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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF CALIFORNIA**

KRISTIANE SMITH,

Plaintiff,

vs.

LAW OFFICES OF PATENAUDE &
FELIX, A.P.C.,

Defendant.

CASE NO. 13cv3061-WQH
(BGS)

ORDER

HAYES, Judge:

The matter before the Court is the Motion to Dismiss filed by Defendant Patenaude & Felix, A.P.C. (ECF No. 16).

I. Background

On December 17, 2013, Plaintiff Kristiane Smith commenced this action by filing a Complaint against Defendant Patenaude & Felix, A.P.C. (ECF No. 1). On February 3, 2014, Plaintiff filed a First Amended Complaint (“FAC”) alleging violations of the Fair Credit Reporting Act, 15 U.S.C. § 1681b (“FCRA”), the Fair Debt Collection Practices Act, 15 U.S.C. § 1692g(a) (“FDCPA”), and the Rosenthal Fair Debt Collection Practices Act, Cal. Civ. Code § 1788.15(a) (“RFDCPA”). (ECF No. 6).

On February 17, 2014, Defendant filed a motion to dismiss. (ECF No. 8). On July 23, 2014, the Court dismissed the FAC without prejudice. (ECF No. 12). On August 26, 2014, Plaintiff filed a Second Amended Complaint (“SAC”). (ECF No. 14).

1 On September 17, 2014, Defendant filed the Motion to Dismiss, accompanied by
2 a request for judicial notice. (ECF No. 16). On October 1, 2014, Plaintiff filed an
3 opposition. (ECF No. 18). On October 13, 2014, Defendant filed a reply. (ECF No.
4 19).

5 **II. Allegations of the SAC**

6 On April 25, 2013, Defendant “violated the FCRA by initiating a hard pull of
7 Plaintiff’s credit report from TransUnion without permissible purpose, thereby reducing
8 her credit score.” (ECF No. 14 at 3). “Defendant is attempting to collect an alleged but
9 non-existent debt on behalf of its client TD BANK USA, N.A.” *Id.* “TD BANK USA,
10 N.A. bought the alleged but non-existent debt, in default, from TARGET INC. on or
11 around March 13, 2013.” *Id.*

12 “Defendant purposefully hid the suit it had filed on June 19, 2013 on behalf of
13 TD BANK USA, N.A. from Plaintiff. Defendant did not serve the suit on Plaintiff until
14 January, 2014, long after Plaintiff filed this Federal suit.” *Id.* at 4. Plaintiff became
15 aware of this lawsuit in November 2013 when she reviewed her credit report. The
16 delayed discovery “is clear ... by the abundance of action taken by Plaintiff after
17 reviewing her credit report in November 2013...” *Id.* “On January 22, 2013, Plaintiff
18 disputed the alleged debt, and sent a demand for validation on the account to TARGET
19 NATIONAL BANK, to which TARGET refused and failed to respond.” *Id.* at 3. On
20 February 11, 2013, Plaintiff sent another demand for validation to Target Brands, Inc.
21 (SAC Ex. B, ECF No. 14 at 23). On March 11, 2013, Plaintiff sent another demand for
22 validation to Target Brands, Inc. (SAC Ex. C, ECF No. 14 at 30).

23 After becoming aware of the lawsuit filed by Defendant, Plaintiff
24 diligently attempted to confirm validation of the alleged account with all
25 3 entities. None of which responded. Plaintiff has been diligent in her
attempts to resolve matters involved with the alleged account for over 18
motions. All attempts have been ignored.

26 (ECF No. 14 at 4).

