

2017 WL 8186857

Only the Westlaw citation is currently available.

United States District Court,  
N.D. Georgia, Atlanta Division.

Khalil JOHNSON, individually, and on behalf  
of other similarly situated individuals, Plaintiff,

v.

HAMILTON POINT PROPERTY  
MANAGEMENT, LLC, and [Hamilton  
Point Investments, LLC](#), Defendants.

CIVIL ACTION FILE NO.  
1:17-CV-00349-LMM-CMS

|  
Signed 11/08/2017

#### Attorneys and Law Firms

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GA, for Defendants.

#### FINAL REPORT AND RECOMMENDATION AND ORDER

[CATHERINE M. SALINAS](#), UNITED STATES  
MAGISTRATE JUDGE

\*1 This action is before the Court on the Rule 12(b)(6) Motion to Dismiss filed by the remaining defendants,<sup>1</sup> Hamilton Point Property Management, LLC (“HPPM”) and Hamilton Point Investments, LLC (“HPI”) (collectively, the “Hamilton Point Defendants” or “property owners”) (Doc. 18), and Plaintiff’s Motion for Leave to File a Surreply (Doc. 28). For the reasons discussed below, Plaintiff’s Motion for Leave to File a Surreply (Doc. 28) is **GRANTED**; I **RECOMMEND** that the Hamilton Point Defendants’ Rule 12(b)(6) Motion to Dismiss (Doc. 18) be **GRANTED**.

#### I. PLAINTIFF’S MOTION FOR LEAVE TO FILE A SURREPLY

Before the Court addresses the merits of the Hamilton Point Defendants’ motion to dismiss, Plaintiff has requested leave of court to file a surreply (Doc. 28) in order to respond to new matters allegedly raised for the first time in the Hamilton Point Defendants’ reply brief.

The Local Rules of this court allow three filings in relation to a given motion: the motion itself, a response, and a reply. LR 7.1, NDGa. Any further filing requires leave of court. Id. A district court has discretion to permit a written surreply brief on a dispositive motion. See [Fedrick v. Mercedes-Benz USA, LLC](#), 366 F. Supp. 2d 1190, 1197 (N.D. Ga. 2005) (citation omitted). The Hamilton Point Defendants oppose Plaintiff’s motion.

After due consideration, the Court will exercise its discretion to **GRANT** Plaintiff’s motion for leave to file a surreply (Doc. 28). The Clerk is **DIRECTED** to docket, as a separate docket entry, Plaintiff’s Surreply to the Hamilton Point Defendants’ Motion to Dismiss (Doc. 28-1). The Court has considered Plaintiff’s surreply in resolving the Hamilton Point Defendants’ motion to dismiss.

#### II. FACTUAL AND PROCEDURAL BACKGROUND

The facts of this case have not changed from those set out in this Court’s Non-Final Report and Recommendation issued on June 8, 2017 with regard to Plaintiff’s claims against the Law Firm Defendants. (Doc. 23). For ease of reference, however, I will summarize them here.

All of Plaintiff’s claims in this action arise from his refusal to pay the rent for his apartment in December 2016. On or about May 9, 2016, Plaintiff signed a lease agreement with Defendant HPPM, as managing agent for the property owner, Defendant HPI, for an apartment located at Creekside Corners Apartments in Lithonia, Georgia. (Doc. 18-2 at 2). In his Amended Complaint, Plaintiff alleges that for the month of December 2016, he refused to pay his rent because his apartment was flooded, moldy, and unlivable. (Doc. 12, Am. Compl., ¶ 13).

After Plaintiff failed to pay his rent, an agent for the property owners filed a dispossessory action against Plaintiff in the Magistrate Court of DeKalb County, Georgia, seeking a judgment in the amount of \$760.00 for past due rent, rent accruing up to the date of judgment or vacancy at the rate of \$760.00 per month, a late fee of \$160.00, \$62.98 in court costs, a service fee of \$70.02, and \$165.18 for water and sewer. A copy of the dispossessory warrant is attached to Plaintiff's Amended Complaint as Exhibit A. (Doc. 12 at 11, "Dispossessory Warrant"). The Dispossessory Warrant was signed under oath by "D. Campbell," as agent for the property owners. (*Id.*). Campbell's signature and the signature of the notary who witnessed Campbell signing are the only signatures that appear on the warrant form.

