



New York, with an address at 2622 Avenue J, Brooklyn, NY 11210, who may also be known as Moishe Caller.

5. Upon information and belief, The Marcal Group LLC is a real estate development and management company.

6. On information and belief, The Marcal Group LLC, also operates under the fictitious name of Calko Medical Center.

7. Upon information and belief, Calko Medical Center is an unincorporated subsidiary of The Marcal Group, LLC, with an address at 6010 Bay Parkway, Brooklyn, New York 11204.

8. Upon information and belief, Calko is a provider of medical offices, medical services, medical facilities, and doctor's offices.

9. Upon information and belief, at all times herein mentioned, Defendants have maintained their principal place of business residence and domicile in this District in the State of New York.

**THIS IS AN ACTION FOR BREACH OF CONTRACT AND UNFAIR BUSINESS PRACTICES**

10. This Complaint alleges that defendants have breached an agreement with the plaintiff for creation and development of a website with the amount in dispute of \$80,000.00.

**JURISDICTION AND VENUE**

11. This Court has jurisdiction over the subject matter of this action, pursuant to 28 U.S.C. §1332, in that the matter in controversy exceeds the sum of \$75,000.00, exclusive of interest and costs, and is between citizens of different states.

12. This Court has personal jurisdiction over the Defendants by virtue of their domicile, residence and addresses in the State and Eastern District of New York.

13. Venue is proper in the Eastern District of New York, pursuant to 28 U.S.C.

§§1391(b)(1)(2) and (c)(1)(2).

### FACTS

14. On or about November 1, 2012, Rafael Harel (“Harel”), the principal of Harel Media Group, met and commenced discussions with the defendant Caller, principal of The Marcal Group and Calko Medical Center.

15. During numerous discussions and e-mails, Harel discussed with Caller providing a website and related marketing services for Calko.

16. Plaintiff provided an Independent Contract or Unilateral Confidentiality and Non-Disclosure Agreement to each Defendant on November 15, 2012, copies of which are attached as Exhibit A.

17. By e-mails dated November 14, 2012 and November 15, 2012, as well as a letter dated November 15, 2012, a preliminary, but comprehensive, overview of the content and features of the proposed website were provided to the defendants.

18. The first web pages of the website were provided to the defendants for review on December 11, 2012. An email dated December 11, 2012 referencing the website template and the \$1,000.00 per page price is attached as Exhibit B.

19. Further discussions, telephone calls and meetings between the parties continued for the next several months and by e-mail dated December 17, 2012, Harel Media made a formal proposal to the defendants, setting forth (i) the media website development services to be provided, (ii) the price of \$1,000.00 per web page, (iii) the finished product, and (iv) the timeframe therefore. A copy of the e-mail dated December 17, 2012 is attached as Exhibit C. That e-mail enclosed a retainer invoice also dated December 17, 2012 in the amount of

\$5,000.00, stating “retainer for the Calko Medical Center website”, a copy of which is attached as Exhibit D.

20. Further work continued and additional pages were provided, and discussions between the parties for the further development of the website and continued work thereon continued through 2012 and the final product was provided to the Defendants on or about May 8, 2013.

21. Plaintiff provided Mark Caller with an invoice no. 211752-CMC dated May 31, 2013 in the amount of \$95,044.00, copy of which is attached at Exhibit E.

22. Discussions between Harel and Caller continued, and meetings were had between Harel and Caller, and at Caller’s direction, between Harel and Roy Baron and Jack Safer, employees of The Marcal Group. On January 11, 2013, Defendants paid Plaintiff \$5,000.00 by check number 00724, at the direction of Caller.

23. Not receiving full payment for the website and related work, plaintiff took the website down on August 7, 2013.

24. On September 21, 2013 Plaintiff restored the website upon Caller agreeing to make a further \$10,000 payment and that Caller would seek valuation of the website work from three competitive website providers designated by Plaintiff as providing a comparative scale, service and professionalism. This was confirmed in an email by Caller to Harel dated October 1, 2013, a copy of which is attached as Exhibit F. On October 7, 2013, Defendants paid an additional \$10,000.00 to Plaintiff by check number 01218.

25. An e-mail in response dated October 2, 2013 outlining some of the website features and further proposed work was forwarded by Harel to Caller on October 2, 2013, a copy of which is attached as Exhibit G.

26. Discussions between the parties continued, but without further payment of any funds

beyond the \$15,000.00 that had already been paid.

27. Plaintiff again took down the website March 20, 2014 after attempts to resolve the matter through negotiations failed. This is made clear by the exchange of e-mails between Caller and Harel on April 2, 2014, copies of which are attached as Exhibits H, I and J.

28. Plaintiff and defendants entered into an agreement for website development, plaintiff performed its services to the defendants, who on numerous occasions expressed their satisfaction with same and the website that was provided, defendants breached the agreement by failure to pay the amount of \$1,000.00 per page under the agreement and the plaintiff has been damaged in an amount in excess of \$80,000.00.

29. The parties are adults, or business entities capable of contracting; the subject of the agreement is lawful and the consideration is fair and was agreed to.

## **CLAIMS FOR RELIEF**

### **COUNT I** **(Breach of Contract)**

30. The allegations set forth in Paragraphs 1-30 hereof are adopted and incorporated by reference as if fully set forth herein.

31. As set forth above, defendants entered into a valid and binding agreement with plaintiff for website development.

32. Defendants have breached their agreement with plaintiff by failure to pay the agreed upon amount being a balance of \$80,044.00 ( $\$95,044.00 - \$15,000.00 = \$80,044.00$ ).

33. Plaintiff has fully performed its obligations under the agreement.

34. As a result of defendants' aforesaid breach of the agreement, plaintiff has been damaged and has suffered monetary harm and harm to its business reputation.

**COUNT II**  
**(Declaratory Judgment)**

35. The allegations set forth in Paragraphs 1-35 hereof are adopted and incorporated by reference as if fully set forth herein.

36. This is an actual controversy between plaintiff and defendants concerning plaintiff's rights under the agreement.

37. As set forth more fully above, defendants have materially breached plaintiff's contractual rights under the agreement, and continue to materially breach the agreement, by failure to make payment to plaintiff as due and owing under the agreement, resulting in harm to plaintiff.

38. Plaintiff is entitled to a declaration that defendants are in material breach of the agreement.

**COUNT III**  
**(Specific Performance)**

39. The allegations set forth in Paragraphs 1-39 hereof are adopted and incorporated by reference as if fully set forth herein.

40. The contract was entered into in the State of New York and the product, being the website was produced and delivered to defendants in this State.

41. Defendants have breached the agreement for the website development by failing to pay the agreed upon price of the website of \$1,000.00 per page, being \$95,044.00.

42. Defendants have failed to perform under the agreement and plaintiff requests the remedy of specific performance.

**PRAYER FOR RELIEF**

WHEREFORE, Harel Media Group demands judgment be entered against the

defendants as follows:

a) finding that:

(i) as to Count I, defendants breached the agreement by failure to pay the balance due of \$80,044.00;

(ii) as to Count II, defendants materially breached the agreement, failing to perform under the agreement, by not making payment, as aforesaid;

(iii) as to Count III, defendants failed to perform under the agreement; and

(b) awarding Harel Media Group:

(i) damages for breach of contract in an amount to be determined at trial, but in no event less than \$80,044.00;

(ii) an order directing that defendants specifically perform the contract;

(iii) punitive damages;

(iv) an award of attorney's fees; and

(v) granting such other and further relief as the Court may deem just and proper.

Dated: Garden City, New York  
June 27, 2014

LAW OFFICE OF BARRY M. KRIVISKY

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