27 “Plaintiff does not owe any debt to TD BANK USA, N.A., PATENAUDE AND
28 FELIX, or TARGET.” *Id.* at 5. “Defendant PATENAUDE AND FELIX A.P.C had ‘no

1 reason to believe' that the alleged account was legitimate at the time it pulled Plaintiff's
2 credit report. Defendant had no legitimate business purpose for obtaining Plaintiff's
3 credit report." *Id.* Because Defendant purchased the account from TD Bank USA,
4 N.A., Defendant "should have known that Plaintiff did not initiate a business
5 transaction with its client TD Bank USA, N.A." *Id.* "It should have known that the
6 alleged account does not involve, or belong to Plaintiff." *Id.* "Defendant had no
7 evidence or reason to believe the alleged debt was legitimate, prior to Defendant pulling
8 Plaintiff's credit report." *Id.* "Defendant was negligent in its duties in fulfilling the
9 certification requirements pursuant to 15 USC 1681(e)(a), prior to pulling Plaintiff's
10 credit report." *Id.*

11 "Defendant failed to send Plaintiff a 30 day validation notice within 5 days of the
12 initial communication, which was on April 25, 2013 when Defendant pulled Plaintiff's
13 credit report without permissible purpose." *Id.* "Defendant is continually attempting
14 to collect a disputed debt. Plaintiff disputed the alleged debt numerous times with
15 TARGET, prior to TD BANK'S purchase of the alleged account." *Id.* at 6. Defendant
16 also misrepresented the amount of the alleged debt because "Defendant claims damages
17 in the amount of \$1,760.59" in a state-court lawsuit but claimed \$2,043.09 in "the
18 notice sent by Defendant on November 15, 2013." *Id.*

19 The SAC asserts seven claims for relief: (1) violation of the FCRA, 15 U.S.C.
20 section 1681b; (2) violation of the FDCPA, 15 U.S.C. section 1692g; (3) violation of
21 the RFDCPA, California Civil Code section 1788.17; (4) violation of the FDCPA, 15
22 U.S.C. section 1692e(2); (5) violation of the FDCPA, 15 U.S.C. section 1692e(8); (6)
23 violation of the FDCPA, 15 U.S.C. section 1692c(10); and (7) violation of the FDCPA,
24 15 U.S.C. section 1692f(1).

25 **III. Discussion**

26 **A. Request for Judicial Notice**

27 Defendant has submitted a request for judicial notice of the following material:

28 (1) the summons and complaint filed on June 19, 2013, in the Superior Court of

1 California for the County of Sacramento, entitled *TD Bank USA, N.A., As Successor in*
2 *Interest to Target National Bank v. Kristiane Smith*, case number 34-2013-00146865;
3 and (2) a November 15, 2013 letter from Defendant to Plaintiff that is also attached as
4 Exhibit D to the SAC. (ECF No. 16-3). Plaintiff does not appear to oppose judicial
5 notice of either document, but contends that “[t]he mere act of filing a suit, provides no
6 evidence to the validity of the suit. Defendant had no reason to believe the alleged debt
7 belonged to the Plaintiff, and filed its suit in bad faith.” (ECF No. 18 at 6).

8 Federal Rule of Evidence 201 provides that “[t]he court may judicially notice a
9 fact that is not subject to reasonable dispute because it ... is generally known within the
10 trial court’s territorial jurisdiction; or ... can be accurately and readily determined from
11 sources whose accuracy cannot reasonably be questioned.” Fed. R. Evid. 210(b).
12 Courts “may take notice of proceedings in other courts, both within and without the
13 federal judicial system, if those proceedings have a direct relation to matters at issue.”
14 *U.S. ex rel. Robinson Rancheria Citizens Council v. Borneo, Inc.*, 971 F.2d 244, 248
15 (9th Cir. 1992) (internal quotations and citation omitted). In ruling on a motion to
16 dismiss, a court may consider “materials incorporated into the complaint by
17 reference....” *Metzler Inv. GMBH v. Corinthian Colls., Inc.*, 540 F.3d 1049, 1061 (9th
18 Cir. 2008).

19 The Court may take judicial notice of the record in case number 24-2013-
20 00146865 as another court’s proceedings that has a “direct relation to matters at issue.”
21 *Borneo, Inc.*, 971 F.2d at 248. The Court may take judicial notice of the November 15,
22 2013 letter because it is incorporated by reference in the SAC. Defendant’s request for
23 judicial notice is granted.

