

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA

ROCIO DE ALBA,

Plaintiff,

v.

VELOCITY INVESTMENTS, LLC. and
MANDARICH LAW FIRM, LLP,

Defendants.

Case No.: 21-cv-547-AJB-MMP

ORDER:

**(1) DENYING VELOCITY
INVESTMENTS, LLC’S MOTION
FOR SUMMARY JUDGMENT; and**

**(2) GRANTING IN PART AND
DENYING IN PART PLAINTIFF’S
MOTION FOR PARTIAL SUMMARY
JUDGMENT**

(Doc. Nos. 53, 57)

Before the Court are two motions—a motion for summary judgment filed by Velocity Investments, LLC (“Velocity”) and a motion for partial summary judgment filed by Rocio De Alba (“Plaintiff”). (Doc. Nos. 53, 57.) The motions are fully briefed. (Doc. Nos. 58, 59.) For the reasons set forth below, the Court **DENIES** Velocity’s motion and **GRANTS IN PART** and **DENIES IN PART** Plaintiff’s motion.

1 **I. BACKGROUND**

2 This action arises from an attempt to collect a debt on a loan Plaintiff obtained and
 3 defaulted on, and which Velocity later purchased. Velocity referred Plaintiff's matter to its
 4 attorney, Mandarich Law Group, LLP's ("MLG" or "Mandarich"), to collect the debt.¹
 5 (Doc. No. 53-2 at 5.)² On behalf Velocity, MLG filed a complaint against Plaintiff in the
 6 San Diego Superior Court on October 13, 2020, in the matter of *Velocity Investments, LLC*
 7 *v. Rocio De Alba, et al.*, case number 37-2020-00036433-CL-CL-CTL ("Collection
 8 Complaint"). (*Id.*; Doc. No. 5 at 4.) On December 7, 2020, Plaintiff's counsel filed an
 9 Answer with the Superior Court and mailed a copy to MLG. (Doc. No. 5 at 4.) According
 10 to MLG, it did not receive actual notice of the Answer until June 7, 2021, because Plaintiff
 11 did not mail the Answer to the appropriate P.O. Box, which was listed on the caption of
 12 the Collection Complaint. (Doc. No. 53-2 at 5–6.)

13 Believing Plaintiff had not responded to the Collection Complaint, MLG filed in
 14 March 2021, a Request for Entry of Default and Judgment with the Superior Court. (*Id.* at
 15 6.) MLG thereafter mailed Plaintiff a copy of the default package along with a cover letter
 16 stating that she failed to respond to the collection lawsuit and that MLG was seeking a
 17 default judgment against her. (*Id.*) The letter also stated: "Although we can no longer
 18 guarantee that judgment will not be entered against you, there is still time to contact us to
 19 work out an arrangement for payment on the remaining balance." (Doc. No. 29-3 at 5.)

20 According to Plaintiff, she opened MLG's letter, panicked, called the number on it,
 21 spoke with a MLG employee, and set up a payment plan. Plaintiff claims that "Mandarich
 22 should never have contacted a represented party, should never have filed a Request for
 23 Entry of Default and Judgment on a case where an answer was on file, and certainly should
 24

25 ¹ The parties' briefs indicate that the correct name of the law firm defendant is Mandarich Law Group,
 26 LLP, and not Mandarich Law Firm, LLP, as named in the Complaint and First Amended Complaint. There
 27 being no dispute as to this correction, the Court considers the former the appropriate name.

28 ² The page citations in this Order refer to the ECF-generated page numbers at the top of each filing.

1 not have taken advantage of the confusion they caused by making false statements to
2 extract bank account information from Ms. De Alba.” (Doc. No. 5 at 5.)

3 Plaintiff filed suit against Defendants in federal court, alleging that MLG violated
4 the federal Fair Debt Collection Practices Act (“FDCPA”), and that both MLG and
5 Velocity violated the California Fair Debt Collection Practices Act (“Rosenthal Act”),
6 which incorporates several provisions of the FDCPA.³ (*Id.* at 1, 6, 7.)

