IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF GEORGIA
ATLANTA DIVISION

JOHN JONES, **Plaintiff,** **v.** **MEDICREDIT, INC.,** **Defendant.**	**CIVIL ACTION NO.** **1:22-CV-2973-TWT-CCB**

FINAL REPORT AND RECOMMENDATION

Plaintiff John Jones brings this action against Defendant Medicredit, Inc. (Medicredit), asserting violations of the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. § 1692, *et seq*., the Georgia Fair Business Practices Act (GFBPA), O.C.G.A. § 10-1-390, *et seq*., and the Unfair and Deceptive Practices Toward the Elderly Act (UDPTEA), O.C.G.A. § 10-1-850, *et seq*. (Doc. 1). The matter comes before the Court on Defendant's motion for summary judgment, (Doc. 21), which Plaintiff opposes, (Doc. 24).

For the reasons that follow, the Court **RECOMMENDS** that Defendant's motion for summary judgment, (Doc. 21), be **GRANTED**, that judgment be

entered in Defendant's favor on the FDCPA claims, and that Plaintiff's claims under the GFBPA and the UDPTEA be **DISMISSED without prejudice**.

I. FACTS

A. Standards for Presenting Facts at Summary Judgment

Unless otherwise indicated, the Court draws the following facts from Defendant's statement of undisputed material facts, (Doc. 22); Plaintiff's response to Defendant's statement of material facts, (Doc. 23 at 1–8); Plaintiff's statement of additional material facts, (*id.* at 8–10); and Defendant's response to Plaintiff's statement of additional material facts, (Doc. 25 at 2–5). Additionally, where indicated and as needed, the Court also draws some facts directly from the record. See Fed. R. Civ. P. 56(c)(3) ("The court need consider only the cited materials, but it may consider other materials in the record.").

For those facts submitted by Defendant that are supported by citations to record evidence, and that Plaintiff has not specifically disputed and refuted with citations to admissible record evidence showing a genuine dispute of fact, the Court deems those facts admitted, under Local Rule 56.1(B). *See* LR 56.1(B)(2)(a)(2), NDGa. ("This Court will deem each of the movant's facts as admitted unless the respondent: (i) directly refutes the movant's fact with concise responses supported by specific citations to evidence (including page or paragraph number); (ii) states

a valid objection to the admissibility of the movant's fact; or (iii) points out that the movant's citation does not support the movant's fact or that the movant's fact is not material or otherwise has failed to comply with the provisions set out in LR 56.1(B)(1).").

The Court has excluded assertions of fact by either party that are immaterial, presented as arguments or legal conclusions, unsupported by a citation to admissible evidence in the record, or set forth only in the party's brief and not in the statement of facts. *See* LR 56.1(B)(1), NDGa. ("The Court will not consider any fact: (a) not supported by a citation to evidence . . . (c) stated as an issue or legal conclusion; or (d) set out only in the brief and not in the movant's [or respondent's] statement of undisputed facts."). The Court has also viewed all of the evidence and factual inferences in the light most favorable to Plaintiff, as it is required to do on a defendant's motion for summary judgment. *See Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*, 475 U.S. 574, 587 (1986); *McCabe v. Sharrett*, 12 F.3d 1558, 1560 (11th Cir. 1994); *Reynolds v. Bridgestone/Firestone, Inc.*, 989 F.2d 465, 469 (11th Cir. 1993).

Both parties dispute some of the other side's proffered facts, but many of those objections are over matters that are not necessarily material to the disposition of this case. Accordingly, the Court will not rule on each objection or

dispute presented and will discuss those objections and disputes only when necessary to do so regarding a genuine dispute of a material issue of fact. Moreover, Defendant objects to all of Plaintiff's additional material facts as immaterial. (*See* Doc. 25 at 2–5). Some proposed facts that the Court declines to exclude on materiality grounds are not "material" as that term is generally employed in the summary judgment context. *See Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986) (identifying material facts as those that "might affect the outcome of the suit under the governing law"). However, the Court includes some of the facts that have been objected to on materiality grounds for background purposes or to provide context for the Court's analysis. Those facts ultimately deemed material should be apparent from the analysis.