24 **B. 12(b)(6) Standard**

25 Federal Rule of Civil Procedure 12(b)(6) permits dismissal for “failure to
26 state a claim upon which relief can be granted.” Fed. R. Civ. P. 12(b)(6). Federal Rule
27 of Civil Procedure 8(a) provides that “[a] pleading that states a claim for relief must
28 contain ... a short and plain statement of the claim showing that the pleader is entitled

1 to relief.” Fed. R. Civ. P. 8(a)(2). Dismissal under Rule 12(b)(6) is appropriate where
2 the complaint lacks a cognizable legal theory or sufficient facts to support a cognizable
3 legal theory. *See Balistreri v. Pacifica Police Dep’t*, 901 F.2d 696, 699 (9th Cir. 1990).

4 “[A] plaintiff’s obligation to provide the ‘grounds’ of his ‘entitle[ment] to relief’
5 requires more than labels and conclusions, and a formulaic recitation of the elements
6 of a cause of action will not do.” *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555 (2007)
7 (quoting Fed. R. Civ. P. 8(a)). “To survive a motion to dismiss, a complaint must
8 contain sufficient factual matter, accepted as true, to ‘state a claim to relief that is
9 plausible on its face.’” *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Twombly*,
10 550 U.S. at 570). “A claim has facial plausibility when the plaintiff pleads factual
11 content that allows the court to draw the reasonable inference that the defendant is liable
12 for the misconduct alleged.” *Id.* (citation omitted). “[T]he tenet that a court must
13 accept as true all of the allegations contained in a complaint is inapplicable to legal
14 conclusions. Threadbare recitals of the elements of a cause of action, supported by
15 mere conclusory statements, do not suffice.” *Id.* (citation omitted). “When there are
16 well-pleaded factual allegations, a court should assume their veracity and then
17 determine whether they plausibly give rise to an entitlement to relief.” *Id.* at 679. “In
18 sum, for a complaint to survive a motion to dismiss, the non-conclusory factual content,
19 and reasonable inferences from that content, must be plausibly suggestive of a claim
20 entitling the plaintiff to relief.” *Moss v. U.S. Secret Serv.*, 572 F.3d 962, 969 (9th Cir.
21 2009) (quotations and citation omitted).

22 **C. Violation of the FCRA (First Claim)**

23 Defendant contends that pulling Plaintiff’s credit report to collect on her debt is
24 a permissible purpose under the FCRA. Defendant contends that Plaintiff has failed to
25 allege any impermissible purpose under the FCRA. Plaintiff contends that Defendant
26 “should have known that the alleged debt did not belong” to Plaintiff. (ECF No. 18 at
27 4). Plaintiff relies on *Cappetta v. GC Servs. Ltd. P’ship*, 654 F. Supp. 2d 453 (E.D. Vir.
28 2009) for the proposition that a debt collector can be liable under the FCRA when it

1 “should have known” that it had no legitimate purpose pulling a plaintiff’s credit report.
2 *Id.* Plaintiff also contends that Defendant did not certify that it pulled Plaintiff’s credit
3 report for a proper purpose.

4 15 U.S.C. section 1681b(f) prohibits a “person” from using or obtaining “a
5 consumer report for any purpose unless ... (1) the consumer report is obtained for a
6 purpose for which the consumer report is authorized to be furnished under this section;
7 and (2) the purpose is certified in accordance with section 1681e of this title by a
8 prospective user of the report through a general or specific certification.” 15 U.S.C. §
9 1681b(f). A consumer report is authorized to be furnished by a consumer reporting
10 agency to “a person which [a consumer reporting agency] has reason to believe ... (A)
11 intends to use the information in connection with a credit transaction involving the
12 consumer on whom the information is to be furnished and involving the extension of
13 credit to, or review or collection of an account of, the consumer...” 15 U.S.C. §
14 1681b(a)(3). 15 U.S.C. section 1681e requires consumer reporting agencies to maintain
15 “reasonable procedures” to ensure that “prospective users of the information identify
16 themselves, certify the purposes for which the information is sought, and certify that the
17 information will be used for no other purpose. 15 U.S.C. § 1681e(a). A consumer
18 report is “any information by a consumer reporting agency bearing on a consumer’s
19 credit worthiness...” 15 U.S.C. § 1681a(d)(1).

