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NO JS-6

UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

DIANA TOROUSSIAN,	)	Case No. CV 12-03519 DDP (AGRx)
	)	
Plaintiff,	)	
	)	<b>ORDER GRANTING DEFENDANT MIDLAND</b>
v.	)	<b>CREDIT MANAGEMENT INC.'S MOTION</b>
	)	<b>FOR SUMMARY JUDGMENT</b>
ASSET ACCEPTANCE, LLC, a	)	
Delaware Limited Liability	)	
Company; MIDLAND CREDIT	)	
MANAGEMENT INC., a Kansas	)	
corporation,	)	
	)	[Dkt. No 43]
Defendants.	)	
	)	

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Presently before the court is Defendant Midland Credit Management Inc. ("Midland")'s Motion for Summary Judgment. Having considered the submissions of the parties and heard oral argument, the court grants the motion and adopts the following order.<sup>1</sup>

**I. Background**

On September 11, 2008, someone opened an HSBC credit card in Plaintiff's name. (Declaration of Rachelle Boire In Support of

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<sup>1</sup> While the court has considered Plaintiff's opposition to the motion, the court notes that Plaintiff violated both the local rules of this district and the standing order of this court by failing to timely file an opposition, filing an overlong brief, and failing to provide mandatory chambers copies of any paper.

1 Motion, Ex. D.) The applicant used Plaintiff's name, social  
2 security number, address, and driver license information to open  
3 the account. Id.

4 Approximately two years later, on November 10, 2010, Plaintiff  
5 filed an identity theft victim report with the Los Angeles Police  
6 Department. (Declaration of Diana Toroussian in Opposition ¶ 4.)  
7 Plaintiff's report was motivated by her discovery of fraudulent  
8 accounts, including the HSBC account, on her credit report. (Id.  
9 ¶¶ 4-5.) According to Plaintiff's declaration, she neither applied  
10 for the HSBC account nor received any statements or information  
11 regarding the account. (Id. ¶ 5.)

12 On January 20, 2011, Plaintiff filed an identity theft  
13 victim's complaint with the Federal Trade Commission and filled out  
14 a notarized affidavit of fraud. (Id. ¶¶ 7-8.) Plaintiff sent the  
15 fraud report to the three credit reporting agencies. (Id. ¶ 9.)  
16 By March 2011, the credit bureaus had deleted the HSBC account from  
17 Plaintiff's credit report. (Id. ¶10.)

18 On June 8, 2011, Defendant Midland acquired the HSBC account.  
19 (Boire Decl. ¶ 4.) On June 15, Midland sent Plaintiff a letter  
20 identifying Midland as "a debt collection company" and the servicer  
21 of "your HSBC Bank Nevada, N.A. account," and offering to settle  
22 the outstanding balance. (Id., Ex. E).

23 On July 15, 2011, Plaintiff sent Midland a letter requesting  
24 that Midland investigate and provide proof of the validity of the  
25 HSBC debt. (Boire Decl., Ex. F; Toroussian Decl. ¶ 14.) The  
26 letter did not mention that Plaintiff was a victim of identity  
27 theft. On August 11, Midland sent another letter to Plaintiff  
28 listing payment options. (Boire Decl., Ex. G.)

1 On October 11, an entity called Renatus Credit ("Renatus")  
2 sent Midland a letter on behalf of Plaintiff.<sup>2</sup> (Id., Ex. H.) The  
3 Renatus letter, like Plaintiff's first letter, asked Midland to  
4 verify the debt. (Id.) The letter also stated that Plaintiff had  
5 disputed the account with the credit bureaus, who had verified the  
6 account. (Id.) The letter further accused Midland of inaccurate  
7 credit reporting. (Id.) Like Plaintiff's first letter, the  
8 October 11 letter did not mention that Plaintiff was a victim of  
9 identity theft.

10 On October 21, Midland notified Plaintiff that it had opened  
11 an investigation. (Declaration of Vahag Matevosian in Opposition,  
12 Ex. L.) The letter reiterated that Midland was a debt collector  
13 attempting to collect a debt. (Id.)

