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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 Antonio Flores,

10 Plaintiff,

11 v.

12 Frost-Arnett Company,

13 Defendant.
14

No. CV-21-01645-PHX-DLR

ORDER

15
16 Pending before the Court are Defendant's motion for summary judgment (Doc. 41)
17 and Plaintiff's motion for partial¹ summary judgment (Doc. 42), which are both fully
18 briefed. The Court grants Plaintiff's motion and denies Defendant's motion.

19 **I. Background**

20 The following facts are undisputed. Plaintiff was injured on the job and underwent
21 several surgeries. A month after the injury, he filed a worker's compensation claim with
22 the Industrial Commission of Arizona, which was accepted. (Doc. 42 at 80-82.) He
23 received medical treatment a few years later from Valley Anesthesiology Consultants for
24 that same injury. (*Id.* at 36-38.)

25 Valley Anesthesiology Consultants ("VAC") placed that debt with Defendant for
26 collection, sending the account as a data file. (*Id.* at 112, 179-180.) As Defendant does with
27 all accounts sent over from VAC, it conducted a keyword search on the data file associated

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¹ Plaintiff moves for summary judgment on the issue of liability for all claims but asks the Court to reserve the issue of damages for a jury.

1 with the account from VAC created by Plaintiff's medical treatment. (Doc. 41 at 22-23.)
2 The search detected no signs that the account was associated with a worker's compensation
3 claim. (*Id.* at 23.)

4 Defendant mailed a letter to Plaintiff indicating that he owed \$1,494 on the account
5 and could pay that amount with check or money order. The letter also stated:

6 Unless you notify this office within 30 days after receiving this
7 notice that you dispute the validity of this debt or any portion
8 thereof, this office will obtain verification of the debt or obtain
9 a copy of a judgment and mail you a copy of such judgment or
10 verification. If you request this office in writing within 30 days
after receiving this notice this office will provide you with the
name and address of the original creditor, if different from the
current creditor.

11 (*Id.* at 47.) Plaintiff received the letter and others like it but never responded. Plaintiff's
12 deposition testimony indicates that he lost sleep over receiving the letter. (Doc. 42 at 57.)
13 Ultimately, Plaintiff sought a prescription for sleeping pills from his doctor, which cost
14 about \$150. (Docs. 41 at 67; 42 at 52.) Plaintiff told Defendant that he could not pay but
15 did not dispute the validity of the debt as invited by the letter or indicate the debt was
16 related to a worker's compensation claim. (Doc. 42 at 57.).

17 Plaintiff sued Defendant under the Fair Debt Collection Practices Act ("FDCPA").
18 Defendant thereafter ceased attempts to collect the debt.

19 **II. Standard**

20 Summary judgment is appropriate when there is no genuine dispute as to any
21 material fact and, viewing those facts in a light most favorable to the nonmoving party, the
22 movant is entitled to judgment as a matter of law. Fed. R. Civ. P. 56(a). A fact is material
23 if it might affect the outcome of the case, and a dispute is genuine if a reasonable jury could
24 find for the nonmoving party based on the competing evidence. *Anderson v. Liberty Lobby,*
25 *Inc.*, 477 U.S. 242, 248 (1986). Summary judgment may also be entered "against a party
26 who fails to make a showing sufficient to establish the existence of an element essential to
27 that party's case, and on which that party will bear the burden of proof at trial." *Celotex*
28 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986). And "conclusory allegations, unsupported by

1 facts are insufficient to survive a motion for summary judgment.” *Hernandez v. Spacelabs*
 2 *Med. Inc.*, 343 F.3d 1107, 1116 (9th Cir. 2003).

3 The party seeking summary judgment “bears the initial responsibility of informing
 4 the district court of the basis for its motion, and identifying those portions of [the record]
 5 which it believes demonstrate the absence of a genuine issue of material fact.” *Celotex*, 477
 6 U.S. at 323. The burden then shifts to the non-movant to establish the existence of a genuine
 7 and material factual dispute. *Id.* at 324. The non-movant “must do more than simply show
 8 that there is some metaphysical doubt as to the material facts[,]” and instead “come forward
 9 with specific facts showing that there is a genuine issue for trial.” *Matsushita Elec. Indus.*
 10 *Co. v. Zenith Radio Corp.*, 475 U.S. 574, 586-87 (1986) (internal quotation and citation
 11 omitted).

12 **III. Analysis**

13 **A. Standing**

14 Defendant argues that Plaintiff has not shown that he suffered an injury in fact and
 15 thus lacks standing to bring this suit. An injury in fact is an injury that is “‘concrete and
 16 particularized’ and ‘actual or imminent, not conjectural or hypothetical.’” *Spokeo, Inc. v.*
 17 *Robins*, 578 U.S. 330, 338 (2016) (“*Spokeo II*”) (quoting *Lujan v. Defs. of Wildlife*, 504
 18 U.S. 555, 560 (1992)). Plaintiff has provided evidence that he spent \$150 on sleeping pills
 19 as a result of the stress from receiving Defendant’s letter. Defendant counters that Plaintiff
 20 sought sleeping pills for loss of sleep beginning before the letter, creating a disputed fact
 21 that precludes summary judgment in its favor.