20 To qualify as a permissible purpose under section 1681b(a)(3)(A), a “credit
21 transaction must both (1) be a credit transaction involving the consumer on whom the
22 information is to be furnished and (2) involve the extension of credit to, or review or
23 collection of an account of, the consumer.” *Pintos v. Pac. Creditors Ass’n*, 605 F.3d
24 665, 674 (9th Cir. 2010) (en banc) (quotations omitted). “[A] person is ‘involved’ in a
25 credit transaction for purposes of § 1681b(a)(3)(A) where she is ‘draw[n] in as a
26 participant’ in the transaction, but not where she is ‘oblige[d] to become associated’
27 with the transaction.” *Id.* at 675 (citing *Andrews v. TRW, Inc.*, 225 F.3d 1063, 1067 (9th
28 Cir. 2000)). In *Pintos*, the plaintiff’s vehicle was towed by police officers. The towing

1 company towed the vehicle, obtained a lien on the vehicle, and sold the vehicle. The
2 towing company then asserted a deficiency claim against the plaintiff, and transferred
3 that claim to the defendant, a collection agency. The district court granted the
4 defendants' motion for summary judgment because the defendant collection agency had
5 a permissible purpose in obtaining the plaintiff's credit report. The Ninth Circuit
6 reversed, reasoning that the plaintiff "did not participate in seeking credit from the
7 towing company." *Id.*

8 She owned the car that was towed, so she was not as completely distant
9 from the transaction as the victim of identity theft in *Andrews*, but neither
10 was she a participant in the typical transaction where an extension of credit
11 is requested. She had no contact with [the towing company or the
12 defendant] until [the towing company] towed her car. She never asked to
13 have the vehicle towed; [the towing company] simply towed the car by
14 direction of the police then tried to collect the charges. [The plaintiff] did
15 not initiate the transaction that resulted in [the defendant] requesting her
16 credit report. As the Seventh Circuit held in *Stergiopoulos v. First
17 Midwest Bancorp, Inc.*, 427 F.3d 1043, 1047 (7th Cir. 2005), §
18 1681b(a)(3)(A) can be relied upon by the party requesting a credit report
19 "only if the consumer initiates the transaction."

20 *Id.* The Ninth Circuit concluded that because the claim against the plaintiff "did not
21 result from a transaction initiated" by the plaintiff, section 1681b(a)(3)(A) did not
22 authorize the defendant to obtain the plaintiff's credit report. *Id.* at 676.

23 In this case, the SAC alleges that Defendant violated the FCRA "by initiating a
24 hard pull of Plaintiff's credit report from TransUnion without permissible purpose"
25 because "Defendant is attempting to collect an alleged but non-existent debt on behalf
26 of it's [sic] client TD BANK USA, N.A." (ECF No. 14 at 3). The SAC alleges:

27 Defendant PATENAUDE AND FELIX A.P.C. had "no reason to believe"
28 that the alleged account was legitimate at the time it pulled Plaintiff's
credit report. The alleged account was bought while in default by TD
BANK USA, N.A. Therefore Defendant PATENAUDE AND FELIX
A.P.C., should have known that Plaintiff did not initiate a business
transaction with it's [sic] client TD BANK USA, N.A. It should have
known that the alleged account does not involve, or belong to Plaintiff.
TD BANK USA, N.A. could not have provided evidence of the alleged
account being legitimate, to Defendant, because such evidence does not
exist. Defendant had no evidence or reason to believe the alleged debt was
legitimate, prior to Defendant pulling Plaintiff's credit report. Defendant
knew it was not in possession of any application on the alleged account.