14 On November 5, Renatus sent Midland a second letter. (Boire  
15 Decl., Ex. I). The letter reiterated that Midland was reporting an  
16 invalid debt to the credit agencies. (Id.) The letter did not  
17 mention that Plaintiff was a victim of identity theft.

18 On November 10, Midland sent Plaintiff another response.  
19 (Boire Decl., Ex. J.) Midland stated that Plaintiff had not  
20 provided sufficient information for it to investigate her dispute.  
21 (Id.) Midland stated that it would report the account to the  
22 credit bureaus as "Disputed," and requested that Plaintiff provide  
23 an explanation of the nature of her dispute, as well as supporting  
24 documentation, including, in the case of alleged fraud or identity

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27 <sup>2</sup> While the Renatus letter states that it is a follow-up to a  
28 Renatus letter of July 20, there is no evidence in the record of  
such a letter.

1 theft, a policy report, FTC fraud report, and fraud affidavit.

2 (Id.)

3 Plaintiff claims that on December 13, 2011, she sent a letter  
4 to Midland stating that she was a victim of identity theft.  
5 (Toroussian Decl. ¶ 21; Ex. I.) The letter did not include any  
6 supporting documents. In any event, Midland claims it never  
7 received Plaintiff's letter. (Boire Decl. ¶ 22.)

8 Plaintiff sent a certified letter regarding the fraudulent  
9 nature of the HSBC account to Midland on February 24, 2012.  
10 (Toroussian Decl. ¶ 22.) The letter referred to a "fraudulent  
11 account and debt" and "previous correspondences," but did not  
12 mention identity theft or include any documentation. (Matevosian  
13 Decl., Ex. L.)

14 Plaintiff's First Amended Complaint alleges eight causes of  
15 action against Midland for violations of the Fair Credit Reporting  
16 Act, 15 U.S.C. § 1681s-2(b), the Fair Debt Collection Practices Act  
17 ("FDCPA"), 15 U.S.C. § 1692(e) et seq., California Civil Code §  
18 1798.93, California Consumer Credit Reporting Agencies Act  
19 ("CCCRAA"), Cal. Civ. Code § 1785.25(a), California Rosenthal Fair  
20 Debt Collection Practices Act, Cal. Civ. Code § 1788.17, and libel.  
21 Midland now moves for summary judgment on all claims.

## 22 **II. Legal Standard**

23 Summary judgment is appropriate where the pleadings,  
24 depositions, answers to interrogatories, and admissions on file,  
25 together with the affidavits, if any, show "that there is no  
26 genuine dispute as to any material fact and the movant is entitled  
27 to judgment as a matter of law." Fed. R. Civ. P. 56(a). A party  
28 seeking summary judgment bears the initial burden of informing the

1 court of the basis for its motion and of identifying those portions  
2 of the pleadings and discovery responses that demonstrate the  
3 absence of a genuine issue of material fact. See Celotex Corp. v.  
4 Catrett, 477 U.S. 317, 323 (1986). All reasonable inferences from  
5 the evidence must be drawn in favor of the nonmoving party. See  
6 Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 242 (1986).  
7 If the moving party does not bear the burden of proof at trial, it  
8 is entitled to summary judgment if it can demonstrate that "there  
9 is an absence of evidence to support the nonmoving party's case."  
10 Celotex, 477 U.S. at 323.

11       Once the moving party meets its burden, the burden shifts to  
12 the nonmoving party opposing the motion, who must "set forth  
13 specific facts showing that there is a genuine issue for trial."  
14 Anderson, 477 U.S. at 256. Summary judgment is warranted if a  
15 party "fails to make a showing sufficient to establish the  
16 existence of an element essential to that party's case, and on  
17 which that party will bear the burden of proof at trial." Celotex,  
18 477 U.S. at 322. A genuine issue exists if "the evidence is such  
19 that a reasonable jury could return a verdict for the nonmoving  
20 party," and material facts are those "that might affect the outcome  
21 of the suit under the governing law." Anderson, 477 U.S. at 248.  
22 There is no genuine issue of fact "[w]here the record taken as a  
23 whole could not lead a rational trier of fact to find for the non-  
24 moving party." Matsushita Elec. Indus. Co. v. Zenith Radio Corp.,  
25 475 U.S. 574, 587 (1986).

