

IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF ILLINOIS  
EASTERN DIVISION

BERNITA BRYANT,

Plaintiff,

v.

UNITED COLLECTION BUREAU,  
INC.,

Defendant.

Case No. 19 C 5931

Judge Harry D. Leinenweber

**ORDER**

Defendant United Collection Bureau, Inc. moves to dismiss Plaintiff Bernita Bryant's Amended Complaint pursuant to FED. R. Civ. P. 12(b)(6). (Dkt. No. 26.) For the reasons stated herein, the Court grants the Motion.

**I. BACKGROUND**

In August 2019, Bryant received a debt collection letter from United Collection Bureau, Inc. ("UCB"). (Am. Compl. ¶ 17, Dkt. No. 21.) The letter provided: "As of the date of this letter, you owe the above stated Account Balance. Because of interest and/or other charges that may vary from day to day, the amount due on the day you pay may be greater." (*Id.* ¶ 20.) The Amended Complaint states that, beyond interest, the "only 'other charge' that is potentially accruing is 'late fees,' and that "[UCB] is misleading [Bryant] about the types of charges that

could be accruing when it knows that its [sic] only late charges accruing." (*Id.* ¶¶ 21-22.) The Amended Complaint also asserts that UCB materially misrepresents the debt's status because it "does not state that the 'Minimum Payment Due' is rising." (*Id.* ¶¶ 24-25.) Bryant alleges the letter violates 15 U.S.C. § 1692e of the Fair Debt Collection Practices Act ("FDCPA"), prohibiting any false, misleading, or deceptive representations in connection with the collection of any debt. (*Id.* ¶¶ 26-27.)

Bryant filed her initial Complaint on September 5, 2019, alleging that UCB violated 15 U.S.C. § 1692(g)(1). The Court dismissed that Complaint without prejudice on March 4, 2020. Bryant then filed an Amended Complaint alleging that UCB violated § 1692e. UCB now moves to dismiss the Amended Complaint pursuant to FED. R. CIV. P. 12(b)(6).

## **II. LEGAL STANDARD**

A Rule 12(b)(6) motion challenges the legal sufficiency of the complaint. To survive a Rule 12(b)(6) motion, the allegations in the complaint must meet a standard of "plausibility." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 564 (2007). A claim is facially plausible "when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). The plaintiff must demonstrate

"more than a sheer possibility that a defendant has acted unlawfully." *Id.* The Court will accept all well-pleaded factual allegations as true and construes all reasonable inferences in the plaintiff's favor. *Marshall-Mosby v. Corp. Receivables, Inc.*, 205 F.3d 323, 326 (7th Cir. 2000). This tenant does not apply to legal conclusions. *Iqbal*, 556 U.S. at 678; *Twombly*, 550 U.S. at 555.

### III. DISCUSSION

In the Seventh Circuit, FDCPA claims are evaluated under the objective "unsophisticated consumer" standard. *Gruber v. Creditors' Prot. Serv., Inc.*, 742 F.3d 271, 273 (7th Cir. 2014). Such a person may, on one hand, be "uninformed, naive, or trusting, but on the other hand [she] does possess rudimentary knowledge about the financial world, is wise enough to read collection notices with added care, possesses reasonable intelligence and is capable of making basic logical deductions and inferences." *Id.* (citations and quotations omitted). "Additionally, while the unsophisticated consumer may tend to read collection letters literally, [she] does not interpret them in a bizarre or idiosyncratic fashion." *Id.* at 274 (citations and quotations omitted).

The Seventh Circuit groups suits alleging deceptive or misleading statements into three categories. *Ruth v. Triumph*

*P'ships*, 577 F.3d 790, 800 (7th Cir. 2009). The first category includes cases "involving statements that plainly, on their face, are not misleading or deceptive." *Id.* In these cases, the court does "not look to extrinsic evidence to determine whether consumers were confused. Instead, [it] grant[s] dismissal or summary judgment in favor of the defendant based on [its] own determination that the statement complied with the law." *Id.* The second category includes cases involving "statements that are not plainly misleading or deceptive but might possibly mislead or deceive the unsophisticated consumer." *Id.* In these cases, "plaintiffs may prevail only by producing extrinsic evidence . . . to prove that unsophisticated consumers do in fact find the challenged statements misleading or deceptive." *Id.* The third category includes cases involving statements that are "so clearly confusing on [their] face[s] that a court may award summary judgment to the plaintiff on that basis." *Id.* at 801. This case falls into the first category.