7 Defendants later filed a special motion to strike pursuant to California’s anti-SLAPP
8 statute, (Doc. No. 27), which the Court granted in part and denied in part, dismissing with
9 prejudice Plaintiff’s Rosenthal Act claim based on § 1692(c)(2)(A) of the FDCPA and
10 sustaining the remaining state claims based on §§ 1692e, 1692d, and 1692f of the FDCPA.
11 (Doc. No. 49 at 11.) The instant Order on Velocity’s motion for summary judgment and
12 Plaintiff’s motion for partial summary judgment follows.

13 **II. LEGAL STANDARD**

14 Summary judgment is appropriate under Federal Rule of Civil Procedure 56 if the
15 moving party demonstrates the absence of a genuine issue of material fact and entitlement
16 to judgment as a matter of law. *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986).⁴ A fact
17 is material when, under the governing substantive law, it could affect the outcome of the
18 case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute is genuine if
19 the evidence is such that a reasonable jury could return a verdict for the nonmoving
20 party. *Id.* The party seeking summary judgment bears the initial burden of establishing the
21 absence of a genuine issue of material fact. *Celotex Corp.*, 477 U.S. at 323. Once the
22 moving party has satisfied this burden, the nonmoving party must “go beyond the pleadings
23 and by [his] own affidavits, or by the depositions, answers to interrogatories, and
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25 ³ The First Amended Complaint at Doc. No. 5 is the operative complaint.

26 ⁴ Internal quotations, citations, and alterations are omitted from the cases cited in this Order unless
27 otherwise indicated.
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admissions on file,” to show that a genuine issue of disputed fact remains. *Id.* at 324. “In judging evidence at the summary judgment stage, the court does not make credibility determinations or weigh conflicting evidence.” *Soremekun v. Thrifty Payless, Inc.*, 509 F.3d 978, 984 (9th Cir. 2007). “Rather, it draws all inferences in the light most favorable to the nonmoving party.” *Id.*

III. DISCUSSION

Here, Velocity seeks summary judgment on Plaintiff’s Rosenthal Act claims against it, arguing that Plaintiff cannot establish that Velocity should be held vicariously liable for the conduct of its attorney, MLG. (Doc. No. 53-1.) Though not a model of clarity, it appears Plaintiff’s motion for partial summary judgment seeks summary adjudication in her favor that: (1) MLG is a debt collector for purposes of the FDCPA; (2) both Defendants are debt collectors for purposes of the Rosenthal Act; (3) Ms. De Alba is a “consumer” and her debt is a “consumer debt” under the two statutes at issue; (4) based on the Court’s Order on Defendants’ anti-SLAPP motion, Plaintiff merits summary judgment on her FDCPA and Rosenthal Act claims; and (5) neither Defendant can establish the defenses pled in their joint Answer. (Doc. No. 57-1 at 9–10.) The Court discusses these issues in turn.

A. Whether Velocity is Vicariously Liable for MLG’s Acts

Velocity contends that Plaintiff has not presented evidence that it can be vicariously liable for the conduct of its attorney, MLG, under the Rosenthal Act. The Court disagrees.

While there is no binding California case on this specific issue, “[t]he Rosenthal Act mimics or incorporates by reference the FDCPA’s requirements . . . and makes available the FDCPA’s remedies for violations.” *Riggs v. Prober & Raphael*, 681 F.3d 1097, 1100 (9th Cir. 2012). The Ninth Circuit has “recognized vicarious liability under the FDCPA” and explained that under general agency principles, “to be liable for the actions of another, the principal must exercise control over the conduct or activities of the agent.” *Clark v. Cap. Credit & Collection Servs., Inc.*, 460 F.3d 1162, 1173 (9th Cir. 2006) (citing with approval *Newman v. Checkrite California*, 912 F. Supp. 1354, 1370 (E.D. Cal.1995) and

1 Restatement (Second) of Agency § 1 (1958)). Considering the parallel nature of the
2 FDCPA and Rosenthal Act, the Court deems it appropriate to apply these general FDCPA
3 principles to determine the issue of vicarious liability under the Rosenthal Act here. Indeed,
4 other courts facing similar issues have done the same. *See, e.g., Newman*, 912 F. Supp. at
5 1370 n.19 (explaining that both federal and California courts look to the Restatement to
6 ascertain common law agency principles).