26       It is not the court's task "to scour the record in search of a  
27 genuine issue of triable fact." Keenan v. Allan, 91 F.3d 1275,  
28 1278 (9th Cir. 1996). Counsel has an obligation to lay out their

1 support clearly. Carmen v. San Francisco Sch. Dist., 237 F.3d  
2 1026, 1031 (9th Cir. 2001). The court "need not examine the entire  
3 file for evidence establishing a genuine issue of fact, where the  
4 evidence is not set forth in the opposition papers with adequate  
5 references so that it could conveniently be found." Id.

6 **III. Discussion**

7 A. California Civil Code § 1798.93

8 A victim of identity theft may bring an action against a  
9 claimant with respect to the claimant's attempt to recover on an  
10 alleged debt. Cal. Civil Code § 1798.93(a). A plaintiff who  
11 proves that she is a victim of identity theft by a preponderance of  
12 the evidence may recover actual damages, attorney's fees, costs,  
13 and equitable relief. Cal. Civil Code § 1798.93(c)(5). To so  
14 recover, a plaintiff must show that "she provided written notice to  
15 the claimant that a situation of identity theft might exist,  
16 including, upon written request of the claimant, a valid copy of  
17 the police report . . . at least 30 days prior to . . . her filing  
18 of the action." Id. (emphasis added).

19 Plaintiff argues that she sent Midland "at least two notices"  
20 of identity theft. Plaintiff's contention is not supported by the  
21 record.<sup>3</sup> There is no dispute that four of the five letters  
22 Plaintiff sent to Midland made no mention of identity theft.  
23 Indeed, the first three letters, dated July 15, October 11, and  
24 November 5, merely challenged Midland to validate the debt, without  
25 so much as a mention of fraud. The February 24, 2012 letter

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27 <sup>3</sup> Plaintiff also concedes that the first three letters were  
28 insufficient by arguing that Midland's November 10 letter "predates  
Plaintiff's notice of fraud." (Opp. at 12)

1 mentioned a "fraudulent account and debt," but did not mention  
2 identity theft. Of the five letters, only the December 13, 2011  
3 letter, which Midland claims it never received, stated that  
4 Plaintiff was a victim of identity theft.

5       Regardless whether Midland received the December 13 letter,  
6 and even assuming that the February 24 letter's reference to a  
7 "fraudulent account" constituted notice to Midland that identity  
8 theft might exist, neither letter satisfied the requirement that  
9 Plaintiff provide, "upon written request of the claimant, a valid  
10 copy of the police report." Cal. Civil Code § 1793(c)(5). As  
11 early as November 11, well before Plaintiff even arguably notified  
12 Midland of the possibility of identity theft, Midland asked  
13 Plaintiff to explain the nature of her dispute. Midland's letter  
14 explicitly stated that it needed supporting documentation, such as,  
15 in the case of "Fraud or Identity Theft: a) a copy of a police  
16 report; b) Federal Trade Commission Fraud Affidavit that has been  
17 filled out . . .; or (c) notarized fraud affidavit." (Boire Decl.  
18 Ex. J.) There is no evidence in the record that Plaintiff  
19 submitted any supporting documentation at any point.<sup>4</sup>

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22       <sup>4</sup> Plaintiff appears to argue that she need not have submitted  
23 any documentation because she did not give notice of identity theft  
24 or fraud until after Midland requested supporting documentation.  
25 (Opp. at 12.) This argument has no merit. While in most cases, a  
26 written request for a police report regarding identity theft might  
27 not occur until there has been some suggestion that identity theft  
28 is at issue, the statute does not specify any such sequence.  
Furthermore, Midland's early request for documentation was  
necessitated by Plaintiff's repeated, vague, and admittedly  
insufficient notices. Indeed, had Midland not prompted Plaintiff  
for a more specific explanation with the request Plaintiff now  
seeks to ignore, her claim for relief under Section. 1793(c)(5)  
would likely have been even less colorable than that presented  
here.

