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UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA

RICHARD BRYAN CLYMER,	)	Case No. EDCV 10-01526
	)	VAP(DTBx)
Plaintiff,	)	
	)	<b>[Motion filed on May 17,</b>
v.	)	<b>2011]</b>
	)	
DISCOVER BANK; BLEIER &	)	<b>ORDER GRANTING DEFENDANT</b>
COX; AND DOES 1 THROUGH	)	<b>BLEIER &amp; COX'S MOTION FOR</b>
5, INCLUSIVE,	)	<b>SUMMARY JUDGMENT</b>
	)	
Defendants.	)	

The Court has considered the papers filed in support of, and in opposition to, Defendant Bleier & Cox's ("Bleier") motion for summary judgment ("Motion"). (Doc. No. 34.) For the reasons set forth below, the Court GRANTS the Motion.

**I. PROCEDURAL BACKGROUND**

Plaintiff Richard Bryan Clymer ("Plaintiff"), appearing pro se, filed a complaint on October 5, 2010, against Defendant Discover Bank ("Discover"), asserting

1 claims for securities fraud and civil conspiracy. (Doc.  
2 No. 1.) On February 5, 2011, Plaintiff filed a first  
3 amended and supplemental complaint ("FAC"), adding  
4 Defendant Bleier, striking the securities fraud and civil  
5 conspiracy claims, and asserting claims for violations of  
6 the Federal Fair Debt Collection Practices Act ("FDCPA"),  
7 15 U.S.C. § 1692(g), and the Fair Credit Reporting Act  
8 ("FCRA"), 15 U.S.C. §§ 1681b, 1681o, 1681s-2, 1681i.

9  
10 On March 17, 2011, Defendant Discover filed a motion  
11 to dismiss (Doc. No. 18), which the Court granted in part  
12 and denied in part (Doc. No. 36). Specifically, the  
13 Court dismissed Plaintiff's fifth and ninth claims for  
14 violations of the FDCPA with prejudice and Plaintiff's  
15 sixth and eighth claims for violations of the FCRA with  
16 prejudice. (Id.)

17  
18 On May 17, 2011, Defendant Bleier filed the Motion, a  
19 memorandum of points and authorities (Def.'s Mem. P. &  
20 A.), the declaration of Edgar N. De Vera ("De Vera  
21 Decl."), and the declaration of Richard Golden ("Golden  
22 Decl.") with exhibits A and B attached. (Doc. No. 34.)  
23 On June 8, 2011, the Court provided Plaintiff with a  
24 notice regarding summary judgment procedures and  
25 rescheduling the hearing on the Motion and the relevant  
26 deadlines. (Doc. No. 37.) On June 8, 2011, Defendants  
27 filed a separate statement of uncontroverted facts and  
28

1 conclusions of law ("SUF"). (Doc. No. 38.) On June 9,  
2 2011, Plaintiff filed an opposition ("Opposition").  
3 (Doc. No. 43.) On June 14, 2011, Defendant Bleier filed  
4 a notice of errata related to the Golden Declaration.  
5 (Doc. No. 44 ("Golden Decl. II").) On June 27, 2011,  
6 Defendant filed a reply ("Reply") (Doc. No. 49) and  
7 "Objections to Plaintiff's Evidence" (Doc. No. 50  
8 ("Def.'s Obj.")). On July 1, 2011, Plaintiff filed an  
9 opposition to Defendant's SUF ("Pl.'s Obj.") (Doc. No.  
10 54), the affidavit of Bryan Clymer ("Clymer Decl.") (Doc.  
11 No. 55), and a statement of genuine disputes ("SGI")  
12 (Doc. No. 56).

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## II. FACTUAL BACKGROUND

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Both sides cite facts that are not relevant to resolution of the Motion. To the extent certain facts are not mentioned in this Order, the Court has not relied on them in reaching its decision. Furthermore, except as described below, the Court overrules the parties' objections, but has independently considered the admissibility of the evidence underlying the SUF and the SMF, and has not considered facts that are irrelevant or based upon inadmissible evidence. Finally, certain proposed facts are not adequately supported by the cited evidence; as to those proposed facts, the Court has considered and relied on the underlying evidence and

1 found facts supported by that evidence, to the extent the  
2 evidence itself was admissible.

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4 The Court finds the following material facts are  
5 supported adequately by admissible evidence and are  
6 uncontroverted. They are "admitted to exist without  
7 controversy" for the purposes of these Motions. L.R. 56-  
8 3; see generally Fed. R. Civ. P. 56.