1 *Id.* at 5. The allegations of the SAC make clear that Defendant pulled Plaintiff’s credit
2 to collect a debt she did not owe and was not “involved” with. *Id.* Because Plaintiff has
3 alleged that she was not “involved” in the alleged credit transaction, a “non-existent
4 debt” that Defendant is attempting to collect, Plaintiff has sufficiently alleged that
5 Defendant did not have a permissible purpose in pulling Plaintiff’s credit report.
6 *Pintos*, 605 F.3d at 674-75; *see also Grigoryan v. Convergent Outsourcing, Inc.*, No.
7 CV 12-1499, 2012 WL 4475455, at *4 (C.D. Cal. Sept. 24, 2012) (denying the
8 defendant debt collector’s motion for judgment on the pleadings on an FCRA claim
9 where the plaintiff alleged that “at no point prior to learning of defendant’s inquiry into
10 her credit report did plaintiff have any interaction or relationship with defendant in any
11 form, nor any outstanding debts or judgments owed to defendant[;]” no allegations in
12 the complaint showed that the defendant was authorized by a third party to collect on
13 a debt involving a consumer credit transaction entered into by the plaintiff). The Court
14 concludes that Plaintiff has stated a claim for violation of the FCRA.

15 Defendant’s motion to dismiss Plaintiff’s First Claim for violation of the FCRA
16 is denied.

17 **D. Violation of the FDCPA**

18 **i. Violation of 15 U.S.C. section 1692g (Second Claim)**

19 Defendant contends that it was not required to send Plaintiff a debt validation
20 because Plaintiff did not request it within thirty days of Defendant sending Plaintiff a
21 demand letter.¹ Defendant contends that it need only be established that this demand
22 letter was sent, not received, and that Plaintiff cannot rebut the presumption that the
23 demand letter was received after it was placed in the mail. Plaintiff contends that
24 Defendant has offered no evidence that the demand letter was sent. Plaintiff contends

25
26 ¹ Defendant submits the Declaration of Jeffrey W. Speights in support of the
27 Motion to Dismiss and in order to demonstrate the dates on which these events
28 occurred. (ECF No. 16-2). The Court does not consider this declaration because, “[a]s
a general rule, ‘a district court may not consider any material beyond the pleadings in
ruling on a Rule 12(b)(6) motion.’” *Lee v. City of Los Angeles*, 250 F.3d 668, 688 (9th
Cir. 2001) (quoting *Branch v. Tunnell*, 14 F.3d 449, 453 (9th Cir. 1994), *overruled on
other grounds by Galbraith v. County of Santa Clara*, 307 F.3d 1119 (9th Cir. 2002)).

1 that she has rebutted the presumption (or will be able to do so) by stating that she never
2 received the demand letter by mail.

3 15 U.S.C. section 1692g(a) requires that, within five days after an “initial
4 communication,” a debt collector must send the consumer a “written notice” containing
5 certain information regarding the debt “unless the ... information is contained in the
6 initial communication....” 15 U.S.C. § 1692g(a). “The term ‘communication’ means
7 the conveying of information regarding a debt directly or indirectly to any person
8 through any medium.” 15 U.S.C. § 1692a(2). Section 1692g(b) provides:

9
10 If the consumer notifies the debt collector in writing within the thirty-day
11 period described in subsection (a) of this section that the debt, or any
12 portion thereof, is disputed, or that the consumer requests the name and
13 address of the original creditor, the debt collector shall cease collection of
14 the debt, or any disputed portion thereof, until the debt collector obtains
15 verification of the debt or a copy of a judgment, or the name and address
16 of the original creditor, and a copy of such verification or judgment, or
17 name and address of the original creditor, is mailed to the consumer by the
18 debt collector.