22 **B. The FDCPA violation**

23 “In order for a plaintiff to recover under the FDCPA, there are three threshold
 24 requirements: (1) the plaintiff must be a ‘consumer’; (2) the defendant must be a ‘debt
 25 collector’; and (3) the defendant must have committed some act or omission in violation
 26 of the FDCPA.” *Robinson v. Managed Accts. Receivables Corp.*, 654 F. Supp. 2d 1051,
 27 1057 (C.D. Cal. 2009). It is undisputed Plaintiff is a consumer and Defendant is a debt
 28 collector. (Docs. 42 at 6-8; 46 (failing to dispute).) Only the third element—whether

1 Defendant committed a violation of the FDCPA—is at issue.

2 The FDCPA prohibits collectors from using any “false, deceptive, or misleading
3 representation or means” in collecting a debt, including “misrepresenting the legal status
4 of the alleged debt[.]” 15 U.S.C. §§ 1692e, 1692e(2)(A). Whether a collector’s conduct is
5 false, deceptive, or misleading is an objective inquiry that considers whether the “least
6 sophisticated debtor” would likely be misled. *Donohue v. Quick CCollect, Inc.*, 592 F.3d
7 1027, 1030 (9th Cir. 2010). “[T]he least sophisticated debtor is reasonable and functional,
8 but lacks experience and education regarding financial matters.” *Stimpson v. Midland*
9 *Credit Mgmt., Inc.*, 944 F.3d 1190, 1196 (9th Cir. 2019).

10 Defendant’s letter indicated that Plaintiff owed \$1,494 on an account placed with
11 Defendant by VAC, who had provided medical treatment to Plaintiff. (Doc. 42 at 255). The
12 letter also included a section that Plaintiff could cut off and return in an envelope along
13 with a “check or money order” for the \$1,494. Although Defendant argues it did not know
14 it at the time, it is undisputed that the debt it attempted to collect was connected to a
15 worker’s compensation claim, which makes it uncollectable in Arizona. See A.R.S. § 23-
16 1062.01(D).

17 Lacking “experience and education regarding financial matters,” the least
18 sophisticated debtor would likely be misled by this letter into thinking he owed the \$1,494
19 while his worker’s compensation claim was being processed. Defendant argues that
20 Plaintiff could not have recognized the letter as a debt collection letter because he could
21 not read English. But Plaintiff’s individual capacity to understand the letter to Defendant’s
22 satisfaction is irrelevant: the “least sophisticated debtor” test is an objective one, not a
23 subjective one. A reasonable juror could only conclude it is likely that when presented with
24 this letter—which announced that the recipient has a balance due of \$1,494—the least
25 sophisticated debtor would be misled into believing he legally owed the debt.

26 Defendant nevertheless argues that the Court should construe the worker’s
27 compensation debt as “an allegedly invalid identify theft debt,” considering that
28 “communications regarding that [sort of] debt are not deemed false, misleading or

1 deceptive” under the FDCPA. (Doc. 41 at 11 (citing *Story v. Midland Credit Funding, LLC*,
 2 No. 15-cv-194-AC, 2015 WL 7760190, at *7 (D. Or. Dec. 2, 2015).) Defendant cites no
 3 controlling authority for this argument. Plaintiff cites contrary, non-controlling authority.

4 The FDCPA is a strict liability statute, holding collectors liable for “violations that
 5 are not knowing or intentional.” *Reichert v. Nat’l Credit Sys., Inc.*, 531 F.3d 1002, 1005
 6 (9th Cir. 2008). The Ninth Circuit has not carved out an identity-theft loophole. Instead,
 7 the FDCPA, allows creditors to avoid liability only by successfully employing the bona
 8 fide error defense, an affirmative defense upon which an asserting defendant bears the
 9 burden of proof. *See* 15 U.S.C. § 1692k. To that end, Defendant’s argument that it should
 10 be immune from violations because “it cannot know what it cannot know” is beside the
 11 point: strict liability means that Defendant’s knowledge is irrelevant. *Reichert*, 531 F.3d at
 12 1005. Besides, Defendant concedes that identity theft cases “can be factually distinguished
 13 from the case at bar[.]” (Doc. 48 at 8.)

14 Because the FDCPA is a strict liability statute, the identity theft argument fails.
 15 Defendant violated 15 U.S.C. § 1692e by misrepresenting the debt as one personally owed
 16 by Plaintiff when it was, in fact, an uncollectable worker’s compensation debt.²

17 **C. The bona fide error defense**

18 Both parties move for summary judgment on Defendant’s bona fide error
 19 affirmative defense.³ “The bona fide error defense requires a showing that the debt

20 ² Plaintiff advises the Court that because a consumer need establish only one
 21 violation to recover, *Kaiser v. Cascade Cap., LLC*, 989 F.3d 1127, 1133 n.8 (9th Cir. 2021),
 22 the Court “need not determine whether [Defendant]” committed other violations of the
 FDCPA “before granting Plaintiff’s motion for partial summary judgment. Accordingly,
 the Court does not address any other alleged violations of the FDCPA.