B. Material Facts

1. Medicredit's procedures and recordkeeping

Medicredit is a debt collector primarily engaged in the collection of debts of third parties. (Doc. 22-12 at 3 t.6–7).[1] Medicredit attempted to collect medical debts

[1] Citations are to the CM/ECF page numbers. However, the deposition transcript of Don Wright, Medicredit's chief operating officer (COO), contains four pages of testimony per CM/ECF page. The Court cites to both the CM/ECF page and the transcript page (designated with a "t.").

from Plaintiff. *Id.* at 3 t.7. The letters that Medicredit sent to Plaintiff are what Medicredit refers to as validation notices. *See id.* at 3 t.7–8. A validation notice is "an initial statement that would be sent out on an account that was placed with Medicredit," (*id.* at 3 t.8), and which "gives [the debtor] 30 days to dispute the validity of the debt," (*id.* at 5 t.14). The consumer account number included on a validation notice "allows [Medicredit] to see all associated debts belonging to the same consumer," (Doc. 22-12 at 5 t.15; *see also* Doc. 25 at ¶ 20), whereas a client account number on a validation notice is associated with a specific debt owed by the debtor, (Doc. 22-12 at 5 t.16). A client account number is "a static number associated with [a specific] account, [a specific] date of service, and [a specific] balance." (Doc. 22-12 at 6 t.17). Medicredit does not assign client account numbers to debts; those numbers are provided to Medicredit by its clients. *Id.* at 6 t.19.

When Medicredit receives a letter from an attorney on behalf of a debtor, it flags the individual's debt accounts that have been placed with Medicredit up until the point of the letter to reflect that the person is represented by counsel. (Doc. 23 at ¶ 14). Medicredit also flags any debts that the attorney directly references in the representation letter. (Doc. 22-12 at 8 t.25–26). However, Medicredit does not assume that an attorney who represents a debtor for a particular account will also represent that debtor for accounts that arise in the future. (Doc. 23 at ¶ 15). In other

words, a new debt placed with Medicredit does not "automatically inherit . . . the prior status of an attorney-involved tag" for a particular debtor in Medicredit's system. (Doc. 22-12 at 9 t.29). Accordingly, if new debt accounts are placed with Medicredit for a particular debtor (who was represented by counsel for prior accounts) after it receives a representation letter, Medicredit will send validation notices for those new accounts to the debtor, as opposed to the prior attorney. *Id.* at 9 t.31.

2. Medicredit's 2019 notices to Plaintiff

On January 4, 2019, Medicredit sent a validation notice to Plaintiff documenting a $790.00 debt that Plaintiff incurred at Coliseum Medical Centers (Coliseum).[2] (Doc. 23 at ¶ 1). The date of service associated with this debt was July 6, 2018. *Id.* The client account number provided for this debt ended in 9619. (Doc. 22-1 at 2).

On February 26, 2019, Medicredit sent a validation notice to Plaintiff documenting a second debt that Plaintiff incurred at Coliseum, totaling $228.19.[3] (Doc. 23 at ¶ 2). The date of service associated with this debt was September 6,

[2] For the sake of brevity, the Court will refer to this debt as "Debt 1."

[3] The Court will refer to this debt as "Debt 2."

2018. *Id.* The client account number provided for this debt ended in 3122. (Doc. 22-2 at 2).

Medicredit's third notice to Plaintiff, dated August 6, 2019, documented a third debt owed to Coliseum for a total of $90.00.[4] (Doc. 23 at ¶ 3). The date of service associated with this debt was March 5, 2019. *Id.* The client account number[5] provided for this debt ended in 3756. (Doc. 22-3 at 2).

All three validation notices included an eight-digit consumer account number ending in 5248 on the upper lefthand side of the statement. (Doc. 22-1 at 2; Doc. 22-2 at 2; Doc. 22-3 at 2).

3. Correspondence between Plaintiff's counsel and Medicredit in 2019 and 2020

On August 21, 2019, Plaintiff's counsel (at the time, Ronald Edwards Daniels) sent a letter to Medicredit in response to its August 6, 2019 validation notice to Plaintiff. (Doc. 22-4; Doc. 23 at ¶ 5). The letter advised Medicredit that Plaintiff was disputing the validity of the debt referenced in the August 6, 2019

[4] The Court will refer to this debt as "Debt 3."

