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

GLORIA EATON, individually and on behalf of all others similarly situated, Plaintiff, v. THE LITIGATION PRACTICE GROUP, PC, Defendant.	)	CIVIL ACTION NUMBER: 1:22-cv-00917-VMC

DEFENDANT THE LITIGATION PRACTICE GROUP'S RENEWED MOTION TO DISMISS PLAINTIFF'S SECOND AMENDED COMPLAINT

Now comes Defendant, The Litigation Practice Group, PC ("LPG"), by and through its undersigned counsel, and hereby moves to dismiss Plaintiff's Second Amended Complaint (Doc. No. 34) under Federal Civil Rule 12(b)(6). Plaintiff's Complaint fails to state any plausible claim upon which relief can be granted in this Court. The bases for LPG's Motion are set forth in the following Memorandum in Support.

[SIGNATURES ON FOLLOWING PAGE]

This 16th day of February, 2023.

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MEMORANDUM IN SUPPORT

I INTRODUCTION

Plaintiff continues to pursue LPG, a multiservice law firm duly licensed to practice law, under the erroneous claim that LPG somehow provides credit repair services and debt adjusting. As the plain terms of the parties' Agreement and the facts alleged by Plaintiff show, LPG does neither. Plaintiff's bald legal conclusion that LPG is a credit repair service and debt adjuster misses the mark and is subject to dismissal under Fed. R. Civ. Proc. 12(b). Her new allegations do not change the argument, and they certainly do not change the legal conclusion.

II. PROCEDURAL HISTORY

Plaintiff filed its original Class Action Complaint on January 26, 2022, in the State Court of Dekalb County. (Doc. No. 1, Ex. A). On March 4, 2022, LPG timely filed a Notice of Removal, removing the case to the United States District Court for the Northern District of Georgia, Atlanta Division. (Doc. No. 1).

On March 11, 2022, LPG moved to dismiss Plaintiff's Complaint for failure to state a claim upon which relief can be granted, with LPG's argument primarily centered around Plaintiff's mistaken belief that LPG performs credit repair services or debt adjusting. In response, Plaintiff filed her First Amended Complaint on March 12, 2022. (Doc. No. 8).

On March 25, 2022, Defendant again moved to dismiss. On April 22, 2022, Plaintiff moved this Court for leave to file yet another amended complaint. (Doc. No. 20). An attachment to the Motion was the proposed Second Amended Complaint, now grown to 49 pages and 173 numbered paragraphs. (Doc No. 20, Ex. A) Defendant opposed the Plaintiff's Motion. (Doc. No. 24) On November 3, 2022, the Court – having reviewed the Second Amended Complaint which accompanied Plaintiff's Motion for Leave to Amend – granted the Motion on November 3, 2022, and again denied Defendant's Motion to Dismiss as moot. (Doc. No. 33) Plaintiff's Second Amended Complaint (hereinafter "SAC") was docketed that same day. (Doc. No. 34). Defendant moved to dismiss the SAC (Doc. No. 41), while also seeking to

consolidate the action with others, under the Transfer Actions Pursuant to 28 U.S.C. § 1407 for Coordinated or Consolidated Pretrial Proceedings to the United States Judicial Panel on Multidistrict Litigation (Doc. No. 42) and Motion to Stay pending the outcome of the MDL referral (Doc. No. 44). On January 30, 2023, the Court entered its Order staying the litigation and denying the Motion to Dismiss as moot, with leave to re-file the Motion within 21 days if the case were not transferred. On February 6, 2023, the MDL Panel denied Defendant's Motion to Transfer.

Defendant again moves to dismiss the SAC. The volume of additional allegations notwithstanding, and recognizing that the Court has reviewed the SAC, Defendant shows that: (1) Plaintiff lacks Article III standing to bring this matter, having failed to assert any concrete, particularized injury; (2) the claims against Defendant fail as a matter of law; and (3) the State Law claims raised in the SAC are not within the subject matter jurisdiction of the Court.

III. PLAINTIFF'S RELEVANT FACTUAL ALLEGATIONS

LPG is a "Law Corporation" (i.e., a law firm), registered by the State Bar of California. ("SAC," ¶ 16). The State Bar of California licenses business entities (i.e., Law Corporations) to practice law. (SAC, ¶ 17). Law firms can be licensed to

practice law in California. (SAC, ¶18). Plaintiff entered into a Legal Services Agreement ("Agreement") with LPG on or around April 8, 2021.[1] (SAC, ¶ 47). LPG undertook to provide legal services to Plaintiff, including legal representation in the state of Georgia. (SAC ¶¶ 55-56).

