UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK

FRANKLIN ARIAS

Plaintiff,

-against-

GUTMAN, MINTZ, BAKER & SONNENFELDT, P.C.; 1700 DEVELOPMENT CO. (1500), Inc.

Defendants.

MEMORANDUM DECISION AND ORDER

15-cv-09388 (GBD)

GEORGE B. DANIELS, United States District Judge:

On December 1, 2015,[1] Plaintiff Franklin Arias filed this action against Defendant Gutman, Mintz, Baker & Sonnenfeldt, P.C. ("GMBS"), a debt collection law firm, for violations of the Fair Debt Collection Practices Act ("FDCPA"), New York State General Business Law Section 349, New York State Judiciary Law Section 487, and common law conversion, and against Defendant 1700 Development Co. (1500), Inc. ("1700 Development"), the putative creditor in the underlying collection lawsuit, for common law conversion only. (Complaint, (ECF No. 7), at 1, 13-19.) Pending before this Court is Defendants' Federal Rule of Civil Procedure 12(c) motion for judgment on the pleadings with respect to the FDCPA cause of action against GMBS, and if granted, request that this Court decline supplemental jurisdiction over and dismiss without prejudice the remaining state law claims.[2]

[1] Arias initially filed a complaint on November 30, 2015, (*see* ECF No. 1), but it contained filing errors which were corrected the next day.

[2] Defendants initially filed a letter motion for a stay of discovery pending an anticipated Rule 12(c) motion for judgment on the pleadings. (Letter Motion, (ECF No. 14), at 1.) Defendants later represented that the

I. Background

In 2006, Arias leased and lived in an apartment owned by 1700 Development. (Complaint at ¶ 9.) That same year, Arias moved out of the apartment and his daughter moved in. (*Id.* at ¶ 10.) Arias alleges that his daughter was supposed to pay the rent, but failed to pay two months' worth. (*Id.*)

Later that same year, GMBS, on behalf of 1700 Development, sued Arias for a breach of the lease agreement in Bronx County Civil Court. (*Id.* at ¶ 12.) Arias alleges that he was not served with the collection lawsuit, and consequently did not file an answer. (*Id.* at ¶¶ 13-14.) As a result, on or about September 28, 2006, GMBS, on behalf of 1700 Development, obtained a default judgment against Arias for $4,656.15.[3] (*Id.* at ¶ 15.)

Approximately eight years later, on or about December 1, 2014, GMBS initiated an attempt to execute on the judgment by issuing an "Information Subpoena With Restraining Notice" to Bank of America, where Arias maintained a checking account.[4] (*Id.* at ¶ 16.) Consistent with New York State law, GMBS included an Exemption Notice and two Exemption Claim Forms for Bank of America to forward to Arias in the event it determined that funds in Arias's acccount

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letter itself would serve as their motion for judgment on the pleadings. (Initial Conference Transcript, (ECF No. 19), at 11:3-12:12.)

[3] Arias does not allege that he was not liable for the amount awarded in the default judgment; to the contrary, he appears to concede he owed the debt by pleading that two months' worth of rent was never paid.

[4] Under New York law, an attorney for a judgment creditor may serve an information subpoena on a financial institution to determine whether a judgment debtor has assets at the institution which might satisfy the judgment. *See* N.Y. CPLR 5224. The attorney may serve a restraining notice along with the information subpoena to prevent the institution or judgment debtor from removing or transferring property held by the institution which could be used to satisfy the judgment. *See* N.Y. CPLR 5222. The judgment debtor must be provided an opportunity to show that the property being restrained or seized is exempt from seizure. *See* N.Y. CPLR 5222-a. If the judgment debtor is successful, the restraint will be lifted; if not, the judgment creditor may obtain an order directing the institution to turn over the judgment debtor's property to satisfy the judgment. *See id.*; N.Y. CPLR 5225; *N. Shore Univ. Hosp. at Plainview v. Citibank Legal Serv. Intake Unit*, 25 Misc. 3d 655, 883 N.Y.S.2d 898 (Dist. Ct. 2009).

could be used to satisfy the outstanding judgment. (*See* Complaint Exhibit A ("Exh. A"), (ECF No. 7-1), at 1.)