[5] The table on the August 7, 2019 notice used the term "creditor account number" instead of the term "client account number," which Medicredit used in the earlier notices. (Doc. 22-3 at 2). However, this difference in terminology does not change the Court's analysis. And no matter what the number is called, it provides a unique identifier for the debt account.

validation notice (i.e., Debt 3) and provided an account number ending in 3756. (Doc. 22-4 at 2). Plaintiff's counsel also demanded that Medicredit verify the alleged debt by providing specific types of information. *Id.* Plaintiff's counsel informed Medicredit that it was "not to contact [his] client [i.e., Plaintiff] for any purpose." *Id.* The letter continues, "If you wish to discuss this alleged debt, or any other alleged debt, you must do so through me until further advised." *Id.* at 2–3. Medicredit's records reflect that it received the letter on August 26, 2019. (Doc. 25 at ¶ 21).

On August 31, 2019, in response to the August 21, 2019 letter, Medicredit sent a dispute response letter to Plaintiff's counsel. (Doc. 23 at ¶ 6). The letter provided an account number ending in 3756, a balance due of $90.00, a date of service of March 5, 2019, and a consumer number ending in 5248. (Doc. 22-5 at 2). Medicredit did not send this letter to Plaintiff. (Doc. 23 at ¶ 6).

On March 27, 2020, Plaintiff's counsel sent a demand letter to Medicredit alleging violations of the FDCPA, the GFBPA, and the UDPTEA. (Doc. 23 at ¶ 7). The letter provided an account number ending in 5248 and referenced Medicredit's notices to Plaintiff that were dated January 4, 2019, February 26, 2019, and August 6, 2019. (Doc. 22-6 at 2). The letter specified that "this law firm, along with Cliff Carlson, PC, represent[s] [Plaintiff] in connection with his account." *Id.*

4. Medicredit's 2021 notices to Plaintiff

On July 27, 2021, Medicredit sent a validation notice to Plaintiff documenting a debt of $395.00 that Plaintiff owed to Coliseum.[6] (Doc. 23 at ¶ 8). The date of service associated with this debt was October 13, 2020. *Id.* The client account number provided for this debt ended in 3662. (Doc. 22-7 at 2).

On August 25, 2021, Medicredit sent a notice to Plaintiff documenting a fifth debt that Plaintiff incurred at Coliseum.[7] (Doc. 23 at ¶ 9). This debt had a balance of $90.00 and a date of service of February 27, 2021. *Id.* The client account number provided for this debt ended in 5440. (Doc. 22-8 at 2).

In both of these notices, Medicredit provided an eight-digit consumer account number ending in 5248 on the upper lefthand side of the statement. (Doc. 22-7 at 2; Doc. 22-8 at 2). This number matched the consumer account number provided in Medicredit's 2019 notices to Plaintiff. (*Compare* Doc. 22-7 at 2; Doc. 22-8 at 2 *with* Doc. 22-1 at 2; Doc. 22-2 at 2; Doc. 22-3 at 2). In other words, each of the five validation notices had the same consumer account number (specific to

[6] The Court will refer to this debt as "Debt 4."

[7] The Court will refer to this debt as "Debt 5."

Plaintiff), and each of the five validation notices had a different creditor or client account number (specific to the particular debt).

II. STANDARD OF REVIEW

Summary judgment is authorized when the pleadings, the discovery and disclosure materials on file, and any affidavits show "that there is no genuine dispute as to any material fact and the movant is entitled to a judgment as a matter of law." Fed. R. Civ. P. 56(a). The party seeking summary judgment bears the burden of demonstrating the absence of a genuine dispute as to any material fact. *See Celotex Corp. v. Catrett*, 477 U.S. 317, 323 (1986); *Baas v. Fewless*, 886 F.3d 1088, 1091 (11th Cir. 2018). The movant carries this burden by showing the court "that there is an absence of evidence to support the nonmoving party's case." *Celotex*, 477 U.S. at 325. In making its determination, the court must view the evidence and all factual inferences in the light most favorable to the non-moving party. *See Crane v. Lifemark Hosps., Inc.*, 898 F.3d 1130, 1134 (11th Cir. 2018).