The Agreement articulates the scope of the legal services that LPG agreed to provide to Plaintiff. (*See* Doc. No. 13). LPG agreed to serve as Plaintiff's attorneys for the purposes enumerated in the Agreement. (*Id*.) The Agreement states that Plaintiff understood that LPG was based in California, but that LPG has licensed attorneys in the State of Georgia that will assist Plaintiff with any dispute that might arise there. (Doc. No. 13).

IV. LAW AND ARGUMENT

The SAC again alleges violations of the Credit Repair Organizations Act, 15 U.S.C. § 1679 *et seq.* ("CROA"), the Georgia Debt Adjustment Act, OCGA §§ 185-1 *et seq.* ("GDAA"), the Georgia Fair Business Practices Act, OCGA §§ 10-1-390 *et. seq.* ("GFBPA"), but now also asserts claims under the Georgia Unfair and

[1] [1] The Agreement was filed under seal on March 25, 2022 (Doc. No. 13), as an exhibit to LPG's Motion to Dismiss (Doc. No. 12). In her Second Amended Complaint, Plaintiff makes several references to the Agreement, while also citing to certain provisions of the Agreement. For the sake of judicial efficiency, LPG will also rely upon – and cite to – the Agreement docketed under seal. (Doc. No. 13). LPG hereby incorporates by reference, as if fully restated herein, the Agreement. *Id*.

Deceptive Practices Towards the Elderly Act, OCGA §§10-1-850 - 857 ("Elderly Abuse Act"), for money had and received, and for restitution.

Even presuming all of the alleged facts to be true, the SAC again fails to state a claim for relief because: (1) LPG is not a "Credit Repair Organization" as defined under the CROA; (2) LPG, as a law firm, is explicitly exempt from the GDAA; (3) as LPG did not violate the GDAA, it likewise did not violate the GFBA; and (4) the Elderly Abuse Act does not apply to the transactions alleged. More importantly for this case, the SAC alleges only a single federal cause of action, under CROA, bringing in the several state law claims on the CROA actions' coattails. In addition to specific defects with the claims, Plaintiff's right to relief under Georgia law and two common law theories, for money had and received and for restitution, do not invoke the subject matter jurisdiction of this Court.

A. Plaintiff Lacks Article III Standing

1. Legal Standard

To have standing to bring a claim, the Plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016) (internal citations omitted). "First and foremost, there must be alleged (and ultimately proved) an injury in fact – a harm suffered by the plaintiff that is concrete and actual or imminent not conjectural or hypothetical."

Steel Co. v. Citizens for a Better Environment, 523 U.S. 83, 102-103 (1998) (internal citations omitted). "Article III standing requires a concrete injury even in the context of a statutory violation." *Spokeo*, 578 U.S. at 342 (stating that "[the plaintiff] could not, for example, allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury-in-fact requirements of Article III").

Foremost among a plaintiff's requirements in establishing Article III standing is pleading and proving an injury-in-fact. *Gill v. Whitford*, 138 S. Ct. 1916, 1929 (2018). To meet this burden, a plaintiff must plead and prove an injury that is "concrete, particularized, and actual or imminent ..." *Clapper v. Amnesty lnt'l USA*, 568 U.S. 398, 409 (2013), quoting *Monsanto Co. v. Geertson Seed Farms*, 561 U.S. 139, 149 (2010). "[T]he requirement of injury in fact is a hard floor of Article III jurisdiction that cannot be removed by statute." *Summers v. Earth Island Inst.*, 555 U.S. 488, 497 (2009).

2. Plaintiff Has Not Suffered, and Has Failed to Properly Plead, an Injury-In-Fact

Notwithstanding the somewhat minimal burden required to allege an injury at the pleading stage, Plaintiff has failed to properly plead an injury-in-fact here. All that is required is to plead "general factual allegations of injury resulting from the defendant's conduct ..." *Id*. However, "Congress' role in identifying and elevating intangible harms does not mean that a plaintiff automatically satisfies the injury-in-

fact requirement of Article III standing whenever a statute grants a person a statutory right and purports to authorize that person to sue to vindicate that right." *Spokeo, Inc. v. Robins*, 578 U.S. 330, 136 S. Ct. 1540, 194 L. Ed. 2d 635 (2016).