The Exemption Notice, the language of which is set forth by statute, provides information to recipient judgment debtors in layperson language regarding the restraint against their account and the exempt status of certain kinds of funds. *See* N.Y. CPLR 5222-a(b)4. Although the Exemption Notice states that an attorney is not needed to make an exemption claim using the attached Exemption Claim Form, it also notifies the recipient judgment debtor that he may wish to "CONSULT AN ATTORNEY (INCLUDING FREE LEGAL SERVICES) OR VISIT THE COURT CLERK FOR MORE INFORMATION" about the judgment against him. (Exh. A at 2; N.Y. CPLR 5222-a(b)4). The statutorily prescribed Exemption Claim Form included with the Exemption Notice provides directions to the judgment debtor regarding how to submit the form; it also states: "**If you have any documents, such as an award letter, an annual statement from your pension, paystubs, copies of checks or bank records showing the last two months of account activity, include copies of the documents with this form. Your account may be released more quickly."[5] (Exh. A at 2 (emphasis added); *see also* N.Y. CPLR 5222-a(b)4).)

Bank of America received the restraining notice on December 5, 2014. (Complaint at ¶ 45.) At that time, Arias's account had a balance of $4,019.62. (Complaint Exhibit B ("Exh. B"), (ECF No. 7-2), at 1.) Bank of America determined that of this amount, $2,625.00 was Federal

[5] Although the Exemption Claim Form indicates that submitting proof that the funds are exempt "may" result in the funds being released more quickly, the Exemption Notice states: "If you send the creditor's attorney proof that the money in your account is exempt, the attorney must release that money within seven days." N.Y. CPLR 5222-a(b)4 (emphasis added). Although this statement technically is accurate, *see* N.Y. CPLR 5222-a(c)4, the statutory scheme allows the judgment creditor to object to the proof provided, in which case the funds will not be released within seven days, *see* N.Y. CPLR 5222-a(d). The conditional phrasing provided in the Exemption Claim Form appears to more accurately reflect the reality that submission of the Exemption Claim Form and accompanying documentation may—but will not necessarily—result in the removal of the restraint, and that additional action may be necessary.

benefits payments (*e.g.*, Social Security Retirement Income ("SSRI")), and was therefore exempt or "protected" from the restraint. (*See id.*; N.Y. CPLR 5222-a.)

That same day, Bank of America heeded GMBS's instructions and sent Arias the Exemption Notice and Exemption Claim Forms. (Complaint at ¶ 46.) In addition, Bank of America included its own letter informing Arias of the restraint on his account. (Exh. B at 1.) The letter made clear to Arias that he retained access to the "protected amount" (*i.e.*, $2,625.00), could use that money as he normally would, and that "[t]here [wa]s nothing else that [he] need[ed] to do to make sure that th[is] 'protected amount' [wa]s safe." (*Id.* at 2 (emphasis omitted).) The letter also informed Arias that the remaining $1,294.62 might also be exempt from the restraint if these funds were also Federal benefit payments. (*Id.* at 2.) The letter stated that if Arias believed that all or part of the unprotected amount was Federal benefit payments, he could: (1) fill out and submit an Exemption Claim Form that the bank included with the letter; (2) contact GMBS directly to try and persuade it to remove the restraint; and/or (3) consult an attorney to help prove the unprotected funds were also exempt from the restraint and could not be garnished by GMBS. (*Id.*) With regard to the third option, the letter also stated: "If you can't afford an attorney, you can seek assistance from a free attorney or a legal aid society. You can find information about free legal aid programs at http://www.lawhelp.org." (*Id.*)

On or about December 15, 2014, Arias received Bank of America's mailing including its letter, the Exemption Notice, and Exemption Claim Form. (Complaint at ¶ 48; Exh. B.) Upon receipt, Arias went to a local Bank of America branch to ask a representative to contact GMBS to inform it that the only funds in his account were, in fact, SSRI, and that the unprotected balance in his account should be released from the restraint. (Complaint at ¶ 48.) Through Bank of America,

Arias faxed bank statements to GMBS purportedly documenting that his account contained only exempt SSRI funds.[6] (*Id.* at ¶ 49.)