1 Plaintiff appears to suggest that even if she is not entitled  
2 to actual damages, she can recover a civil penalty of \$30,000 under  
3 1793(c)(6). Section 1793(c)(6) provides for such a penalty, "in  
4 addition to any other damages," if a victim of identity theft  
5 establishes that (1) she provided written notice to the claimant  
6 that identity theft might exist, "and explaining the basis for that  
7 belief," (2) "the claimant failed to diligently investigate . . .  
8 ," and (3) the claimant continued to pursue its claim despite facts  
9 entitling the identity theft victim to relief from the claim.  
10 1793(c)(6).

11 As an initial matter, though neither party has briefed the  
12 issue, Plaintiff's contention ignores that a civil penalty under  
13 Section 1793(c)(6) is available "in addition to" the remedies of  
14 Section 1793(c)(5). As discussed above, however, Plaintiff is not  
15 entitled to any remedies under Section 1793(c)(5). Having failed  
16 to meet the more permissive requirements of that section, Plaintiff  
17 cannot possibly satisfy the stricter requirements and obtain the  
18 greater relief of Section 1793(c)(6).

19 Furthermore, even if Plaintiff could recover a civil penalty  
20 without making an adequate claim for actual costs, she has not made  
21 the requisite showing. Section 1793(c)(6)(A) requires a plaintiff  
22 to explain the basis for her belief that she is a victim of  
23 identity theft. As discussed above, Plaintiff never mentioned that  
24 she was such a victim in four of her five letters. Even the  
25 December 13 letter, which alone stated that Plaintiff was an  
26 "identity theft victim," provided no basis for its assertions.

27 Nor has Plaintiff provided any evidence that Midland failed to  
28 conduct a diligent investigation. See Cal. Civ. Code §



1 1793(c)(6)(B). Midland's November 11 letter makes clear that it  
2 needed additional information from Plaintiff to further its  
3 investigation. Plaintiff never provided that information. Though  
4 Plaintiff points to Midland's response to an interrogatory as an  
5 admission that Midland conducted no investigation, the cited  
6 evidence merely reiterates that "Plaintiff['s] failure to provide  
7 [Midland] with her identity theft report has frustrated [Midland's]  
8 attempt to investigate her claim of identity theft." (Matevosian  
9 Decl., Ex. N)

10 Absent any evidence that Plaintiff satisfied the requirements  
11 of California Civil Code Section 1793(c)(5) and c(6), Midland is  
12 entitled to summary judgment on Plaintiff's first cause of action.<sup>5</sup>

13 **B. Fair Credit Reporting Act ("FCRA")**

14 The FCRA imposes certain duties on sources that provide credit  
15 information to credit reporting agencies ("CRAs"). Gorman v.  
16 Wolpoff & Abramson, LLP, 584 F.3d 1147, 1153 (9th Cir. 2009); 15  
17 U.S.C. § 1681s-2. Midland is such a source. A further set of  
18 duties is triggered when reporting sources such as Midland receive  
19 notice from a credit reporting agency or bureau that a consumer  
20 disputes certain credit information. Gorman, 584 F.3d at 1154; 15  
21 U.S.C. § 1681s-2(b). These duties are not triggered, however, if a  
22 source receives notice of a dispute from the consumer himself.  
23 Gorman, 584 F.3d at 1154.

24 Plaintiff claims that Midland violates the duties imposed by  
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27 <sup>5</sup> This conclusion does not affect Plaintiff's claims for  
28 declaratory and injunctive relief under California Civil Code  
Section 1793.98(c)(1), (2), and (3).

1 15 U.S.C. § 1681s-2(b). Specifically, Plaintiff alleges that  
2 Midland failed to conduct an investigation with respect to the  
3 disputed information that the CRAs provided to Midland and failed  
4 to delete inaccurate information. See 15 U.S.C. § 1681s-2(b).

