

1 **WO**

2  
3  
4  
5  
6 **IN THE UNITED STATES DISTRICT COURT**  
7 **FOR THE DISTRICT OF ARIZONA**  
8

9 Wendy Rahier,

10 Plaintiff,

11 v.

12 Thunderbird Collection Specialists  
13 Incorporated,

14 Defendant.

No. CV-22-00141-TUC-JGZ

**ORDER**

15 In this action, Plaintiff Wendy Rahier alleges Defendant Thunderbird Collection  
16 Specialists (TCS) violated the Fair Debt Collection Practices Act (FDCPA), 15 U.S.C. §  
17 1692e(2)(A) & (8), by failing to remove a dispute notation from its collection item on  
18 Rahier’s consumer credit file. (Doc. 1 at 3.) Pending before the Court are Rahier’s Motion  
19 for Partial Summary Judgment, (Doc. 22), and TCS’s Motion for Summary Judgment.  
20 (Doc. 24.) The Motions are fully briefed. (Docs. 22–25, 27–32.) The Court heard Oral  
21 Argument on the motions on June 29, 2023. For the following reasons, the Court will deny  
22 Rahier’s Motion and grant TCS’s Motion.<sup>1</sup>

23 **I. Background<sup>2</sup>**

24 TCS is a debt collector and was attempting to collect on a debt owed to Arizona  
25 Arthritis & Rheumatology Associates, P.C., by Rahier, in the amount of \$3,223.00 (the

26  
27 <sup>1</sup> At the June 29 hearing, the Court also heard argument on Plaintiff’s Counsel’s Motion  
28 to Withdraw. (Doc. 20.) In light of its resolution of the motions for summary judgment, the  
Court will deny the Motion to Withdraw as moot.

<sup>2</sup> The facts in this background section are undisputed unless otherwise indicated.

1 Debt). (Docs. 27 at 2; 1 at 2.) Because Rahier originally disputed the Debt, (Docs. 25 ¶ 1;  
2 30 ¶ 1), TCS notified the credit reporting agencies (CRA), including Trans Union, that the  
3 Debt was disputed, (Docs. 25 ¶ 2; 30 ¶ 2). Subsequently, Rahier sent a letter through her  
4 counsel, to TCS, informing TCS that she was no longer disputing the Debt and requesting  
5 the dispute remark be removed from the tradeline. (Docs. 25 ¶ 3; 30 ¶ 3.)

6 Upon receipt of Rahier's letter, TCS took steps to change the status of the Debt from  
7 disputed to not being disputed in the software program it uses to provide debt collection  
8 information to the CRAs to which it reports. (Docs. 25 ¶ 4; 30 ¶¶4–5.) TCS removed the  
9 "dispute" designation from the field in the software program which identifies debts that are  
10 being disputed (the compliance condition code field), and left the field blank. (Docs. 25  
11 ¶5; 25-1 ¶ 9; 30 ¶¶ 4, 5.) TCS's collection notes document a change of the Debt from  
12 disputed to undisputed. (Docs. 25 ¶ 7; 30 ¶ 7.) TCS submitted the revised debt collection  
13 information to the CRAs. (Docs. 25 ¶ 6; 30 ¶ 6.)

14 Rahier's subsequent credit report from Trans Union still showed the Debt as being  
15 disputed. (Docs. 30 ¶ 8; 25 ¶ 8.) Rahier states that TCS's procedures were ineffective to  
16 remove the dispute designation as evidenced by the Credit Reporting Resource Guide  
17 (CRRG), which she identifies as a source of credit reporting industry standards and  
18 procedures. (Doc. 23 ¶ 4–5.) According to Rahier, the CRRG establishes that the only way  
19 to remove a dispute code is to replace it with another compliance condition code or with  
20 "XR" (a removal code). (*Id.* ¶¶ 7, 8.) Thus, although TCS deleted the dispute code, TCS's  
21 leaving the compliance code field blank resulted in the continued reporting of the Debt as  
22 disputed, as evidenced by Rahier's Trans Union credit report. (*Id.* ¶ 9–10.)

23 On March 23, 2022, Rahier filed suit against TCS alleging violations of § 1692e of  
24 the FDCPA, 15 U.S.C., for falsely reporting that the Debt was disputed. (Doc. 1 at 4–5.)

25 On March 23, 2023, the parties filed the pending Motions for Summary Judgment.  
26 (Docs. 22; 24.) Rahier requests that the Court enter judgment against TCS as to liability  
27 and allow the case to proceed to trial on the question of damages. (Doc. 22 at 6.) TCS  
28 argues it is entitled to judgment because Rahier cannot prove that TCS violated the FDCPA

1 and that she suffered actual damages. (Doc. 24 at 7, 10.)

