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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SIXTH APPELLATE DISTRICT

THUY THANH THI CUNG, Cross-Complainant and Appellant, v. STUDENT LOAN SOLUTIONS, LLC et al., Cross-Defendants and Respondents.	H051409 (Santa Clara County Super. Ct. No. 22CV405010)

This case concerns a student loan made to Thuy Thanh Thi Cung in 2008. Almost as soon as the loan was made, Cung began to miss payments, and she stopped making payments altogether in 2012. In 2017, Student Loan Solutions, LLC (SLS) purchased the loan, and in 2022 it sued Cung for non-payment. Cung responded by filing cross-claims against SLS and four others for violating state and federal debt collection statutes. Cross-Defendants in turn moved to strike the cross-claims under Code of Civil Procedure section 425.16, the anti-SLAPP statute, and the motion was granted.

Cung now appeals. On appeal, she does not dispute that her cross-claims arose out of protected conduct and triggered the anti-SLAPP statute. Instead, Cung argues that she satisfied her burden under the anti-SLAPP statute of showing a probability of prevailing.

Relying on the court's decision in *Guracar v. Student Loan Solutions, LLC* (May 20, 2025, H051407) __ Cal.App.5th __ (*Guracar*)), which was briefed and argued with Cung's appeal, we conclude that Cung has standing to assert claims under California's Fair Debt Buying Practices Act (Debt Buyers Act) (Civ. Code, § 1788.50 et seq.), the Private Student Loan Collections Reform Act (PSLCRA) (Civ. Code, § 1788.200 et seq.), and the Rosenthal Fair Debt Collection Practices Act (Rosenthal Act) (Civ. Code, § 1788-1788.33) as well as the Fair Debt Collection Practices Act (FDCPA) (15 U.S.C. § 1692 et seq.). We also conclude that Cung has established a probability of prevailing on several of these claims.

I. BACKGROUND

A. The Loan at Issue and Cung's Default

In February 2008, Cung was enrolled as an art student, and she took out a private student loan from Bank of America, N.A. (Bank of America) for $30,000. The loan required Cung to make 240 monthly payments of $470.70. An associated credit agreement required Bank of America to send monthly statements showing "the Monthly Payment Amount and the monthly due dates." The agreement also contained an acceleration clause granting the bank the option, if Cung failed to make any payment, to accelerate repayment of her loan by providing notice that "the whole outstanding principal balance, accrued interest, and all other amounts payable . . . are due and payable at once."

Because of family financial problems, Cung dropped out after one semester, and she did not make any payments on her loan until September 2010. Over the next one-and-a-half years, Cung made 10 or so payments, but stopped after January 2012. In May 2010, Bank of America charged off $40,965.22 on Cung's loan, including $39,621.78 in principal and $1,343.44 in interest.

B. Bank of America's Collection Efforts

In a declaration submitted in opposition to the anti-SLAPP motion, Cung averred that, after Bank of America charged off her loan in May 2010, she received at least one letter, which she was now unable to locate, demanding that her loan " 'be paid in full immediately.' " Cung also averred that, over the next seven years, she received letters from debt collectors seeking payment of $39,740.22, which is slightly more than the principal charged off in May 2010. In addition, in May 2016, Cung received an e-mail from Williams and Fudge, Inc. (Williams & Fudge) on behalf of Bank of America stating that the "balance listed," which was $39,740.22, "is due."

C. The Sale to SLS and the June 2018 Letter

On October 31, 2017, Student Loan Solutions, LLC (SLS) purchased a group of loans from Bank of America, including Cung's. In June 2018, Williams & Fudge sent Cung a letter, this time on behalf of SLS. The letter listed $39,740.22 as the amount due and informed Cung that Williams & Fudge was seeking to collect "the total amount from you."

D. The July 2022 Letter

In July 2022, almost four years later, Williams & Fudge sent Cung a second letter on behalf of SLS. While this letter contained the same consumer identification and pin numbers as the June 2018 letter, it listed the amount due as $18,854.10 rather than $39,740.22. The July 2022 letter also stated that Cung had "failed to pay installments due as required," that "SLS hereby accelerates the loan and demands all payments due," and that "$18,854.10 is now immediately due and owing to SLS."