5 Midland has introduced evidence that the credit reporting  
6 agencies never notified Midland of any dispute regarding the HSBC  
7 account. (Boire Decl. ¶ 26.) Plaintiff argues that Midland's  
8 November 10 letter is evidence that Midland did receive notice from  
9 the CRAs because the letter requests information regarding  
10 Plaintiff's "dispute of the credit reporting of your . . . account  
11 pursuant to the Fair Credit Reporting Act." (Boire Decl., Ex. J;  
12 Opp. at 16.) Plaintiff's argument has no merit. Midland's  
13 reference to the FCRA cannot possibly be read to suggest that it  
14 received anything from any CRA. Rather, Midland's statement  
15 identifying the dispute was responsive to Plaintiff's November 5  
16 letter, which alleged that Midland was reporting an unverified debt  
17 to the CRAs and that "FCRA Section 1681s-2(b) triggers your  
18 furnisher's liability under this section, since [Plaintiff] has  
19 made her initial disputes with the credit bureaus prior to . . .  
20 submission of her disputes directly to you." (Boire Decl., Ex. I.)  
21 That Plaintiff submitted a dispute to the CRAs and to Midland  
22 directly, however, has no bearing on whether the CRAs reported  
23 anything to Midland. See Gorman, 584 F.3d at 1154.

24 Beyond Midland's letter, Plaintiff cites only to her own  
25 declaration, which states that "CRAs did not inform me that they  
26 find my dispute to be frivolous or that they would not be  
27 forwarding it to Defendant. As such, CRAs communicated my dispute  
28 to Defendant." (Toroussian Decl. ¶ 16.) In other words, Plaintiff

1 argues that Midland must have received notice from the CRAs because  
2 the CRAs did not tell Plaintiff that they were not going to send  
3 Midland any notice. However, “[c]onclusory, speculative testimony  
4 in affidavits and moving papers is insufficient to raise genuine  
5 issues of fact and defeat summary judgment.” Soremekun v. Thrifty  
6 Payless, Inc., 509 F.3d 978, 984 (9th Cir. 2009). Plaintiff’s  
7 unsupported assertion is, therefore, inadequate to defeat Midland’s  
8 motion with respect to her FCRA claims.<sup>6</sup>

9 C. California Consumer Credit Reporting Agencies Act

10 The relevant part of the CCCRAA states that “[a] person shall  
11 not furnish information on a specific transaction or experience to  
12 any consumer credit reporting agency if the person knows or should  
13 know the information is incomplete or inaccurate.” Cal. Civ. Code  
14 § 1785.25(a). Plaintiff argues that her letters to Midland put  
15 Midland on notice that the information regarding the HSBC account  
16 was inaccurate because of the “fraudulent nature” of the account.  
17 (Opp. at 21-22.)

18 As discussed above, however, Plaintiff’s letters were  
19 extremely vague. Even taken at face value, Plaintiff’s first three  
20 letters did no more than inform Midland that Plaintiff disputed the  
21 HSBC account for some unknown reason. While the fifth, and  
22 particularly the fourth, letter might have put Midland on notice  
23 that Plaintiff claimed to be a victim of identity theft, those  
24 letters alone did not establish that Plaintiff was actually a

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26 <sup>6</sup> The reasonableness of a credit information furnisher’s  
27 investigation of a dispute necessarily depends on the information  
28 provided by the CRA. Gorman, 584 F.3d at 1157. Absent any  
evidence that Midland received any information from a CRA, a  
reasonableness inquiry, which may be appropriate on summary  
judgment, is unnecessary. See id.

1 victim. Midland requested, but never received, any documentation  
2 supporting any of Plaintiff's claims, nor, as discussed above, is  
3 there any evidence that a CRA reported a dispute to Midland.<sup>7</sup> On  
4 such a record, no trier of fact could find that Midland should have  
5 known that Plaintiff was a victim of identity theft.

