

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22

UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF WASHINGTON
AT SEATTLE

WENDY HEALEY,

Plaintiff,

v.

TRANS UNION LLC, et al.,

Defendants.

CASE NO. C09-0956JLR

ORDER ON MOTION FOR
SUMMARY JUDGMENT

This matter comes before the court on Defendant Debt Recovery Solutions, LLC’s (“DRS”) motion for summary judgment (Dkt. # 55).¹ Plaintiff Wendy Healey opposes DRS’s motion. (Dkt. # 59.) Having reviewed the parties’ submissions, the balance of the record, and the governing law, and having heard oral argument, the court GRANTS in part and DENIES in part DRS’s motion for summary judgment.

¹ Ms. Healey dismissed her claims against Defendant Trans Union LLC in October 2010. (Dkt. # 43.) At oral argument on May 18, 2011, Ms. Healey’s counsel represented that she has also settled her claims against Defendant Experian Information Solutions, Inc. (“Experian”).

I. BACKGROUND

This case arises out of DRS's efforts to collect a debt that it purchased from Embarq (referred to by the parties as the "Sprint/Embarq account").² The debt was based on a delinquent Sprint cellular telephone account that had been opened under the name "Wendy Healey" at a Tallahassee, Florida address in 2004. Plaintiff Wendy Healey asserts that the delinquent account is not hers, that she has never had an account with Sprint or Embarq, and that she has never lived in Tallahassee, Florida. (Healey Decl. (Dkt. # 61) ¶ 1.)

Beginning in 2005, Embarq assigned the debt to two prior collection agencies, both of which attempted to collect the debt on the Sprint/Embarq account from Ms. Healey. (*Id.* ¶ 2.) Ms. Healey successfully stopped both collection efforts. (*Id.*) On February 6, 2007, however, Ms. Healey received a letter from a third collection agency, DRS, demanding payment of \$902.77 due on the Sprint/Embarq account. (Felton Decl. (Dkt. # 56) Ex. C.) The letter, which was addressed to Ms. Healey in Everett, Washington, stated that DRS had purchased the debt from Embarq and that the letter marked the beginning of its collection process. (*Id.*) The letter further informed Ms. Healey that DRS would assume the debt was valid unless Ms. Healey notified DRS within 30 days that she disputed the debt; and if DRS received timely notification of a dispute, within 30 days, it would obtain a verification of the debt and mail a copy to Ms. Healey. (*Id.*) Finally, the letter notified Ms. Healey that a negative credit report had been

² Neither Sprint nor Embarq are parties to this action.

1 submitted to a credit reporting agency. (*Id.*) Don Schwartz, chief operating officer of
2 DRS, testified that DRS did not submit the negative credit report—rather, the negative
3 credit report had been submitted by some other entity before DRS purchased the account.
4 (Felton Decl. Ex. B (“Schwartz Dep.”) at 24-26.) The record does not reflect who
5 submitted the negative credit report prior to DRS’s involvement.

6 On March 1, 2007, Ms. Healey sent DRS a letter titled “Request for Debt
7 Validation.” (Felton Decl. Ex. E at HEALEY 000938.) In her letter, Ms. Healey stated
8 that that she was “disputing this collection account as I have never had an account with
9 Embarq.” (*Id.*) Ms. Healey did not describe her past efforts to delete the Sprint/Embarq
10 account from her credit report or provide any other information about the account. (*Id.*)
11 Ms. Healey asked DRS to provide proof within 30 days that she was obligated to pay the
12 debt, including the following items:

- 13 1. Agreement with your client that grants you the authority to collect this
alleged debt.
- 14 2. Agreement that bears the signature of the alleged debtor wherein he/she
agreed to pay the creditor.
- 15 3. A copy of the original application by this debtor—including the source
of collateral used to gain this credit.
- 16 4. The complete payment history on this account so I have proof that the
amount is correct.

17 (*Id.*) Ms. Healey’s letter included an address in Arlington, Washington, because she had
18 moved from Everett earlier that year. (*Id.*) On March 7, 2007, DRS noted in its records
19 that the account was in dispute and that it had requested documents to verify the debt.
20 (Felton Decl. Ex. D. (“Collection Notes”) at DRS 0001.)
21
22

1 On May 3, 2007, Ms. Healey sent a follow-up letter to DRS in which she stated
2 that she had not received a response within 30 days as requested in her earlier letter.
3 (Felton Decl. Ex. E at HEALEY 000941.) She provided no additional information about
4 the account. (*Id.*) DRS noted in its records it received the letter, that the account was in
5 dispute, and that it had requested verification documents. (Collection Notes at DRS
6 0001.)

7 On July 5, 2007, DRS sent verification documents to Ms. Healey. (*Id.*) On July
8 23, 2007, DRS noted in its records that it had received new contact information for Ms.
9 Healey, and the next day, DRS sent copies of the verification documents to the new
10 address. (*Id.*) Ms. Healey did not receive either set of documents that DRS mailed in
11 July 2007. (*See* Healey Decl. ¶ 4.) Neither mailing is in the record before the court.

12 In January 2008, DRS noted in its records that Ms. Healey had not responded to its
13 July 2007 mailings. (Collection Notes at DRS 0002.) DRS reactivated Ms. Healey's
14 collection account, and on January 14, 2008, DRS sent Ms. Healey a second letter
15 demanding payment of the Sprint/Embarq debt. (*Id.*; Felton Decl. Ex. F.)

16 On January 21, 2008, Ms. Healey sent another "Request for Debt Validation"
17 letter to DRS. (Felton Decl. Ex. G.) The letter is nearly identical to Ms. Healey's March
18 2007 letter. Ms. Healey stated that she had never had an Embarq account; noted that she
19 never received the validation documents she requested in March 2007; and asked DRS to
20 send her, within 30 days, the same four items listed in her March 2007 letter. (*Id.*) On
21 January 25, 2008, DRS again noted in its records that the account was in dispute.
22

1 (Collection Notes at DRS 0002.) DRS's records reflect that it again sent the verification
2 documents to Ms. Healey. (*Id.*)

3 On February 19, 2008, DRS noted in its records that it had received no response
4 from Ms. Healey regarding the verification documents, and it again reactivated Ms.
5 Healey's collection account. (*Id.*) On February 20, 2008, DRS sent a third letter to Ms.
6 Healey demanding payment. (*Id.*; Felton Decl. Ex. H.) The letter asked Ms. Healey
7 either to pay the debt or to contact DRS to discuss resolution of the debt. (*Id.*) In
8 addition, DRS, for the first time, reported Ms. Healey's delinquent account to the credit
9 reporting agencies. (Schwartz Dep. at 27.)