## 2 **II. Discussion**

3 At issue in this lawsuit is whether TCS’s response to Rahier’s request caused the  
4 dispute remark to continue to be reported to Trans Union. The parties agree that summary  
5 judgment is the appropriate mechanism for resolving this case because the facts are  
6 undisputed and the issue presented is a matter of law. (Docs. 22 at 6; 24 at 10.)

7 Summary judgment will be granted when the movant has shown “that there is no  
8 genuine dispute as to any material fact and the movant is entitled to judgment as a matter  
9 of law.” Fed. R. Civ. P. 56(a); *Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986). A dispute  
10 is “genuine” if there is sufficient evidence for a reasonable jury to return a verdict in favor  
11 of the nonmoving party. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A fact  
12 is “material” if it might affect the outcome of the suit under the governing law. *Id.* There  
13 is no genuine issue of material fact when a party fails to establish an element essential to  
14 that party’s case and on which that party will bear the burden of proof at trial. *Celotex*  
15 *Corp.*, 477 U.S. at 322–23. In its analysis, the court must believe the nonmovant’s evidence  
16 and draw all inferences in the nonmovant’s favor. *Anderson*, 477 U.S. at 255.

### 17 **A. FDCPA Claim**

18 To prevail on a claim for violation of the FDCPA, a plaintiff must establish that (1)  
19 the plaintiff is a consumer, (2) who was the object of a collection activity arising from a  
20 debt, (3) the defendant is a debt collector, and (4) the defendant violated a provision of the  
21 FDCPA. *See Turner v. Cook*, 362 F.3d 1219, 1227–28 (9th Cir. 2004). The parties here  
22 dispute only the fourth element—whether the defendant violated a provision of the  
23 FDCPA.

24 Under § 1692e of the FDCPA, “[a] debt collector may not use any false, deceptive,  
25 or misleading representation in connection with the collection of any debt.” 15 U.S.C. §  
26 1692e. The FDCPA’s prohibitions include making a “false representation of the character  
27 of, . . . or legal status of any debt,” (15 U.S.C. § 1692e(2)(A)), and “communicating . . .  
28 credit information which is known, or which should be known to be false, including the

1 failure to communicate that a disputed debt is disputed,” (15 U.S.C. § 1692e(8)). “The  
2 FDCPA does not ordinarily require proof of [an] intentional violation, and is a strict  
3 liability statute.” *Gonzales v. Arrow Fin. Servs., LLC*, 660 F.3d 1055, 1061 (9th Cir. 2011).

4 On the undisputed facts, Rahier cannot establish an essential element of her claim.  
5 Rahier’s evidence does not establish that TCS falsely reported information about the Debt  
6 to Trans Union. The CRRG is Rahier’s sole proof Rahier offers to prove that TCS reported  
7 to Trans Union information that it knew or should have known to be false. Rahier argues  
8 that the CRRG provides the industry standards and proves that TCS’s communication of  
9 revised information to Trans Union was ineffective, and the communication therefore false,  
10 because TCS did not follow the procedure for removing the disputed designation set forth  
11 in the CRRG. The CRRG states that the *only* way to remove a dispute code is to replace it  
12 with another compliance condition code or with “XR” (a removal code), which TCS did  
13 not do. (Docs. 23 ¶¶ 7, 8; 30 ¶ 6.)

14 The CRRG, however, is not admissible or applicable in resolution of this dispute.  
15 First, Rahier fails to provide expert testimony or other evidence which would support her  
16 assertion that the CRRG sets forth the credit report industry standards and procedures. *See*  
17 Fed. R. Civ. P. 56(c)(2) (“A party may object that the material cited to support or dispute  
18 a fact cannot be presented in a form that would be admissible in evidence.”); *Calvin v.*  
19 *Michigan First Credit Union*, No. 19-CV-11519, 2020 WL 3972519, at \*4 (E.D. Mich.  
20 July 14, 2020) (finding CRRG is inadmissible hearsay because plaintiff did not provide  
21 expert witness testimony to establish CRRG as an industry standard).

