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IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ST VINCENT CHARITY
Plaintiff

MICHAEL PALUSCSAK, ET AL
Defendant

Case No: CV-18-898214

Judge: CASSANDRA COLLIER-WILLIAMS

JOURNAL ENTRY

96 DISP.OTHER - FINAL

MOTION FOR SUMMARY JUDGMENT OF COUNTERCLAIM DEFENDANTS GEORGE GUSSES CO., GEORGE GUSSES, JOSEPH SZYPERSKI, AND ROBIN WORLINE, FILED 01/10/2022, IS GRANTED.

COUNTERCLAIM-DEFENDANT UNITED COLLECTION BUREAU, INC.'S MOTION FOR SUMMARY JUDGMENT, FILED 01/10/2022, IS GRANTED.

SVCMC'S MOTION TO JOIN MOTIONS FOR SUMMARY JUDGMENT FILED BY CO-COUNTERCLAIM DEFENDANTS, FILED 01/10/2022, IS GRANTED.

OPINION AND ORDER ATTACHED AND ORDERED RECORDED. FINAL. OSJ.
PURSUANT TO CIV.R. 58(B), THE CLERK OF COURTS IS DIRECTED TO SERVE THIS JUDGMENT IN A MANNER PRESCRIBED BY CIV.R. 5(B). THE CLERK MUST INDICATE ON THE DOCKET THE NAMES AND ADDRESSES OF ALL PARTIES, THE METHOD OF SERVICE, AND THE COSTS ASSOCIATED WITH THIS SERVICE.

OSJ

Judge Signature Date

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CUYAHOGA COUNTY

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08/15/2022

IN THE COURT OF COMMON PLEAS
CUYAHOGA COUNTY, OHIO

ST. VINCENT CHARITY	)	Case No. CV-18-898214
	)	
Plaintiff,	)	JUDGE CASSANDRA COLLIER-WILLIAMS
	)	
	)	
v.	)	
	)	
MICHAEL PALUSCSAK ET AL.,	)	
	)	
	)	
	)	**OPINION AND ORDER**
Defendants.	)	
	)	

JUDGE C. COLLIER-WILLIAMS:

This matter is before the Court pursuant to Counterclaim Defendants United Collection Bureau, Inc. ("UCBI"), George Gusses Co., L.P.A. ("Gusses"), Joseph Szyperski, and Robin A. Worline's Motions for Summary Judgment. Additionally, Counterclaim Defendant St. Vincent Charity Medical Center ("SVCMC") filed a Motion to Join the Motions for Summary Judgment of its Co-Counterclaim Defendants. For the reasons outlined below, the Court GRANTS Counterclaim Defendants' Motions for Summary Judgment in their entirety.

FACTUAL AND PROCEDURAL BACKGROUND

In September of 2015, Counterclaim Plaintiff Michael Paluscsak ("Paluscsak") went to St. Vincent Charity Medical Center, where he had an MRI performed on his knee. SVCMC billed Paluscsak in the amount of One Thousand One Hundred Seventy Five Dollars and Forty Cents ($1,175.40) for the medical procedure. The bill went unpaid. After the bill remained outstanding for 18 months, SVCMC referred the account to UCBI for collections. UCBI sent a collection letter

to Paluscsak on June 2, 2017. UCBI then hired George Gusses Co., L.P.A.[1] to file a debt collection action against Paluscsak. Before filing suit, the Gusses law firm sent a letter to Paluscsak on June 2, 2017, stating that he owed $1,175.40 on the account. The bill remained unpaid. On July 11, 2017, the Gusses firm filed a lawsuit in Cleveland Municipal Court, Case Number 2017CVF009866.

On August 14, 2017, in response to the Complaint filed against him in Municipal Court, Paluscsak filed an Answer and Counterclaims on behalf of a putative class. Paluscsak asserted claims based on the federal Fair Debt Collection Practices Act ("FDCPA") and the Ohio Consumer Sales Practices Act ("OCSPA"). Paluscsak also asserted common law claims of fraud and abuse of process. The crux of Paluscsak's Counterclaims arise from the contention that the debt collection activities were initiated in the name of "St. Vincent Charity," and not by the correct legal entity, "St. Vincent Charity Medical Center."