Once the moving party has adequately supported its motion, the non-moving party must come forward with specific facts that demonstrate the existence of a genuine issue for trial. *Matsushita*, 475 U.S. at 587. The non-moving party is required "to go beyond the pleadings" and to present competent evidence designating "specific facts showing that there is a genuine issue for trial." *Celotex*,

477 U.S. at 324 (internal quotation marks omitted). Generally, "[t]he mere existence of a scintilla of evidence" supporting the non-moving party's case is insufficient to defeat a motion for summary judgment; rather, there must be evidence on which a jury could reasonably find for the non-moving party. *Anderson*, 477 U.S. at 252. The non-moving party cannot defeat summary judgment by relying upon conclusory assertions. *See Holifield v. Reno,* 115 F.3d 1555, 1564 n. 6 (11th Cir. 1997), *abrogated on other grounds by Lewis v. City of Union City*, 918 F.3d 1213 (11th Cir. 2019) (*en banc*). Rather, "[a] party asserting that a fact . . . is genuinely disputed must support the assertion by . . . citing to particular parts of materials in the record." Fed. R. Civ. P. 56(c)(1)(A); *see also Resol. Tr. Corp. v. Dunmar Corp.,* 43 F.3d 587, 599 (11th Cir. 1995) (*en banc*) ("There is no burden upon the district court to distill every potential argument that could be made based upon the materials before it on summary judgment.").

If a fact is found to be material, the court must also consider the genuineness of the alleged factual dispute. *See Anderson,* 477 U.S. at 249-50. A factual dispute is not genuine if it is unsupported by evidence, or if it is created by evidence that is "merely colorable" or is "not significantly probative." *Id*. A dispute is genuine "if the evidence is such that a reasonable jury could return a verdict for the nonmoving party." *Id*. at 248. Moreover, for factual issues to be genuine, they must

have a real basis in the record. *Matsushita*, 475 U.S. at 587. The non-moving party "must do more than simply show that there is some metaphysical doubt as to the material facts." *Id*. at 586. "Where the record taken as a whole could not lead a rational trier of fact to find for the non-moving party, there is no genuine issue for trial." *Id*. at 587 (internal quotation marks omitted). Thus, the standard for summary judgment mirrors that for a directed verdict: "whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law." *Anderson*, 477 U.S. at 259 (internal quotation marks omitted).

When considering motions for summary judgment, the court does not make decisions as to the merits of disputed factual issues. *See id*. at 249; *Ryder Int'l Corp. v. First Am. Nat'l Bank*, 943 F.2d 1521, 1523 (11th Cir. 1991). Rather, the court only determines whether there are genuine issues of material fact to be tried. *Anderson*, 477 U.S. at 249. Disputed facts that do not resolve or affect the outcome of a suit will not preclude the entry of summary judgment. *Id*.

III. DISCUSSION

In Count I of the complaint, Plaintiff alleges that Defendant violated Sections 1692c(a)(1) and 1692c(a)(2) of the FDCPA by continuing to directly contact him to collect a debt or debts owed to Coliseum, despite Defendant's actual

knowledge that Plaintiff was represented by counsel and counsel's demand to Defendant to cease contact. (Doc. 1 at ¶ 52). In Count II, Plaintiff asserts that Defendant violated the GFBPA because first, a violation of the FDCPA constitutes a violation of the GFBPA, (*id.* at ¶ 69), and second, Defendant engaged in unfair and deceptive acts or practices in the conduct of consumer transactions by repeatedly and directly communicating with Plaintiff, (*id.* at ¶¶ 68, 74). As to Count III, Plaintiff explains that "UDPTEA is not a claim in its own right, but, rather, enhances damages when a violation of the [G]FBPA occurs." *Id.* at ¶ 21. Plaintiff claims that the UDPTEA enhancements apply for Defendant's GFBPA violation because he qualifies as both a disabled and elderly person under the UDPTEA. *Id.* at ¶¶ 79–80. In Count IV, Plaintiff requests exemplary damages under the GFBPA because Defendant acted intentionally. *Id.* at ¶¶ 84–86. Defendant moves for summary judgment on all counts. (Doc. 21).

A. FDCPA (Count I)

The purpose of the FDCPA 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(e). To establish a claim under the FDCPA, a plaintiff must

show that (1) the plaintiff has been the object of collection activity arising from consumer debt, (2) the defendant is a debt collector as defined by the statute, and (3) the defendant has engaged in an act or omission prohibited by the FDCPA. *Moore v. McCalla Raymer, LLC*, 916 F. Supp. 2d 1332, 1347 (N.D. Ga. 2013). Here, Plaintiff alleges that Defendant engaged in two prohibited acts by violating Sections 1692c(a)(1) and 1692c(a)(2). (Doc. 1 at ¶ 52).