The Amended Complaint alleges UCB's letter violates § 1692e in two ways: (1) by giving false, misleading, and deceptive information about the debt and the effect of not paying it; and (2) by misleading Bryant as to the "Minimum Payment Due." (Am. Compl. ¶¶ 26-27.) Bryant withdraws the second point in her

response brief. Therefore, the Court only addresses Bryant's first point.

Bryant suggests that UCB's letter misleads the unsophisticated consumer by inclusion of the phrase "other charges." The following paragraphs from the Amended Complaint summarize Bryant's allegations on this point:

20. Said letter goes on to state "[A]s of the date of this letter, you owe the above stated Account Balance. Because of interest and/or other charges that may vary from day to day, the amount due on the day you pay may be greater."

21. The only "other charge" that is potentially accruing is "late fees;" Defendant is quite aware of this.

22. Defendant is misleading Plaintiff about the types of charges that could be accruing when it knows that [] only late charges [are] accruing.

23. Just like *Boucher*, this letter is not clear what the "other charges" are or what "other charges" may apply, Plaintiff is "left to guess about the economic consequences of failing to pay immediately." *Id.* at 368.

(*Id.* ¶¶ 20-23.) UCB does not dispute that the letter includes the language that Bryant quotes. UCB argues that it does not matter, however, because the language is factually accurate and consistent with Seventh Circuit law. UCB is correct on both points.

Bryant acknowledges that "late fees" and "late charges" are potentially accruing on her account. (*Id.* ¶¶ 21-22.) Her response

also acknowledges that she expected interest to accrue. (Resp. at 2, Dkt. No. 32.) The letter states that Bryant's Account Balance "may be greater" than stated "[b]ecause of interest and/or other charges." (*Id.* ¶ 20.) The term "other charges" includes "late fees" or "late charges." Therefore, it is accurate to use "other charges" in a letter to describe the potential for "late fees" or "late charges." Thus, UCB's statement is factually accurate.

The use of "other charges" language in this way is also consistent with Seventh Circuit law. See *Miller v. McCalla, Raymer, Padrick, Cobb, Nichols, & Clark, L.L.C.*, 214 F.3d 872, 876 (7th Cir. 2000) (stating the amount due may vary "[b]ecause of interest, late charges, and other charges"). The law does not require UCB to itemize what "other charges" may exist, and Bryant's cited cases do not stand for this proposition. See *Boucher v. Fin. Sys. of Green Bay, Inc.*, 880 F.3d 362, 367 (7th Cir. 2018) (holding debt collection letter was misleading because it implied the imposition of "late charges and other charges" when those charges were precluded by Wisconsin law); *Lox v. CDA, Ltd.*, 689 F.3d 818, 825 (7th Cir. 2012) (holding a debt collection letter was false because it implied the imposition of attorney's fees when such fees were not provided for in the debt agreement). Those cases involve scenarios where

the debt collector's language was not accurate. Indeed, those cases involved instances where the debt collector's representations were legally or otherwise precluded, and therefore objectively false and misleading. The Amended Complaint fails to allege there is any such inaccuracy here.