E. The Proceedings Below

In October 2022, SLS sued Cung in Santa Clara County Superior Court. The complaint alleged that Cung took out a loan with Bank of America, in May 2010 Bank of America charged off $40,965.22 on the loan, and in 2012 Cung stopped making payments. The complaint also alleged that Bank of America sold Cung's loan to SLS.

Finally, the complaint alleged that Cung owed SLS $18,854.10, representing the payments missed in the last four years and, because SLS accelerated the loan, the remaining principal payments. The complaint attached an affidavit from Christopher Rue, SLS's general manager, which in turn attached copies of Cung's credit agreement with Bank of America and a statement disclosing the amount of the loan and the monthly payments.

In November 2022 Cung, on behalf of herself and a class of similarly situated persons, filed cross-claims against SLS, Rue, and Williams & Fudge, as well as Stephen Goldsmith and Goldsmith & Hull, one of the lawyers representing SLS and his firm. Cung alleged that cross-defendants violated the Debt Buyers Act, the PSLCRA, the Rosenthal Act, and the FDCPA by suing to collect a time-barred debt. Cung also claimed that cross-defendants violated the Rosenthal Act and the FDCPA by misrepresenting the character, amount or status of the debt owed and making misleading representations. Finally, Cung claimed that cross-defendants violated the Debt Buyers Act by not including statutorily required disclosures in SLS's initial written communications, and the PSLCRA by not including statutorily required allegations and documents in the complaint.

Cross-Defendants moved to strike Cung's cross-claims under the anti-SLAPP statute, arguing that the cross-claims arose from protected conduct and that Cung could not show a probability of prevailing. The trial court heard the motion to strike the cross-claims along with a similar motion to strike the cross-claims in *Guracar*. In an order applying to both cases, the court granted the motion to strike and entered judgment in cross-defendants' favor on Cung's cross-claims.

The order discussed the evidence in the *Guracar* case, not this one, but said that the court's analysis, reasoning, and conclusions were the same in this case. Accordingly, we only briefly summarize the *Guracar* order. After ruling that Guracar's cross-claims arose out of protected conduct, the trial court held that Guracar did not establish a probability of prevailing on his cross-claims. With respect to the cross-claims that cross-defendants sued to collect a time-barred debt, the trial court ruled that Guracar's loan was an "installment debt" and that SLS accelerated Guracar's loan in June 2022, making the remaining balance due then. With respect to Guracar's other cross-claims, the trial court ruled that SLS made the initial disclosures required by the Debt Buyers Act in a November 2017 letter, which cross-defendants submitted along with their reply. Additionally, in light of its ruling that SLS's cross-claims were not time-barred, the trial court ruled that cross-defendants made no false or misleading statements. Finally, the trial court ruled that the allegations in the complaint and documents attached to it substantially complied with the PSLCRA's requirements.

Cung filed a timely notice of appeal. (Code Civ. Proc., § 425.16, subd. (i); § 904.1, subd. (a)(13).)

II. Discussion

The anti-SLAPP statute was enacted to combat strategic lawsuits against public participation (SLAPPs): " 'lawsuits brought primarily to chill the valid exercise of the constitutional rights of freedom of speech and petition for the redress of grievances.' " (*Geiser v. Kuhns* (2022) 13 Cal.5th 1238, 1242, quoting Code Civ. Proc., § 425.16, subd. (a).) The statute authorizes special motions to strike in which the merits of a party's claims are evaluated, pre-discovery, in " 'a summary-judgment-like procedure.' " (*Barry v. State Bar of California* (2017) 2 Cal.5th 318, 324; see *id*. at pp. 321-322; but see Code Civ. Proc., § 425.16, subd. (g) [permitting trial courts to order specified discovery "for good cause shown"].) If a claim arises out of an "act . . . in furtherance of a person's right of petition or free speech . . . in connection with a public issue," the claim must be stricken unless the non-moving party establishes "a probability that [it] will prevail on the merits." (Code Civ. Proc., § 425.16, subd. (b)(1).) To establish a probability of prevailing, the non-moving party must demonstrate that the claim is "legally sufficient and factually substantiated"—that is, the claim has " 'minimal merit' " and the factual showing supporting it, if accepted, "would be sufficient to sustain a favorable judgment." (*Baral v. Schnitt* (2016) 1 Cal.5th 376, 385, 391, 396.)