1. Section 1692c(a)(1)

Section 1692c(a)(1) prohibits a debt collector from "communicat[ing] with a consumer in connection with the collection of any debt . . . at any unusual time or place or a time or place known or which should be known to be inconvenient to the consumer." 15 U.S.C. § 1692c(a)(1). Plaintiff alleges that "Defendant should have known that contacting [him] directly was inconvenient" because Plaintiff's counsel directed Defendant not to contact Plaintiff directly. (Doc. 1 at ¶ 55). Plaintiff also claims that "[i]t [was] extremely inconvenient for Defendant to send multiple statements to [him] with vastly differing amounts due for seemingly the same debt." *Id.* at ¶ 57. Defendant moves for summary judgment on Plaintiff's FDCPA claim on the grounds that he cannot show that Defendant engaged in a prohibited act under the FDCPA. (Doc. 22-13 at 7). However, other than quoting

the statute, Defendant does not substantively engage with Plaintiff's theory of relief under Section 1692c(a)(1), and neither does Plaintiff in his response.

Plaintiff's assertion that Medicredit violated Section 1692c(a)(1) "appears to be an attempt to shoehorn a § 1692c(a)(2) claim into another provision." *Jones v. Nationwide Recovery Serv., Inc.*, No. 1:22-CV-01347-LMM-LTW, 2023 WL 3628305, at *3 (N.D. Ga. Mar. 13, 2023), *adopted by* 2023 WL 9051449 (N.D. Ga. Apr. 28, 2023). Neither the August 21, 2019 letter nor the March 27, 2020 demand sent by Plaintiff's counsel indicates that communication by mail was inconvenient for Plaintiff. Nor are there any facts to suggest that the validation notices that Defendant sent in the mail somehow reached Plaintiff at an unusual or inconvenient time or place. As such, Plaintiff fails to show that Medicredit violated Section 1692c(a)(1).

2. Section 1692c(a)(2)

Section 1692c(a)(2) of the FDCPA provides in pertinent part:

> [A] debt collector may not communicate with a consumer in connection with the collection of any debt . . . if the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney's name and address . . . .

15 U.S.C. § 1692c(a)(2). Plaintiff maintains that the validation notices sent in 2021 for Debts 4 and 5—the ones sent after counsel sent letters to Medicredit—run afoul

of this provision. Defendant argues that Plaintiff cannot show that it had actual knowledge that Plaintiff was represented by counsel with respect to the specific debts it was seeking to collect because, among other things, Debts 4 and 5 had dates of service that occurred *after* the latest letter from Plaintiff's counsel and neither Plaintiff nor his counsel indicated to Defendant that Plaintiff was represented for purposes of either of these bills. (Doc. 22-13 at 7–12).

Plaintiff responds that when Medicredit sent him collection letters in July and August 2021, it knew that Plaintiff was represented by counsel with regard to his Coliseum debts. (Doc. 24 at 9). He argues that Medicredit "listed the same consumer account number on each of the 5 collection letters it sent to [Plaintiff]," because it recognized that "these bills share a relation and an association with each other." *Id.* Plaintiff also contends that the mere fact that Plaintiff incurred balances with Coliseum on different dates does not mean that they are separate debts under the FDCPA. *Id.* at 9–10. In reply, Defendant argues that Plaintiff lacks a factual or legal basis for his position that each of his bills from Coliseum should be treated as one debt under the FDCPA. (Doc. 25 at 6–10). Defendant contends that each Coliseum debt account that Medicredit serviced had unique properties, including the date of service, the amount due, and the date of initial statement. *Id.* at 7.