10 On March 9, 2008, Ms. Healey sent a letter to DRS. (Felton Decl. Ex. I.) Ms.
11 Healey stated that she had received no response to her January 2008 request for
12 validation documents, and warned that she intended to file suit if DRS did not respond
13 within 15 days. (*Id.*)

14 On March 18, 2008, DRS again mailed a response to Ms. Healey's request for
15 documents to verify the debt. (Felton Decl. Ex. J; *see also* Collection Notes at DRS
16 0003.) DRS's response included invoices and billing statements for a Sprint cellular
17 telephone account in the name of Wendy Healey at an address in Tallahassee, Florida.
18 (Felton Decl. Ex. J.) DRS asked Ms. Healey to "remit payment immediately or call our
19 customer service department . . . if further information is required." (*Id.* at HEALEY
20 000109.)

21 Although Ms. Healey received DRS's March 18, 2008 mailing, she did not contact
22 DRS or otherwise respond to the mailing. (*See* Felton Decl. Ex. A ("Healey Dep.") at

1 277.) Having received no response to the verification documents, DRS again reactivated
2 Ms. Healey's account, and, on May 7, 2008, sent Ms. Healey a fourth collection letter.
3 (Felton Decl. Ex. K; *see also* Collection Notes at DRS 0003.) Ms. Healey did not
4 respond to the collection letter. (Healey Dep. at 268.)

5 On June 12, 2008, DRS sent a fifth collection letter to Ms. Healey. (Felton Decl.
6 Ex. L at HEALEY 000102.) Again, Ms. Healey did not respond to DRS's letter. (Healey
7 Dep. at 270.)

8 On July 21, 2008, DRS sent a sixth collection letter to Ms. Healey in which it
9 offered to settle the debt for 85% of the amount owed on the account. (Felton Decl. Ex.
10 L at HEALEY 000099.) The letter included the following language:

11 A SETTLEMENT OFFER
12 YOU JUST CANNOT AFFORD TO PASS UP!!
*** 15% OFF YOUR BILL ***

13 That is right – if you pay just \$767.36 of the \$902.77 that you currently
14 owe, this account will be considered SETTLED IN FULL. Upon clearance
15 of the funds we will notify the National Credit Reporting Agencies that this
account has been settled. To take advantage of this offer, your payment of
\$767.36 must be received on or before 08/11/08.

16 (*Id.*) Ms. Healey did not respond to the letter. (Healey Dep. at 271.)

17 On August 28, 2008, DRS sent a seventh collection letter to Ms. Healey, again
18 offering to settle the debt for 85% of the amount owed. (Felton Decl. Ex. L at HEALEY
19 000095.) This letter included the following language:

20 WE DON'T NEED A LOT OF WORDS
21 TO MAKE OUR POINT
22 WE WANT YOUR PAYMENT – NOW

1 Even though you missed the deadline imposed by our recent settlement
2 offer, we are still convinced that there has never been a better time to put an
end to this unpleasant situation.

3 Call it a good will gesture or just an honest attempt to clear this debt from
4 an inventory of delinquent receivables that are still unpaid. Whatever the
5 reason, our previous offer of settlement that had recently expired is now
6 extended until 09/18/08. If you accept this offer, you will save \$135.41 and
begin the process of repairing your damaged credit reputation at the same
time.

7 Don't lose this opportunity. Send us your check for \$767.36 and upon
8 clearance of funds, your account will be considered settled and the
appropriate Credit Reporting Agencies will be instructed to change the
status of this account.

9 (*Id.*) Ms. Healey did not respond to the letter. (Healey Dep. at 271.)

10 On October 10, 2008, DRS sent an eighth collection letter to Ms. Healey, this time
11 offering to settle the debt for 75% of the amount owed. (Felton Decl. Ex. L at HEALEY
12 000091; *see also* Collection Notes at DRS 0004.) This letter included the following
13 language:

14 Our last settlement offer was certainly most generous—but apparently we
15 just didn't give you enough time to gather the funds before the offer
16 expired. We also didn't suggest an alternative repayment program—a
different way of finally paying down this debt.

17 IN RESPONSE—

18 The first thing we will do is open the window of opportunity a little wider
19 and extend our settlement offer until 10/31/08. We are sure this additional
20 time will help you secure the funds required to settle this debt. And, using
some creativity and recognizing the financial constraints that we all must
live under, we will accept the settlement amount in two (2) payments, each
in the sum of \$338.54. The first check must be received by 10/31/08 and
the remaining check must be received by 11/31/08.

21 (*Id.*) Ms. Healey did not respond to DRS's letter. (Healey Dep. at 277.)
22

1 On October 20, 2008, DRS sent another copy of the Sprint/Embarq account
2 invoice to Ms. Healey. (Felton Decl. Ex. M.) Ms. Healey did not respond to this
3 mailing. (Healey Dep. at 277.)

4 On November 21, 2008, when Ms. Healey applied for a loan to buy a new vehicle,
5 she learned that DRS's collection activity was appearing on her Experian credit report.
6 (Healey Decl. ¶ 16.) Ms. Healey's credit union asked her to provide proof that the
7 Sprint/Embarq delinquency on her credit report was not hers before it would approve the
8 loan. (*Id.*) Although Ms. Healey felt humiliated and embarrassed, she provided the
9 requested proof and obtained an automobile loan that same day. (Supp. Felton Decl.
10 (Dkt. # 64) Ex. A ("Healey Dep.") at 308-09.) According to Nancy Bolling, the
11 mortgage lending administrator for Northwest Plus Credit Union, Ms. Healey qualified
12 for the best loan rates the credit union had available. (Felton Decl. Ex. S ("Bolling
13 Dep.") at 18.)