\*2 The Dispossessory Warrant form at issue in this case is a blank form provided by the DeKalb County Magistrate Court. The form is readily available on that court's website at <http://www.dekalbcountymagistratecourt.com/pdfs/DispossessoryWarrant.pdf>.

At the top lefthand corner of the blank Dispossessory Warrant form is a space for entering the plaintiff's and defendant's names and addresses. On the Dispossessory Warrant form at issue in this lawsuit, "Creeside Corners, Hamilton Point Investments" at 5301 W. Farrington Highway, Lithonia, Georgia, 30038, is listed as the plaintiff, and "Khalil Johnson" at 2207 Turnberry Pl., Lithonia, Georgia, 30036, is listed as the defendant. (Doc. 12 at 11).

At the top righthand corner of the blank Dispossessory Warrant form immediately below the name of the court ("Magistrate Court of DeKalb County") and the title of the form ("Dispossessory Warrant"), the form provides a pre-printed space for entering the name and address of the plaintiff's attorney, and his or her Georgia Bar number. *Id.* On the Dispossessory Warrant form at issue in this lawsuit, the following information was entered in the space provided for entering the attorney's name, address, and Bar number:

Ga. Bar No. 765209  
Atty: M. Williams  
2970 Clairmont Rd, Park Central,  
Ste 220

Atlanta, Ga. 30329

(Doc. 12 at 11).

In the original complaint that Plaintiff filed in this Court to initiate this lawsuit, Plaintiff sued only the Law Firm Defendants, alleging that they violated the Fair Debt Collection Practices Act ("FDCPA") by filing the Dispossessory Warrant against Plaintiff without having conducted a meaningful review of the warrant, and by seeking to collect a late fee in excess of what was authorized under Plaintiff's lease agreement. (Doc. 1, Compl.). The Complaint asserted claims under sections 1692e(2)(A), 1692e(3), and 1692f of the FDCPA, and all of Plaintiff's claims were premised on his assertion that the Law Firm Defendants had falsely claimed in the Dispossessory Warrant that Plaintiff owed more in late fees than he actually did. (Compl. ¶¶ 30-45, Counts I-IV).

On February 22, 2017, the Law Firm Defendants moved to dismiss Plaintiff's Complaint pursuant to [Rule 12\(b\)\(6\) of the Federal Rules of Civil Procedure](#). (Doc. 4). The Law Firm Defendants argued that Plaintiff had failed to state a valid claim under the FDCPA for several reasons: (1) that in accordance with Georgia law, the agent of Plaintiff's landlord was the person who signed the Dispossessory Warrant, not Attorney Williams or the Law Firm; (2) that the Law Firm Defendants did not engage in any false, deceptive, or misleading behavior because they had been retained by Plaintiff's landlord to represent the landlord in court should the dispossessory action proceed to trial; and (3) that the disputed late fees were in fact specifically authorized by Plaintiff's lease. The Law Firm Defendants argued that for these reasons, Plaintiff's Complaint failed to state a claim that the Law Firm Defendants were attempting to collect a debt in an amount that was not authorized by the contract creating the debt. (Doc. 4 at 4-5).

In response, Plaintiff moved to amend his complaint to add the Hamilton Point Defendants and to modify his allegations accordingly. On April 10, 2017, the undersigned granted Plaintiff's motion as unopposed. (Doc. 11). Plaintiff's Amended Complaint was docketed, and summonses were issued to the Hamilton Point Defendants. On May 18, 2017, the Hamilton Point Defendants filed the instant [Rule 12\(b\)\(6\)](#) motion to dismiss. (Doc. 18).