Here, Plaintiff does not allege any actual damages, nor does Plaintiff allege any concrete, particularized harm. The SAC states that "Plaintiff and the Class Members have suffered actual damages under the CROA by paying fees to Defendant for credit repair services that were not yet performed." [SAC, ¶121] It is upon this single sentence that jurisdiction in this Court is based.

While "general factual allegations of injury" might suffice at the pleading stage, bald conclusory allegations like these will not. *See Lujan*, 504 U.S. at 561 (internal citation omitted). "Determining whether a complaint states a plausible claim for relief [is] ... a context-specific task that requires the reviewing court to draw on its judicial experience and common sense." *Iqbal*, 556 U.S. at 679, 129 S.Ct. 1937. "[W]here the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint has alleged—but it has not 'show[n]'—'that the pleader is entitled to relief.'" *Id.* at 679, 129 S.Ct. 1937 (quoting Fed. R. Civ. P. 8(a)(2)).

In the case at hand, the Court cannot simply infer such harm, nor can the Court infer that Plaintiff has suffered <u>any</u> concrete damages based on the allegations in the SAC. Even taking all of the allegations as true, Plaintiff has failed to sufficiently plead

concrete harm or a particularized injury-in-fact. Absent injury, subject matter jurisdiction does not exist here and Plaintiff lacks standing to pursue this action. The Complaint should be dismissed, with prejudice, as a matter of law.

A. Rule 12(b)(6) Standard

Federal Rule of Civil Procedure 12(b)(6) requires dismissal of a complaint when a plaintiff's allegations fail to set forth facts which, if true, would entitle the complainant to relief. *Ashcroft v. Iqbal*, 556 U.S. 662, 679 (2009). The pleadings must raise the right to relief beyond the speculative level, and a plaintiff must provide "more than labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007). When considering a motion to dismiss, the Supreme Court instructed lower courts to consider "[t]wo working principles." *Iqbal*, 556 U.S. at 678. First, the court is not required to accept, as true, legal conclusions couched as factual allegations. *Id.* Second, "[t]o 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.'" *Id.* (citing *Twombly*, 550 U.S. at 570). "But where the well-pleaded facts do not permit the court to infer more than the mere possibility of misconduct, the complaint . . . has not 'show[n]'... 'that the pleader is entitled to relief.'" *Iqbal*, 556 U.S. at 679 (citing FED. R. CIV. P. 8(a)(2)).

In considering a 12(b)(6) motion, the court should accept all well-pleaded facts in the Complaint as true and draw all inferences in the plaintiff's favor. *Craft v. Olszewski*, 428 F. App'x 919, 921 (11th Cir. 2011). However, the "duty to liberally construe a plaintiff's complaint in the face of a motion to dismiss is not the equivalent of a duty to re-write it for the plaintiff." *Wilchombe v. TeeVee Toons, Inc.*, 555 F.3d 949, 960 (11th Cir. 2009) (quotations omitted). "[C]onclusory allegations, unwarranted deductions of facts or legal conclusions masquerading as facts will not prevent dismissal." *Oxford Asset Mgmt. v. Jaharis*, 297 F.3d 1182, 1188 (11th Cir. 2002). Indeed, a plaintiff must provide "more than an unadorned, the-defendant-unlawfully-harmed-me accusation" to survive a motion to dismiss. *Iqbal*, 556 U.S. at 678.

B. Plaintiff Fails to State a Claim for a Violation of the CROA: LPG is a Law Firm, and not a Credit Repair Organization

In its order granting leave to file the SAC, the Court did not address whether CROA applies in this case at all. The SAC attempts to define LPG, a law firm that performs legal services, as a "credit repair organization" under the CROA. LPG, however, is not a credit repair organization as that term is defined by statute. Rather, LPG is a law firm registered in California as a "Law Corporation."

The CROA defines a credit repair organization as follows:

> The term "credit repair organization" –
> (A) Means any person who uses any instrumentality of interstate commerce or the mails to sell, provide, or perform (or represent that such person can or will sell, provide, or perform) any service, in return

> for the payment of money or other valuable consideration, for the express or implied purpose of (i) Improving any customer's credit record, credit history, or credit rating: or (ii) Providing advice or assistance to any consumer with regarding to any activity or service described in clause (i).