7 Here, Velocity does not dispute Plaintiff's contention that as Velocity's attorney,
8 MLG was Velocity's agent. *Compare* (Doc. No. 57-1 at 22 (Plaintiff asserting that MLG
9 is *per se* Velocity's agent), with (Doc. No. 58 (Velocity not rejecting so)). Instead, Velocity
10 maintains that Plaintiff has not offered evidence that it had the right to control MLG's
11 litigation conduct or that Velocity even knew of the default package MLG sent to Plaintiff
12 for purposes of imposing vicarious liability here.

13 The Court finds there is evidence upon which a reasonable trier of fact could
14 conclude that Velocity exercised control over MLG in this case. For example, the
15 declaration of MLG partner, Christopher Mandarich, states that Velocity referred
16 Plaintiff's debt collection matter to his firm, and on Velocity's behalf, MLG filed the
17 Collection Complaint against Plaintiff. (Doc. No. 53-2 at 5.) The declaration also indicates
18 that the scope of Velocity's referral permitted MLG to "collect Plaintiff's debt through
19 letters and phone calls." (*Id.*) Indeed, in the letter MLG sent to Plaintiff concerning the
20 request for default judgment, MLG introduced itself as Velocity's representative in
21 Plaintiff's debt matter and collection lawsuit before informing her that they are requesting
22 the court enter a default judgment against her. (Doc. No. 29-3 at 5 ("Dear ROCIO
23 DEALBA: Our firm represents Velocity Investments, LLC in the above referenced matter
24 and pending lawsuit. You were served with the lawsuit and failed to respond. At this time
25 we are requesting that the court enter a default judgment against you.")).

26 Such evidence—viewed in the light most favorable to Plaintiff—can support a
27 finding that Velocity had the right to control MLG's conduct or activities with respect to
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1 its collection of Plaintiff's debt and that MLG acted within the scope of authority granted
2 that Velocity granted it. *See Fenton v. Freedman*, 748 F.2d 1358, 1362 (9th Cir. 1984) ("It
3 is not necessary to prove that the principal exercised his right of control or actually
4 supervised the work of the agent, so long as the existence of the right is established from
5 the facts."); *see also Blanton v. Womancare, Inc.*, 696 P.2d 645, 649 (Cal. 1985) ("the
6 client as principal is bound by the acts of the attorney-agent within the scope of his actual
7 authority (express or implied) or his apparent or ostensible authority; or by unauthorized
8 acts ratified by the client.").

9 While Velocity points to deposition testimony from its company representative that
10 Velocity relies on the law firms it hires to manage the legal process, such testimony does
11 not conclusively establish that Velocity had no right to control MLG's conduct by virtue
12 of their attorney-client relationship. And the resolution of such factual disputes requires
13 consideration of competing evidence and witness credibility, which the Court cannot do
14 here.

15 Drawing all inferences from the evidence in the light most favorable to Plaintiff—
16 as the Court must at the summary judgment stage—the Court finds that a reasonable jury
17 could find that Velocity had the right to control MLG's conduct in this case, and thus, can
18 be held vicariously liable under the Rosenthal Act. Accordingly, the Court **DENIES**
19 Velocity's motion for summary judgment on this basis.