\*3 Plaintiff's Amended Complaint asserts entirely different factual allegations and theories of recovery than those that he asserted in his original Complaint. Plaintiff's Amended Complaint alleges that the address listed for Attorney Williams at the top righthand corner of the Dispossessory Warrant is the address of Williams's Law Firm, but that at the time the warrant was issued, neither Attorney Williams nor the Law Firm had been retained on behalf of the Hamilton Point Defendants to collect the debt at issue in the warrant, to review the underlying documents that gave rise to the debt, or to review, prepare, or file the Dispossessory Warrant. Plaintiff alleges that, nevertheless, the Law Firm Defendants authorized the Hamilton Point Defendants to put the Law Firm Defendants' information on the warrant, and Attorney Williams allowed his name to be placed thereon. (Am. Compl. ¶¶ 22-28). Plaintiff alleges that "Defendants" sought to collect the past due rent at issue in the underlying dispossessory action by filing a dispossessory warrant in the form of the one attached to Plaintiff's Amended Complaint as Exhibit A. Plaintiff further alleges that "[m]ore than 200 examples of Exhibit A have been sent out" to collect delinquent debts during the 12 months preceding this lawsuit, with the knowledge and consent of all Defendants. (*Id.* ¶¶ 15-19). Plaintiff alleges that, "Exhibit A is intended to mislead and frighten consumers into believing that Attorney Williams is participating in the collection of the debt in a meaningful way." (*Id.* ¶ 27).

The Amended Complaint asserts a single "Claim For Relief" on behalf of the Plaintiff—that "Exhibit A violates ... §§ 1692, 1692e and 1692j" of the FDCPA, 15 U.S.C. § 1692, *et seq.* Plaintiff generally alleges "upon information and belief" that the Hamilton Point Defendants are in the business of operating the rental apartment complex where Plaintiff resides, and that each Hamilton Point defendant is "a debt collector" pursuant to Section 1692a(6) of the FDCPA, which provides that "the term [debt collector] includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. § 1692a(6). Plaintiff's Amended Complaint also purports to assert this action on behalf of a class, pursuant to [Rules 23\(a\) and 23\(b\)\(3\) of the Federal Rules of Civil Procedure](#). (Am. Compl. at 6-7).

On June 8, 2017, the undersigned U.S. magistrate judge issued a Non-Final Report and Recommendation with regard to the motion to dismiss filed by the Law Firm Defendants. (Doc. 23, "R&R"). In the R&R, I noted that Plaintiff's complaint was in the prohibited "shotgun" format, which made it difficult to discern what Plaintiff was claiming against which defendant or defendants. (*Id.* at 9). I then concluded that Plaintiff had failed to state a plausible claim against either Attorney Williams or the Law Firm under any of the cited provisions of the FDCPA. On June 21, 2017, Plaintiff filed objections to the R&R. (Doc. 26).

On July 24, 2017, U.S. District Judge Leigh Martin May overruled Plaintiff's objections and adopted the R&R in its entirety. (Doc. 31). The Court found that Plaintiff's allegations against the Law Firm Defendants were completely without factual or legal merit. (*See id.* at 7). The Law Firm Defendants were then terminated from this case.

The [Rule 12\(b\)\(6\)](#) motion to dismiss filed on May 18, 2017 (Doc. 18) by the Hamilton Point Defendants remains pending before this Court. The motion has been fully briefed and is ripe for consideration.

### III. LEGAL STANDARD

To survive a [Rule 12\(b\)\(6\)](#) motion to dismiss, a complaint need not contain "detailed factual allegations," but must "give the defendant fair notice of what the ... claim is and the grounds upon which it rests." [Bell Atl. Corp. v. Twombly](#), 550 U.S. 544, 555, 127 S. Ct. 1955, 1964 (2007) (citation omitted).

In [Ashcroft v. Iqbal](#), 556 U.S. 662, 129 S. Ct. 1937 (2009), the Supreme Court clarified the pleading standard for civil actions, stating:

[T]he pleading standard Rule 8 announces does not require detailed factual allegations, but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation. A pleading that offers labels and conclusions or a formulaic recitation of the elements of a cause of action will not do. Nor does a complaint suffice if it tenders naked assertions devoid of further factual enhancement.

To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged. The plausibility standard is not akin to a “probability requirement, but it asks for more than a sheer possibility that a defendant has acted unlawfully. Where a complaint pleads facts that are merely consistent with a defendant’s liability, it stops short of the line between possibility and plausibility of entitlement to relief.

\*4 *Id.* at 678, 129 S. Ct. at 1949 (internal quotes and citations omitted).