Cung argues that the trial court erred in striking her cross-claims because she established a probability of prevailing on each. We review the trial court's rulings on this issue de novo. (See, e.g., *Park v. Board of Trustees of California State University* (2017) 2 Cal.5th 1057, 1067.) However, before doing so, we consider an alternative ground for affirmance urged by cross-defendants: standing.

A. Standing

Cross-Defendants argue that Cung lacks standing because she presented no evidence that she suffered concrete harm. Following the *Guracar* decision, we reject these arguments and conclude that Cung has standing to seek statutory damages under the Debt Buyers Act, the PSLCRA, the Rosenthal Act, and the FDCPA even in the absence of concrete harm. (*Guracar*, *supra*, __ Cal.App.5th at pp. __-__ [pp. 8-16]; see also *Chai v. Velocity Investments, LLC* (2025) 108 Cal.App.5th 1030, 1038-1041.)

B. Time-Barred Debt

It is clear that Cung's cross-claims for suing to collect a time-barred debt are legally sufficient. Both the Debt Buyers Act and the PSLCRA expressly prohibit debt buyers and private student loan collectors from suing to collect debts that are time-barred. (Civ. Code, § 1788.56 ["A debt buyer shall not bring suit . . . to collect a consumer debt if the applicable statute of limitations on the debt buyer's claim has expired."]; *id*., § 1788.204 ["A private education . . . loan collector shall not bring suit . . . to collect a private education loan if the applicable statute of limitations for the . . . private education loan collector's claim has expired."].) In addition, the FDCPA—and, by extension the Rosenthal Act, which incorporates the provisions of the FDCPA (Civ. Code, § 1788.17)—has been interpreted to prohibit suing or threatening to sue to collect time-barred debts. (See, e.g., *McMahon v. LVNV Funding, LLC* (7th Cir. 2014) 744 F.3d

1010, 1020; *McCollough v. Johnson, Rodenburg & Lauinger, LLC* (9th Cir. 2011) 637 F.3d 939, 947-948.)

However, the trial court held that Cung did not factually substantiate her cross-claims, and therefore failed to establish a probability of prevailing on those cross-claims, because her loan was not accelerated until June 2022 and therefore SLS's suit to collect on the loan was timely filed. (See Code Civ. Proc, § 337.) Cung argues that she presented evidence establishing that Bank of America accelerated repayment of her loan after charging it off in May 2010, outside the limitations period. As explained below, we agree with Cung.

Cung's student loan required her to make monthly payments for 20 years. Under the continuous accrual doctrine, when a contractual obligation arises on a recurring basis, as with an installment contract or a lease, " 'a [new] cause of action accrues each time a wrongful act occurs, triggering a new limitations period.' " (*Aryeh v. Canon Business Solutions, Inc*. (2013) 55 Cal.4th 1185, 1199.) Consequently, under the ordinary operation of her loan, each time Cung failed to make a monthly payment, a new claim for breach arose, and a new limitations period on that new claim began to run. (*Piedmont Capital Management, LLC v. McElfish* (2023) 94 Cal.App.5th 961, 970; *Armstrong Petroleum Corp. v. Tri-Valley Oil & Gas Co*. (2004) 116 Cal.App.4th 1375, 1388.)

However, Cung's credit agreement contained an acceleration clause. If Cung failed to make a monthly payment, this clause gave the holder of the loan the option, after providing notice, to make the whole loan, any accrued interest, and all other amounts "due and payable at once": "[Y]ou"—which the promissory note defined to mean Bank of America or another holder of the loan—"have the right to give me [Cung] notice that the whole outstanding principal balance, accrued interest, and all other amounts payable to you under the terms of this Credit Agreement are due and payable at once (subject to any applicable law which may give me a right to cure my default) if . . . I fail to make any monthly payment to you when due . . . ."