14 On November 22, 2008, Ms. Healey sent a letter to DRS in which she stated that
15 the Sprint invoices that she received in March and October 2008 did not constitute proper
16 validation of the debt. (Felton Decl. Ex. N.) Her letter attached copies of two letters
17 purportedly written by a Federal Trade Commission attorney which, she contended,
18 proved that DRS's conduct was illegal. (*Id.*) Ms. Healey also sent letters to Trans Union
19 and Experian. (Felton Decl. Exs. O, P.) In these letters, Ms. Healey challenged the
20 improper reinsertion of the debt on her credit report and explained that she had removed
21 the Sprint/Embarq account from her report twice before. (*Id.*) Finally, Ms. Healey sent
22 letters to the attorneys general of Kansas, Georgia, Pennsylvania, Texas, and New York

1 to ask for help resolving the Sprint/Embarq account. (Healey Decl. Ex. 22.) Although
2 Ms. Healey's letter to the attorneys general contained a detailed chronology of her
3 attempts to resolve the Sprint/Embarq account, she did not include this information in her
4 letters to Trans Union, Experian, or DRS. (*Compare id. with Felton Decl. Exs. O, P.*)

5 DRS received Ms. Healey's letter on November 28, 2008. (Collection Notes at
6 DRS 0004.) DRS again noted in its records that the account was in dispute, and set Ms.
7 Healey's account status to No Calls and Stop Mail. (*Id.* at DRS 0004-0005.) On January
8 8, 2009, DRS instructed the credit reporting agencies to delete the Sprint/Embarq account
9 from Ms. Healey's credit record. (Collection Notes at DRS 0007.)

10 Ms. Healey's letter also triggered responses from Trans Union and Experian. On
11 December 2, 2008, Trans Union sent Ms. Healey a letter in which it stated that the
12 disputed information did not appear on her credit report. (Felton Decl. Ex. Q.) Experian,
13 for its part, initiated a dispute investigation with DRS. (Baxter Decl. (Dkt. # 60) Ex. 2
14 ("Hughes Dep.") at 92-93.) On December 23, 2008, Ms. Healey obtained a copy of
15 Experian's investigation report. (Healey Decl. ¶ 18 & Ex. 19.) The first page of the
16 report noted that Experian had investigated the disputed DRS account and that the
17 account had been "verified as accurate." (Healey Decl. Ex. 19 at 1.) The report also
18 noted that Ms. Healey disputed the account, and that the account had been reported since
19 February 2008. (*Id.* at 3.)

20 On January 12, 2009, Ms. Healey obtained a copy of a Credit Plus mortgage credit
21 when she and her husband attempted to refinance their home. (Healey Decl. ¶ 21 & Ex.
22 21.) The report, which summarizes credit scores across the three major credit reporting

1 agencies, includes the DRS collection account and notes that it is “disputed by
2 consumer.” (*Id.* at 3.) None of Ms. Healey’s Experian or Trans Union credit reports are
3 in the record before the court.

4 On February 2, 2009, Embarq sent a letter to the Washington State Attorney
5 General’s Consumer Protection Division in which it stated that the disputed
6 Sprint/Embarq account had been opened using Ms. Healey’s social security number and
7 date of birth.³ (Felton Decl. Ex. R.)

8 On July 10, 2009, Ms. Healey filed the instant lawsuit. (Compl. (Dkt. # 1).) In
9 her complaint, Ms. Healey alleges that DRS’s conduct violated the Fair Debt Collection
10 Practices Act (“FDCPA”), 15 U.S.C. § 1692 *et seq.*, and the Fair Credit Reporting Act
11 (“FCRA”), 15 U.S.C. § 1681 *et seq.* (Compl. ¶¶ 17-21, 30-38.)

12 II. ANALYSIS

13 A. Summary Judgment Standard

14 Summary judgment is appropriate if the pleadings, the discovery and disclosure
15 materials on file, and any affidavits, when viewed in the light most favorable to the non-
16 moving party, “show that there is no genuine dispute as to any material fact and the
17 movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex*
18 *Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. County of Los Angeles*, 477 F.3d
19 652, 658 (9th Cir. 2007). The moving party bears the initial burden of showing there is

21 ³ The letter states that it was sent in response to information mailed to Embarq on January
22 29, 2009. (*Id.*) The January 29 mailing is not in the record, nor is there any evidence of how the
Consumer Protection Division became involved in Ms. Healey’s case.

1 no genuine issue of material fact and that he or she is entitled to prevail as a matter of
2 law. *Celotex*, 477 U.S. at 323. If the moving party meets his or her burden, the
3 nonmoving party must go beyond the pleadings and identify facts which show a genuine
4 issue for trial. *Cline v. Indus. Maint. Eng'g. & Contracting Co.*, 200 F.3d 1223, 1229
5 (9th Cir. 2000). The non-moving party “must make a showing sufficient to establish a
6 genuine dispute of material fact regarding the existence of the essential elements of his
7 case that he must prove at trial.” *Galen*, 477 F.3d at 658.

8 **B. FDCPA Claims**

9 “The purpose of the FDCPA is to protect vulnerable and unsophisticated debtors
10 from abuse, harassment, and deceptive collection practices.” *Guerrero v. RJM*
11 *Acquisitions LLC*, 499 F.3d 926, 938 (9th Cir. 2007). Whether conduct violates the
12 FDCPA requires an objective analysis that takes into account the “the least sophisticated
13 debtor” standard. *See Donohue v. Quick Collect, Inc.*, 592 F.3d 1027, 1030 (9th Cir.
14 2010); *Guerrero*, 499 F.3d at 934. The FDCPA is a strict liability statute, which “should
15 be construed liberally in favor of the consumer.” *Clark v. Capital Credit & Collection*
16 *Serv., Inc.*, 460 F.3d 1162, 1175-76 (9th Cir. 2006) (quotation omitted).

17 1. FDCPA Statute of Limitations

18 DRS moves for summary judgment on Ms. Healey’s claims based on collection
19 activities that occurred before July 10, 2008—that is, more than one year before Ms.
20 Healey filed her complaint.

21 Actions to enforce liability for violations of the FDCPA may be brought “within
22 one year from the date on which the violation occurs.” 15 U.S.C. § 1692k(d); *see also*

1 | *Naas v. Stolman*, 130 F.3d 892, 893 (9th Cir. 1997). Ms. Healey concedes that her
2 | FDCPA claims based on conduct that occurred before July 10, 2008 are barred by §
3 | 1692k(d). (Resp. (Dkt. # 59) at 8-10; *see also id.* at 15 (conceding § 1692g claims).)
4 | Therefore, the court grants DRS’s motion for summary judgment on Ms. Healey’s claims
5 | for violations of the FDCPA based on DRS’s collection activities before July 10, 2008.