20 **B. Whether MLG is a "Debt collector" under the FDCPA**

21 Next, Plaintiff requests summary judgment on the issue of whether MLG is a debt
22 collect for purposes of the FDCPA. Under the federal statute, a "debt collector" is "any
23 person who uses any instrumentality of interstate commerce or the mails in any business
24 the principal purpose of which is the collection of any debts, or who regularly collects or
25 attempts to collect, directly or indirectly, debts owed or due or asserted to be owed or due
26 another." 15 U.S.C. § 1692a(6).
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1 According to Plaintiff, MLG is a debt collector under the FDCPA because MLG's
 2 "exclusive business activity is to collect debts on behalf of third parties" and does so "by
 3 contacting consumers by telephone, letters, and email, and by filing and prosecuting
 4 collection litigation." (Doc. No. 57-1 at 13–14 (citing in support deposition testimony at
 5 Doc. No. 57-3 at 43–45).) Plaintiff also asserts that MLG admitted at deposition that it is
 6 "engaged in the collection of consumer and/or commercial debt" on behalf of third parties.
 7 (Doc. No. 57-3 at 44–45.) MLG offered no argument or evidence to the contrary.

8 There being no genuine dispute that MLG is a debt collector for purposes of the
 9 FDCPA, the Court treats this fact as established in this case. *See* Fed. R. Civ. P. 56(g);
 10 *Nat'l Union Fire Ins. Co. of Pittsburgh, PA v. Ready Pac Foods, Inc.*, 782 F. Supp. 2d
 11 1047, 1051 (C.D. Cal. 2011) ("Rule 56(g) allows a court to grant partial summary
 12 judgment, thereby reducing the number of facts at issue in a trial."). Accordingly, the Court
 13 **GRANTS** Plaintiff's motion for partial summary judgment on this basis.

14 **C. Whether Defendants are "Debt Collector" under the Rosenthal Act**

15 Plaintiff also requests summary judgment on the issue of whether Defendants are
 16 debt collectors for purposes of the Rosenthal Act. Under the state statute, a "debt collector"
 17 is "any person who, in the ordinary course of business, regularly, on behalf of that person
 18 or others, engages in debt collection." Cal. Civ. Code § 1788.2(c). Debt collection, in turn,
 19 "means any act or practice in connection with the collection of consumer debts. *Id.*
 20 § 1788.2(b).

21 As to MLG, Plaintiff reiterates that deposition testimony establishes that MLG
 22 regularly engages in collecting debt on behalf of its clients. (Doc. No. 57-3 at 43–45.)
 23 Again, MLG does not dispute Plaintiff's position or evidence. There being no genuine
 24 dispute that MLG is a debt collector for purposes of the Rosenthal Act, the Court treats this
 25 fact as established in this case. *See* Fed. R. Civ. P. 56(g). Accordingly, the Court **GRANTS**
 26 Plaintiff's motion for partial summary judgment on this basis.

1 As to Velocity, Plaintiff argues that Velocity admitted to being a debt collector as
 2 defined in the Rosenthal Act and cited Velocity's response to its Request for Admission
 3 No. 15 in support. (Doc. No. 57-3 at 169.) Velocity counters that although its response
 4 admits that it is a debt collector within the meaning of Cal. Civ. Code § 1788.2(c), it
 5 expressly denied being a debt collector as to Plaintiff specifically. The argument fails to
 6 persuade.

7 To meet the definition of "debt collector," the plain text of Cal. Civ. Code
 8 § 1788.2(c) requires only that Velocity, in the ordinary course of business, be regularly
 9 engaged in debt collection on its, or other's behalf. And Velocity offers no authority for its
 10 position that one be considered a debt collector generally, but not one specifically.
 11 Accordingly, the Court does not find there to be a genuine issue of material fact as to
 12 whether Velocity is a debt collector for purposes of the Rosenthal Act, and thus, **GRANTS**
 13 Plaintiff's motion for partial summary judgment on this basis.