If a party exercises the option granted by an acceleration clause to require immediate full payment, the statute of limitations on all amounts due under the loan begins to run upon failure to make that payment. (See *Garver v. Brace* (1996) 47 Cal.App.4th 995, 1000 (*Garver*); see 13 Williston on Contracts (4th ed. 2022) § 79:18, pp. 337-340, *id.* (2024 supp.) § 79:18, pp. 1-2.) However, an acceleration clause requires " 'some affirmative act' " manifesting the election to exercise it. (*Garver*, *supra*, 47 Cal.App.4th at p. 1000; see also *Jones v. Wilton* (1938) 10 Cal.2d 493, 500 ["If the creditor fails to act affirmatively to mature the indebtedness, the statute of limitations is not set in motion."].)

Cung presented evidence of such an affirmative act. Her declaration and cross-defendants' records showed that she failed to make any monthly payments in 2008 or 2009, and Bank of America charged off her loan as a bad debt in May 2010. Afterwards, she receive at least one letter from Bank of America demanding payment of her loan " 'in full immediately,' " and debt collectors subsequently demanded payment of $39,740.22, the approximate balance on her loan when it was charged off. Although Cung could not locate the letter, she presented a declaration from Osman Yunus Guracar, the plaintiff in *Guracar*, who received, and retained, a similar letter. Guracar averred that he took out a student loan from Bank of America in 2007, stopped making payment in 2009, and the bank charged off the loan as a bad debt in January 2010. In February 2010, the next month, Guracar received a letter, which he retained, demanding that his account be "paid in full immediately" and seeking payment of $8,288.53, the approximate balance on his loan when it was charged off. In other words, around roughly the same time and in roughly the same situation as Cung, Guracar received a letter containing the same language and demanding that same payment that Cung recalled—which provides persuasive confirmation of Cung's declaration.

Cung's declaration was supported by two other documents as well. First, in May 2016, Williams & Fudge sent her an e-mail on behalf of the Bank of America.

Rather than demanding a monthly payment or even previously missed monthly payments, the e-mail listed the balance on her account as $39,740.22, the approximately balance on her loan, and stated that "the balance listed is due." Second, in June 2018, Williams & Fudge sent Cung a letter, this time on behalf of SLS. Like the 2016 e-mail, the 2018 letter stated that the balance due was $39,740.22. In addition, the letter stated that Cung's debt was "delinquent" and that Williams & Fudge was seeking collect the "total amount."

In light of this evidence, a reasonable trier of fact could find that Bank of America exercised its option to accelerate repayment of her loan. As noted above, Cung's credit agreement provided that, if she failed to make any monthly payment, Bank of America had the option to accelerate repayment by providing notice that "the whole outstanding principal balance, accrued interest, and all other amounts payable . . . are due and payable at once." Evidence showed that Cung failed to make monthly payments, and after writing off Cung's loan as a bad debt, Bank of America sent Cung a letter demanding payment of her loan " 'in full immediately.' " Accordingly, Williams & Fudge's subsequent May 2016 e-mail and June 2018 letter demanded $39,9740.22, approximately the whole outstanding principal balance that Bank of America charged off. Thus, based on the evidence in the record, a reasonable jury could find that sometime shortly after writing off Cung's loan in May but before Williams & Fudge May 2016 e-mail, Bank of America exercised its option to accelerate repayment of the loan by notifying her that the whole outstanding balance of her loan was due and payable at once.

Courts have found loans accelerated based on similar evidence. For example, in *Sharpe v. Brotzman* (1956) 145 Cal.App.2d 354, the plaintiffs purchased a sawmill financed in large part by a promissory note, which contained an acceleration clause. (*Id*. at pp. 356, 360.) After the plaintiff failed to make payments (*id*. at p. 357), the sellers sent the plaintiff a notice of foreclosure containing the following statement: "I herewith demand of you all the unpaid balance plus taxes plus the percentages allowed me under the mortgage as foreclosure costs." (*Id.* at p. 359.) The Court of Appeal held that this statement was "clearly an exercise of the option . . . to declare all payments due upon a default, and was notice to the purchasers of the exercise of that opinion." (*Id*. at p. 359, italics omitted.)