6 | 2. § 1692d Claim

7 | Section 1692d of the FDCPA prohibits a debt collector from engaging “in any
8 | conduct the natural consequence of which is to harass, oppress, or abuse any person in
9 | connection with the collection of a debt.” 15 U.S.C. § 1692d. In addition to this general
10 | ban on harassing or abusive conduct, § 1692d provides a non-exclusive list of six
11 | prohibited acts. *Id.* This list includes such actions as using or threatening violence or
12 | other criminal means to harm the physical person, reputation, or property of any person;
13 | using obscene, profane, or abusive language; publishing a list of consumers who
14 | allegedly refuse to pay debts; advertising the debt for sale to coerce payment; repeatedly
15 | or continuously calling a person with the intent to annoy, abuse, or harass any person;
16 | and placing telephone calls without meaningful disclosure of the caller’s identity. *Id.*
17 | Whether conduct violates § 1692d requires an objective analysis that considers whether
18 | the “least sophisticated debtor” would find the conduct harassing, oppressive, or abusive.
19 | *Guerrero*, 499 F.3d at 934.

20 | DRS argues that it is entitled to summary judgment on Ms. Healey’s § 1692d
21 | claim because Ms. Healey cannot point to any evidence that DRS engaged in any
22 | harassing, oppressive, or abusive conduct akin to the conduct prohibited by § 1692d. Ms.

1 Healey counters that DRS violated § 1692d by sending her “harassing letters” demanding
2 payment of the Sprint/Embarq account. (Resp. at 12.)

3 DRS sent only four letters to Ms. Healey after July 10, 2008. (See Felton Decl.
4 Ex. L at HEALEY 000099, 000095, 000091; *id.* Ex. M.; Healey Decl. ¶¶ 12-15.) Having
5 reviewed these letters in light of the “least sophisticated debtor” standard, the court
6 concludes that the letters do not constitute harassing, abusive, or oppressive conduct in
7 violation of § 1692d. First, the July, August, and October 2008 collection letters used
8 polite, informative language, were sent at a rate of less than one per month, and offered to
9 settle the outstanding debt for less than the amount owed. (See Felton Decl. Ex. L at
10 HEALEY 000099, 000095, 000091.) Second, DRS’s October 20, 2008 letter enclosing
11 the Sprint/Embarq billing statements states only that it encloses “documentation
12 supporting the current balance due” in response to Ms. Healey’s request for verification
13 of the debt, and asks Ms. Heale either to “remit payment immediately” or to call
14 customer service “if further information is required.” (Felton Decl. Ex. M.) Even the
15 “least sophisticated debtor” would not consider these letters harassing, abusive, or
16 oppressive. *See Masuda v. Thomas Richards & Co.*, 759 F. Supp. 1456, 1465-66 (C.D.
17 Cal. 1991) (holding that the mailing of six letters per month did not violate § 1692d
18 because “[l]etters, so long as they comply with specific FDCPA requirements, represent
19 the least intrusive means of communicating with debtors.”).

1 Ms. Healey characterizes the letters as harassing because they repeatedly asked her
2 to pay a debt that belonged to someone else.⁴ (*See, e.g.*, Healey Decl. ¶¶ 12-13.) Ms.
3 Healey testified that she felt that DRS’s March 2008 letter, which included the Sprint
4 billing statements, did not constitute adequate verification of the debt because it did not
5 include the full list of items that she requested in her January 2008 letter. (Healey Dep. at
6 269.) Thus, from Ms. Healey’s perspective, DRS was continuing to try to collect a debt
7 that it had not proved to her was valid. Although it is not unreasonable for Ms. Healey to
8 subjectively feel harassed when she continued to receive collection letters regarding an
9 account that she had twice removed from her credit report, this *subjective* feeling of
10 harassment is not actionable under the FDCPA. Rather, FDCPA claims are governed by
11 an *objective* “least sophisticated debtor” standard that does not take into account the
12 unique circumstances of the individual debtor. *See Guerrero*, 499 F.3d at 934.

13 Moreover, Ms. Healey’s assertion that DRS harassed her by attempting to collect a
14 debt that belonged to a third party is based on a flawed understanding of the FDCPA’s
15 verification requirements. The Ninth Circuit has held that, “[a]t the minimum,
16 verification of a debt involves nothing more than the debt collector confirming in writing
17 that the amount being demanded is what the creditor is claiming.” *Clark*, 460 F.3d at
18 1173-74 (internal citation omitted). In *Clark*, after the debtors requested verification of

19
20 ⁴ The section of Ms. Healey’s response addressing § 1692d is rife with exaggerations and
21 misstatements of the record. (*See Resp.* at 11-12.) Contrary to Ms. Healey’s assertions, a review
22 of Ms. Healey’s letters to DRS reveals that she never “asked [DRS] to produce any proof that the
account belonged to her and not another Wendy Healey,” and she did not inform DRS until
November 2008—after the allegedly “harassing” letters were sent—that she did not consider the
Sprint billing statements to be “proof that she was the one who opened the account.” (*Id.*)

1 the debt, the debt collector obtained information from the creditor “about the nature and
2 balance of the outstanding bill and provided the [debtors] with documentary evidence in
3 the form of the itemized statement.” *Id.* at 1174. The Ninth Circuit held that, by sending
4 the itemized statement to the debtors, the debt collector satisfied its verification
5 obligations under § 1692g. *Id.* The Ninth Circuit also noted that “the FDCPA did not
6 impose upon [the debt collector] any duty to investigate independently the claims
7 presented by” the creditor; and that, when verifying a debt, a debt collector generally may
8 “reasonably rely upon information provided by a creditor who has provided accurate
9 information in the past.” *Id.* There is no requirement that the debt collector respond to a
10 timely request for validation within 30 days; rather, the debt collector must cease
11 collection activities until it mails the verification documents to the consumer. Once the
12 debt collector obtains verification of the debt and mails a copy of the verification
13 documents to the consumer, it may resume its collection activities. 15 U.S.C. § 1692g(b).