19 15 U.S.C. § 1692g(b). Where a “written notice” that complies with section 1692g(a)
20 is sent to the debtor, the debtor must send a verification request under section 1692g(b)
21 within thirty days of receipt of the written notice in order to create any obligation on the
22 debt collector’s part. *See Mahon v. Credit Bureau of Placer Cnty. Inc.*, 171 F.3d 1197,
23 1202-03 (9th Cir. 1999) (holding that the plaintiffs’ “tardy request for verification of
24 the debt ... did not trigger any obligation on the part of the [defendant] to verify the
25 debt”); *see also* 15 U.S.C. § 1692g(a) (requiring that, within five days after the initial
26 communication, the debt collector shall send the debtor a “written notice” containing
27 “a statement that if the consumer notifies the debt collector in writing within the thirty-
28 day period that the debt ... is disputed, the debt collector will obtain verification of the
debt or a copy of a judgment against the consumer and a copy of such verification or
judgment will be mailed to the consumer by the debt collector....”).

29 The SAC alleges that “Defendant also refused and failed to send to [sic] initial
demand letter as required by the FDCPA....” (ECF No. 14 at 4). The SAC alleges that
“Defendant failed to send Plaintiff a 30 day validation notice within 5 days of the initial

1 communication, which was on April 25, 2013 when Defendant pulled Plaintiff’s credit
2 report without permissible purpose.” *Id.* at 5. The SAC also alleges that Plaintiff
3 became aware of the debt in November 2013 when she reviewed her credit report, and
4 Plaintiff first sought to validate the debt on January 22, 2013. The SAC fails to
5 plausibly allege an “initial communication” under section 1692g, a prerequisite to
6 triggering any debt collector duties under this section. *See Vartanian v. Portfolio*
7 *Recovery Assocs., LLC*, No. 2:12-cv-08358, 2013 WL 877863, at *6 (C.D. Cal. Mar.
8 7, 2013) (“[Plaintiff] does not contend that [Defendant] ever contacted him.... There
9 was then no ‘initial communication’ from [Defendant] sufficient to trigger the 15 U.S.C.
10 § 1692g(a)’s notice requirement. Neither was there any debt-collection practices to stop
11 under § 1692g(b.)”; *McNall v. Credit Bureau of Josephine Cnty.*, 689 F. Supp. 2d
12 1265, 1269 (D. Or. 2010) (“[Defendant’s] letter was not the ‘initial communication’
13 about the collection of the debt which would trigger the validation notice requirements
14 of 15 U.S.C. § 1692(a).”). Defendant’s alleged pulling of Plaintiff’s credit report on
15 April 25, 2013 is not a “communication,” which is “the *conveying* of information
16 regarding a debt...” 15 U.S.C. § 1692a(2) (emphasis added). The Court concludes that
17 Plaintiff has failed to plausibly allege an “initial communication” under 15 U.S.C.
18 section 1692g.

19 Defendant’s motion to dismiss Plaintiff’s Second Claim for violation of section
20 1692g is granted.

21 **ii. Violation of 15 U.S.C. section 1692e (Fourth Claim)**

22 Defendant asserts that it did not misrepresent the amount of Plaintiff’s debt.
23 Defendant contends that the difference between the amount prayed for in the April 2013
24 state-court complaint and the amount demanded in a November 2013 letter to Plaintiff
25 does not demonstrate a misrepresentation of Plaintiff’s debt in November 2013.
26 Defendant asserts that the increased amount in the November 2013 letter includes legal
27 costs that Defendant had accumulated in the interim. Defendant contends that it is
28 entitled to recover its actual costs in bringing a state court action, citing California Code

1 of Civil Procedure sections 1032-1033.5. Plaintiff does not address these contentions
2 in opposition.

3 It is a violation of the FDCPA to make a false representation, “in connection with
4 the collection of any debt,” regarding “the character, amount, or legal status of any debt;
5 or ... any services rendered or compensation which may be lawfully received by any
6 debt collector for the collection of a debt.” 15 U.S.C. § 1692e(2). Section 1692f
7 provides that “the following conduct is a violation of this section ... [t]he collection of
8 any amount (including any interest, fee, charge, or expense incidental to the principal
9 obligation) unless such amount is expressly authorized by the agreement creating the
10 debt or permitted by law.” 15 U.S.C. § 1692f(1).