The Eleventh Circuit has yet to directly address the knowledge requirement under Section 1692c(a)(2). However, courts in this Circuit and elsewhere have interpreted Section 1692c(a)(2) to require that a debt collector have "actual knowledge" of attorney representation with respect to the specific debt at issue. *See Ramirez v. LTD Fin. Servs. L.P.*, No. 1:19-CV-2575-CAP-RDC, 2021 WL 5027860, at *10 (N.D. Ga. July 16, 2021) (collecting cases), *adopted by* 2021 WL 9598131 (N.D. Ga. Sept. 2, 2021); *see also Eslava v. AllianceOne Receivables Mgmt., Inc.*, No. 12-0425-WS-N, 2012 WL 4336012, at *2 (S.D. Ala. Sept. 20, 2012) ("Abundant precedent, as well as the plain statutory language, confirms that this claim requires [a plaintiff] to prove that [the defendant] had actual knowledge that she was represented by counsel."). And as the Supreme Court has explained, "to have 'actual knowledge' of a piece of information, one must *in fact* be aware of it." *Intel Corp. Inv. Policy Comm. v. Sulyma*, 140 S. Ct. 768, 776 (2020) (collecting legal definitions) (emphasis added); *see also* BALLENTINE'S LAW DICTIONARY (3d ed. 1969) (defining "actual knowledge" as "[r]eal knowledge as distinguished from presumed knowledge or knowledge imputed to one because of his having had information which should have put him on inquiry that would have led to real knowledge").

The Third Circuit's reasoning in *Graziano v. Harrison* is persuasive on these facts. 950 F.2d 107, 113 (3d Cir. 1991) (overruled in part on other grounds).[8] In *Graziano*, the court held that a debt collector does not violate Section 1692c(a)(2) by communicating directly with a consumer regarding additional debts even if the debt collector knows that the consumer is represented by an attorney with respect to a prior debt. *Id.* The consumer in *Graziano* retained an attorney who then requested verification of the debt from the debt collector. *Id.* at 109. The debt collector subsequently sent two notices of two additional debts directly to the consumer. *Id.* at 110. The Third Circuit found that the debt collector did not "breach[] the statutory mandate" under Section 1692c(a)(2) because at the time the debt collector communicated with the consumer about the two additional debts, the debt collector "had not been informed that [the consumer] was represented by counsel with respect to *those debts*." *Id.* at 113 (emphasis added).

To determine whether Medicredit's 2021 notices, which concerned Debts 4 and 5, violated Section 1692c(a)(2), the Court must decide whether the 2019 and 2020 letters from Plaintiff's counsel to Medicredit were sufficient to put it on notice

[8] In *Riccio v. Sentry Cr., Inc.*, the Third Circuit overruled *Graziano*'s interpretation of Section 1692g(a)(3). 954 F.3d 582, 585 (3d Cir. 2020) (en banc). That issue is not before the Court.

that Plaintiff was represented by counsel with respect to Debts 4 and 5. Counsel's letter dated August 21, 2019 was written in response to Medicredit's August 6, 2019 validation notice and provides an account number ending in 3756, which corresponds to Debt 3. (Doc. 22-4 at 2; *see also* Doc. 22-3 at 2). In the letter, Plaintiff's counsel tells Medicredit "not to contact [Plaintiff] for any purpose" and explains that if Medicredit "wish[es] to discuss this alleged debt, or any other alleged debt, [it] must do so through [Plaintiff's counsel]." (Doc. 22-4 at 2). Over seven months later, Plaintiff's counsel sent a second letter to Medicredit. (Doc. 22-6). This letter references the three notices Medicredit sent to Plaintiff in 2019 and provides an account number ending in 5248. *Id.* at 2.

Though the sweeping language of the first letter sent by Plaintiff's counsel purports to prohibit *any* contact between Medicredit and Plaintiff, not every violation of the wishes of a debtor's attorney will amount to a violation of the FDCPA. *See Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456, 1464 (C.D. Cal. 1991) (noting that "[d]espite the broad language of [counsel's] letter, it would be unfair to charge [the debt collector] with the knowledge that counsel represented [the plaintiff] with respect to debts assigned to [the collector] *after* the dates of his

letter"). [9] Plaintiff argues that Medicredit was "plainly aware" that he was represented by counsel with regards to his account with Coliseum. (Doc. 24 at 10). Medicredit was aware—and had documented in its records—that Plaintiff was represented by counsel as to Debts 1, 2, and 3. (Doc. 23 at ¶ 7; *see also* Doc. 22-12 at 7 t.24 (Medicredit's COO testifying that Plaintiff's representation by an attorney would have been documented with "any account [Medicredit] had placed up until that point")). However, Plaintiff's reading of the statute would require debt collectors, such as Medicredit, to assume that any time a debtor is represented as to a debt owed to a specific creditor, the debtor has legal counsel for any future debts owed to that creditor—*regardless* of when they are incurred. That reading is inconsistent with the plain language of the statute, which requires that the debt collector know that the debtor is represented with regard to the debt at issue. 15 U.S.C. § 1692c(a)(2); *see also Jones*, 2023 WL 3628305, at *3 ("Plaintiff cannot just declare that no one may ever communicate with him about any debt he might ever incur, 'past, present, or future.'").