Later that day, Arias called GMBS to let it know about the faxed bank statements. (*Id.* at ¶ 50.) According to the Complaint, someone at GMBS told Arias that "he owed the debt and that GMBS would remove the restraint only if Mr. Arias sent them a payment." (*Id.* at ¶ 51.) Arias responded "that he could not afford to make a payment," to which GMBS responded that Arias "would have to go to court to attempt to remove that [sic] restraint." (*Id.* at ¶¶ 52-53.)

Notwithstanding this conversation, on December 19, 2014, Arias mailed to GMBS a completed Exemption Claim Form indicating that the unprotected amount was SSRI. (*Id.* at ¶ 59.) With the mailing, Arias included a bank statement dated December 12, 2014, which listed eleven monthly SSRI deposits, dating back to February 3, 2014, each in the amount of $785.00, as support for the representation he made in the Exemption Claim Form.[7] (Exh. B at 6-7.) The bank statement, however, was not certified, notarized or otherwise authenticated. Additionally, although there were thirteen withdrawals totaling $1,062.00, none of the withdrawals appeared individually, nor did the statement provide the account's "available balance" after each transaction. (*Id.*)

On December 22, 2014, pursuant to the procedures outlined in CPLR 5222-a, GMBS filed an objection to Arias's exemption claim in Bronx County Civil Court. (*See* Complaint at ¶ 60; Complaint, Exhibit C ("Exh. C"), (ECF No. 7-3), at 7.) GMBS's objection attached Arias's executed Exemption Claim Form as well as the accompanying bank statement that Arias had

[6] Arias did not attach the documents he allegedly faxed to GMBS to his Complaint.

[7] Upon information and belief, the Complaint alleges that this is one of the documents that Arias initially faxed to GMBS four days earlier. (*Compare id.* at ¶¶ 49-50, 80 (indicating that Arias faxed and mailed more than one bank statement), *with* Exh. B (attaching a single bank statement).)

submitted to it. (Exh. C at 14-16.) GMBS objected to Arias's claim that the remaining funds in his account were exempt from restraint and eventual garnishment because, according to GMBS, "the commingling of personal funds with exempt funds transforms the opening balance into personal and non-exempt monies." (*Id.* at 6 (quoting "*Zappia v. Maher*, N.Y.L.J. 3/12/03, p. 21, col. 6 (Civ. Ct. Nassau Cty. 2003)").) GMBS's objection further explained that because the bank statement that Arias had submitted did not start from a zero balance, and because Arias failed to provide documentation demonstrating that he never commingled exempt funds with non-exempt funds, GMBS could not determine whether the funds in his account were exempt from restraint and garnishment. (*Id.* at 6-7.)

GMBS also objected to Arias's claim of exemption on the ground that Bank of America had restrained only a portion of the funds in Arias's account, and had these funds been exempt, it would not have restrained them, either. (*Id.* at 7.) GMBS's objection requested that the court release the restrained funds in Arias's account to GMBS, or, in the alternative, issue a protective order over the restrained account and hold a hearing on January 6, 2015 at 9:30 AM at 851 Grand Concourse, Bronx, NY 10451, Room 503, Part 34, to determine the exemption status of the funds. (*Id.* at 1, 7-8.)