Specifically, Paluscsak alleged that after he received the MRI at SVCMC, he received letters from both UCBI and the Gusses Counterclaim Defendants stating that he owed money to "St. Vincent Charity." *See* Amended Counterclaim ¶ 28-31, 32. Paluscsak asserted in his Counterclaim, "The letter[s] [from UCBI and the Gusses Counterclaim Defendants] falsely stated that [Paluscsak] owed money to 'St. Vincent Charity' when there is no such entity in existence." *Id.* at ¶ 31, 33.

Furthermore, Paluscsak alleges that attorney Joseph Szyperski of the Gusses Law Firm signed a complaint on behalf of "St. Vincent Charity." Paluscsak believes that the words "Medical

[1] George Gusses, Robin A. Worline, and Joseph T. Szyperski are attorneys and employees of George Gusses Co., L.P.A. and are each named individually in Paluscak's Counterclaim. The Court will refer to George Gusses Co., L.P.A. and the individual employees as the "Gusses Counterclaim Defendants" throughout this opinion. When referring to all of the Counterclaim Defendants: SVCMC, the Gusses Defendants, and UCBI, the Court will refer to them collectively as "Counterclaim Defendants."

Center" were omitted from SVCMC's name on the Complaint "for the improper motive of cheating unsuspecting and unsophisticated consumers." *Id.* at ¶ 65(d).

Paluscsak also alleges violation of the FDCPA's venue provision against the Gusses Counterclaim Defendants because they filed the Complaint in Cleveland Municipal Court, instead of Garfield Municipal Court, where Paluscsak resides. This Court notes that Paluscsak did not file any motion objecting to the case being filed in Cleveland Municipal Court.

After the filing of the Complaint and Counterclaim, the matter proceeded in Cleveland Municipal Court. A number of motions were filed and subsequently ruled on in Municipal Court Additionally, SVCMC voluntarily dismissed its Complaint against Paluscsak, leaving only Paluscsak's Counterclaim. On May 14, 2018, the Municipal Court granted UCBI's Motion to Certify the Case to the Cuyahoga County Common Pleas Court because the amount in controversy in Paluscsak's Counterclaim exceeded the jurisdiction of the court pursuant to Ohio Civ. R. 13(J). Accordingly, on May 22, 2018, the matter was transferred from the Cleveland Municipal Court to the Cuyahoga County Court of Common Pleas.

The matter proceeded before this Court. This Court dismissed the fraud and abuse of process Counterclaims by partially granting Counterclaim Defendants' Motion for Judgment on the Pleadings, Motion to Dismiss, and Motion to Dismiss and/or Strike . *See* Journal Entries, dated 07/10/2018, 08/14/2018, and 11/09/2018. On January 10, 2022, UCBI and the Gusses Counterclaim Defendants filed Motions for Summary Judgment. On the same date, SVCMC filed a Motion to Join Motions for Summary Judgment filed by Co-Counterclaim Defendants. Both summary judgment motions essentially argue that Paluscsak does not have standing to bring his claims and that the use of the name "St. Vincent Charity" was not false, deceptive, or misleading.

Additionally, the Gusses Counterclaim Defendants separately argue that there was no violation of the FDCPA's venue provision by filing the complaint in Cleveland Municipal Court.

LAW AND ANALYSIS

A. Summary Judgment Standard

Pursuant to Cir. 56(C), summary judgment is only appropriate when (1) no genuine issue as to any material fact exists; (2) the party moving for summary judgment is entitled to judgment as a matter of law; and (3) after viewing the evidence most strongly in favor of the nonmoving party, reasonable minds can reach only one conclusion and that conclusion is adverse to the nonmoving party. *Hollins v. Shaffer*, 182 Ohio App.3d 282, 2009-Ohio-2136, 912 N.E.2d 637 (8th Dist.). "The burden of showing no genuine issue as to any material fact exists falls upon the moving party in requesting summary judgment." *Harless v. Willis Day Warehousing Co.*, 54 Ohio St. 2d 64, 375 N.E.2d 46 (1978). If the movant satisfies the initial burden, then the nonmoving party has the burden to set forth specific facts that there remain genuine issues of material fact that would preclude summary judgment. *Edvon v. Morales*, 8th Dist. Cuyahoga No. 106448, 2018-Ohio-5171, ¶ 17, citing *Dresher v. Burt*, 75 Ohio St.3d 280, 292, 662 N.E.2d 264 (1996).