14 Here, in response to Ms. Healey’s request for verification of the debt, DRS mailed
15 Ms. Healey a copy of the itemized billing statement on the Sprint/Embarq account that
16 demonstrated the amount of the outstanding bill and showed that the debt was in the
17 name of Wendy Healey. Thus, the undisputed facts establish that DRS satisfied its
18 obligation to verify the debt under the FDCPA. When Ms. Healey did not respond to
19 DRS’s correspondence, DRS was entitled to resume collection activity. 15 U.S.C. §
20 1692g(b). DRS’s conduct in resuming that activity, therefore, was lawful and was not
21 harassing, abusive, or oppressive in violation of § 1692d.
22

1 3. § 1692e Claims

2 DRS moves for summary judgment on Ms. Healey’s claims under § 1692e, which
3 prohibits the use of “false, deceptive, or misleading representation[s] or means in
4 connection with the collection of any debt.” 15 U.S.C. § 1692e. Although Ms. Healey
5 concedes that summary judgment is appropriate on her claims that DRS violated § 1692e
6 by “falsely representing the compensation it could receive, and failing to communicate
7 that the debt was disputed” (Resp. at 12 n.3), Ms. Healey continues to assert claims that
8 DRS falsely represented the “character, amount, or legal status” of her debt in violation
9 of § 1692e(2)(A), and “[c]ommunicat[ed] or threaten[ed] to communicate to any person
10 credit information which is known or which should be known to be false” in violation of
11 § 1692e(8).

12 a. § 1692e(2)(A) Claim

13 The FDCPA prohibits a debt collector from making a false, deceptive, or
14 misleading representation about “the character, amount, or legal status of any debt.” 15
15 U.S.C. § 1692e(2)(A). The plaintiff is not required to prove that the defendant knowingly
16 or intentionally made the false representation. *Clark*, 460 F.3d at 1176. A debt collector
17 is not liable for a false representation, however, if “the violation was not intentional and
18 resulted from a bona fide error notwithstanding the maintenance of procedures
19 reasonably adapted to avoid any such error.” 15 U.S.C. § 1692k(c). Thus, “if a debt
20 collector reasonably relies on the debt reported by the creditor, the debt collector will not
21 be liable for any errors.” *Clark*, 460 F.3d at 1177. Because the bona fide error defense is
22 an affirmative defense, the debt collector bears the burden of proof. *Id.*

1 Viewing the evidence in the light most favorable to Ms. Healey, and mindful that
2 the FDCPA does not require proof that a violation of § 1692e(2)(A) was knowing or
3 intentional, the court concludes that Ms. Healey has met her burden to establish a genuine
4 issue of material fact regarding whether DRS made a false representation about “the
5 character, amount, or legal status” of the debt when it represented in its collection letters
6 and to the credit reporting agencies that the delinquent Sprint/Embarq account belonged
7 to her.

8 DRS argues that Ms. Healey cannot prove her § 1692e(2) claim because the
9 FDCPA does not impose on a debt collector any duty to independently investigate the
10 debt or the debtor. (Reply (Dkt. # 63) at 5 (citing *Clark*, 460 F.3d at 1174).) Although
11 DRS is correct, this rule applies to violations of § 1692g, not violations of § 1692e. *See*
12 *Clark*, 460 F.3d at 1174.⁵ As the Ninth Circuit noted in *Clark*, the court’s determination
13 that the debt collector’s verification of the debt did not violate the FDCPA was not the

14
15 ⁵ To support its contention that it is entitled to summary judgment on Ms. Healey’s §
16 1692e claims, DRS relies in its reply brief—and relied at oral argument—on *Becker v. Genesis*
17 *Financial Services*, No. CV-06-5037-EFS, 2007 WL 4190473 (E.D. Wash. Nov. 21, 2007).
18 Having reviewed *Becker*, the court respectfully declines to follow it because *Becker* did not
19 apply the correct standard to the § 1692e claims. The *Becker* court based its analysis on *Bleich v.*
20 *Revenue Maximization Group, Inc.*, 233 F. Supp. 2d 496, 500-01 (E.D.N.Y. 2002). *See Becker*,
21 2007 WL 4190473, at *7-8. In 2006, however, the Ninth Circuit disapproved the standard the
22 *Bleich* court applied to § 1692e claims. *Clark*, 406 F.3d at 1175. Although the *Clark* court
agreed with *Bleich* that a debt collector may reasonably rely on its client’s statements when
verifying a debt pursuant to § 1692g, *see id.* at 1174, the court expressly disagreed with *Bleich*’s
conclusion that a plaintiff must show that the debt collector knowingly or intentionally
misrepresented the debt in order to prevail under § 1692e, *see id.* at 1175 (citing *Bleich*, 233 F.
Supp. 2d at 500-01). In addition, the *Becker* court improperly applied *Clark*’s § 1692g standard
to the plaintiff’s § 1692e(2) claim. *Becker*, 2007 WL 4190473, at *9 (citing *Clark*, 406 F.3d at
1174). For these reasons, the court finds neither *Becker* nor *Bleich* persuasive in analyzing Ms.
Healey’s § 1692e claims.

1 end of the court’s inquiry into the plaintiffs’ claims. *Id.* Rather, the court continued on to
2 analyze the plaintiffs’ claim that the debt collectors knew that the debt alleged by the
3 creditor was “invalid and misstated” in violation of § 1692e(2)(A). *Id.* The Ninth Circuit
4 held that a debt collector’s conduct need not be knowing or intentional to violate § 1692e.
5 *Id.* at 1176. The court recognized, however, that there is a “narrow exception to strict
6 liability” under the FDCPA where “the violation was not intentional and resulted from a
7 bona fide error notwithstanding the maintenance of procedures reasonably adapted to
8 avoid any such error.” *Id.*; 15 U.S.C. § 1692k(c).

9 Here, Ms. Healey has presented evidence that DRS falsely represented in its
10 collection letters and its communications to the credit agencies that she was responsible
11 for the delinquent Sprint/Embarq account. In light of the FDCPA’s strict liability
12 standard, this evidence is sufficient to establish a genuine issue of material fact regarding
13 whether DRS violated § 1692e(2)(A). Further, because DRS has pointed the court to no
14 evidence that its reliance on Sprint/Embarq’s representations regarding Ms. Healey’s
15 account was reasonable or that it maintained procedures to avoid errors, it has failed to
16 establish that it is entitled on summary judgment to the bona fide error affirmative
17 defense. *See Clark*, 460 F.3d at 1177. The court therefore DENIES DRS’s motion for
18 summary judgment on Ms. Healey’s claim for violation of 1692e(2)(A).