14 **D. "Consumer" and "Consumer Debt" under the FDCPA & Rosenthal Act**

15 Plaintiff also seeks summary judgment on the issues of whether the definitions of
 16 "consumer" and "consumer debt" under the FDCPA & Rosenthal Act are satisfied in this
 17 case. Under the FDCPA, a "consumer is "any natural person obligated or allegedly
 18 obligated to pay any debt." 15 U.S.C. § 1692a(3). And "debt" is defined as "any obligation
 19 or alleged obligation of a consumer to pay money arising out of a transaction in which the
 20 money, property, insurance, or services which are the subject of the transaction are
 21 primarily for personal, family, or household purposes. . ." *Id.* § 1692a(5). The Rosenthal
 22 Act defines these terms similarly. *See* Cal. Civ. Code § 1788.2(e), (f).

23 Here, Plaintiff is a natural person, whom Defendants allege owe a debt, which
 24 Plaintiff's declaration establishes was incurred for personal and household purposes. (Doc.
 25 No. 57-4 at 2.) Defendants do not dispute these facts or Plaintiff's contention that such
 26 evidence meets the definitions of "consumer" and "consumer debt" for purposes of the
 27 FDCPA and the Rosenthal Act. There being no dispute as to these issues, the Court finds
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1 them established in this case. *See* Fed. R. Civ. P. 56(g). Accordingly, the Court **GRANTS**
 2 Plaintiff's motion for partial summary judgment on this basis.

3 **E. Liability based on the Court's Findings on the Anti-SLAPP Motion**

4 Next, Plaintiff requests summary judgment in her favor on her FDCPA and
 5 Rosenthal Act claims. In Plaintiff's view, she has established that Defendants violated
 6 §§ 1692e, 1692d and 1692f of the FDCPA (and in turn, the Rosenthal Act claims premised
 7 on those FDCPA violations) as a matter of law based solely on the Court's findings in its
 8 Order on Defendants' anti-SLAPP motion. (Doc. No. 57-1 at 16–18.) Plaintiff, however,
 9 presents no authority upon which the Court could find that prevailing against an
 10 anti-SLAPP motion necessarily means she must prevail on the ultimate issue of liability.

11 As explained in the prior Order, the Court's determination of the anti-SLAPP motion
 12 concerned whether Plaintiff demonstrated "a probability of prevailing on her claims" and
 13 the "inquiry is limited to whether the plaintiff has stated a legally sufficient claim and made
 14 a prima facie factual showing sufficient to sustain a favorable judgment." (Doc. No. 49 at
 15 5.) The Court's conclusion that Plaintiff has demonstrated a probability of prevailing on
 16 her claims is not the same as an ultimate finding of liability. Nor is it the same as finding—
 17 as the Court would need to find here—that based on uncontroverted evidence, there are no
 18 genuine issues of material fact as to Plaintiff's claims such that she is entitled to judgment
 19 as a matter of law. *See Celotex*, 477 U.S. at 322.

20 Because Plaintiff's summary judgment request rests solely on the Court's finding
 21 that she has demonstrated a probability of prevailing on her claims and fails to clearly set
 22 forth how each element of her claims is established by conclusive evidence, the Court
 23 deems it inappropriate to grant judgment in the manner Plaintiff seeks here. Accordingly,
 24 the Court **DENIES** Plaintiff's motion for summary judgment on this basis.

25 **F. Defendants' Affirmative Defenses**

26 Plaintiff additionally seeks summary judgment on Defendants' affirmative defenses:
 27 bona fide error, lack of standing, unclean hands, contribution, fault of others, and
 28

1 mitigation of damages.⁵

2 As an initial matter, the Court notes that while Defendants filed an opposition, they
3 chose to respond only to Plaintiff's challenge to their bona fide error defense. (Doc. No. 58
4 (containing no argument as to the other affirmative defenses).) Thus, the Court deems
5 Defendants' other affirmative defenses—lack of standing, unclean hands, contribution,
6 fault of others, and mitigation of damages—abandoned. *See Jenkins v. Cnty. of Riverside*,
7 398 F.3d 1093, 1095 n.4 (9th Cir. 2005) (noting that Jenkins “abandoned her other two
8 claims by not raising them in opposition to the County’s motion for summary judgment.”).
9 Accordingly, the Court **GRANTS** Plaintiff’s motion for summary judgment on these
10 abandoned defenses.