11 The SAC alleges that Defendant only claimed damages of \$1,760.59 in the state-
12 court complaint but stated in a November 2013 letter to Plaintiff that Plaintiff owed
13 \$2,043.09. The state-court complaint requests “\$1,760.59, which is the reasonable
14 value, is due and unpaid despite plaintiff’s demand ... [and] [f]or such other and further
15 relief as the Court deems just and fair.” (ECF No. 16-5 at 9). Under California law,
16 costs are only recoverable by the prevailing party. *See* Cal. Code Civ. Proc. § 1032
17 (“Except as otherwise expressly provided by statute, a prevailing party is entitled as a
18 matter of right to recover costs in any action or proceeding.”). Whether Defendant was
19 entitled to include court costs in its representation to Plaintiff of her alleged debt is a
20 factual dispute not properly resolved on a motion to dismiss.²

21 Defendant’s motion to dismiss Plaintiff’s Fourth Claim for violation of 15 U.S.C.

22
23 ² Defendant has cited no legal authority for the proposition that it cannot be
24 liable as a matter of law for including court costs in its representation of the amount of
25 Plaintiff’s alleged debt. *Cf. Shula v. Lawent*, 359 F.3d 489, 490-92 (7th Cir. 2004)
26 (affirming summary judgment for the plaintiff and holding that the defendant violated
27 section 1692e when it represented to the plaintiff that the plaintiff owed court costs
28 incurred in an abandoned proceeding because no Illinois law permitted the defendant
to collect costs prior to judgment); *Fritz v. Resurgent Capital Servs., LP*, 955 F. Supp.
2d 163, 171-72 (E.D.N.Y. 2013) (denying the defendant’s motion to dismiss an FDCPA
claim for allegedly misrepresenting the amount of the plaintiff’s debt to a credit
reporting agency because, under New York law, “a party is not liable for court costs
unless and until there is a judgment in favor of the opposing party” and “[b]y including
court costs in the debt it reported to credit reporting agencies, [the defendant]
misrepresented the amount of the debt”).

1 section 1692e is denied.

2 **E. Other Claims**

3 Defendant makes no contentions specific to Plaintiff's Third, Fifth, Sixth, and
4 Seventh Claims. Defendant contends generally:

5 Plaintiff's Complaint does not plead any viable cause of action that should
6 survive this Motion to Dismiss. Plaintiff's vague allegations that P&F
7 failed to communicate the debt was disputed and that P&F attempted to
8 collect a debt not authorized by an agreement are without merit and should
not withstand this Motion. Plaintiff has not presented a plausible theory of
recovery for any of her causes of action and therefore her Second
Amended Complaint should be dismissed with prejudice.

9 (ECF No. 16-1 at 16).

10 Defendant's motion to dismiss Plaintiff's Third, Fifth, Sixth, and Seventh Claims
11 is denied.

12 **IV. Conclusion**

13 IT IS HEREBY ORDERED that the Motion to Dismiss (ECF No. 16) is
14 GRANTED in part and DENIED in part. Plaintiff's Second Claim is DISMISSED
15 without prejudice. No later than thirty days from the date this Order is filed, Plaintiff
16 may file a motion for leave to amend the Second Amended Complaint accompanied by
17 a proposed third amended complaint. If Plaintiff does not file a motion for leave to
18 amend, this case will proceed on the remaining portions of the Second Amended
19 Complaint.

20 If, alternatively, Plaintiff chooses to file a motion for leave to amend, the third
21 amended complaint must be complete in itself and may not incorporate by reference
22 prior versions of the complaint or other filings in this action.

23 DATED: December 17, 2014

24 
25 **WILLIAM Q. HAYES**
26 United States District Judge
27
28