See 15 U.S.C. § 1679a(3)(A)(i)-(ii).

Plaintiff alleges that LPG "received payments from Plaintiff and the Class Members for the express purpose of improving her credit record, credit history, or credit rating" (SAC ¶ 115), but did not allege any fact supporting such express purpose. Plaintiff promptly undercuts her own argument by noting that LPG's legal activities "if successful, would necessarily result in credit repair. *Id.* LPG shows the Court that this is the entire point, LPG's legal services could have the effect of improving Plaintiff's credit, but there is nothing showing that the Agreement expressly provided for this result. Notably, Plaintiff must show that "the" – not "a" purpose of LPG was to improve a consumer's credit record. *See White v. Fin. Credit Corp.*, No. 99 C 4023, 2001 U.S. Dist. LEXIS 21486, at *1, 16 (N.D. Ill. Dec. 20, 2001) (refusing to find that Defendant was a credit repair organization even though it offered to improve credit history, because that statement was ancillary to the defendant's main business). This distinction between credit repair organizations and businesses – particularly law firms – which can perform services that result in improved credit is the primary one which has escaped Plaintiff's gaze from the start.

In order to interpret the meaning of a statute, the Court first looks to the plain language of the statute. *Cabalceta v. Standard Fruit Co.*, 883 F.2d 1553, 1559 (11th Cir. 1989). In doing so, the Court looks "to the design of the statute as a whole and to its object and policy." *Crandon v. United States*, 494 U.S. 152, 158, 110 S. Ct. 997, 108 L. Ed. 2d 132 (1990). If the statute is unclear or ambiguous, the Court may look to legislative history and other extrinsic evidence. *See Cabalceta*, 883 F.2d at 1559.

The Eleventh Circuit has also instructed that when the plain meaning of a statute produces an "unreasonable [result] plainly at variance with the policy of the legislation as a whole this Court has followed [the purpose of the act], rather than the literal words." *Hughey v. JMS Dev. Corp.*, 78 F.3d 1523, 1529 (11th Cir. 1996) (citations omitted); *see also Public Citizen v. United States Dep't of Justice*, 491 U.S. 440, 454-55, 109 S. Ct. 2558, 105 L. Ed. 2d 377 (1989) ("it is one of the surest indexes of a mature and developed jurisprudence not to make a fortress out of a dictionary; but to remember that statutes always have some purpose or object to accomplish, whose sympathetic and imaginative discovery is the surest guide to their meaning").

This Court has previously addressed the interpretation of the CROA in the context of a class action proceeding, not unlike the case at bar. *See Hillis v. Equifax Consumer Servs.*, 237 F.R.D. 491, 512 (N.D. Ga. 2006).

"The CROA statute's omission of a definition for the terms 'credit record,' 'credit history,' or 'credit rating,' along with the statute's sweeping language and its inclusion of different credit terms in another section of the statute, creates an ambiguity, thereby permitting the Court to consider legislative history and other extrinsic evidence to aid in the task of interpretation." *Id*. at 512. "Statutes are not to be interpreted in a vacuum, and the CROA is no exception." *Id*.

"Congress's interchangeable use of the terms 'credit repair clinic' and 'credit repair organization' in the Credit Repair Organizations Act, 15 U.S.C.S. § 1679 et seq., strongly indicates that Congress sought to regulate a specific type of activity and guard against a particular type of harm-in short, services that purport to improve or repair adverse historical, tangible, and displayable data in a consumer's credit record." *Id*. at 493.

This Court in *Hillis* addressed the scope of the CROA as follows:

> Accordingly, tethered to Congress' findings, purposes, and the legislative history, it becomes apparent that the definition of a credit repair organization is narrower than a cursory reading of the statute would indicate. Specifically, when the CROA statute refers to services whose purpose is to improve a consumer's 'credit record, credit history, or credit rating,' these terms refer to a

> consumer's historical credit record. Congress did not intend for the definition of a credit repair organization to sweep services that offer only prospective credit advice to consumers or which provide information to consumers so that they can take steps to improve their credit in the future.

Hillis at 514.