B. Fair Debt Collection Practice Act and Ohio Consumer Sales Practice Act

As stated, Paluscsak's Counterclaims allege that Counterclaim Defendants violated certain provisions of the FDCPA and OCSPA while attempting to collect the debt owed to SVCMC. Both the FDCPA, 15 U.S.C. 11692 et seq., and the OCSPA, R.C. 1345.01 et seq., are remedial statutes, intended to reach a broad range of conduct. The United States Congress enacted the FDCPA "to eliminate abusive debt collection practices by debt collectors, to ensure 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. 1692a. Under the FDCPA, a debt collector is prohibited from using "any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. 1692e.

When analyzing whether conduct giving rise to a claim fits within the broad scope of the FDCPA, "the conduct is viewed through the eyes of the 'least sophisticated consumer.'" *Currier v. First Resolution Invest. Corp.,* 762 F.3d 529, 533 (6th Cir.2014). That standard, while protecting "the gullible and the shrewd alike," also presumes "a basic level of reasonableness and understanding on the part of the debtor." *Id.* "Although this standard protects naive consumers, it also 'prevents liability for bizarre or idiosyncratic interpretations of collection notices by preserving a quotient of reasonableness and presuming a basic level of understanding and willingness to read with care.'" *Federal Home Loan Mortgage Corp. v. Lamar*, 503 F.3d 504, 509-510 (6th Cir. 2007) citing *Wilson v. Quadramed Corp.,* 225 F.3d 350, 354-55 (3d Cir. 2000)(internal citation omitted).

The Ohio Consumer Sales Practices Act (OCSPA) is designed to protect a consumer from a supplier's deceptions and curtail unscrupulous acts of suppliers. The act states, "[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction." R.C. 1345.02(A). The Ohio Supreme Court has stated, "debt collectors, including attorneys engaged in debt collections, can be held liable under the OCSPA." *Taylor v. First Resolution Invest. Corp.,* 148 Ohio St.3d 627, 2016-Ohio-3444, 72 N.E.3d 573, ¶ 87. In his Amended Counterclaim, Paluscsak generally alleges that Counterclaim Defendants violated the OCSPA by "knowingly commit[ing] unfair, deceptive and/or unconscionable acts or practices."

C. Standing

Counterclaim Defendants rely on lack of standing as a basis for dismissal of Paluscsak's Counterclaims. Standing is a jurisdictional requirement. *See Bank of Am., NA. v. Kuchta*, 141 Ohio St.3d 75, 2014-Ohio-4275, 21 N.E.3d 1040, ¶ 22 ("Standing is certainly a jurisdictional requirement; a party's lack of standing vitiates the party's ability to invoke the jurisdiction of a court."). Standing requires a plaintiff to establish (1) injury-in-fact, (2) causation, and (3) redressability. *Moore v. City of Middletown*, 133 Ohio St.3d 55, 2012-Ohio-3897, 975 N.E.2d 977. In this matter, Counterclaim Defendants argue that Paluscsak has not satisfied the injury-in-fact requirement. "Perhaps the most basic requirement to bringing a lawsuit is that the plaintiff suffer some injury." *See Estate of Mikulski v. Centerior Energy Corp.*, 8th Dist. No. 107108, 2019-Ohio-983, ¶ 59 (quoting *Felix v. Ganley Chevrolet, Inc.* 145 Ohio St. 3d 329, 2015-Ohio-3430, 49 N.E.3d 1224).

The Counterclaim Defendants point this Court to the United States Supreme Court decision of *Spokeo, Inc. v. Robins,* 578 U.S. 330, 136 S.Ct. 1540, 194 L. Ed. 2d 635 (2016) in support of dismissal. The *Spokeo* decision analyzed the standing requirement of Article III in the context of federal statutory claims – particularly addressing whether Congress may confer standing on a plaintiff who suffers no concrete injury and suffers only statutory damages. In the decision, the Supreme Court clarified that "Article III standing requires a concrete injury even in the context of a statutory violation," noting that a plaintiff cannot "allege a bare procedural violation, divorced from any concrete harm, and satisfy the injury in fact requirement of Article III." *Id.*

The *Spokeo* Court examined the minimum requirements of standing in federal court in the context of a Fair Credit Reporting Act (FCRA) case and reaffirmed the principle that Congress may not confer standing in the absence of an alleged particularized and concrete injury-in-fact.