The *Iqbal* Court went on to instruct that, while a court must accept all factual allegations in a complaint as true, it need not accept as true legal conclusions recited in a complaint. Repeating that “only a complaint that states a plausible claim for relief survives a motion to dismiss,” the Supreme Court then advised that “[d]etermining whether a complaint states a plausible claim for relief will ... be a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but has not ‘show[n]’—‘that the pleader is entitled to relief.’” *Id.* at 679, 129 S. Ct. at 1950 (quoting *Fed. R. Civ. P. 8(a)(2)*) (other citations omitted). All reasonable inferences are to be made in favor of the plaintiff. *Duke v. Cleland*, 5 F.3d 1399, 1402 (11th Cir. 1993).

#### IV. DISCUSSION

As mentioned above, Plaintiff’s Amended Complaint asserts a single claim for relief—i.e., that the Dispossessory Warrant at issue in this lawsuit violated §§ 1692, 1692e, and 1692j of the FDCPA. (See Am. Compl. ¶¶ 32-38). I note that § 1692 is merely the FDCPA’s statement of Congressional findings and declaration of purpose. The section has no specific prohibitions, and apart from several passing references, Plaintiff’s Amended Complaint asserts no actual claim pursuant to that provision. Accordingly, the Court will construe Plaintiff’s Amended Complaint as alleging violations of only two

sections of the FDCPA: § 1692e (prohibiting false and misleading representations); and § 1692j (prohibiting the furnishing of certain deceptive forms).

Applying the legal standards set forth above, I conclude that the Hamilton Point Defendants’ [Rule 12\(b\)\(6\)](#) motion to dismiss should be granted as to the claims asserted in the Amended Complaint. Plaintiff’s factual allegations are insufficient to support any of the claims that Plaintiff is asserting against the Hamilton Point Defendants in this action with regard to the Dispossessory Warrant at issue in this lawsuit.

##### A. Section 1692e

Plaintiff first alleges that “Exhibit A”—the Dispossessory Warrant—violated § 1692e of the FDCPA. (Am. Compl. ¶ 33). Section 1692e prohibits debt collectors from using any false, deceptive, or misleading representations or means in connection with the collection of any debt. [15 U.S.C. § 1692e](#).

Plaintiff, however, has failed to identify which subsection or subsections either defendant allegedly violated and in what way those provisions were violated. Instead, the Amended Complaint merely quotes the following statutory excerpts from [15 U.S.C. § 1692e](#):

A debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt. Without limiting the general application of the foregoing, the following conduct is a violation of this section:

...

(2) The false representation of—

\*5 (A) the character, amount, or legal status of any debt; or

(B) any services rendered or compensation which may be lawfully received by any debt collector for the collection of a debt.

(3) The false representation or implication that any individual is an attorney or that any communication is from an attorney.

...



(9) The use or distribution of any written communication which simulates or is falsely represented to be a document authorized, issued, or approved by any court, official, or agency of the United States or any State, or which creates a false impression as to its source, authorization, or approval.

(10) The use of any false representation or deceptive means to collect or attempt to collect any debt....

(Doc. 12, Am. Compl., at 6-7).

Plaintiff's Amended Complaint contains no factual allegations to show how any of these provisions were allegedly violated by the Hamilton Point Defendants, apart from simply alleging that "Exhibit A was used and caused to be distributed by Defendants in violation of the above quoted provision of the statute." (*Id.* at 7). The Amended Complaint fails to provide any factual or legal support for how or in what manner either of the Hamilton Point Defendants (as opposed to "Exhibit A") violated any particular subsection (or every subsection) quoted in the Amended Complaint. Thus, Plaintiff has failed to plead sufficient factual content that allows the court "to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Twombly*, 550 U.S. at 556.

Moreover, an indispensable element of a § 1692e claim is that the defendant be a "debt collector," as that term is defined in the FDCPA.<sup>2</sup> Plaintiff's claim is premised on the assumption that the Hamilton Point Defendants qualify as "debt collectors" under Section 1692a(6) the FDCPA. (Am. Compl. ¶ 11).

The FDCPA's definition of "debt collector" is found at 15 U.S.C. § 1692a(6), which provides, in pertinent part, as follows:

The term "debt collector" means any person who uses any instrumentality of interstate commerce or the mails in any business the principal purpose of which is the collection of any debts, or who regularly collects or attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or

due another. Notwithstanding the exclusion provided by clause (F) of the last sentence of this paragraph, the term includes any creditor who, in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts.