The evidence here is indistinguishable. Much like the notice of foreclosure in *Sharpe*, the letter received by Cung after she stopped making monthly payments and Bank of America charged off her loan as a bad debt demanded payment " 'in full immediately.' " In addition, by listing the balance on Cung's loan as $39,740.22, the amount charged off by the bank, and informing Cung that "the balance listed is due," the May 2016 e-mail implicitly confirmed that the loan had been accelerated. The June 2018 letter similarly listed the balance on Cung's loan as $39,740.22 and sought " 'the total amount,' " provides further confirmation. Thus, the evidence of acceleration in this case is at least as strong as the evidence in *Sharpe*.

The conclusion that Bank of America accelerated Cung's loan is also supported by a case involving SLS and William & Fudge. In *Shadrin v. Student Loan Solutions LLC* (D. Md. 2022) 2022 WL 971183 (*Shadrin*)), as here, SLS bought two student loans from Bank of America and later sued the debtors for nonpayment. (*Id*. at pp. *1-*2.) The debtors in turn sued SLS and Williams & Fudge for violating the FDCPA and related state statutes by seeking to collect a time-barred debt. (*Id*. at pp. *1, *3.) SLS and Williams & Fudge moved to dismiss, but the district court denied the motion. Applying California law, the court held that the loans at issue were accelerated before SLS purchased them in 2017. (*Id*. at pp. *5-*6.) In 2016, Bank of America sent one of the debtors a letter stating that her account balance was $17,683.79, which was much more than any monthly payment or the previously missed payments, and that this balance was due. (*Ibid*.) The letter did not include any installment schedule or information about making regular installment payments. (*Ibid*.) The district court concluded that the letters constituted "an affirmative act necessary to accelerate an unsecured loan" because they "contained demands for the entire balance of the borrower's loan, coupled with the lack of information about or subsequent notices of installment payments." (*Id*. at p. *7.) Similarly, here, William & Fudge's 2016 e-mail stated that the balance on Cung's loan was $39,740.22, the principal balance charged off in May 2010, and sought payment of that entire balance. Moreover, the e-mail did not include any information about monthly payments, previously missed payments, or a schedule for making future payments. Accordingly, under *Shadrin*, the May 2016 e-mail alone would have accelerated Cung's loan.

Despite their involvement in the *Shadrin* case, SLS and Williams & Fudge do not mention the case in their briefing. Instead, they contend that in *Beal Bank v. Crystal Properties, Ltd.* (*In re Crystal Properties, Ltd.*) (9th Cir. 2001) 268 F.3d 743 (*Beal Bank*), the Ninth Circuit held that a letter demanding repayment in full was not a notice of acceleration. While that is technically correct, they fail to mention what else the letter in *Beal Bank* said. In *Beal Bank*, a letter from the Federal Deposit Insurance Corporation (FDIC) informed a debtor that " 'there is a 5% default interest due on all remaining principal and unpaid interest,' " and" '[u]nless we receive payment in full of all principal and accrued interest by May 31, 1995 . . . we will be filing a Notice of Default.' " (*Id.* at p. 752.) However, the FDIC's letter also stated that that " 'we *will* be filing a Notice of Default' " and threatened future action, which, the Ninth Circuit observed, "demonstrates that the acceleration option had *not* been exercised." (*Ibid*., italics added) Accordingly, the Ninth Circuit concluded that the letter "merely advised the debtors that the FDIC could invoke the default interest clause in the future." (*Ibid*.)

This case is different. There is no evidence that the letter that Cung described in her declaration, the May 2016 e-mail, or the June 2018 letter calculated interest using the contractual rather than the default interest rate or threatened any future action. To the contrary, these communications demanded payment " 'in full immediately,' " said that the entire balance charged off was "due," and sought to "collect the total amount."

Consequently, in sharp contrast to *Beal Bank*, nothing in the communications in this case suggests that Bank of America did not intend to exercise its option to accelerate repayment.