The Court acknowledged the role of Congress to "identify intangible harms that meet minimum Article III requirements," and thus "its judgment is also instructive and important" regarding the issue of standing. *Id.* at 1549. Consequently, Congress "may 'elevat[e] to the status of legally cognizable injuries concrete, de facto injuries that were previously inadequate in law.'" The Supreme Court emphasized that the power of Congress is limited by the injury-in-fact requirement of Article III. *Id.* at 1547-48. Thus, for there to be standing under Article III, there must be a "concrete injury even in the context of a statutory violation." *Id.* at 1549. In some circumstances, "the violation of a procedural right granted by statute can be sufficient * * * to constitute injury in fact." *Id.* However, in the context of the FCRA, a "violation of one of the FCRA's procedural requirements may result in no harm." *Id.* at 1550.

The Supreme Court opinion has been the subject of intense analysis in federal courts. *See* Ezra Church, et al, *The Meaning of Spokeo, 365 Days and 430 Decisions Later*, LAW 360 (2017). Ohio courts are not bound by federal standing principles derived from Article III of the United States Constitution's "cases" and "controversies" requirement. *Leppla v. Sprintcom, Inc.*, 156 Ohio App. 3d 498, 2004-Ohio-1309, 806 N.E.2d 1019 (2d Dist.), citing Article III, Section 2, U.S. Constitution. However, Ohio courts often look to federal law when discussing the requirements for standing under Ohio law. *Id.* Ohio courts generally adhere to the traditional principles of standing that "require litigants to show, at a minimum, that they have suffered '(1) an injury that is (2) fairly traceable to the defendant's allegedly unlawful conduct, and (3) likely to be redressed by the requested relief.'" *ProgressOhio.org, Inc. v. JobsOhio*, 139 Ohio St. 3d 520, 2014-Ohio-2382, ¶ 7, 13 N.E.3d 1101, quoting *Moore* at ¶ 22, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S. Ct. 2130, 119 L. Ed. 2d 351 (1992); *see State ex rel. Walgate v. Kasich*, 147 Ohio St. 3d 1, 2016-Ohio-1176, ¶ 23, 59 N.E.3d 1240 ("The test for Article III standing, like the test for

common-law [standing] in Ohio, requires an injury in fact, causation, and redressability."). These three requirements are considered the "'irreducible constitutional minimum'" of standing. *Moore* at ¶ 22, quoting *Lujan* at 560.

In *Smith v. Ohio State Univ.,* 10th Dist. No. 17AP-218, 2017-Ohio-8836, the Tenth District was confronted with the issue of whether standing for purposes of a state court FCRA action could be conferred by statute. The court stated that, although Ohio courts have accepted the proposition that standing could be conferred solely by a statutory grant, it would not apply this concept to an action based upon a federal statute. *Id.* at ¶ 14. Instead, it would apply the federal principles of standing as articulated in the *Spokeo* case. In doing so, the court held that students who had argued that the university had violated FCRA by including extraneous information in a background check disclosure had not demonstrated an injury-in-fact, and therefore lacked standing to sue. *Id.* at ¶ 15.

The Ohio Supreme Court has not expressly adopted the decision in *Spokeo* yet. However, the Court signaled in *Felix v. Ganley Chevrolet, Inc.* 145 Ohio St. 3d 329, 2015-Ohio-3430, 49 N.E.3d 1224, decided while *Spokeo* was still pending, that it was awaiting the outcome of *Spokeo* and that *Spokeo* may require it to apply the same analysis to standing. *Felix* at 32, fn. 4 ("Some courts treat the failure to sufficiently allege and demonstrate damages in consumer-protection claims as failure to establish standing or ripeness *** The questions before us are framed neither as standing nor ripeness issues, and we intimate no opinion on those questions of law, particularly given that the United States Supreme court [in *Spokeo*] is now considering, on standing grounds only, whether a plaintiff may bring suit under the Fair Credit Reporting Act, 15 U.SC. 1681 et seq., alleging as his injury only violations of his statutory rights under the act."). As the Ohio Supreme Court anticipated in *Felix*, the United States Supreme Court has now made it clear that a

plaintiff must allege an actual injury, something beyond a mere violation of a procedural statutory right, to satisfy the standing requirement.

Furthermore, the Eighth District recently approved of *Spokeo* in *Estate of Mikulski v. Centerior Energy Corp.*, 8th Dist. No. 107108, 2019-Ohio-983, 133 N.E.3d 899. The *Mikulski* court found that the class members did not have standing to bring their claims because they

> did not suffer injury because, like the plaintiffs in *Smith*, they did not "file[] erroneous tax returns in reliance on the allegedly erroneous form or receive[] a smaller tax deduction as a result[.]" Therefore, they have not suffered a concrete and particular injury as is required for standing.