The federal CROA statute is clear on its face – LPG, a law firm providing legal services to its clients, is not subject to the CROA. Here, Plaintiff entered into the Agreement, which expressly and unambiguously set forth that LPG would provide legal assistance necessary to resolve Plaintiff's debts. (*See* Doc. No. 13). LPG served as Plaintiff's attorney in connection with disputes with creditors, and LPG advised that it "will be available to render all legal assistance necessary to resolve these debts." (Doc. No. 13, p. 1).

Plaintiff does not allege that LPG attorneys took any action to improve her credit history or credit rating, outside the context of seeking to negotiate with creditors. LPG takes the consumer's circumstances as they are, providing legal representation to the consumer in lawsuits related to their debt; providing legal services in disputing the legality of the consumer's debts; and assisting the consumer in stopping creditors or debt collectors from harassing them. *Id.* These are not credit improvement actions. Rather, as the Agreement plainly states, LPG is providing <u>legal services</u>.

Whether the consumer could achieve a better credit rating would be, at best, an ancillary benefit, as nothing in the Agreement asserts that the purpose of the Agreement is to improve the consumer's credit rating, credit history, or credit record. Placing LPG under the credit repair organization umbrella would turn every bankruptcy attorney, who represents consumers in credit disputes or negotiations, and every attorney retained to address demands from creditors (regardless of how meritorious) into a credit repair organization. Such a result was clearly not intended by the plain language of the statute and would be wholly contrary to the public policy goal underlying the CROA – consumer protection.

Although Plaintiff may have used the statutory buzzwords in crafting the SAC, the Agreement with LPG unambiguously states that LPG will provide advice and legal representation to its clients. Thus, Congress did not intend to regulate the type of legal services that LPG provides under CROA. The facts as alleged by Plaintiff show that LPG is not a credit repair organization, but a law firm providing services to distressed debtors. Plaintiff has again failed to allege facts which would create a claim for relief as to this federal statute, and the CROA claim should be dismissed.

As mentioned above, if the Court finds that Plaintiff has not alleged facts from which the Court can find Defendant liable as a credit reporting organization as

defined in the CROA, this Court would lose subject matter jurisdiction over the pendent Georgia claims. However, rather than relying solely upon the CROA, Plaintiff addresses the deficiencies in the additional counts as well.

C. Plaintiff Fails to State a Claim for a Violation of the Georgia Debt Adjustment Act ("GDAA")

1. LPG Is a Law Firm, Exempt from the GDAA

Plaintiff alleges, incorrectly, that LPG violated the GDAA. All of Plaintiff's allegations regarding this Act assume that LPG is a "debt adjuster" as defined in O.C.G.A. § 18-5-1. The SAC, however, ignores the fact that there is an explicit exemption for debt adjustment for persons and entities practicing law in Georgia. *See* O.C.G.A. § 18-5-3.

> Specifically, O.C.G.A § 18-5-3 states as follows:
>
> Nothing in this chapter shall apply to those situations involving debt adjusting incurred in the practice of law in this state.

Thus, because LPG is a law firm, practicing law in Georgia (through an attorney licensed to practice law in Georgia as acknowledged by Plaintiff), LPG is exempt for the GDAA. Plaintiff makes numerous allegations regarding the legal actions in Georgia, and even identifies the Georgia attorney, Rayshawn Williams, working with LPG in connection with her matters. (SAC ¶¶ 69-111) Taking the allegations of the Complaint as true, Plaintiff may have a claim against LPG (and/or

Mr. Williams) for malpractice, but these allegations make plain that the specific exemption for legal services under O.C.G.A §18-5-3 applies.

As set out above, the Court first looks to the plain language of the statute. *Cabalceta*, 883 F.2d at 1559. The GDAA specifically and unambiguously exempts from the statute "debt adjusting incurred in the practice of law in this state." Plaintiff's allegations, by themselves and with nothing more, establish that LPG is a law firm, engaged in the practice of law. Furthermore, while Plaintiff appears to be suggesting that LPG has engaged in the unauthorized practice of law (which LPG strenuously denies), there is nothing in the statute which would grant a private remedy for such practice under the GDAA.