19 *b. § 1692e(8) Claim*

20 The FDCPA prohibits “communicating or threatening to communicate . . . credit
21 information which is known or which should be known to be false, including the failure
22 to communicate that a disputed debt is disputed.” 15 U.S.C. § 1692e(8). The language

1 of § 1692e(8), unlike the language of § 1692e(2), requires the plaintiff to show that the
2 defendant knew or should have known that the information was false. *Id.*; *see also Clark*,
3 460 F.3d at 1176 n.11 (noting that although the FDCPA is generally a strict liability
4 statute, Congress expressly required elements of knowledge and intent where it deemed
5 them necessary). Here, Ms. Healey has offered no evidence that DRS knew or should
6 have known that the debt it purchased from Sprint/Embarq was invalid. Rather, DRS
7 requested and received documents verifying the debt from Sprint/Embarq; DRS sent
8 those documents to Ms. Healey; and DRS resumed its collection activities only after Ms.
9 Healey failed to respond in any way to its mailing. Ms. Healey's letters to DRS stated
10 only that the account was not hers: they did not explain that Ms. Healey had been the
11 victim of identity fraud, did not state that she had twice removed the account from her
12 credit report, and did not, until November 2008, put DRS on notice that she considered
13 the Sprint/Embarq billing statements to be insufficient verification of the debt.⁶ Finally,
14 Ms. Healey concedes that summary judgment is appropriate on her claim that DRS failed
15 to report that the debt was disputed. Because Ms. Healey has not offered evidence
16 demonstrating a genuine issue of material fact regarding whether DRS communicated

17
18
19 ⁶ At oral argument, counsel for Ms. Healey pointed out that DRS knew that the
20 Sprint/Embarq account had likely been assigned to other agencies in the past. (*See Schwartz*
21 *Dep. at 22* (“I am aware that it’s the normal practice of Sprint/Embarq to assign to multiple
22 agencies, yes, prior to us obtaining it. I don’t know who they assigned it to.”).) Counsel,
however, has directed the court to no authority for the proposition that knowledge that
Sprint/Embarq may have assigned the account to other collection agencies should have put DRS
on notice that the account did not belong to Ms. Healey.

1 credit information which it knew or should have known was false, the court grants DRS's
2 motion for summary judgment on Ms. Healey's claim under § 1692e(8).

3 4. § 1692f Claims

4 Section 1692f of the FDCPA prohibits a debt collector from using "unfair or
5 unconscionable means to collect or attempt to collect any debt." 15 U.S.C. § 1692f.

6 Whether conduct violates § 1692f requires an objective analysis that takes into account
7 the "the least sophisticated debtor" standard. *See Donohue*, 592 F.3d at 1030.

8 DRS moves for summary judgment on all of Ms. Healey's claims under § 1692f.
9 In her response, Ms. Healey concedes several of her claims, but argues that summary
10 judgment is inappropriate on her claim for violation of § 1692f(1), which prohibits "[t]he
11 collection of any amount (including any interest, fee, charge, or expense incidental to the
12 principal obligation) unless such amount is expressly authorized by the agreement
13 creating the debt or permitted by law." (Resp. at 14.) Ms. Healey contends that the
14 amount DRS tried to collect was not authorized by law or agreement because (1) DRS
15 acknowledged there was no underlying agreement signed by the original debtor; (2) DRS
16 should have known that the account did not belong to Ms. Healey.

17 The court concludes, viewing the evidence in the light most favorable to Ms.
18 Healey, that DRS did not use unfair or unconscionable means of collecting the debt. Ms.
19 Healey's argument that the debt was not authorized by law or agreement is unavailing.
20 Contrary to Ms. Healey's assertions, DRS did not concede that there was no underlying
21 contract. (*See Supp. Schwartz Dep. (Dkt. # 69)* at 38 (stating that there are no signed
22 contracts for landline telephone accounts and that the fact that there is no signature does

1 | not mean there was not a contract).) In addition, Ms. Healey has offered the court no
2 | evidence that DRS should have known the account did not belong to Ms. Healey.

3 | Although Ms. Healey's letters stated that the account was not hers, she did not inform
4 | DRS that she had been a victim of identity theft or that she had successfully removed the
5 | account from her credit report twice in the past. Rather, Ms. Healey stated only that she
6 | had never had an Embarq account, and DRS appropriately responded by mailing her the
7 | billing statements for the Sprint/Embarq account that had been opened under her name.

8 | To the extent Ms. Healey challenges DRS's other actions or communications,
9 | those claims, too, are unavailing. The letters DRS sent to Ms. Healey were informational
10 | and nonthreatening. *See Wade v. Regional Credit Ass'n*, 87 F.3d 1098, 1100-01 (9th Cir.
11 | 1996). In addition, as noted above, the letters were relatively infrequent: DRS sent only
12 | four between July 2008 and October 2008. Similarly, the court is not persuaded by Ms.
13 | Healey's assertion that DRS's "refusal to investigate" was unfair or unconscionable.
14 | DRS sought verification documents and delivered them to Ms. Healey upon request in
15 | compliance with § 1692g. Because Ms. Healey did not respond to DRS's mailings, DRS
16 | had no reason to investigate further. None of DRS's conduct rises to the level of the
17 | "unfair or unconscionable" conduct listed in § 1692f. The court therefore concludes,
18 | viewing the evidence in the light most favorable to Ms. Healey, that summary judgment
19 | is appropriate on Ms. Healey's § 1692f claims.

1 5. FDCPA Damages

2 The FDCPA provides that:

3 any debt collector who fails to comply with any provision of this
4 subchapter with respect to any person is liable to such person in an amount
5 equal to the sum of—

6 (1) any actual damage sustained by such person as a result of such failure;

7 (2)(A) in the case of any action by an individual, such additional damages
8 as the court may allow, but not exceeding \$1,000; . . .

9 (3) . . . the costs of the action, together with a reasonable attorney’s fee as
10 determined by the court.