Here, Paluscsak's claims are based on: 1) the failure to include the term "Medical Center" in communications to him and the Complaint filed against him; and 2) the filing of the Complaint in Cleveland Municipal Court, instead of the Garfield Heights Municipal Court. In the context of the FDCPA, a FDCPA violation might cause harm if it leads a plaintiff to pay extra money, affects a plaintiff's credit, or otherwise alters a plaintiff's response to a debt. None of these harms happened in this case. Here, the Court finds that Paluscsak did not suffer a concrete injury. It is *not* alleged that Mr. Paluscsak paid the wrong entity for his unpaid medical debt in reliance on the name "St. Vincent Charity" as opposed to "St. Vincent Charity Medical Center." In fact, it is *not* alleged that Mr. Paluscsak paid *any* entity for his unpaid medical debt. Counterclaim Defendants have long dismissed their claims for the unpaid medical debt against Mr. Paluscsak. Mere use of a commonly used name in attempts to collect an undisputed debt, without more, is insufficient to establish injury-in-fact. Furthermore, when looking at Paluscsak's venue claim, he suffered no damages from Cleveland being the choice of venue, as opposed to Garfield Heights. Instead, Paluscsak is claiming only "bare procedural violation[s]."

Paluscsak points to testimony that he has spent money defending the collection lawsuit and retaining counsel. Furthermore, he testified that having a lawsuit filed against him was "very disturbing" both "emotionally" and "financially." *Paluscsak Dep.* at 178. Paluscsak testified that it was "embarrassing to a certain degree." *Id.* These claimed injuries do not qualify as "injury" sufficient to confer standing. *See, e.g. Wadsworth v. Kross, Lieberman & Stone, Inc.*, 12 F. 4th 665, 668 (7th Cir. 2021) (noting that "anxiety," "embarrassment," "stress," "infuriation or disgust," "sense of indignation," "annoy[ance]" and "intimidat[ion]" are not "injuries in fact").

In a similar case, *Midland Funding LLC v. Brent*, N.D. Ohio No. 3:08 CV 1434, 2010 U.S. Dist LEXIS 117501 (Nov. 4, 2010), the Court held that "the emotional distress [the debtor] claim[ed] to have suffered appear[ed] to have been due to nothing more than the embarrassment and inconvenience which are the natural consequences of debt collection." *Id.* (internal quotation marks omitted). The court therefore granted summary judgment as to the debtor's actual-damages claims, noting, "an FDCPA actual damages rule must only award emotional damages for actual, serious emotional distress traceable to proscribed debt collection practices." *Id.* "That is because debt collection is an inherently stressful experience for the consumer, and the FDCPA was intended to deter only abusive and unlawful debt collection practices." *Id.* (internal quotation marks and ellipses omitted).

Accordingly, the Court finds that Paluscsak's claimed injuries are not injuries that were ***caused*** by Counterclaim Defendants' use of the common name "St. Vincent Charity," instead of the full name "St. Vincent Charity Medical Center" in attempts to collect an unsatisfied debt from Paluscsak. Furthermore, there was no injury caused by the venue being Cleveland instead of Garfield Heights. Thus, in the absence of an injury-in-fact, Paluscsak may not rely on the

availability of statutory damages under the FDCPA and the OCSPA to pursue his claims. Consequently, Counterclaim Defendants' Motions for Summary are hereby granted.

D. Paluscsak's Claims under the FDCPA and OCSPA Fail as a Matter of Law

Even if this Court were to conclude that Paluscsak has standing to bring his counterclaims, his OCSPA and FDCPA claims fail on the merits as a matter of law.

1. Violation of 15 U.S.C. §1692e

Section 1692e of the FDCPA provides that "[a] debt collector may not use any false, deceptive, or misleading representation or means in connection with the collection of any debt." 15 U.S.C. § 1692e. This provision goes on to list sixteen subsections, providing a nonexhaustive list of practices that fall within the statute's ban. Paluscsak alleges that Counterclaim Defendants' identification of "St. Vincent Charity" as the creditor is a violation of §1692e in that they "falsely stated that Paluscsak owed money to 'St. Vincent Charity' when there is no such entity in existence and there is no registration with the Ohio Secretary of State of 'St. Vincent Charity' as [a] fictitious name." Amended Counterclaim ¶ 34.