On January 6, 2015, Arias appeared *pro se* at the Bronx County Civil Court hearing. (Complaint at ¶ 76.) (*Id.*) At the hearing, Arias told the presiding judge that the unprotected income in his account was SSRI, and that it was therefore exempt from restraint and garnishment. (*Id.* at ¶ 77.) At that point, the GMBS attorney asked Arias to step into the hall to discuss the case. (*Id.* at ¶ 78.) Once in the hallway, the attorney asked Arias to see the documents that purportedly demonstrated the funds in his account were exempt from the restraint. (*Id.* at ¶ 79.) Upon information and belief, the Complaint alleges that Arias presented the same bank statements in the

hallway that he had Bank of America fax to GMBS on December 15, 2014, and that he mailed to GMBS along with the Exemption Claim Form on December 19, 2014.[8] (*Id.* at ¶ 80.) After looking at the documents, the GMBS attorney and Arias returned to the courtroom, at which time GMBS withdrew its motion and stipulated to release all restrained funds. (*Id.* at ¶ 81.)

On December 1, 2015, Arias filed the above-captioned action, alleging, *inter alia*, violations of the FDCPA under 15 U.S.C. §§ 1692e and 1692f. (*Id.* at ¶¶ 87-94.) The Complaint contends that GMBS should have released the restraint on his funds after initially receiving the bank statement via fax and mail or, at the very least, no later than when it received his Exemption Claim Form and bank statement. He argues that GMBS's subsequent withdrawal of its motion after reviewing the bank statement in the courthouse hallway demonstrates that the statement submission sufficiently proved the funds in Arias's account were, in fact, exempt. (*Id.*) Instead, the Complaint alleges that even though "GMBS had no good-faith basis for objecting to the exemption claim," it nonetheless objected to Arias's claim of exemption "in order to abuse and intimidate Mr. Arias into agreeing to send them payments from his exempt funds, or in hopes that Mr. Arias would default at the hearing on the exemption objection." (*Id.* at ¶ 61; *see also id.* at ¶ 86.)

Defendants now move for judgment on the pleadings with regard to the FDCPA cause of action against GMBS. They argue that FDCPA liability should not lie because GMBS's objection to Arias's claim of exemption was filed in accordance with the procedures set forth in CPLR 5222-a. According to Defendants, GMBS merely sought to "exercis[e] its client's legislatively enacted statutory right thereunder to avail itself of the opportunity to challenge through motion practice and cross-examination . . . [Arias's] claim of exemption and the purported documentary proof

[8] *See supra* note 7.

submitted by [him in] support thereof." (Defendants' Reply Memorandum of Law in Support of their Fed.P[sic].Civ.P.12(c) Motion Dismissing Plaintiff's Complaint, (ECF No. 29), at 4.) Additionally, Defendants argue that even if the bank statement had sufficiently demonstrated the exempt status of Arias's funds to warrant an instruction from GMBS to Bank of America to release the restraint, CPLR 5222-a provides judgment debtors with legal remedies directly targeting the conduct of which Arias complains, and that imposing FDCPA liability in this instance would therefore be superfluous. Finally, Defendants argue that Arias's claim under § 1692e fails because no purported misrepresentation made by GMBS was material.

II. Standard of Review

A motion for judgment on the pleadings pursuant to Fed. R. Civ. P. 12(c) is reviewed according to the same standard as a motion to dismiss a complaint. *See Johnson v. Rowley*, 569 F.3d 40, 43 (2d Cir. 2009) (per curiam). Accordingly, when reviewing a Rule 12(c) motion, a court must "accept all factual allegations in the complaint as true and draw all reasonable inferences in [the plaintiff's] favor. To survive . . ., [the plaintiff's] complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face." *Id.* at 43-44 (internal citation and quotation marks omitted). "Plausibility . . . depends on a host of considerations: the full factual picture presented by the complaint, the particular cause of action and its elements, and the existence of alternative explanations so obvious that they render plaintiff's inferences unreasonable." *L-7 Designs, Inc. v. Old Navy, LLC*, 647 F.3d 419, 429 (2d Cir. 2011).