11 With respect to the bona fide error defense, Plaintiff argues that Defendants have
12 waived this defense because they did not raise it in their briefing on the anti-SLAPP motion.
13 A waiver “is the intentional relinquishment or abandonment of a known right.” *Morgan v.*
14 *Sundance, Inc.*, 596 U.S. 411, 417 (2022). “To decide whether a waiver has occurred, the
15 court focuses on the actions of the person who held the right; the court seldom considers
16 the effects of those actions on the opposing party.” *Id.*

17 Here, Defendants explain that it did not argue a bona fide error defense in their
18 anti-SLAPP briefing because doing so would have entailed consideration of potentially
19 conflicting evidence, which is outside the scope of the Court’s inquiry on an anti-SLAPP
20 motion. The point is well taken.

21 As the Court noted in the prior Order, in deciding the anti-SLAPP motion, the Court
22 had to accept Plaintiff’s evidence as true, and could not weigh evidence or resolve
23 conflicting factual claims. (Doc. No. 49 at 5.) And because the analysis focused on whether
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26 ⁵ Plaintiff also appears to challenge the affirmative defenses of “invalid service,” “good faith exception,”
27 and “waiver,” but those were not raised in Defendants’ Answer. (Doc. No. 16.) Because those defenses
28 were not raised in the Answer, and Defendants’ briefs do not, in any event, address them, the Court
declines to consider Plaintiff’s challenges thereto.

1 Plaintiff demonstrated a prima facie case of her claims, the Court could only evaluate
2 Defendants' showing to determine if it defeats Plaintiff's claims as a matter of law. (*Id.*)
3 Understanding that their bona fide error defense entailed disputed issues of fact that were
4 inappropriate for resolution at that stage, Defendants chose not to argue the defense at that
5 time. Defendants' decision in this regard is not inconsistent with their right to assert this
6 defense. Because Defendants' actions do not establish and "intentional relinquishment or
7 abandonment of a known right," *Morgan.*, 596 U.S. at 417, the Court does not find that
8 Defendants have waived their bona fide error defense. Accordingly, the Court **DENIES**
9 Plaintiff's motion for summary judgment on Defendants' bona fide error defense.

10 Plaintiff also argues, in the alternative, that Defendants lack evidence to establish
11 their bona fide error defense. "The bona fide error defense requires a showing that the debt
12 collector: (1) violated the FDCPA unintentionally; (2) the violation resulted from a bona
13 fide error; and (3) the debt collector maintained procedures reasonably adapted to avoid
14 the violation."⁶ *Urbina v. Nat'l Bus. Factors Inc.*, 979 F.3d 758, 763 (9th Cir. 2020).
15 Plaintiff contends that Defendants do not have evidence that they maintained procedures
16 reasonably adapted to avoid the violation at issue here.

17 Here, the error at issue was the filing of the request for default and sending a letter
18 to Plaintiff regarding the request for default. According to Defendants, the error occurred
19 because MLG was unaware of Plaintiff's response to the Collection Complaint. And in
20 support of their position that MLG maintained procedures reasonably adapted to avoid the
21 error, Defendants point to MLG's partner's declaration and supporting document detailing
22 MLG's "procedures for processing mail and all incoming documents," which are "intended
23 to ensure that all incoming pleadings and other documents are properly recorded in the
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25 ⁶ There is no dispute that the Rosenthal Act provides a similar defense. *See* Cal. Civ. Code § 1788.30(e)
26 ("A debt collector shall have no civil liability to which such debt collector might otherwise be subject for
27 a violation of this title, if the debt collector shows by a preponderance of evidence that the violation was
28 not intentional and resulted notwithstanding the maintenance of procedures reasonably adapted to avoid
any such violation.")