Whether a debt collector's actions are false, deceptive, or misleading under 15 U.S.C.S. § 1692e is based on whether the "least sophisticated consumer" would be misled by the debt collector's actions. In addition, in applying this standard, the courts have also held that a statement must be materially false or misleading to violate § 1692e and not merely "false in some technical sense." *See Miller v. Javitch, Block & Rathbone*, 561 F.3d 588, 596 (6th Cir.2009) (*quoting Hahn v. Triumph Partnerships*, LLC, 557 F.3d 755, 757-58 (7th Cir.2009)). The materiality standard simply means that in addition to being technically false, a statement would tend to mislead or confuse the reasonable unsophisticated consumer.

Here, there is no question that Palsuscak received a MRI SVCMC. No other medical providers use that name in Ohio. There is also no question that Paluscsak owed SVCMC $1,175.40 for the MRI performed, and that it remained unpaid. When asked whether there was anything "false or misleading" about Counterclaim Defendants' use of the abbreviated name "St. Vincent Charity," Mr. Paluscsak testified: "To a certain degree, no." *Paluscsak Dep.* at 170. Paluscsak also admitted that, at the time he received UCBI's March 14, 2017 letter, he was equally unfamiliar with the name "St. Vincent Charity Medical Center." *Id.* at 152. Thus, even if the pre-suit collection communications had stated SVCMC's full legal name, it would have made no difference to Paluscsak. *Id.*

Either way, Paluscsak admits he would have been receiving a collection notice with the name of a creditor he was not familiar with and would have had the same degree of confusion. *Id.* Paluscsak was not mislead into thinking that he owed "St. Vincent Charity" money that he did not owe. If he received a collection notice from "St. Vincent Charity Medical Center," he would have also been confused as to who was attempting to collect from him, as he was not familiar with that name either. Concerning the Complaint, Paluscsak admitted that it would have made no difference to him if the words "Medical Center" were added to the caption of the Complaint. *Id.* at 152.

Numerous courts have held that the FDCPA does not mandate the use of the creditor's full legal name and that the use of a truncated name is permissible as long as it is not misleading. *Leonard v. Zwicker & Assoc.,PC.*, S.D. Fla. No. 16-cv-14326, 2016 U.S. Dist. LEXIS 173669, *2 (Dec. 14, 2016) (ruling that the use of "American Express" sufficiently identifies the various legal entities affiliated with American Express Company under the least-sophisticated-consumer standard; *see also Berk v. JPMorgan Chase Bank, N.A.*, E.D. Pa. No. 11-2715, 2011 U.S. Dist. LEXIS 109626, *12 (Sept. 23, 2011) (holding as a matter of law that "[n]o reasonable person

would find that 'Chase Auto Loans' is a false identification of any of the named Chase defendants - JPMorgan Chase Bank, JPMorgan Chase & Co., or Chase Auto Finance Corporation"); *Stuppiello v. Sw. Credit Sys., LP*, S.D. Cal. No. 16-cv-1811, 2017 U.S. Dist. LEXIS 213450, *19-22 (Jan. 9, 2017) (holding as a matter of law that collection notice did not violate FDCPA where it identified creditor by the commonly-used acronym "AT&T" and not by its full legal name "Pacific Bell Telephone Company dba AT&T California"); *Eul v. Transworld Sys.*, N.D. Ill. No. 15 C 7755, 2017 U.S. Dist. LEXIS 47505, *98-102 (Mar. 30, 2017) ("The Court has no difficulty concluding that the letters' identification of the creditor generally as 'National Collegiate Trust' was not false or misleading as a matter of law," even though it did not identify which of the numerous National Collegiate Trust entities actually held the loan.); *Williams v. Waypoint Res. Grp.*, LLC, E.D.N.Y. No. 18-cv-4921, 2019 U.S. Dist. LEXIS 50499, *9-10 (Mar. 26, 2019) (finding as a matter of law that collection notice complied with FDCPA where it identified creditor generally as "Verizon" without specifying which Verizon entity was the actual creditor).