9

10 Defendant Bleier attempted to collect a debt from  
11 Plaintiff related to a credit card with Defendant  
12 Discover. (SUF 1, 12; FAC ¶ 6.) On March 3, 2009,  
13 Plaintiff sent a letter to Defendant Discover disputing  
14 the debt. (Id.) Defendant Bleier contends it never  
15 received Plaintiff's March 3, 2009, dispute letter;  
16 Plaintiff alleges that Bleier received the letter when  
17 Discover provided Bleier with Plaintiff's file.  
18 Plaintiff does not have personal knowledge of what Bleier  
19 did or did not receive in the file from Discover,  
20 however, and offers no evidence to support his naked  
21 contention that Bleier received his dispute letter.  
22 Plaintiff accordingly has not raised a genuine issue that  
23 Bleier received or otherwise had knowledge of his dispute  
24 letter.

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1 Plaintiff further contends that Defendant Bleier  
2 continued to attempt to collect the debt from him,  
3 including sending collection letters to Plaintiff on  
4 March 25, 2009, and April 30, 2009. Plaintiff offers no  
5 admissible evidence to support this assertion nor does he  
6 attach the alleged letters from Bleier. On the other  
7 hand, Bleier presents evidence, in the form of a sworn  
8 declaration, that it did not send the collection letters.  
9 Specifically, Defendant Bleier presents evidence that it  
10 was assigned Plaintiff's debt on July 9, 2009,<sup>1</sup> several  
11 months after Plaintiff received the letters. (See SUF 9;  
12 Golden Decl. II ¶ 2.)

13  
14 Finally, Defendant Bleier made a formal inquiry on  
15 Plaintiff's credit report in September 2009. (SUF 5; FAC  
16 ¶¶ 7-10.) Plaintiff argues Bleier did not have  
17 Plaintiff's consent to do so, nor a permissible purpose  
18 under the FCRA.

19  
20 **III. LEGAL STANDARD**

21 A court shall grant a motion for summary judgment  
22 when there is no genuine issue as to any material fact  
23 and the moving party is entitled to judgment as a matter  
24 of law. Fed. R. Civ. P. 56(a); Anderson v. Liberty

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27 <sup>1</sup> Plaintiff attaches a copy of his credit report to  
28 the Opposition. Plaintiff has not authenticated the  
document properly, however, and the Court accordingly has  
not considered it.

1 Lobby, Inc., 477 U.S. 242, 247-48 (1986). The moving  
2 party must show that "under the governing law, there can  
3 be but one reasonable conclusion as to the verdict."  
4 Anderson, 477 U.S. at 250.

5  
6 Generally, the burden is on the moving party to  
7 demonstrate that it is entitled to summary judgment.  
8 Margolis v. Ryan, 140 F.3d 850, 852 (9th Cir. 1998)  
9 (citing Anderson, 477 U.S. at 256-57); Retail Clerks  
10 Union Local 648 v. Hub Pharmacy, Inc., 707 F.2d 1030,  
11 1033 (9th Cir. 1983). The moving party bears the initial  
12 burden of identifying the elements of the claim or  
13 defense and evidence that it believes demonstrates the  
14 absence of an issue of material fact. Celotex Corp. v.  
15 Catrett, 477 U.S. 317, 323 (1986).

16  
17 Where the non-moving party has the burden at trial,  
18 however, the moving party need not produce evidence  
19 negating or disproving every essential element of the  
20 non-moving party's case. Celotex, 477 U.S. at 325.  
21 Instead, the moving party's burden is met by pointing out  
22 that there is an absence of evidence supporting the non-  
23 moving party's case. Id.; Horphang Research Ltd. v.  
24 Garcia, 475 F.3d 102,



1 **A. FDCPA Claims (Plaintiff's First, Fourth, and Ninth**  
2 **Claims)**

3 Plaintiff alleges three claims against Bleier for  
4 violations of the FDCPA. The applicable statute of  
5 limitations under the FDCPA is one year: "An action to  
6 enforce any liability created by this title may be  
7 brought in any appropriate United States district court  
8 without regard to the amount in controversy, or in any  
9 other court of competent jurisdiction, within one year  
10 from the date on which the violation occurs." 15 U.S.C.  
11 § 1692k(d) (emphasis added). As noted above, Plaintiff  
12 bases his FDCPA claims on two letters Bleier allegedly  
13 sent on March 25, 2009, and April 30, 2009, but offers no  
14 evidence that Bleier sent these letters. Plaintiff  
15 attaches as exhibits to his declaration two letters from  
16 another law firm, Zwickler & Associates, P.C. (Clymer  
17 Decl., Ex. 1.) Plaintiff presents no evidence that  
18 Bleier was the law firm that sent him letters containing  
19 the alleged violations. Moreover, even assuming Bleier  
20 sent the letters, under the applicable statute of  
21 limitations, Plaintiff was required to file his FDCPA  
22 claims by April 30, 2010. Plaintiff filed this action on  
23 October 5, 2010, well after the expiration of the one-  
24 year limitations period.