III. The Instant Motion

The FDCPA's purpose is "to eliminate abusive debt collection practices by debt collectors, to insure that those debt collectors who refrain from using abusive debt collection practices are not

competitively disadvantaged, and to promote consistent State action to protect consumers against debt collection abuses." 15 U.S.C. § 1692. The statute targets "collection abuses such as use of 'obscene or profane language, threats of violence, telephone calls at unreasonable hours, misrepresentation of a consumer's legal rights, disclosing a consumer's personal affairs to friends, neighbors, or an employer, obtaining information about a consumer through false pretence, impersonating public officials and attorneys and simulating legal process.'" *See Kropelnicki v. Siegel*, 290 F.3d 118, 127 (2d Cir. 2002) (quoting S.Rep. No. 95–382, at 2 (1977), *reprinted in* 1977 U.S.C.C.A.N. 1695, 1696).

Likewise, New York State has enacted legislation to protect debtors from certain debt-collector conduct. The present litigation in large part rests on the relationship between the FDCPA and one particular New York State statute: CPLR 5222-a.

> CPLR 5222-a was enacted as part of the Exempt Income Protection Act of 2008 (EIPA). The purpose of this legislation was to insure that sources of income that are exempt from judgment enforcement were not restrained or seized in enforcement of judgments. To meet this purpose, the EIPA provides for a method by which a judgment debtor would be advised that certain sources of income were exempt from execution, a method to claim the exemption[, a procedure for the judgment creditor to object to any claimed exemption,] and a procedure by which the court in which the judgment was entered would expeditiously determine the validity of the claimed exemption. (*See* Bill Jacket, L 2008, ch 575.) . . . .

Midland Funding LLC v. Singleton, 34 Misc. 3d 798, 800, 935 N.Y.S.2d 844 (Dist. Ct. 2011) ("*Midland I*"). Additionally, CPLR 5222-a provides that if a judgment creditor objects to a judgment debtor's claimed exemption in bad faith, the judgment debtor shall be awarded costs, reasonable attorney's fees, actual damages and an amount not to exceed $1,000. N.Y. C.P.L.R. 5222-a(g). Subject to the speed with which the judgment debtor claims an exemption, the entire

dispute will usually be resolved within one or two months after the initial imposition of the restraint.[9]

A. GMBS is Not Liable under § 1692e

Section 1692e prohibits debt collectors from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. However, "not every technically false representation by a debt collector amounts to a violation of the FDCPA." *Gabriele v. Am. Home Mortg. Servicing, Inc.*, 503 F. App'x 89, 94 (2d Cir. 2012). Courts generally require such falsehoods, deceptions or misrepresentations to be material. *See id.* (citing with approval several sister circuits and district courts within this circuit reading a materiality requirement into § 1692e). Misrepresentations are material if they would "mislead a putative-debtor as to the nature and legal status of the underlying debt, or [would] impede a consumer's ability to respond to or dispute collection . . . ." *Gabriele*, 503 F. App'x at 94. Furthermore, although a communication is evaluated according to how the "least sophisticated consumer" would understand it, the least sophisticated consumer is "neither irrational nor a dolt." *Ellis v. Solomon & Solomon, P.C.*, 591 F.3d 130, 135 (2d Cir. 2010). Accordingly, some courts within this circuit have held that "even the least sophisticated consumer can be presumed to possess a rudimentary amount of information about the world and a willingness to read a collection notice with some care." *Greco v. Trauner, Cohen & Thomas, L.L.P.*, 412 F.3d 360, 363 (2d Cir. 2005) (citation omitted).

Arias alleges that GMBS's representations—that (1) "the commingling of personal funds with exempt funds transforms the opening balance into personal and non-exempt monies," and

[9] Indeed, in the instant case, Bank of America imposed the partial restraint on Arias's account on December 5, 2014, and the restraint was voluntarily withdrawn by GMBS on January 6, 2014. Even if GMBS had not voluntarily withdrawn the restraint, the court was obligated to decide whether Arias's funds were exempt from the restraint by January 11, 2014. *See* N.Y. CPLR 5222-a(d).

that (2) Arias therefore needed to provide a bank statement from a zero balance in order for GMBS to be able to determine whether Arias's claim of exemption was legitimate—were legally false. (Complaint at ¶¶ 64, 64 n.2, 65, 67, 75a-c.) Arias contends that these legally false statements misrepresented "to the least sophisticated consumer that that [sic] the burden is on the consumer to provide certain documentation when in fact the burden is on the debt collector . . . to demonstrate a reasonable belief that such judgment debtor's account contains funds that are not exempt from execution . . . ." (*Id.* at ¶ 71 (internal quotation marks omitted).)