UCBI presents an affidavit to the Court of Jared Klaus, attorney for UCBI, which avers that a search for "St. Vincent Charity" on the website of the Ohio Secretary of State displays only names and entities affiliated with St. Vincent Charity Medical Center. The affidavit also avers that a Google search for "St. Vincent Charity" lists as the first result St. Vincent Charity's website, STVINCENTCHARITY.com; shows a map of all St. Vincent Charity locations, including the Independence location at which Mr. Paluscsak received his MRI; and contains numerous other results, including St. Vincent Charity's Facebook and Wikipedia pages, that would have enabled Paluscsak to easily determine that St. Vincent Charity was an abbreviation for St. Vincent Charity Medical Center. *See* Exhibit D to UCBI's Motion for Summary Judgment.

This Court finds that using the common name of "St. Vincent Charity" instead of "St. Vincent Charity Medical Center" is not likely to mislead the least sophisticated consumer because "St. Vincent Charity" is a commonly used name under which the business usually transacts. *See Mahan v. Retrieval-Masters Credit Bureau, Inc.*, 777 F. Supp. 2d 1293, 1301 (S.D. Ala. 2011) (holding that a creditor had not violated §1692e when using a name under which it had commonly done business).

Paluscsak does not contend that the pre-suit collections communications and the Complaint filed by the Counterclaim Defendants set out to trick him into paying money he did not owe, or to mislead him into paying the wrong person. The use of the truncated name "St. Vincent Charity" was harmless, rather than an effort to lead Paluscsak astray. This court finds that it is clear beyond any genuine issue of material fact that Counterclaim Defendants' use of the name "St. Vincent Charity" was not false, deceptive, or misleading. As such, even if Paluscsak has standing to bring his claims, Paluscsak's claims against Counterclaim Defendants under the FDCPA fail as a matter of law.

Consequently, Counterclaim Defendants' Motions for Summary Judgment are hereby granted.

2. Violation of 15 U.S.C. §1692i

15 U.S.C. §1692i is FDCPA's "fair venue" provision and was designed to combat the problem of forum abuse—an unfair practice in which debt collectors seek to obtain default judgments by filing suit in courts so distant or inconvenient that consumers cannot make an appearance. The FDCPA provides a venue provision, allowing a case to be prosecuted: only in the judicial district or similar legal entity— (A) In which such consumer signed the contract sued upon; or (B) in which such consumer resides at the commencement of the action. 15 U.S.C. § 692i

(a) (2). However, if a violation does occur, "a debt collector may not be held liable if the debt collector shows by a preponderance of the evidence that the violation was not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error." 15 U.S.C. § 1692k(c)). Under the bona fide error defense, a debt collector is not liable for a FDCPA violation if it shows by a preponderance of the evidence that (1) the violation was unintentional, (2) the violation resulted from a bona fide error, and (3) it maintained procedures reasonably adapted to avoid the error. *See* U.S.C. § 1692k(c).

Paluscsak alleges that the Gusses Counterclaim Defendants violated the FDCPA when they filed suit in Cleveland Municipal Court because he did not reside within the territorial jurisdiction of Cleveland Municipal Court. Further, he alleges that he did not sign the contract underlying his debt to SVCMC within the territorial jurisdiction of Cleveland Municipal Court. Garfield Heights Municipal Court and Cleveland Municipal Court are both in Cuyahoga County, Ohio Paluscsak does not know where he signed the contract creating his account liability to SVCMC. *See Paluscsak Dep.* at 105. There is nothing in the record to indicate where Paluscsak signed the contract.

This Court finds that the Gusses Defendants are entitled to the bona fide error defense. In regard to the first element, the Gusses Counterclaim Defendants argue that the alleged violation of the FDCPA was unintentional. Attorney Joseph Szyperski of the Gusses law firm testified that the venue choice of Cleveland was made by looking up Paluscsak's address in the Ohio Legal Directory. Specifically, Szyperski stated that the Gusses Defendants "had an address in Cleveland for [Paluscsak] and, therefore, looking at what we always look for to check to see. We checked, I believe – I think you have it in one of your exhibits, the Ohio Legal Directory often referred to as

the Blue Book, wherein you check by way of a Zip Code of someone to see the city." Szyperski testified that Paluscsak's zip code is listed in the Ohio Legal Directory as a Cleveland address.

As to the second element, the Gusses Defendants argue that any error was bona fide. This requires that the error contemplated is an honest error, one that is sincerely made in good faith and without pretense. Based upon the information above, the Gusses argue that they legitimately reviewed Paluscsak's address on statements from the original creditor. Once they had the zip code, they cross-referenced the Ohio Legal Directory. The Gusses state that this is a normal procedure for determining the proper venue of a claim and that any error occurring as a result of the procedure was a bona fide error.