6 D. FDCPA and Rosenthal FDCPA<sup>8</sup>

7 The FDCPA is designed to curtail abusive practices by debt  
8 collectors. 15 U.S.C. § 1692(e). A "debt collector" under the  
9 FDCPA is "any person who uses any instrumentality of interstate  
10 commerce or the mails in any business the principal purpose of  
11 which is the collection of any debts, or who regularly collects or  
12 attempts to collect, directly or indirectly, debts owed or due or  
13 asserted to be owed or due another." 15 U.S.C. § 1692a(6).

14 Midland argues that it does not qualify as a "debt collector"  
15 because there is no evidence that its primary purpose is collecting  
16 on debts owed to another, as opposed to collecting on debts Midland  
17 itself owns. The court disagrees. Midland's June 15 letter  
18 identified itself as "a communication from a debt collector" and  
19 described Midland as "a debt collection company." (Boire Decl.,  
20 Ex. E.) Midland's August 11 letter used similar language. (Id.,  
21 Ex. G). The July 11 letter, in which Midland requested documents  
22 from Plaintiff, stated, "[T]his communication is from a debt  
23 collector. This is an attempt to collect a debt." (Id., Ex. J.)

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25 <sup>7</sup> As the Ninth Circuit explained in Gorman, the requirements  
26 of § 1785.25 and Section 1681s-2(a) of the FCRA are "nearly  
27 identical." Gorman, 584 F.3d at 1172. Plaintiff has not, however,  
brought an FCRA claim under Section 1681s-2(a).

28 <sup>8</sup> California's Rosenthal FDCPA generally incorporates the  
provisions of the federal FDCPA. Cal. Civ. Code § 1788.17.

1           This evidence is more than sufficient to create a triable  
2 issue as to whether Midland's primary purpose is to collect on  
3 debts owed to third parties, and thus qualifies as a debt collector  
4 under the FDCPA. The Rosenthal FDCPA does not limit its definition  
5 of debt collector to those who collect on behalf of others, but  
6 does limit the term to those who engage in debt collection "in the  
7 ordinary case of business." Cal. Civ. Code § 1788.2(c). Midland's  
8 letters thus create a triable issue with respect to the Rosenthal  
9 FDCPA as well.

10           Midland also argues that Plaintiff has failed to put forth  
11 any evidence that Midland attempted to collect on a "debt," as  
12 defined by the FDCPA. Under the FDCPA, a debt is an obligation "of  
13 a consumer to pay money arising out of a transaction in which the  
14 money, property, insurance, or services which are the subject of  
15 the transaction are primarily for personal, family, or household  
16 purposes . . . ." 15 U.S.C. § 1692a(5) (emphasis added). Midland  
17 argues that, even if the HSBC account was fraudulently opened,  
18 there is no evidence that the charges arising thereunder resulted  
19 from consumer purchases made for personal, family, or household  
20 purposes.

21           Neither party sufficiently addresses this question, which is a  
22 close one. The Fourth Circuit has recognized, albeit in an  
23 unpublished disposition explicitly declining to address the issue,  
24 that FDCPA plaintiffs who are victims of identity theft, or who  
25 have other worthy collection defenses, may find it impossible to  
26 document the nature of the debt incurred. Booshada v. Providence  
27 Dane LLC, 462 Fed. Appx. 331, 336 (4th Cir. 2012). The court  
28 agreed, however, with a court of this circuit that "the

1 determination of whether a debt is a consumer debt is a fact driven  
2 one, and should be decided on a case-by-case basis looking at all  
3 relevant factors." Id., citing Hansen v. Ticket Track, Inc., 280  
4 F. Supp. 2d 1196, 1204 (W.D. Wash. 2003) (alterations omitted).