[9] Similar to Plaintiff's counsel's letter to Medicredit, the letter sent by Masuda's counsel advised the debt collector to send "all further communications" regarding its collection efforts related to Masuda's hospital bills to counsel. *Masuda*, 759 F. Supp. at 1464.

Indeed, imposing such an assumption on debt collectors would transform the knowledge requirement of the statute from one of actual knowledge to one of constructive knowledge, and it ignores a critical phrase of the statute's plain language: "with respect to *such* debt." 15 U.S.C. § 1692c(a)(2) (emphasis added). Nor does the fact that the debts assigned to Medicredit after August 21, 2019 were owed to the same creditor as the earlier debts mandate a different interpretation. *See Masuda*, 759 F. Supp. At 1464 n.14. Indeed, another judge on this court rejected an identical argument in *Jones*. 2023 WL 3628305, at *3.

Plaintiff is correct that Debts 4 and 5 have a consumer account number ending in 5248 that is also on his earlier Coliseum debt accounts. But this is insufficient to establish that Medicredit was on notice of Plaintiff's legal representation as to Debts 4 and 5 for at least two reasons. First, the consumer account number does not refer to a specific debt account placed with Medicredit, but instead enables the company to track multiple debt accounts associated with a single debtor. (Doc. 25 at ¶ 20; Doc. 22-12 at 5 t.15). Additionally, it is clear from Medicredit's validation notices that Debts 4 and 5 had unique client account numbers. (*Compare* Docs. 22-7 and 22-8 *with* Docs. 22-1, 22-2, and 22-3). Second, Debts 4 and 5 were incurred *after* Plaintiff's counsel communicated with Medicredit in 2019 and 2020. Debt 4 had a service date of October 13, 2020, (Doc.

22-7 at 2), and Debt 5 had a service date of February 27, 2021, (Doc. 22-8 at 2). There is simply no way that even the latest of counsel's letters—sent on March 27, 2020—could have given Medicredit knowledge that Plaintiff was represented for purposes of debts he would not incur until many months later. *Jones*, 2023 WL 9051449, at *3 (noting that a letter from an attorney referencing "nonexistent future debts" cannot suffice to provide knowledge that the debtor is represented for purposes of specific debts that arise in the future).

Finally, Plaintiff argues that the Court should not view the five different Coliseum charges as separate debts for the purposes of the FDCPA. (Doc. 24 at 9–10). Other than encouraging the Court to "construe [the statute's] language broadly," Plaintiff cites no support for this proposition. *Id.* at 10. Plaintiff's argument is even less persuasive after accounting for the significant amount of time that elapsed between Coliseum's services that resulted in Debt 3 and those that underlie Debts 4 and 5: over a year and a half.[10] Thus, the Court does not find

[10] To recall, Debt 3 has a date of service of March 5, 2019, (Doc, 22-3 at 2), whereas Debts 4 and 5 have dates of service of October 13, 2020, (Doc. 22-7 at 2), and February 27, 2021, (Doc. 22-8 at 2), respectively.

that Medicredit is attempting to "arbitrarily split[] the overall debt into smaller individual micro-bills." (Doc. 24 at 10).[11]

Because "courts have uniformly interpreted the knowledge requirement to require that a debt collector have 'actual knowledge' of attorney representation 'with respect to' the specific account at issue," *Castellanos v. Portfolio Recovery Assocs., LLC*, 297 F. Supp. 3d 1301, 1309 (S.D. Fla. 2017), if Plaintiff wanted Medicredit to communicate with his counsel about Debts 4 and 5, he had to put Medicredit on notice that he was represented with respect to those accounts. Plaintiff failed to do that here, and therefore Medicredit did not have actual knowledge that Plaintiff was represented as to Debts 4 and 5. For the reasons stated above, Defendant's motion for summary judgment as to the FDCPA claim should be **GRANTED**.