\*6 As a general rule, creditors are not considered debt collectors and therefore cannot violate § 1692e of the FDCPA. However, there is an exception to that general rule. Pursuant to the second sentence of the definition quoted above, a creditor can violate that section if the creditor "in the process of collecting his own debts, uses any name other than his own which would indicate that a third person is collecting or attempting to collect such debts." 15 U.S.C. § 1692a(6) (often referred to as the "false name exception"). "A creditor uses a name other than its own when it uses a name that implies that a third party is involved in collecting its debts, pretends to be someone else or uses a pseudonym or alias." *Maguire v. Citicorp Retail Servs., Inc.*, 147 F.3d 232, 236 (2d Cir. 1998) (citing *Villarreal v. Snow*, No. 95-2484, 1996 WL 473386, at \*3 (N.D. Ill. Aug. 19, 1996) (internal quotation marks omitted)). The false name exception aims to prevent deceit as to who is actually collecting the debt. See *Mazzei v. Money Store*, 349 F. Supp. 2d 651, 658 (S.D.N.Y. 2004) (citing *Maguire v. Citicorp Retail Servs., Inc.*, 147 F.3d 232, 236 (2d Cir. 1998)).

The Hamilton Point Defendants argue that they did not violate § 1692e because they do not fall under the FDCPA's definition of "debt collector"; rather, HPI is the original creditor, and HPPM is the affiliated property management company with fiduciary duties to HPI. (Doc. 18-1 at 6; Doc. 27 at 5). The Hamilton Point Defendants rely on § 1692a(6)(F)(i) of the FDCPA, which expressly excludes from the definition of debt collector "any person collecting or attempting to collect any debt owed or due or asserted to be owed or due another to the extent such activity ... is incidental to a bona fide fiduciary obligation or a bona fide escrow arrangement." 15 U.S.C. 1692a(6)(F)(i).

In support of their contention, the Hamilton Point Defendants cite two Florida cases that stand for

the proposition that a property management company attempting to collect a debt from a plaintiff on behalf of the property owner is not liable under the FDCPA because it is a bona fide fiduciary for the property owner, and it acts in that capacity when it attempts to collect funds from the plaintiff. (See Doc. 18-1 at 7-8 and Doc. 27 at 4, citing [Azar v. Hayter](#), 874 F. Supp. 1314, 1319 (N.D. Fla. 1995) (concluding that both the condominium association and its management company with a fiduciary duty to the association to collect fees owed were excluded from the FDCPA's definition of "debt collector"); and [Reynolds v. Gables Residential Servs.](#), 428 F. Supp. 2d 1260, 1264 (M.D. Fla. 2006) (similarly holding that property owner and manager of the property which had a fiduciary relationship to collect rent and corresponding fees from tenants were not debt collectors within the meaning of the FDCPA)).

In his response brief, Plaintiff concedes that the Hamilton Point Defendants are not liable as "traditional debt collectors" under the FDCPA because they are "in the business of operating the apartment complex where plaintiff resided." (Doc. 25 at 3, 5). Instead, Plaintiff argues that the Hamilton Point Defendants are liable pursuant to the "false name exception" set forth in § 1692a(6). Plaintiff argues that the Hamilton Point Defendants are liable "because they communicated with the consumer using a form document that misleadingly represented to the consumer that an attorney was already involved in the case and had reviewed and approved the filing of the document." (*Id.* at 5). In its July 24, 2017 Order, this Court addressed this argument in connection with the Law Firm Defendants' motion to dismiss, and concluded that there "is nothing inherently misleading or unduly intimidating" about including an attorney's name and address on a dispossessionary warrant. (Doc. 31 at 7). Plaintiff's argument with respect to the Hamilton Point Defendants again misses the mark, and I reach the same conclusion here.