2. Plaintiff Fails to State a Claim under the GDAA Because She Has Failed to Allege an Essential Element Merely Sets Forth a Formulaic Recitation of the Elements of Her Cause of Action

The SAC further fails to state a claim for relief under the GDAA. While Plaintiff alleges that "Defendant is engaged in the business of providing 'Debt Adjusting' services" (SAC ¶ 133-34), the SAC does not provide the Court with any factual basis for the claim that the fees paid to LPG were intended to be distributed to creditors, as described in O.C.G.A. §§18-5-1(1)(B) and 18-5-2. The conclusion, unsupported by any fact, that the payments to LPG were a "charge, fee, contribution or combination thereof in an amount in excess of 7.5 percent of the amount paid

monthly by such debtor to such person for distribution to creditors of such debtor" (O.C.G.A. § 18-5-2) does not create a cause of action. The Agreement does not state, nor does Plaintiff allege, that the payments to LPG were going to be used for distribution to creditors. Plaintiff has merely set forth a formulaic recitation of the elements of the cause of action. Earlier this year, in reviewing a similar cause of action under the GDAA, this Court found that "Plaintiffs have failed to state a claim for a violation of the GDAA because Plaintiffs have merely set forth a formulaic recitation of the elements of the cause of action where Plaintiffs merely alleged that Defendants collected an amount in excess of 7.5%." *Phan v. Peak Debt Consumption, LLC*, No. 1:19-CV-04613-JPB, 2022 U.S. Dist. LEXIS 13474, at *10-11 (N.D. Ga. Jan. 25, 2022).

In *Phan*, this Court held that "while this is an element that must be pled and

> Plaintiffs parrot the statutory language, the allegation must be supported by further factual enhancement." *Id.* Thus, threadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice. *See Ashcroft v. Iqbal*, 556 U.S. 662, 662, 129 S. Ct. 1937, 1939 (2009). Plaintiff merely alleges that "Defendant's retention of all payments by Plaintiff and the Class Members violated the GDAA because said sums were all an amount in excess of the statutorily allowed 7.5% permitted by the GDAA." (SAC, ¶ 135). This was exactly the reason for the dismissal of the plaintiff's claims in *Phan v. Peak Debt*

Consumption, LLC. Accordingly, Plaintiff has failed to provide the required "factual enhancement" to state a claim for relief against LPG under the GDAA.

D. Plaintiff's Georgia Fair Business Act ("GFBPA") Allegations Must be Dismissed because They are Completely Derivative of the GDAA Claims

The SAC restates Plaintiff's claims for violations of the GFBPA. As the Court noted in the November 3 Order, this claim fails where the GDAA claim fails. For the reasons set forth above, Plaintiff's GDAA claims are not well founded, and thus her GFBPA claims must be dismissed as well. *See Phan v. Peak Debt Consumption*, ("because Plaintiffs failed to state a claim under the GDAA, Plaintiffs have likewise failed to state a claim under the Georgia FBPA, and as a result, to the extent Plaintiffs seek default as to the claim brought pursuant to the Georgia FBPA, Plaintiffs' motion is denied"). *Phan v. Peak Debt Consumption, LLC,* No. 1:19-CV-04613-JPB, 2022 U.S. Dist. LEXIS 13474, at *10-11 (N.D. Ga. Jan. 25, 2022).

Plaintiff has not made any specific allegations in the SAC that LPG violated the GFBPA other than through the GDAA. (SAC, ¶¶ 137-141). By way of example, Plaintiff alleges that, "Defendant's violations of the GDAA also violated the FBPA" and "Defendant intentionally violated the FBPA when it violated the GDAA..." (SAC, ¶¶ 139-140). Because there are no independent allegations that LPG's actions violated the GFBPA separate from the bootstrapped GDAA violations, Plaintiff fails to state a plausible claim for relief.

E. Plaintiff's Common Law Claims Fail as a Matter of Law

Plaintiff also asserts a claim for restitution. Plaintiff alleges that the parties' Agreement was "illegal" and therefore restitution is a remedy for recovering the consideration paid. (SAC, ¶¶ 139-140). The declaration that the contract was illegal is not supported by any evidence, and is in fact directly negated by the SAC itself. Plaintiff's contention in this appears to be that LPG could not perform; however, that allegation is directly contradicted by the Plaintiff's many paragraphs describing the legal services provided (however poorly). As the Court noted in the November 3 Order, "Restitution is an alternative remedy which entitles a party whose express contract has been breached or repudiated to recover the reasonable value of materials furnished or services rendered, measured as of the time of performance, if certain conditions are met." *PMS Construction Co. v DeKalb County*, 257 S.E.2d 285, 288 (Ga. 1979). There is no allegation of any conditions justifying equitable relief. Where, as here, there is an express agreement, an action at law for breach of contract is the remedy the law provides.