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1 Plaintiff contends he did not discover the violations  
2 until February 2010. (Opp'n at 2.) This argument is  
3 belied by the evidence, however. Specifically, Plaintiff  
4 states Defendant Bleier sent the letters on March 25,  
5 2009, and April 30, 2009. By Plaintiff's own account, he  
6 therefore became aware of the alleged violations at that  
7 time. Thus, Plaintiff's FDCPA claims are barred by the  
8 statute of limitations. The Court accordingly GRANTS  
9 Defendant Bleier's Motion as to Plaintiff's First,  
10 Fourth, and Ninth Claims, with prejudice.

11

12 **B. FCRA Claims (Plaintiff's Second and Third Claims)**

13 Plaintiff bases his claim that Bleier violated the  
14 FCRA on his allegation that Bleier obtained Plaintiff's  
15 credit report from a consumer reporting agency without a  
16 "permissible purpose." (See Opp'n at 2.)

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18 The FCRA creates a private right of action through a  
19 provision that provides:

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21 Any person who willfully fails to comply with any  
22 requirement imposed under this subchapter with  
23 respect to any consumer is liable to that consumer  
in an amount equal to the sum of-

- 24 (1) (A) any actual damages sustained by the  
25 consumer as a result of the failure or damages  
of not less than \$100 and not more than \$1,000;  
or
- 26 (B) in the case of liability of a natural  
27 person for obtaining a consumer report under  
false pretenses or knowingly without a  
permissible purpose, actual damages sustained

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1 by the consumer as a result of the failure or  
2 \$1,000, whichever is greater;  
3 (2) such amount of punitive damages as the court  
4 may allow; and  
5 (3) in the case of any successful action to enforce  
6 any liability under this section, the costs of the  
7 action together with reasonable attorney's fees as  
8 determined by the court.  
9 15 U.S.C. § 1681n; see also § 1681o (providing civil  
10 liability for negligent noncompliance, but only for  
11 consumers' actual damages); Nelson v. Chase Manhattan  
12 Mortg. Corp., 282 F.3d 1057, 1059 (9th Cir. 2002)  
13 ("[W]ith these words Congress created a private right of  
14 action for consumers").

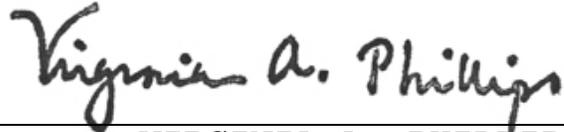
15 Although a party may not "obtain a consumer report"  
16 unless it is "obtained for a purpose" authorized by FCRA,  
17 see 15 U.S.C. § 1681b(f), Plaintiff's conclusory  
18 allegation that Bleier lacked a "permissible purpose"  
19 (see Opp'n at 2) is insufficient to create a genuine  
20 issue of fact. The FCRA expressly permits receipt of a  
21 consumer report for use "in connection with a credit  
22 transaction involving the consumer on whom the  
23 information is to be furnished and involving the . . .  
24 collection of an account of [ ] the consumer." See 15  
25 U.S.C. § 1681b(a)(3)(A). Here, Bleier has presented  
26 evidence it was attempting to collect what it believed to  
27 be a valid credit card debt. (Golden Decl. ¶ 2.)  
28 Plaintiff has presented no evidence that Bleier was aware  
of Plaintiff's dispute letter or that Bleier obtained  
Plaintiff's credit report for any other purpose than to

1 collect a debt it had been assigned. The Court  
2 accordingly GRANTS Defendant Bleier's Motion as to  
3 Plaintiff's second and third claims, with prejudice.

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**V. CONCLUSION**

For the foregoing reasons, the Court GRANTS Defendant Bleier's Motion and DISMISSES Plaintiff's first, second, third, fourth, and ninth claims, with prejudice.



Dated: July 29, 2011

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VIRGINIA A. PHILLIPS  
United States District Judge