5 Looking then, to the specific facts of this case, and even  
6 taking into account the strong consumer protection policy  
7 underlying the FDCPA, the court agrees that Plaintiff has not put  
8 forth sufficient evidence that consumer debt is at issue.  
9 The only evidence Plaintiff cites in support of her contention is  
10 that the credit card linked to the disputed HSBC account was opened  
11 at a retail bridal shop. (Opp. At 2; Boire Decl., Ex. D.) In some  
12 cases, information about the nature of fraudulently incurred  
13 charges may be unavailable or ambiguous.<sup>9</sup> In such cases, the  
14 origin of the debt may be sufficient to create a triable issue as  
15 to its nature. Here, however, Plaintiff has not even attempted to  
16 identify the fraudulent charges made in her name, let alone  
17 demonstrate that they may have been incurred for personal, family,  
18 or household purposes. Thus, the record before the court in this  
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20 <sup>9</sup> At least one court has found, in an identity theft case,  
21 that an FDCPA plaintiff failed to create an issue of fact with  
22 respect to the nature of alleged debts. In Anderson v. AFNI, Inc.,  
23 an identity theft victim brought an FDCPA claim based upon  
24 fraudulent Verizon (presumably telephone) accounts. Anderson v.  
25 AFNI, Inc., No. 10-4064, 2011 WL 1808779 at \*1 (E.D. Pa. May 11,  
26 2011). The plaintiff argued that because (1) the identity thief  
27 was a known, convicted individual, (2) the debts were associated  
28 with a residential address, and (3) the debt collector treated the  
debts as "debts" under the FDCPA, she had created a triable issue  
of fact. Anderson, 2011 WL 1808779 at \*14. The court disagreed,  
reasoning that individuals sometimes conduct commercial activities  
from residential addresses. Id. This court further notes that the  
Verizon accounts and (presumably) telephone charges at issue in  
Anderson would, by their very nature, likely be more difficult to  
classify than discrete fraudulent purchases of the type made on the  
HSBC credit card here.

1 case does not include sufficient evidence of a "debt" as defined by  
2 the FDCPA to create a triable issue of fact. Midland is therefore  
3 entitled to summary judgment on the FDCPA and RFDCPA claims.

4 E. Libel

5 Under California law, libel "is a false and unprivileged  
6 publication . . . which exposes any person to hatred, contempt,  
7 ridicule, or obloquy, or which causes him to be shunned or avoided,  
8 or which has a tendency to injure him in his occupation." Cal.  
9 Civ. Code § 45. The FCRA, however, preempts all libel claims  
10 except with respect to consumer information "furnished with malice  
11 or willful intent to injure such consumer." 15 U.S.C. § 1681h(e).  
12 A plaintiff must, therefore, show that a defendant furnished credit  
13 information with knowledge of falsity or reckless disregard for the  
14 truth. Gorman, 584 F.3d at 1168 (citing New York Times v.  
15 Sullivan, 376 U.S. 254 (1964)).

16 Here, Plaintiff argues that Midland was admittedly reckless  
17 because it stated, in response for a request for admission, that it  
18 lacked sufficient information to admit or deny that the HSBC  
19 account is fraudulent. (Opp. at 27.) As discussed at length  
20 above, Midland attempted to investigate Plaintiff's dispute. Even  
21 once Plaintiff clarified that a "fraudulent account" was at issue,  
22 and even assuming that Midland received the fourth letter  
23 referencing "identity theft," Plaintiff never provided Midland with  
24 the documentation it needed, and requested, to carry out a full  
25 investigation. Though Midland opened an investigation, Plaintiff's  
26 own failures impeded Midland's inquiry. Under such circumstances,  
27 no rational trier of fact could conclude that Midland was reckless,  
28 let alone intentional, in its reporting of the HSBC account.

1 **IV. Conclusion**

2 For the reasons stated above, Defendant's Motion for Summary  
3 Judgment is GRANTED, with one exception. The court does not reach  
4 Plaintiff's remaining claim for declaratory and injunctive relief  
5 under California Civil Code Section 1798.93(c). The court declines  
6 to exercise supplemental jurisdiction over that lone remaining  
7 state law claim. See 28 U.S.C. § 1367(c).

8  
9 IT IS SO ORDERED.

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12 Dated: October 4, 2013

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DEAN D. PREGERSON  
United States District Judge