11 15 U.S.C. § 1692k(a). In determining the amount of additional damages under §
12 1692k(2)(A), the court “shall consider . . . the frequency and persistence of
13 noncompliance by the debt collector, the nature of such noncompliance, and the extent to
14 which such noncompliance was intentional[.]” 15 U.S.C. § 1692k(b)(1). As noted
15 above, the FDCPA provides an affirmative defense under which the debt collector cannot
16 be held liable for a violation of the statute if it shows “by a preponderance of the
17 evidence that the violation was not intentional and resulted from a bona fide error
18 notwithstanding the maintenance of procedures reasonably adapted to avoid any such
19 error.” 15 U.S.C. § 1692k(c).

20 DRS seeks a determination on summary judgment that Ms. Healey cannot
21 establish any actual damages resulting from any violations of the FDCPA. Ms. Healey
22 concedes that she cannot recover damages based on her assertions that DRS’s violations
 of the FDCPA resulted in a reduced line of credit and an increased homeowner’s
 insurance premium. (Resp. at 17.) Ms. Healey contends, however, that she is entitled to

1 actual damages because the initial denial of her application for a loan to buy a new
2 vehicle was “extremely upsetting and very humiliating and embarrassing.” (*Id.*)

3 The Ninth Circuit has not ruled on whether emotional distress damages are
4 recoverable under the FDCPA, and the district courts are split on the issue. *See Riley v.*
5 *Giguere*, 631 F. Supp. 2d 1295, 1315 (E.D. Cal. 2009) (citing cases). In *Riley*, the court
6 concluded that emotional damages are available for violations of the FDCPA. The *Riley*
7 court observed that the FDCPA’s damages provision is “virtually identical to that of the
8 FCRA,” and that the “Ninth Circuit has held that ‘actual damages’ under the FCRA
9 includes recovery for ‘emotional distress and humiliation.’” *Id.* (quoting *Guimond v.*
10 *Trans Union Credit Info. Co.*, 45 F.3d 1329, 1333 (9th Cir. 1995)). The *Riley* court
11 therefore concluded that a plaintiff may recover emotional distress damages for violations
12 of the FDCPA provided she shows that she actually suffered symptoms of emotional
13 distress. *Id.*

14 The court is persuaded by the *Riley* court’s analysis, and, like *Riley*, holds that
15 “actual damages” under the FDCPA includes emotional distress damages. Although Ms.
16 Healey admits that she did not seek psychological or medical treatment for her emotional
17 distress (*see Healey Dep.* at 218), this is not dispositive. *See Riley*, 631 F. Supp. 2d at
18 1315 (holding that a plaintiff need not prove the elements of a claim for emotional
19 distress under state tort law order to recover emotional distress damages under the
20 FDCPA). Therefore, the court denies DRS’s motion for a determination on summary
21 judgment that Ms. Healey cannot prove actual damages under the FDCPA.
22

1 **C. FCRA Claim**

2 “Congress enacted the [FCRA] in 1970 ‘to ensure fair and accurate credit
3 reporting, promote efficiency in the banking system, and protect consumer privacy.’”
4 *Gorman v. Wolpoff & Abramson, LLP*, 584 F.3d 1147, 1153 (9th Cir. 2009) (quoting
5 *Safeco Ins. Co. of Am. v. Burr*, 551 U.S. 47, 52 (2007)). Section 1681s-2 of the FCRA
6 imposes two responsibilities on sources that provide credit information to credit reporting
7 agencies (“CRAs”). These sources, including debt collectors, are called “furnishers”
8 under the statute. First, a furnisher must provide accurate information. 15 U.S.C.
9 § 1681s-2(a). Second, a furnisher must investigate and/or correct inaccurate information.
10 15 U.S.C. § 1681s-2(b). These duties are triggered only “‘upon notice of dispute’ – that
11 is, when a person who furnished information to a CRA receives notice from the CRA that
12 the consumer disputes the information.” *Gorman*, 584 F.3d at 1154. “[N]otice of a
13 dispute received directly from the consumer does not trigger furnishers’ duties under
14 subsection (b).” *Id.*

15 Section 1681s-2(b) provides that, after receiving a notice of dispute, the furnisher
16 shall:

- 17 (A) conduct an investigation with respect to the disputed information;
- 18 (B) review all relevant information provided by the [CRA] pursuant to
19 section 1681i(a)(2) . . . ;
- 20 (C) report the results of the investigation to the [CRA];
- 21 (D) if the investigation finds that the information is incomplete or
22 inaccurate, report those results to all other [CRAs] to which the person
furnished the information . . . ; and

1 (E) if an item of information disputed by a consumer is found to be
2 inaccurate or incomplete or cannot be verified after any reinvestigation
under paragraph (1) . . . (i) modify . . . (ii) delete . . . [or] (iii) permanently
3 block the reporting of that item of information [to the CRAs].

4 15 U.S.C. § 1681s-2(b). “The FCRA expressly creates a private right of action for willful
or negligent noncompliance with its requirements.” *Gorman*, 584 F.3d at 1154. This
5 right of action, however, is limited to claims arising under § 1681s-2(b). *Id.* “A private
6 litigant can bring a lawsuit to enforce § 1681s-2(b), but only after reporting the dispute to
7 a CRA, which in turn reports it to the furnisher. *Nelson v. Chase Manhattan Mortgage*
8 *Corp.*, 282 F.3d 1057, 1059-60 (9th Cir. 2002). Duties imposed under § 1681s-2(a), by
9 contrast, are enforceable only by federal or state agencies. 15 U.S.C. § 1681s-2(d).

10 A furnisher’s investigation of a dispute pursuant to § 1681s-2(b)(1)(A) must be
11 reasonable. *Gorman*, 584 F.3d at 1157. The burden of showing the investigation was
12 unreasonable is on the plaintiff. *See id.* The furnisher’s duty to conduct a reasonable
13 investigation arises when it receives a notice of dispute from a CRA. *Id.* “Such notice
14 must include ‘all relevant information regarding the dispute that the [CRA] has received
15 from the consumer.’ 15 U.S.C. § 1681i(a)(2)(A). Thus, “the pertinent question is . . .
16 whether the furnisher’s procedures were reasonable in light of what it learned about the
17 nature of the dispute from the description in the CRA’s notice of dispute.” *Gorman*, 584
18 F.3d at 1157 (citing *Westra v. Credit Control of Pinellas*, 409 F.3d 825, 827 (7th Cir.
19 2005) (holding that the furnisher’s investigation in that case was reasonable given the
20 “scant information” it received from the CRA regarding the nature of the consumer’s
21 dispute)). Although reasonableness is normally a question for the finder of fact,
22

1 summary judgment is appropriate “when only one conclusion about the conduct’s
2 reasonableness is possible.” *Id.* at 1157.