While the Court could dismiss the Amended Complaint on this basis alone, UCB's other argument for dismissal applies with equal force. UCB argues the Amended Complaint fails to state a plausible claim for relief under the FDCPA. The Court agrees. As the allegations demonstrate, Bryant assumes that UCB is prohibited from collecting any charges beyond late fees. Yet the Amended Complaint fails to state any basis, such as a law, regulation, or policy, that could support this assumption. See *Heng v. Heavner, Beyers & Mihlar, LLC*, 849 F.3d 348, 353 (7th Cir. 2017) (affirming district court's dismissal of § 1692e claim because plaintiff did not identify "any law, regulation, or [ ] policy" to explain why the defendant's conduct was prohibited). The closest the Amended Complaint gets to a basis is alleging that UCB "is quite aware" that late fees are the only charges "potentially accruing." (Am. Compl. ¶ 21.) This is insufficient and does not permit the Court to draw a reasonable inference that UCB is liable for misconduct. See *Iqbal*, 556 U.S. at 678.

To save her claim, Bryant makes new allegations in the response brief. Specifically, Bryant states, "the only thing that dictates what fees are associated with this debt is the agreement between Plaintiff and Creditor for this debt," and that "Plaintiff never signed any agreement that would allow any charges except interest and late fees." (Resp. at 2.) But Bryant may not amend her complaint in her response brief. See *Pirelli Armstrong Tire Corp. Retiree Med. Benefits Trust v. Walgreen Co.*, 631 F.3d 436, 448 (7th Cir. 2011) (affirming district court's dismissal "because of the axiomatic rule that a plaintiff may not amend [her] complaint in [her] response brief"). The Amended Complaint does not allege a law, credit agreement provision, or other reason to explain why UCB can only charge late fees. Thus, Bryant fails to plead a FDCPA violation.

The Court also denies Bryant's improper request for leave to amend. District courts "have broad discretion to deny leave to amend where there is undue delay, bad faith, dilatory motive, repeated failure to cure deficiencies, undue prejudice to the defendants, or where the amendment would be futile. *Gonzalez-Koeneke v. West*, 791 F.3d 801, 807 (7th Cir. 2015) (quotation and citation omitted). This is UCB's second motion to dismiss for failure to state a claim and Bryant's second improper attempt to amend a pleading in a response brief. The Court granted UCB's

first motion, dismissed the Complaint, and reminded Bryant that lodging new allegations in a response brief is not the proper way to amend a pleading. (3/4/20 Hearing Tr. at 10:12-16 ("Finally, Bryant improperly raises a new claim in her response. If Bryant wishes to make additional claims, she must seek leave of the Court to amend under Federal Rule of Civil Procedure 15.")).)

Despite ample opportunity, Bryant never sought leave to amend under FED. R. CIV. P. 15. Bryant also failed to give the Court a reason to grant the newest request in her response, stating only that she "fee[l]s quite strongly that [s]he has given a well pleaded Complaint for this matter." (Resp. at 3.) *See Gonzalez-Koeneke*, 791 F.3d at 807 ("A motion to amend should state with particularity the grounds for the motion and should be accompanied by the proposed amendment.") (citing *Otto v. Variable Annuity Life Ins. Co.*, 814 F.2d 1127, 1139 (7th Cir. 1986)). Bryant offers no "meaningful indication of how [she] would plead differently" if so allowed, and she should not be permitted to benefit from UCB's vetting of her allegations. *Indep. Trust Corp. v. Stewart Info. Servs Corp.*, 665 F.3d 930, 943 (7th Cir. 2012); *see also Bencomo v. Forster & Garbus LLP*, No. 18-CV-1259-JPS, 2019 WL 3082502, at \*8 (E.D. Wis. July 15, 2019) (denying leave to file a second amended complaint because

"[i]t is simply too late in the day for [plaintiff] to amend her complaint once more" and noting that neither defendants nor the Court should "be expected to be strung along as [plaintiff] tries out every theory of liability she can imagine as those theories come to her mind"). Thus, the Court dismisses the Amended Complaint with prejudice and without leave to amend.

**IV. CONCLUSION**

For the foregoing reasons, the Court grants Defendant's Motion to Dismiss (Dkt. No. 26). The Court dismisses Plaintiff's Amended Complaint with prejudice and without leave to amend.

**IT IS SO ORDERED.**

A handwritten signature in black ink, appearing to read 'Leinenweber', is written above a horizontal line.

Harry D. Leinenweber, Judge  
United States District Court

Dated: 10/8/2020