Similarly, this Court has noted, "[a] cause of action for money had and received is not premised on wrongdoing but looks only to the justice of the case and inquires whether the defendant has received money which rightfully belongs to another." *Tex. Ed Tech Sols., LLC v. Authentica Sols., LLC,* No. 1:20-cv-00151-SDG, 2021 U.S. Dist. LEXIS 63942, at *1 (N.D. Ga. Apr. 1, 2021). "To prove a claim for money had

and received, a plaintiff must show that a defendant holds money which in equity and good conscience belongs to him." *Id*. Money had and received is also a quasi-contract remedy based upon the lack of a contract remedy. If Plaintiff seeks to recover the monies paid under the Agreement, an action for breach of contract, rather than CROA, GDAA and GFBPA, is the appropriate claim.

F. Plaintiff's Claim Under the Elder Abuse Act Should be Dismissed Because Plaintiff Does Not Allege that LPG Violated Any Qualifying Statutory Provision Under the Act

In Plaintiff's Second Amended Complaint, she alleges that LPG's actions constitute unfair or deceptive practices towards the elderly under Georgia's elder abuse statute, O.C.G.A. §§ 10 -1-850 through 857. (SAC, ¶¶ 156-158). Plaintiff contends in conclusory fashion that she has stated a claim under the Act because she is over sixty years of age, and the Elder Abuse Act protects the elderly from "various forms of deceptive or unfair practices." (SAC, 156-158). With nothing more, Plaintiff's bald, conclusory allegation cannot survive a motion to dismiss. *See Hardy v. Wells Fargo Bank* at *27 ("Plaintiff does not identify any provision within Article 15 that has been violated or any deception on the part of [defendant] that fits into the categories within Article 15 and where this Court has not located any violations on Plaintiff's behalf, the Court finds that Plaintiff's unfair or deceptive practices towards the elderly claim should be dismissed"). There is no right of action without the GFBPA claim and Plaintiff does not point to any of the factors identified in the statute to determine

whether LPG acted in disregard of her rights or with knowledge that she was an "elder person." Accordingly, Plaintiff's claim under the Elder Abuse Act fails as a matter of law.

V. CONCLUSION

Plaintiff lacks standing to pursue these claims as no actual damages are alleged, but mere statutory violations of the CROA and Georgia statutes. The claim under the CROA fails as a matter of law because Plaintiff's SAC amply demonstrates that LPG was providing legal services and not credit repair as that term has been defined by statute and case law. The Georgia statutory claims fail on the basis that LPG is specifically exempted from the GDAA as a law firm and because Plaintiff has not shown the court that payments made to LPG were intended to be distributed to creditors. Moreover, if the CROA claim fails, then this Court lacks subject matter jurisdiction to hear the remaining state law actions, even if the common law claims could survive a Motion to Dismiss.

At every point, Plaintiff has chosen to mis-characterize her relationship with LPG, in direct conflict with the terms of the Agreement she signed and the conceded facts that LPG had undertaken to represent her in connection with her creditors. The facts alleged, even when taken as true, show no more than a client unsatisfied with the performance of her attorney, seeking to recover the fees paid. If every debtor whose attorney fails to provide the hoped-for relief is given a federal cause of action, it is only a matter of time before no debtor will be able to hire an attorney to defend creditor claims.

WHEREFORE, the Second Amended Complaint should be dismissed with prejudice.

This 16th day of February, 2023.

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LOCAL RULE 5.1 CERTIFICATION

I hereby certify that this Motion to Dismiss has been prepared with the font type and margin requirements of Times New Roman, 14-point font, in accordance with Local Rule 5.1.

HAYS & POTTER, LLP

/s/ James W. Hays
James W. Hays
Attorney for Defendant
Georgia Bar No: 340910

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was electronically filed on February 16, 2023, via the Court's CM/ECF system, which will provide notice to Plaintiff's counsel.

HAYS & POTTER, LLP

/s/ James W. Hays
James W. Hays
Attorney for Defendant
Georgia Bar No: 340910