23 ³ Separately, Defendant argues that it cannot have violated the FDCPA because it
 24 did not intend to collect an uncollectable debt and reasonably relied on the representations
 25 of the creditor who assigned the debt. Defendant asserts this argument is separate from the
 26 bona fide error defense, citing *Reichert*, 531 F.3d at 1004 and *Clark v. Capital Credit &*
Collection Servs., 460 F.3d, 1162, 1176 (9th Cir. 2006). But those cases explain that even
 27 innocent attempts to collect an uncollectable debt under the FDCPA are considered
 28 violations. *Reichert*, 531 F.3d at 1004 (“[T]he FDCPA is a strict liability statute in that a
 plaintiff need not prove that an error is intentional.”) Notwithstanding violating the
 FDCPA, collectors may employ the “bona fide errors[]” affirmative defense. *Id.* at 1005.
Reichert emphasized, however, that “allowing a debt collector to escape liability for
 unintentional violations would render the bona fide error defense superfluous.” *Id.* at 1006.
 Thus, to the extent Defendant seeks to avoid liability for relying on a creditor’s
 information, that argument finds purchase only in the bona fide error affirmative defense.

1 collector: (1) violated the FDCPA unintentionally; (2) the violation resulted from a bona
2 fide error; and (3) the debt collector maintained procedures reasonably adapted to avoid
3 the violation.” *Urbina v. Nat’l Bus. Factors Inc.*, 979 F.3d 758, 763 (9th Cir. 2020). Neither
4 party disputes that Defendant satisfies the first two elements. Nor do they dispute that
5 Defendant satisfies the first portion of element three by maintaining “procedures.” The
6 parties instead spar over whether those procedures were “reasonably adapted” to avoid
7 FDCPA violations.

8 Whether a collector’s procedures are “reasonably adapted to avoid [a] violation” of
9 the FDCPA is a fact-sensitive inquiry. *Id.* at 764. Nevertheless, the Ninth Circuit has held
10 that procedures that merely rely on a creditor to provide accurate information are
11 insufficient. *Id.* at 761.

12 It is undisputed that Defendant’s procedure entails running keyword searches
13 designed to detect accounts related to a worker’s compensation claim. (Doc. 41 at 22.)
14 These keywords include “wrkcmp,” “workers comp,” “worker’s comp,” “workers
15 compensation,” “workman’s compensation,” “wrkcompensation,” and others. (*Id.*)
16 Defendant attests that it “regularly tests this process” to ensure its accuracy. (*Id.* at 23.) If
17 the process indicates that a particular account is related to a workers compensation claim,
18 “the account is removed from active collections and all activity ceases.” (*Id.*) Otherwise,
19 “the account remains” with Defendant. (*Id.*)

20 As Defendant concedes, its procedure “relied on the information provided by VAC.”
21 (Doc. 41 at 11.) Indeed, the procedure will detect a worker’s compensation related debt
22 only when the creditor provides accurate information about whether the debt is related to
23 a worker’s compensation claim. If the creditor provides inaccurate information—as it did
24 here—the software scrub won’t catch the worker’s compensation related keywords. As
25 such, Defendant’s procedures are not “reasonably adapted” to avoiding an FDCPA
26 violation because, at bottom, those procedures rely on a creditor to provide accurate
27 information.⁴ Plaintiff is entitled to judgment on the bona fide error defense.

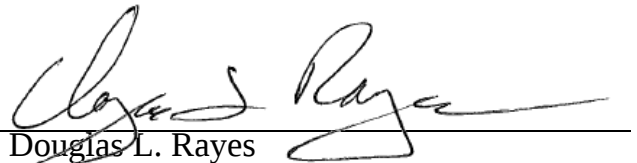
28 ⁴ Defendant argues that it could not have implemented any other procedures, in part
because, unlike some other jurisdictions, Arizona does not have a public-facing database

1 **IV. Conclusion**

2 There is no genuine dispute of material fact that Defendant harmed Plaintiff by
3 violating the FDCPA and failed to maintain adequate procedures to entitle it to the bona
4 fide error defense. Accordingly,

5 **IT IS ORDERED** that Defendant's motion for summary judgment (Doc. 41) is
6 **DENIED**. Plaintiff's motion for partial summary judgment (Doc. 42) is **GRANTED**. The
7 parties will appear for a telephonic trial scheduling conference on **Tuesday, January 17,**
8 **2023, at 11:00 a.m.** The parties will be provided with call-in information via separate
9 email.

10 Dated this 11th day of January, 2023.

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15 Douglas L. Rayes
16 United States District Judge
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26 for worker's compensation claims. But the Ninth Circuit in *Urbana* was unequivocal: a
27 collector may not qualify for the bona fide error defense when its alleged procedures utterly
28 rely on the creditor to provide accurate information. It broached no exceptions. And here,
Defendant's procedure hangs entirely on VAC providing accurate information. Perhaps the
Ninth Circuit may be willing to carve out an exception when a collector proves that it could
not implement procedures that relied on something beyond the creditor's provision of
accurate information, but to create such an exception is beyond the purview of this Court.