B. GFBPA and UDPTEA (Counts II–IV)

Plaintiff asserts two statutory state law claims—a violation of the GFBPA and a violation of the UDPTEA—over which the Court has supplemental

[11] Plaintiff's attempt to analogize this situation to someone who incurs ten separate charges on a credit card fails to appreciate the relevant facts. A better example might be ten charges on ten completely different credit cards (but maybe all issued by the same bank) over the course of several years.

jurisdiction under 28 U.S.C. § 1367. Both claims are derivative of Plaintiff's FDCPA claim. (*See* Doc. 1 at ¶ 69 ("[T]o the extent that those actions also violate the FDCPA, those actions also violate Georgia's FBPA." (citations omitted)); *id.* at ¶ 82 ("Plaintiff suffered . . . as a result of Defendant's conduct in violation of the [G]FBPA, which also therefore violates the UDPTEA.")). Yet Plaintiff also alleges that Defendant's actions violate the GFBPA independent of whether they violate the FDCPA. *Id.* at ¶ 70. Defendant argues that if the Court grants summary judgment in its favor as to Plaintiff's FDCPA claim, it should dismiss Plaintiff's claims under the GFBPA and the UDPTEA. (Doc. 22-13 at 12–13). Plaintiff does not substantively address this argument in his response.[12] (*See generally* Doc. 24).

"[A] federal FDCPA claim may serve as a predicate offense under the [G]FBPA, which itself may serve as a predicate under the UDPTEA." *Ramirez*, 2021 WL 5027860, at *11. Indeed, the Eleventh Circuit has held that "a violation of the FDCPA constitutes a violation of the GFBPA." *Harris v. Liberty Cmty. Mgmt., Inc.*, 702 F.3d 1298, 1303 (11th Cir. 2012). Additionally, to recover enhanced penalties under the UPDTEA, a plaintiff must establish a violation of the GFBPA and that

[12] Plaintiff notes only that, "Georgia courts have held that a violation of federal law under the FDCPA constitutes a violation of state law under the [G]FBPA." (Doc. 24 at 8).

he qualifies as a disabled or elder person. O.C.G.A. § 10-1-851. Here, as noted above, Plaintiff pleads his GFBPA claim independently of his FDCPA claim. (Doc. 1 at ¶ 70).

The Supreme Court has held that:

> [n]eedless decisions of state law should be avoided both as a matter of comity and to promote justice between the parties, by procuring for them a surer-footed reading of applicable law. Certainly, if the federal claims are dismissed before trial, even though not insubstantial in a jurisdictional sense, the state claims should be dismissed as well.

United Mine Workers of Am. v. Gibbs, 383 U.S. 715, 726 (1966) (footnotes omitted); *see also* 28 U.S.C. § 1367(c) ("The district courts may decline to exercise supplemental jurisdiction over a claim . . . if . . . the district court has dismissed all claims over which it has original jurisdiction."). Here, considering the paucity of the briefing on the state claims, judicial economy, and the interests of comity, the Court finds that resolution of Plaintiff's state law claims under the GFBPA and the UDPTEA would be better suited for resolution in the Georgia courts. Accordingly, the Court recommends that Plaintiff's GFBPA and UDPTEA claims be dismissed without prejudice. *See Baggett v. First Nat'l Bank of Gainesville*, 117 F.3d 1342, 1353 (11th Cir. 1997) (dismissing the state law claim *without* prejudice); *Purser v. Weinstock & Scavo, P.C.*, No. 1:08-CV-2466-CAP-CCH, 2008 WL 11443084, at *14 (N.D. Ga. Nov. 6, 2008), *adopted by*, 2009 WL 10707838 (N.D. Ga. Jan. 8, 2009)

(dismissing plaintiff's pendent GFBPA and UDPTEA claims *without* prejudice after dismissing plaintiff's FDCPA claims).

IV. CONCLUSION

For the foregoing reasons, the Court **RECOMMENDS** that Defendant's motion for summary judgment, (Doc. 21), be **GRANTED** and that Plaintiff's state law claims be **DISMISSED without prejudice**.

Because this case presents no other issues referred to Magistrate Judges pursuant to Standing Order 18-01, the Clerk is **DIRECTED** to terminate the reference of this matter to the undersigned.

IT IS SO RECOMMENDED, this 29th day of January, 2024.

CHRISTOPHER C. BLY
UNITED STATES MAGISTRATE JUDGE