\*7 Plaintiff has failed to plausibly allege that the Hamilton Point Defendants can be considered debt collectors based on the "false name exception." Plaintiff's Amended Complaint fails to allege or indicate what "false name" Plaintiff contends the Hamilton Point Defendants purportedly used so as to bring them within the purview of § 1692a(6) of the FDCPA. Plaintiff's Amended Complaint also fails to allege that either HPPM or HPI was "in the process of collecting [its] own debts," as required

under 15 U.S.C. § 1692a(6) in order for the false name exception to apply. See [Thomas v. Am. Service Fin. Corp.](#), 966 F. Supp. 2d 82, 96-97 (E.D.N.Y. 2013) (granting defendant's motion to dismiss plaintiff's FDCPA false name exception claim where the complaint never alleged that the defendant was attempting to collect its own debts). Nothing in the Dispossessionary Warrant indicates that Plaintiff's past due rent and related fees should be paid to any entity other than the property owner. In addition to failing to make the necessary factual allegations, Plaintiff also has cited no legal authority, binding or otherwise, to support his theory that where a tenant admittedly fails to pay the rent when it becomes due, the swearing out of a dispossessionary warrant by an owner's agent on behalf of the property owner violates any specific provision of the FDCPA.

Plaintiff argues that by placing Attorney Williams's name on the Dispossessionary Warrant in the space provided on the blank form for entering such information, the Hamilton Point Defendants violated the FDCPA by creating the false and misleading impression that a third party was participating in the collection of the debt. (Doc. 25 at 6).

The Dispossessionary Warrant, however, plainly reflects on its face that the warrant was completed and sworn to under oath by an agent of the owner, D. Campbell, on behalf of the owner (HPI) of the apartment complex (Creekside Corners) where Plaintiff Khalil Johnson was a tenant in arrears on his rent. (Doc. 12 at 11). The Dispossessionary Warrant clearly identifies the plaintiff as "Creekside Corners, Hamilton Point Investments," and the defendant as "Khalil Johnson." (*Id.*). The Dispossessionary Warrant itself does not indicate that Attorney Williams or his Law Firm filled out the warrant, signed the warrant, or transmitted the warrant to Plaintiff or the Magistrate Court of DeKalb County. And Plaintiff's Amended Complaint contains no such allegations. Even under the Eleventh Circuit's "least sophisticated consumer" standard, a person is presumed "to possess a rudimentary amount of information about the world and a willingness to read a collector's notice with some care." See [LeBlanc v. Unifund CCR Partners](#), 601 F.3d 1185, 1194 (11th Cir. 2010).

Plaintiff has also failed to allege or show that the names "Hamilton Point Investments" and/or "Creekside Corners" were in any way "false" names used by the Hamilton Point Defendants in order to "pretend to be

someone else” or to disguise their identity so as to deceive the debtor that a third person was “collecting or attempting to collect such debt[.]” 15 U.S.C. § 1692a(6); Magee v. Mays, No. 1:15-cv-1884-MHC, Doc. 30 (N.D. Ga. 2015) (rejecting plaintiff's claim that dispossessionary warrants were confusing and that her landlord was a “debt collector” subject to the FDCPA under § 1692a(6)'s false name exception).

With regard to Plaintiff's legal arguments, Plaintiff has not cited any cases that support his argument that the Hamilton Point Defendants can be considered “debt collectors” under the FDCPA by virtue of the “false name exception.” The cases that Plaintiff has cited are inapposite. The first two cited cases dismissed the plaintiff's FDCPA claim for failure to state a valid claim. (See Doc. 25 at 6, citing Dynott v. Nationstar Mortg., LLC, No. 1:13-cv-1474-WSD, 2014 WL 1028886, at \*2-3 (N.D. Ga. Mar. 17, 2014) (dismissing plaintiff's FDCPA claim for failure to state a claim for relief); Reese v. JPMorgan Chase & Co., 686 F. Supp. 2d 1291, 1308 (S.D. Fla. 2009) (concluding that plaintiff's attempt to bring the defendant under the FDCPA by applying the “false name exception” was unavailing). The third case, Vincent v. The Money Store, 736 F.3d 88 (2d Cir. 2013), dealt with whether a creditor violated the FDCPA by using a law firm's name instead of its own in order to suggest that the law firm, rather than the creditor, was collecting the relevant debt. Id. at 97 (stating that “the text of the statute is clear that there must be some active involvement in the misrepresentation by the creditor before triggering liability under the false name exception.”). Plaintiff's Amended Complaint does not allege that the Hamilton Point Defendants used a lawyer's or law firm's name instead of their own to collect a debt. None of the cases Plaintiff cites support the arguments that he makes.