As an initial matter, GMBS's representation that a judgment debtor must provide documentary proof to sufficiently demonstrate the exempt status of restrained funds was not a *mis*representation because New York courts have imposed such a burden. As at least one court has explained, "the [New York State] legislature, when enacting EIPA, could not possibly have intended to permit a person to obtain an exemption simply by checking a box on the exemption claim form, signing that form and timely mailing it back to the judgment creditor's attorney." *Midland Funding LLC v. Singleton* ("*Midland II*"), 35 Misc. 3d 410, 416, 943 N.Y.S.2d 373 (Dist. Ct. 2012). Thus, notwithstanding CPLR 5222-a(d)'s prescription that an executed Exemption Claim Form is prima facie evidence of an exemption, a judgment creditor is entitled to challenge a judgment debtor's claim of exemption, especially if unaccompanied by documentary proof. *See Midland I*, 34 Misc.3d at 802, 935 N.Y.S.2d 844. Indeed, this is the rationale underlying the objection process outlined in CPLR 5222-a(d). *See id.* at 805, 935 N.Y.S.2d 844 (stating "the judgment creditor is entitled to the opportunity to question the judgment debtor as to source of the funds claimed to be exempt" because "[f]undamental fairness and basic due process require the judgment creditor be provided with some method for meaningfully contesting the judgment debtor's claim the funds on deposit in an account are exempt from execution"). Accordingly,

Arias's allegation that GMBS misrepresented that the burden is on the judgment debtor to provide sufficient documentary proof of the claimed exemption is itself incorrect.

However, Arias may be correct that under New York law commingling exempt and non-exempt funds does not impact whether funds initially exempt from restraint remain exempt; he also may be correct that there is no requirement that a judgment debtor provide account statements starting from a zero balance to establish that exempt and non-exempt funds have not been commingled. Even so, given the circumstances, such misrepresentations were not material, and therefore cannot provide a basis on which to impose FDCPA liability.

Arias's underlying debt was previously established by default judgment, the validity of which he does not dispute. GMBS's alleged misrepresentations do not relate to the nature nor legal status of Arias's underlying debt, and therefore are not "material" on this basis. *See Gabriele*, 503 F. App'x at 94.

Nor would GMBS's alleged misrepresentations impede the least sophisticated consumer's ability to respond to or dispute collection. First, GMBS's objection explicitly requested a court hearing at a particular date, time, and location to determine the exempt status of the remaining funds in Arias's account.[10] The hearing request date was set for less than three weeks after Arias had mailed the Exemption Claim Form and bank statement to GMBS. Given the expedience of the hearing request, the objection encouraged, rather than impeded, the least sophisticated consumer's ability to further respond to and dispute collection, notwithstanding the misrepresentations alleged. Furthermore, any minimal impact that GMBS's legal

[10] Although GMBS's objection in the first instance requested a judicial order deeming the funds non-exempt based on its submission, such a request would not impact the least sophisticated consumer's ability to respond to or dispute collection in the event this primary form of relief was not granted. Indeed, the denial of such a request and setting of a hearing would signal, even to the least sophisticated consumer, that GMBS's objections, on their face, were non-dispositive.

misrepresentations might have had was mitigated by the information—including information about how to procure free legal representation—that was forwarded to Arias when the restraint was imposed.

