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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
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9 James Navarro,

10 Plaintiff,

11 v.

12 Portfolio Recovery Associates, LLC,

13 Defendant.
14

No. CV-18-02333-PHX-JJT

ORDER

15 At issue is Defendant's Motion for Summary Judgment (Doc. 26, DMSJ), supported
16 by Defendant's Statement of Facts (Doc. 27, DSOF), to which Plaintiff filed a Response
17 (Doc. 30) and Defendant filed a Reply (Doc. 36); and Plaintiff's Motion for Summary
18 Judgment (Doc. 28, PMSJ), supported by Plaintiff's Statement of Facts (Doc. 29, PSOF),
19 to which Defendant filed a Response (Doc. 32) and Plaintiff filed a Reply (Doc. 35). For
20 the reasons that follow, the Court grants Defendant's Motion and denies Plaintiff's Motion.

21 **I. BACKGROUND**

22 Plaintiff's Complaint (Doc. 1) alleges a single violation of the Fair Debt Collection
23 Practices Act (FDCPA), 15 U.S.C. §§ 1692 *et seq.* Before the Court are the parties' cross
24 motions for summary judgment.

25 In 2017, Plaintiff obtained his credit report from the three major credit reporting
26 agencies and noticed that Defendant, a debt collector and data furnisher, was reporting a
27 delinquent account. Around December 6, 2017, Defendant received a letter¹ stating that

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¹ It appears that Plaintiff did not actually send the letter himself. The letter was

1 Plaintiff disputed the reported account. (PSOF, Ex. 1.) On December 27, Defendant
2 electronically communicated to the credit reporting agencies an “XB” compliance code for
3 Plaintiff’s account. (DSOF, Ex. E; Ex. B.) Data furnishers, such as Defendant, are required
4 to use Compliance Condition Codes when communicating to the reporting agencies the
5 status of accounts. An XB code signals to the agencies that the account is in dispute.
6 (DSOF, Ex. B at 2.) Defendant, who reports to the agencies on the 8th and 27th of every
7 month, again reported an XB code on January 8, 2018. (DSOF, Ex. E.)

8 On January 11, Defendant sent Plaintiff a letter stating that it had completed its
9 investigation into the dispute and determined that the reported account was valid. (DSOF,
10 Ex. F.) It attached a copy of two statements reflecting a delinquent credit card account that
11 Plaintiff had opened with Capital One Bank. Plaintiff admitted that he received this letter.
12 (DSOF, Ex. D at 7.) Nothing in the record indicates whether Plaintiff followed up with
13 Defendant or continued to dispute the debt.

14 After completing its investigation in January, Defendant began submitting an “XC”
15 compliance code to the credit reporting agencies. (DSOF, Ex. E; Ex. B.) An XC code
16 informs the reporting agencies that the data furnisher has completed the investigation into
17 the disputed account but that the consumer disagrees with the outcome of the investigation.
18 Defendant continued to submit an XC code twice monthly until Plaintiff brought this
19 lawsuit. (DSOF, Ex. E; Ex. B.)

20 On July 2, 2018—three weeks before filing suit—Plaintiff entered into a payment
21 plan with Defendant for the very debt that is the subject of this litigation.² (DSOF, Ex. G.)
22 Plaintiff pulled his credit report three days later and discovered that Experian was still
23 reporting Plaintiff’s outstanding and past-due debt with Defendant. On July 25, the day he
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27 signed “James Navarro w/ permission.” Plaintiff testified at his deposition that he had never
28 seen the letter prior to the deposition and that his lawyers signed it. (DSOF, Ex. D at 6.)

² In his deposition, Plaintiff testified that at one point he opened an account with
Capital One and did not fully pay off the credit card, and that he has never denied that he
owed the amount on that credit card. (DSOF, Ex. D at 4.)

1 filed this suit, Plaintiff made his first payment to Defendant in accordance with the payment
2 plan. (DSOF, Ex. G.)

3 **II. LEGAL STANDARD**

4 Under Rule 56(c) of the Federal Rules of Civil Procedure, summary judgment is
5 appropriate when: (1) the movant shows that there is no genuine dispute as to any material
6 fact; and (2) after viewing the evidence most favorably to the non-moving party, the
7 movant is entitled to prevail as a matter of law. Fed. R. Civ. P. 56; *Celotex Corp. v. Catrett*,
8 477 U.S. 317, 322-23 (1986); *Eisenberg v. Ins. Co. of N. Am.*, 815 F.2d 1285, 1288-89 (9th
9 Cir. 1987). Under this standard, “[o]nly disputes over facts that might affect the outcome
10 of the suit under governing [substantive] law will properly preclude the entry of summary
11 judgment.” *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A “genuine issue”
12 of material fact arises only “if the evidence is such that a reasonable jury could return a
13 verdict for the non-moving party.” *Id.*

14 In considering a motion for summary judgment, the Court must regard as true the
15 non-moving party’s evidence if it is supported by affidavits or other evidentiary material.
16 *Celotex*, 477 U.S. at 324; *Eisenberg*, 815 F.2d at 1289. The non-moving party may not
17 merely rest on its pleadings; it must produce some significant probative evidence tending
18 to contradict the moving party’s allegations, thereby creating a material question of fact.
19 *Anderson*, 477 U.S. at 256-57 (holding that the plaintiff must present affirmative evidence
20 in order to defeat a properly supported motion for summary judgment); *First Nat’l Bank of*
21 *Ariz. v. Cities Serv. Co.*, 391 U.S. 253, 289 (1968).