Finally, as to the third and final element of the defense, the Gusses state that the firm maintains procedures to avoid the error that occurred. Attorney Szyperski testified that there was a written procedure for the process he described, wherein a representative of the Gusses Firm would be required to use the Ohio Legal Directory to cross-reference the address of the party against whom the Gusses law firm would be filing suit.

The Court holds that the Gusses Counterclaim Defendants are entitled to the bona fide error defense as any alleged violation of 15 U.S.C. 1692i was unintentional, bona fide error, and there was a procedure maintained to avoid the alleged error.

3. Violation of 1692e (5)

Interestingly, in his Brief in Opposition to the various motions for summary judgment, Paluscsak begins to rely on new theories of liability that were not found in his Amended Counterclaim. Paluscsak argues that UCBI committed the unauthorized practice of law in violation of FDCPA's prohibition of "threat[s] to take any action that cannot legally be taken." *Brief in Opposition,* 22, 29-30.; 15 U.S.C. § 1692e (5). Ohio courts are reluctant to permit plaintiffs

to blindside defendants in an opposition to a summary judgment brief by presenting new theories of liability that are nowhere to be found in the complaint. *See, e.g., Parente v. Embassy Suites,* 8th Dist. Cuyahoga No. 71890, 1997 Ohio App. LEXIS 4010, *10 (Sept. 4, 1997) (reasoning that appellant "could not counter [a]***defense presented in a motion for summary judgment with another theory of liability" and "[a]ny argument on that***issue***was not properly before the trial court"). As such, this Court rejects Paluscsak's attempt to raise this issue for the first time in opposition to the summary judgment motions.

4. Ohio Consumer Sales Protection Act

Paluscsak's claims against Counterclaim Defendants under the OCSPA also rely solely on the use of the name "St. Vincent Charity" instead of "St. Vincent Charity Medical Center" by the Counterclaim Defendants. The OCSPA states, "[n]o supplier shall commit an unfair or deceptive act or practice in connection with a consumer transaction," R.C. § 1345.02(A) The OCSPA lists the types of supplier representations that are deemed deceptive. R.C. § 1345.02(B). Paluscsak contends that he is "challenging the actions taken by suppliers through the use of an unregistered fictitious name." *Brief in Opposition*, pg. 36. However, mere use of fictitious names is not a basis for OCSPA liability. It is plainly not listed among the deceptive practices prohibited by R.C. § 1345.02. Counterclaim Defendants are entitled to summary judgment on Paluscsak's claim under the OCSPA.

Paluscsak points this Court to two cases to support his argument for OCSPA liability. The first is the case of *Brown v. Lyons*, 43 Ohio Misc. 14, 332, N.E.2d 380 (C.P. 19987). In *Brown*, the defendant concealed his real identity from consumers by making frequent and consistent changes to his business name and location. The court held that this was a violation of the OCSPA. In contrast, Counterclaim Defendants have not engaged in overt concealment of the real identity

of St. Vincent Charity Medical Center. Next, Paluscsak cites to the case of *Crull v. Maple Park Body Shop*, 521 N.E.2d 1099, 36 Ohio App. 3d 153, 1987 Ohio App. LEXIS 10545 in support of his argument for OCSPA liability. However, *Crull* specifically held that "[t]he mere failure to register a fictitious name pursuant to R.C. 1329.01 is not an unfair or deceptive act or practice in violation of R.C. 1345.01 et seq." *Id.* Instead, *Crull* stands for the proposition that failure to register a fictitious name may be a relevant factor in the determination whether a supplier has committed an unfair or deceptive act. *Id.* Accordingly, the Court hereby holds that Counterclaim Defendants did not commit an unfair or deceptive act that would create liability under the OCSPA and Paluscsak's OCSPA counterclaim fails as a matter of law. Consequently, Counterclaim Defendants' Motions for Summary Judgment are hereby granted.

CONCLUSION

Based on the foregoing, the Court hereby GRANTS Counterclaim Defendants George Gusses Co., George Gusses, Joseph Szyperski, and Robin Worline's Motion for Summary Judgment and Counterclaim-Defendant United Collection Bureau, Inc.'s Motion for Summary Judgment. In addition, the Court GRANTS SVCMC's Motion to Join Motions for Summary Judgment filed by Co-Counterclaim Defendants. FINAL.

IT IS SO ORDERED.

8/15/2022

DATE

JUDGE CASSANDRA COLLIER-WILLIAMS