state courts are authorized to enforce federal created rights. *See, Levitt v. Fax.Com, Inc., et al.*, ___ A.2d ___ (Md. Sept. 13, 2004). (TCPA cases are not precluded by the Tenth Amendment.)

7. And finally, to the extent this Court may award attorneys' fees, such fees must be "reasonable." C.R.S. 13-17-201. These Defendants made no factual or legal arguments in this action that were effective in defending the action (i.e. grounds for dismissal). Simply stated, this Court adopted the rationale of another court in deciding to dismiss. Therefore, Defendants should not be permitted to collect legal fees for arguments that lacked merit. *See, (Defendants' Brief In Support Of Motion To Dismiss*, dated July 1, 2004 (18 pages)).

WHEREFORE, Plaintiff requests that the Defendants' Motion For Attorneys Fees be denied.

DATED this 16th day of November, 2004.

/s/ A. M. Demirali

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of November, 2004, a true and correct copy of the foregoing Plaintiff's Response To Motion For Attorneys' Fees was electronically served on counsel for Defendants, Douglas A. Turner.

/s/ Susan L. Beck