Second, Arias alleged that he never commingled non-exempt and exempt funds. (Complaint at ¶¶ 19, 42, 49-50, 77.) Accordingly, GMBS's alleged misstatement that commingling non-exempt and exempt funds would result in previously exempt funds becoming non-exempt would not materially impact the least sophisticated consumer's ability to respond to or dispute GMBS's collection efforts. In light of the facts known, even the least sophisticated consumer would realize the alleged misstatement would be an insufficient ground to allow GMBS to garnish such funds. *See DiMatteo v. Sweeney, Gallo, Reich & Bolz, L.L.P.*, 619 F. App'x 7, 9-10 (2d Cir. 2015) (suggesting without deciding that background facts relating to the ongoing dispute—as opposed to facts related to debtor's background, financial circumstances, or sophistication—may be considered when applying least-sophisticated-consumer test). Perhaps if exempt and non-exempt funds had been commingled, GMBS's misstatement could be deemed material. But those are not the facts alleged.

B. GMBS is Not Liable under § 1692f

Arias also alleges that GMBS violated § 1692f, which makes illegal the use of "unfair or unconscionable means" to collect a debt. 15 U.S.C. § 1692f. Specifically, Arias alleges that GMBS's conduct was unfair or unconscionable because GMBS should have released the restraint after Arias told a representative over the phone and sent documents by fax that his account contained solely exempt funds. In short, he alleges that he should not have had to go to court to oppose GMBS's objection. (Complaint at ¶¶ 54-58.)

FDCPA liability is strictly imposed because the abusive nature of a debt collector's conduct does not turn on the collector's intent, but rather on the effect such conduct has on the person from whom collection is sought. The imposition that a wrongfully imposed restraint or eventually overruled objection to a claimed exemption has on a judgment debtor is identical regardless of whether the restraint and subsequent objection were filed in good faith. In enacting CPLR 5222-a, the New York State legislature set forth an expedited process to determine the exempt status of funds that could potentially satisfy an enforceable money judgment. A debt collector and its attorney do not engage in "unfair or unconscionable" conduct when they have objectively complied with New York State's legislatively prescribed process regardless of the motivation driving the collector's objectively compliant conduct.

Arias's claim that GMBS had no good faith basis to maintain the restraint on his account or file its objection after he provided his bank statement is insufficient, standing alone, to establish grounds for imposing FDCPA liability because GMBS complied with the procedures outlined in CPLR 5222-a. GMBS provided Bank of America with the statutorily required Exemption Notice and Exemption Claim Forms and notified Bank of America that it had an obligation to forward these materials to Arias within two days of imposing any restraint. Once Arias filed the Exemption Claim Form and accompanying bank statement, GMBS filed its objection within the statutorily authorized period. GMBS's objection proposed a date, time and location for a hearing to determine the exempt status of the funds in Arias's account, and served Arias with this objection so that he could present argument regarding why he believed the funds in his account were in fact exempt. Arias in fact was not impeded from responding to or disputing collection since he appeared at the hearing. Such conduct cannot be deemed unfair or unconscionable simply because GMBS

allegedly acted in bad faith, since the impact of such conduct on Arias would have been identical even if GMBS had acted in good faith.

Additionally, Arias's allegation explaining why GMBS allegedly acted in bad faith—*i.e.*, "to abuse and intimidate Mr. Arias into agreeing to send them payments from his exempt funds, or in hopes that Mr. Arias would default at the hearing on the exemption objection"—is unsupported and implausible. At no point did GMBS ever initiate direct contact with Arias in an attempt to procure payment. Instead, Arias contacted GMBS. At the time Arias contacted GMBS, GMBS was under no obligation to release the restraint; CPLR 5222-a(d) provides a judgment creditor eight days after receiving an executed Exemption Claim Form to decide whether to object to a claimed exemption. When GMBS was contacted by Arias, he had not yet even submitted his Exemption Claim Form. Given these circumstances, GMBS's statement that Arias could make a payment or appear in court to dispute the partial restraint on his account was not inconsistent with the process designated by New York State, nor was it unfair or unconscionable under the FDCPA. Furthermore, GMBS attached to its objection both Arias's completed Exemption Claim Form and Arias's bank statement purporting to prove unequivocally that the funds in Arias's account were exempt. If, as Arias alleges, the bank statement was dispositive of this issue, Arias's failure to appear at the scheduled hearing would have been inconsequential since the Exemption Claim Form and bank statement *ipso facto* would have been sufficient to establish the exempt status of his funds.