3 DRS contends that summary judgment is appropriate on Ms. Healey’s FCRA
4 claim because she did not notify the CRAs of any dispute with DRS until November 22,
5 2008, and she has no evidence that DRS negligently or willfully failed to comply with
6 any FCRA requirements thereafter. Ms. Healey focuses on Experian in her response.
7 Ms. Healey asserts that she notified Experian that she disputed the accuracy of DRS’s
8 information; that Experian notified DRS of the dispute by sending it an Automated
9 Consumer Dispute Verification (“ACDV”) form; and that DRS verified that the
10 information reported on her Experian credit report was accurate.⁷ (Resp. at 15-16 (citing
11 Hughes Dep. at 92-93).)

12 The court concludes that Ms. Healey has not met her burden to “make a showing
13 sufficient to establish a genuine dispute of material fact regarding the existence of the
14 essential elements of [her] case that [she] must prove at trial.” *Galen*, 477 F.3d at 658.
15 First, with respect to Trans Union, the only evidence in the record is Trans Union’s
16 December 2, 2008 letter to Ms. Healey in which it stated that the disputed DRS account
17 did not appear on Ms. Healey’s Trans Union credit report. (Felton Decl. Ex. Q.) Ms.
18 Healey has offered the court no evidence that Trans Union reported any dispute to DRS
19 as required to trigger DRS’s duties under the FCRA. Thus, summary judgment is
20

21
22 ⁷ Contrary to Ms. Healey’s assertion (Resp. at 16), DRS does not deny that it received
notice of a dispute from Experian.

1 appropriate to the extent Ms. Healey brings FCRA claims against DRS arising out of a
2 dispute notice received from Trans Union.

3 Nor does the evidence before the court support a conclusion that DRS conducted
4 an unreasonable investigation following receipt of a dispute notice from Experian.
5 Experian's Rule 30(b)(6) deponent, Kim Hughes, testified that after Experian received
6 Ms. Healey's letter in November 2008, it initiated a dispute with DRS and "conveyed the
7 information that Ms. Healey stated about the account to appear also on the dispute
8 verification form that was transmitted to [DRS]." (Hughes Dep. at 92-93.) Although the
9 ACDV form that Experian transmitted to DRS is not in the record before the court, the
10 Ms. Hughes testified that Experian coded the dispute as "claims inaccurate information."
11 (*Id.* at 94.) In December 2008, Experian received verification from DRS that the
12 information it had reported about the Sprint/Embarq account was accurate. (*Id.* at 110-
13 11.) Experian then prepared a report for Ms. Healey in which it summarized the results
14 of its investigation. (*Id.* at 111; Healey Decl. Ex. 19.) The report, dated December 23,
15 2008, shows that Experian "completed investigating the items you disputed with the
16 sources of the information" and notes that the DRS item "remains" on the account
17 because it had been verified as accurate. (Healey Decl. Ex. 19 at 2.) The report lists the
18 DRS collection account as a "potentially negative item[] or item[] for further review,"
19 and notes that it was disputed by the consumer. (*Id.* at 4.) The record does not contain
20 any evidence regarding the investigation DRS performed following its receipt of the
21 ACDV form.
22

1 This evidence is insufficient to survive summary judgment. In *Gorman*, the
2 notices sent by the CRAs to the furnisher were in the record, as were the furnisher's notes
3 regarding the inquiries it made after receiving the notices. *Gorman*, 584 F.3d at 1157-61.
4 The court, therefore, was able to evaluate both the notices and the furnisher's response in
5 determining whether the furnisher's investigation was reasonable in light of the
6 information provided by the CRAs. *Id.* Similarly, in *Westra*, the Seventh Circuit
7 concluded that a furnisher's investigation was reasonable where the CRA's notice stated
8 only that consumer was disputing the charge on the basis that the account did not belong
9 to him, and did not provide any information about possible fraud or identity theft.
10 *Westra*, 409 F.3d at 827. Under these circumstances, the furnisher satisfied its
11 obligations when it verified the consumer's name, address, and date of birth to the CRA.
12 *Id.*

13 Here, by contrast, neither the CRAs' dispute notices nor evidence of DRS's
14 investigation are before the court. The court thus is left to speculate regarding the
15 reasonableness of DRS's investigation in light of the information provided by the CRA.
16 To survive summary judgment, it is not enough that DRS's conclusion regarding the
17 validity of the Sprint/Embarq account ultimately proved to be incorrect. As the Ninth
18 Circuit has made clear, "[a]n investigation is not necessarily unreasonable because it
19 results in a substantive conclusion unfavorable to the consumer, even if that conclusion
20 turns out to be inaccurate." *Gorman*, 584 F.3d at 1161. Therefore, in light of the absence
21 in the record of evidence of the CRAs' dispute notices or DRS's investigation in response
22 to those notices, the court concludes that Ms. Healey has not met her burden to establish a

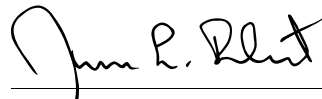
1 genuine issue of material fact regarding whether DRS violated the FCRA by failing to
2 complete a reasonable investigation.

3 In addition, to the extent Ms. Healey alleges that DRS violated the FCRA by
4 failing to notify the CRAs that her account was in dispute, this claim also fails. A
5 furnisher's failure, after receiving notice of a dispute from a CRA, to report a "bona fide
6 dispute . . . that could materially alter how the reported debt is understood . . . gives rise
7 to a furnisher's liability under § 1681s-2(b)." *Gorman*, 584 F.3d at 1163 (holding that
8 consumer could bring a claim against the furnisher for failing to report to the CRAs that a
9 charge was still disputed following investigation). Here, the only evidence in the record
10 is that DRS accurately reported to Experian that Ms. Healey disputed the validity of the
11 Sprint/Embarq account. (Healey Decl. Ex. 19 at 4.) Summary judgment, therefore, is
12 appropriate on this claim as well.

13 III. CONCLUSION

14 For the foregoing reasons, the court GRANTS in part and DENIES in part DRS's
15 motion for summary judgment (Dkt. # 55).

16 Dated this 18th day of May, 2011.

17
18 
19 _____
20 JAMES L. ROBART
21 United States District Judge
22