\*8 In sum, Plaintiff cannot establish that the Hamilton Point Defendants are liable under the FDCPA as debt collectors pursuant to the false name exception provision, because they truthfully used the name of the apartment complex and property owner to collect their own debt. See Reynolds, 428 F. Supp. 2d at 1264. For the reasons stated, Plaintiff has failed to state a plausible claim that the Hamilton Point Defendants are subject to the FDCPA under the “false name exception” to that statute. Plaintiff has failed to allege or show an essential element of a § 1692e claim, i.e., that the Hamilton Point Defendants were “debt collectors.”

Accordingly, for all the reasons stated, I RECOMMEND that the Hamilton Point Defendants' Rule 12(b)(6) motion to dismiss Plaintiff's claim for violation of § 1692e be GRANTED for failure to state a plausible claim.

#### B. Section 1692j

Plaintiff also has failed to allege or show that the Hamilton Point Defendants are liable under Section 1692j of the FDCPA, “Furnishing Certain Deceptive Forms.” This section provides as follows:

It is unlawful to design, compile, and furnish any form knowing that such form would be used to create the false belief in a consumer that a person other than the creditor of such consumer is participating in the collection of or in an attempt to collect a debt such consumer allegedly owes such creditor, when in fact such person is not so participating.

15 U.S.C. § 1692j(a). This section applies to any person, regardless of whether they meet the FDCPA definition of a debt collector. Mahan Lab. Corp. of Am., No. 10-00426-KD-M, 2011 WL 836674, at \*3 (S.D. Ala. Mar. 9, 2011).

The conduct prohibited in Section 1692j is known as “flat rating,” which is explained as follows:

A “flat-rater” is one who sells to creditors a set of dunning letters bearing the letterhead of the flat-rater's collection agency and exhorting the debtor to pay the creditor at once. The creditor sends these letters to his debtors, giving the impression that a third party debt collector is collecting the debt. In fact, however, the flat-rater is not in the business of debt collection, but merely sells dunning letters. This bill prohibits the practice of flat-rating

because of its inherently deceptive nature.

[In re Scrimpsheer](#), 17 B.R. 999, 1010-12 (Bankr. N.D.N.Y. 1982) (quoting the FDCPA's legislative history); [Anthes v. Transworld Sys., Inc.](#), 765 F. Supp. 162, 167-68 (D. Del. 1991) (same). See also [Nielsen v. Dickerson](#), 307 F.3d 623, 639 (7th Cir. 2002) (“This provision bars the practice commonly known as ‘flat-rating,’ in which an individual sends a delinquency letter to the debtor portraying himself as a debt collector, when in fact he has no real involvement in the debt collection effort; in effect, the individual is lending his name to the creditor for its intimidation value, often in exchange for a ‘flat’ rate per letter.”).

Plaintiff's Amended Complaint alleges that at the time the Dispossession Warrant was issued, the Law Firm Defendants had not yet been retained to collect Plaintiff's past due rent, but the Law Firm Defendants nevertheless authorized the Hamilton Point Defendants to place Attorney Williams's name on the warrant form anyway in order “to mislead and frighten consumers” into believing that Attorney Williams was participating in the collection process in a meaningful way. (Am. Compl. ¶¶ 22, 26-27). Plaintiff alleges that the Law Firm Defendants were the entities that “furnished” the Dispossession Warrant to the Hamilton Point Defendants. (*Id.* ¶ 37). Plaintiff further alleges, without any factual support, that “[u]pon information and belief, Attorney Williams and/or [the Law Firm] receive a flat fee based upon the number of times Williams' name is placed on a dispossession warrant.” (*Id.* ¶ 31). Plaintiff alleges that this practice is called “flat rating” and constitutes a violation of Section 1692j of the FDCPA. (*Id.* ¶ 38).

\*9 Plaintiff's Amended Complaint fails to state a plausible claim that the Hamilton Point Defendants violated § 1692j of the FDCPA. Plaintiff's Amended Complaint contains no allegations that either of the Hamilton Point Defendants “designed, compiled, and furnished” the Dispossession Warrant. (Am. Compl. ¶ 37). Rather, Plaintiff alleges that it was the Law Firm Defendants that furnished the Dispossession Warrant to the Hamilton Point Defendants to create the false belief that the Law Firm Defendants were collecting the debt. (Am. Compl. ¶ 37). Plaintiff has subsequently acknowledged that the warrant form at issue in this lawsuit was actually published by the DeKalb County

Magistrate Court and that the blank form is freely available on the court's website. (Doc. 16 at 10).