Finally, it is worth noting that CPLR 5222-a(g) explicitly creates a cause of action for the conduct about which Arias complains—*i.e.*, the bad-faith maintenance of a restraint and filing of an objection to a claimed exemption. *See Garfield v. Ocwen Loan Servicing, LLC*, 811 F.3d 86, 91-92 (2d Cir. 2016) (suggesting that whether another statute explicitly creates a cause of action

for its violation may be applicable to the determination of whether the FDCPA provides a cause of action).[11] Imposing liability under the FDCPA is not necessary when a state statutory scheme already provides substantive protection from a specific type of conduct. *See Lautman v. 2800 Coyle Street Owners Corp.*, No. 14-cv-1868, 2014 WL 4843947, at *12 (E.D.N.Y. Sept. 26, 2014) ("Imposing FDCPA liability is not necessary to serve the statute's purpose of protecting consumers, since plaintiff could have, and did, seek redress through the court system."). Simply stiffening the penalty New York State already has decided is appropriate for violations of its statutory scheme does nothing to serve the purposes for which the FDCPA was enacted.

C. Court Declines to Exercise Supplemental Jurisdiction

In addition to the FDCPA cause of action, Arias alleged three state-law causes of action, namely violations of New York State General Business Law Section 349, New York State Judiciary Law Section 487, and common law conversion. This Court only has subject-matter jurisdiction over these additional claims by virtue of 28 U.S.C. § 1367, which allows a federal court to exercise supplemental jurisdiction over state-law claims. Section 1367(c)(3) provides that, where a court dismisses "all claims over which it has original jurisdiction," the court may, in its discretion, decline to exercise supplemental jurisdiction over pendent state-law claims. 28 U.S.C. § 1367(c)(3). Further, "in the usual case in which all federal-law claims are eliminated before trial, the balance of factors to be considered under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and comity—will point toward declining to exercise jurisdiction over the remaining state law claims." *Pension Ben. Guar. Corp. ex rel. St. Vincent*

[11] Of course, this is not to say that a debt collector could not engage in conduct that violates both CPLR 5222-a(g) and the FDCPA, since "statements . . . and actions taken in furtherance of a legal action are not, in and of themselves exempt from liability under the FDCPA . . . ." *Gabriele*, 502 F. App'x at 95 (citing *Goldman v. Cohen*, 445 F.3d 152, 157 (2d Cir. 2006)).

Catholic Med. Ctr. Ret. Plan v. Morgan Stanley Inv. Mgmt., Inc., 712 F.3d 705, 727 (2d Cir. 2013) (internal citations and quotation marks omitted).

This particular case is in its early stages. At this point, only a minimal amount of discovery has taken place. (Argument Transcript dated March 23, 2016, (ECF No. 34), at 86:17-87:19, 88:13-20, 91:13-92:7.) Additionally, the state causes of action are largely dependent upon an adjudication of whether GMBS complied with CPLR 5222-a, which is a determination that is best left to a state court. Given the early stage of litigation and principles of comity, this Court declines to exercise supplemental jurisdiction over Arias's remaining state-law claims against the Defendants.

IV. Conclusion

The Defendants' motion for judgment on the pleadings with respect to the FDCPA cause of action against GMBS is GRANTED. This Court declines to exercise supplemental jurisdiction over Arias's remaining state law claims, and therefore dismisses those causes of action without prejudice.

The Clerk of Court is directed to close the above-captioned action.

Dated: June 8, 2016
New York, New York

SO ORDERED:

George B. Daniels

GEORGE B. DANIELS
United States District Judge