22 “A summary judgment motion cannot be defeated by relying solely on conclusory
23 allegations unsupported by factual data.” *Taylor v. List*, 880 F.2d 1040, 1045 (9th Cir.
24 1989). “Summary judgment must be entered ‘against a party who fails to make a showing
25 sufficient to establish the existence of an element essential to that party’s case, and on
26 which that party will bear the burden of proof at trial.’” *United States v. Carter*, 906 F.2d
27 1375, 1376 (9th Cir. 1990) (quoting *Celotex*, 477 U.S. at 322).

III. ANALYSIS

A. FDCPA Claim

The FDCPA prohibits a debt collector from using “false, deceptive, or misleading representation or means in connection with the collection” of a debt. 15 U.S.C. § 1692e. This includes “[c]ommunicating or threatening to communicate to any person credit information which is known or which should be known to be false, including the failure to communicate that a disputed debt is disputed.” § 1692e(8). Plaintiff argues that Defendant violated this provision by failing to report to Experian that the account was in dispute as of December 2017, when Defendant received Plaintiff’s initial letter. Defendant argues that it reported the dispute to the reporting agencies, including Experian; investigated the account; determined its validity; informed Plaintiff of its validity; and reported the status of the investigation to the reporting agencies.

To support his argument, Plaintiff submitted a copy of the July 2018 Experian credit report showing Plaintiff’s account as past-due. Defendant argues that the Experian report is inadmissible because it is both hearsay and unauthenticated. “It is well settled that only admissible evidence may be considered by the trial court in ruling on a motion for summary judgment.” *Beyene v. Coleman Sec. Servs., Inc.*, 854 F.2d 1179, 1181 (9th Cir. 1988). However, with respect to a non-moving party’s evidence,³ this Court and the Ninth Circuit Court of Appeals have interpreted this rule as bearing on substance rather than form. That is, courts may consider evidence that may be inadmissible in its present summary judgment *form*, but whose *contents* would nonetheless be admissible at trial. *Fraser v. Goodale*, 342 F.3d 1032 (9th Cir. 2003); *Block v. City of Los Angeles*, 253 F.3d 410, 418-19 (9th Cir. 2001) (“To survive summary judgment, a party does not necessarily have to produce evidence in a form that would be admissible at trial, as long as the party satisfies the requirements of Federal Rules of Civil Procedure 56.”); *Cook v. Lee*, No. CV-17-02569-PHX-DGC, 2019 WL 2525373, at *4 (D. Ariz. June 19, 2019).

³ The Court acknowledges that Plaintiff is both a non-moving and a moving party in this instance. The analysis and the end-result are unchanged by this fact.

1 Yet, even accepting that he could authenticate and establish a hearsay exception for
2 the Experian report at trial, Plaintiff has still failed to raise a genuine dispute of material
3 fact. In its Motion, Defendant submitted a declaration from its Vice President of
4 Complaints and Disputes. (DSOF, Ex. B.) She averred that Defendant reported the dispute
5 to the reporting agencies by submitting an XB code—the required and only mechanism to
6 signal a dispute. After ascertaining the validity of Plaintiff’s account, Defendant submitted
7 XC codes, signaling that it had conducted and completed an investigation into the disputed
8 debt.

9 Defendant attached internal records that reflect and corroborate this. Specifically,
10 before December 27, Defendant was not reporting any compliance code. However,
11 December 27 and January 8’s transmissions contain an XB code. And an XC code occupies
12 the field from January 27 until this suit.

13 Plaintiff’s only evidence, the Experian report, does not contradict Defendant’s
14 declaration or internal records. The fact that Experian may have failed to take corrective
15 action on its end does not support the inference that Defendant failed to report the dispute
16 on its end. Had Plaintiff, for example, submitted evidence that Experian did not *receive* the
17 dispute notice from Defendant, he may have created a dispute of material fact as to whether
18 Defendant sent it. But the Court will not read this into Plaintiff’s evidence. Without more,
19 Defendant has demonstrated that it satisfied its duties and, accordingly, cannot be held
20 liable for Experian’s possible deficiencies.⁴

21 Defendant has provided evidence that it reported the disputed debt. Plaintiff has
22 provided no evidence to controvert this. The Court therefore grants Defendant’s Motion
23 for Summary Judgment and denies Plaintiff’s cross-Motion for Summary Judgment. *See*
24 *Anderson*, 477 U.S. at 256-57.

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27 ⁴ As Defendant noted, the Fair Credit Reporting Act supplies a cause of action
28 against a credit reporting agency for failure to report a disputed account.