appropriate account file.” (Doc. No. 58-1 at 2.) The declaration explains that “MLG’s Incoming Document procedures are intended to ensure that a request for default is only filed with a court when the consumer defendant failed to respond to the complaint” and that its “attorney procedures also require that an attorney review the account to ensure that it is appropriate and permissible to file a request for default, i.e., that sufficient time had elapsed to support a request for default, that the consumer had not responded to the complaint and that MLG had received supporting documentation and information from its client.” (*Id.*) Defendants also reference the caption of the Collection Complaint which identifies for Plaintiff MLG’s correct P.O. Box address.

As MLG has pointed to evidence of procedures upon which a reasonable jury could support a finding of a bona fide error defense, the Court rejects Plaintiff’s contention that MLG cannot establish this defense. The Court acknowledges that Plaintiff takes issue with whether MLG’s procedures were reasonably adapted to avoid the violation when it has no policy of checking the case docket for filings, but such dispute is for the trier of fact to resolve after weighing the parties’ evidence, which the Court cannot do here.⁷ *See Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1157 (9th Cir. 2009) (“We have held that ‘summary judgment is generally an inappropriate way to decide questions of reasonableness because the jury’s unique competence in applying the reasonable man standard is thought ordinarily to preclude summary judgment.”). Accordingly, the Court **DENIES** Plaintiff’s motion for summary judgment in her favor on MLG’s bona fide error defense.

Finally, the Court notes that Defendants raise no argument as to Velocity’s bona fide error defense or evidence of any procedure maintained by Velocity to avoid the error that

⁷ The Court acknowledges that Defendants raised relevance objections to Plaintiff’s evidence that MLG has used different addresses in the past and closed its office for a period of time during the COVID-19 pandemic. Because “objections for relevance are generally unnecessary on summary judgment,” *Sandoval v. Cnty. of San Diego*, 985 F.3d 657, 665 (9th Cir. 2021), and the Court’s ruling in this matter does not rely on the evidence objected to, the Court **DENIES** the objections as moot.

1 occurred here. Accordingly, the Court **GRANTS** Plaintiff's motion for summary judgment
 2 in her favor on Velocity's bona fide error defense.

3 **IV. CONCLUSION**

4 For the reasons stated herein, the Court **DENIES** Velocity's motion for summary
 5 judgment (Doc. No. 53) and **GRANTS IN PART** and **DENIES IN PART** Plaintiff's
 6 motion for partial summary judgment (Doc. No. 57).

7 In sum, the Court **DISMISSES** Defendants' affirmative defenses of lack of standing,
 8 unclean hands, contribution, fault of others, and mitigation of damages, and **DISMISSES**
 9 Velocity's bona fide error defense. Additionally, the Court finds the following facts
 10 established in this case.

- 11 • MLG is a "debt collector" under the FDCPA.
- 12 • Defendants are "debt collectors" under the Rosenthal Act.
- 13 • Plaintiff is a "consumer", and her debt constitutes "consumer debt", under the
 14 FDCPA and Rosenthal Act.

15 All other issues, including but not limited to whether Velocity is vicariously liable
 16 for MLG's conduct under the circumstances of this case and MLG's bona fide error
 17 defense, remain for trial.

18 Having ruled on the pending motions, the Court **DIRECTS** the parties to contact the
 19 Magistrate Judge's chambers no later than August 21, 2024 to reschedule a mandatory
 20 settlement conference, as well as the pretrial deadlines and final pretrial conference, for
 21 this case.

22 **IT IS SO ORDERED.**

23 Dated: August 16, 2024

24 
 25 Hon. Anthony J. Battaglia
 26 United States District Judge
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