22 Second, compliance with industry guidelines, such as the CRRG, is not sufficient to  
23 prove (or disprove) an alleged violation of the FDCPA. *See, e.g., Koehler v. Waypoint Res.*  
24 *Grp., LLC*, No. 8:18-CV-2071-T-60AAS, 2019 WL 5722117, at \*2 (M.D. Fla. Nov. 5,  
25 2019) (debt collector’s noncompliance with industry standards is insufficient to prove an  
26 FDCPA claim); *Boatley v. Diem Corp.*, No. CIV. 03-0762-PHX-SMM, 2004 WL 5315892,  
27 at \*3 (D. Ariz. Mar. 24, 2004) (debt collector’s compliance with industry standards is not  
28

1 a defense to an FDCPA claim).<sup>3</sup>

2 The evidence, viewed in a light most favorable to Rahier, demonstrates only that:  
3 TCS received Rahier's letter and took steps to remove the "dispute" designation from the  
4 field in the software program which identifies debts that are being disputed. TCS's  
5 collection notes corroborate this and indicate that TCS removed the disputed remark. TCS  
6 then reported its information to Trans Union. The record does not contain evidence from  
7 Trans Union. There is no evidence that TCS's revisions were not received by Trans Union  
8 and no admissible evidence that TCS's manner of revising its data was ineffective. The  
9 fact that Trans Union continued to report the Debt as disputed does not, by itself, support  
10 the inference that TCS failed to accurately report to Trans Union to the exclusion of other  
11 possible explanations for Trans Union's reporting. *See Navarro v. Portfolio Recovery*  
12 *Assocs., LLC*, No. CV-18-02333-PHX-JJT, 2019 WL 4418254, at \*3 (D. Ariz. Sept. 16,  
13 2019) (granting summary judgment in favor of debt collector when plaintiff failed to show  
14 evidence that the debt collector reported inaccurate information to the CRA). This is  
15 particularly true in light of the undisputed evidence that TCS took steps to remove the  
16 "dispute" designation in its collection data. On this record, Rahier cannot establish that  
17 TCS reported to Trans Union information about the Debt that was "false, deceptive, or  
18 misleading." *See* 15 U.S.C. 1692e.

19 Because Rahier cannot prove that TCS reported false information to Trans Union,  
20 the Court will grant TCS's motion for summary judgment. (Doc. 22 at 5–6.) *See Celotex*  
21 *Corp.*, 477 U.S. at 322 (there is no genuine issue of material fact when a party fails to  
22 establish an element essential to that party's case and on which that party will bear the  
23 burden of proof at trial.).<sup>4</sup>

24 <sup>3</sup> TCS argues that the Court should preclude Rahier's use of the CRRG to support her  
25 claim because Rahier did not timely disclose the CRRG during discovery as required by  
26 Fed. R. Civ. P. 26 (a)(1)(A)(ii). (Docs. 27 at 6–7; 32 at 5.) Although Rahier admits that she  
27 did not timely disclose the CRRG, in light of the Court's conclusion that the CRRG is  
inadmissible, the Court need not decide whether the sanction of exclusion is warranted. For  
the same reason, the Court also does not address TCS's additional evidentiary challenges  
to Rahier's use of the CRRG.

28 <sup>4</sup> TCS argues alternatively that a fact question exists as to TCS's bona-fide-error defense.  
(Doc. 31 at 3.) The bona-fide-error defense states a debt collector is not liable for violations

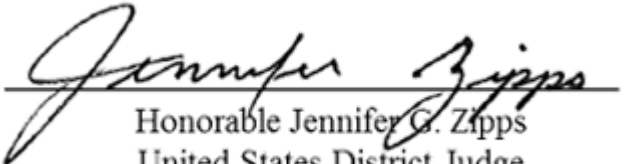
1 **III. Conclusion**

2 For the foregoing reasons, the Court concludes that TCS is entitled to summary  
3 judgment as a matter of law.

4 **IT IS ORDERED:**

- 5 1. Plaintiff's Motion for Partial Summary Judgment (Doc. 22) is **DENIED**.  
6 2. Defendant's Motion for Summary Judgment (Doc. 24) is **GRANTED**.  
7 3. Plaintiff's Counsel's Motion to Withdraw (Doc. 20) is **DENIED** as moot.  
8 4. The Clerk of Court must enter judgment accordingly and close its file in this  
9 action.

10 Dated this 11th day of July, 2023.

11  
12  
13   
14 Honorable Jennifer C. Zipp  
15 United States District Judge  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25

26  
27 \_\_\_\_\_  
28 under the FDCPA when its conduct was “not intentional and resulted from a bona fide error notwithstanding the maintenance of procedures reasonably adapted to avoid any such error.” 15 U.S.C. § 1692k(c). In light of the Court's conclusion that Rahier has failed to prove a violation of the FDCPA, the Court does not consider this affirmative defense.