Plaintiff has neither alleged nor shown that anyone sold a set of dunning letters to the Hamilton Point Defendants, or that Plaintiff received a dunning letter or communication from his landlord that falsely appeared to have been signed and sent to Plaintiff by Attorney Williams or his Law Firm. Section 1692j is limited to delinquency letters sold or provided to a creditor, who then sends the letters to its debtors, giving the false impression that a third party debt collector is collecting the debt. See [Anthes](#), 765 F. Supp. at 167-68 n.5. It is clear from the face of the Dispossession Warrant that Plaintiff's landlord's agent initiated the dispossession action by filling out and signing under oath a court-provided form, and that neither Attorney Williams nor the Law Firm signed it.

In sum, for the reasons stated, Plaintiff's Section 1692j claim against the Hamilton Point Defendants fails to state a valid claim under the FDCPA. Plaintiff's Amended Complaint does not allege or show that either of the Hamilton Point Defendant designed, compiled, and furnished a dunning letter or false form to create the belief that a person, other than the creditor, was participating in the collection of a debt, when in fact such person was not so participating, as required by the express terms of Section 1692j. See [Sobers v. Caliber Home Loans, Inc.](#), No. 1:16-cv-335-WSD, 2017 WL 443651, at \*4 (N.D. Ga. Feb. 2, 2017) (dismissing plaintiff's Section 1692j(a) claim for failure to allege that any defendant designed, compiled, and furnished a false form). Nor has Plaintiff provided sufficient factual allegations to support a valid claim that the Hamilton Point Defendants are flat-raters who merely provided their name and signature for use by a person other than themselves in the collection of a debt.

Accordingly, for all the reasons stated, I RECOMMEND that the Hamilton Point Defendants' Rule 12(b)(6) motion to dismiss Plaintiff's § 1692j claim be GRANTED for failure to state a plausible claim.

## V. CONCLUSION

For the reasons stated above, Plaintiff's Motion for Leave to File a Surreply (Doc. 28) is **GRANTED**. The Clerk is **DIRECTED** to docket the surreply attached to



Plaintiff's motion at Docket Entry 28-1 as separate docket entry labeled Plaintiff's Surreply to the Hamilton Point Defendants' Motion to Dismiss.

I **RECOMMEND** that the Hamilton Point Defendants' [Rule 12\(b\)\(6\)](#) Motion to Dismiss (Doc. 18) Plaintiff's Amended Complaint be **GRANTED** in its entirety.

As this is a Final Report and Recommendation, and there is nothing further in this action pending before the

undersigned Magistrate Judge, the Clerk is **DIRECTED** to terminate this reference.

**IT IS SO ORDERED and RECOMMENDED**, this 8th day of November, 2017.

**All Citations**

Slip Copy, 2017 WL 8186857

**Footnotes**

- 1** Former defendants J. Mike Williams ("Attorney Williams") and his law firm, Fowler, Hein, Cheatwood & Williams, P.A. (the "Law Firm") (collectively, the "Law Firm Defendants"), were dismissed from this lawsuit on July 24, 2017 (Doc. 31, Order) pursuant to their Rule 12(b)(6) motion to dismiss (Doc. 14).
- 2** To state a valid claim under the FDCPA, a plaintiff must sufficiently plead that: (1) he has been the object of collection activity arising from a consumer debt; (2) the defendant attempting to collect the debt qualifies as a "debt collector" under the Act; and (3) the defendant has engaged in a prohibited act or has failed to perform a requirement imposed by the FDCPA. [Ware v. Bank of America Corp.](#), 9 F. Supp. 3d 1329, 1336 (N.D. Ga. 2014) (citing [Buckley v. Bayrock Mortg. Corp.](#), No. 1:09-CV-1387-TWT, 2010 WL 476673, at \*6 (N.D. Ga. Feb. 5, 2010) (other citation omitted)).

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