Cross-Defendants cite several other cases, but these cases are also distinguishable. *First Bank Investors' Trust v. Tarkio College* (8th Cir. 1997) 129 F.3d 471 (*Tarkio*) is inapposite for the same reason as *Beal Bank*. The letter in *Tarkio* stated that the debtor was in default and requested " 'full payment of the unpaid principal . . . and unpaid and accrued interest.' " (*Tarkio*, *supra*, 129 F.3d at p. 474.) However, the letter also calculated the interest due at the contractual rather than the default interest rate, thereby indicating that the bank was not yet exercising its right to accelerate the loan. (*Id*. at pp. 475-476.) In another case cited by cross-defendants, a bank warned a debtor that it " 'ha[d] the option of accelerating and declaring immediately due and payable all of the liabilities owing the Bank,' " but did not indicate that in fact it was exercising that option. (*In re Zamani* (Bankr. N.D. Cal. 2008) 390 B.R. 680, 689.) In still other cases, there was not even a warning that the note in question would be accelerated. (See *Green v. Carlstrom* (1963) 212 Cal.App.2d 240, 243-245; *Bird v. Real Time Resolutions, Inc*. (N.D.Cal. 2016) 183 F.Supp.3d 1058, 1063.) Consequently, none of the cases cited by cross-defendants suggests that Bank of America did not accelerate Cung's loan.

Accordingly, a reasonable trier of fact could find that that Bank of America gave Cung notice it was exercising its option to accelerate repayment of her loan. In light of such a finding, any claim concerning Cung's loan would have accrued shortly after Bank of America charged off her loan in May 2010 and certainly no later than Williams & Fudge's May 2016 e-mail, which in turn means that the four-year statute of limitations on any collection claim would have expired long before SLS sued in 2022. Cung therefore has established a probability of prevailing on her cross-claims that cross-defendants violated the Debt Buyer Practices Act, the PSLCRA, the Rosenthal Act, and the FDCPA by suing to collect a time-barred debt.

C. The Misrepresentation Claims

Cung claims that cross-defendants violated the FDCPA and, by way of the FDCPA provisions incorporated into it, the Rosenthal Act by making false or misleading representations in trying to collect her debt. These cross-claims are supported by the same evidence that supports Cung's cross-claims that cross-defendants sued to collect a time-barred debt. The complaint alleged that the claim against Cung was timely because the applicable statute of limitations is four years, Cung's loan was an installment contract, and the loan was accelerated in October 2018. However, as shown above, Cung presented evidence that her loan was accelerated before it was sold to SLS in 2017. As this is more than four years before the complaint was filed in October 2022, a reasonable trier of fact could find that the statements in the complaint concerning the statute of limitations were either false or deceptive and mischaracterized the legal status of the claims against Cung.

We therefore conclude that Cung has established a reasonable probability of prevailing on her cross-claims that cross-defendants violated the FDCPA and the Rosenthal Act by making false and misleading representations.

D. Initial Written Communication

In addition to claiming that cross-defendants violated multiple statutes by suing to collect a time-barred debt, Cung claimed that SLS violated the Debt Buyers Act by failing to make required disclosures in its initial written communication. Focusing on the *Guracar* case, the trial court held that Cung failed to show a probability of prevailing on this cross-claim because SLS presented uncontroverted evidence that its initial communication contained the required disclosures. In fact, in this case SLS did not present such evidence.

The Debt Buyers Act requires the initial written communication from a debt buyer to disclose that the debtor may request various records relating to the debt in question. (Civ. Code, § 1788.52, subd. (d)(1).) In addition, if the debt is time-barred, the debt buyer must state that it will not sue for that debt. (*Id*., § 1788.52, subd. (d)(1), (2).) If the time-barred debt is "not past the date for obsolescence provided for in Section 605(a) of the federal Fair Credit Reporting Act" (*id*., § 1788.52, subd. (d)(2)), which is seven years (15 U.S.C. § 1681c(a)(4)), the initial communication must state: " 'The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it. If you do not pay the debt, [insert name of debt buyer] may [continue to] report it to the credit reporting agencies as unpaid for as long as the law permits this reporting.' " (Civ. Code, § 1788.52, subd. (d)(2).) If the time-barred debt is past the obsolescence date, the initial communication must state: " 'The law limits how long you can be sued on a debt. Because of the age of your debt, we will not sue you for it, and we will not report it to any credit reporting agency.' " (*Id*., § 1788.52, subd. (d)(3).)

In the trial court, Cung argued that SLS failed to make these disclosures because they were not included in the letter sent by Williams & Fudge on SLS's behalf in July 2022. In their reply, SLS presented evidence that its first communication with Cung was in fact on June 11, 2018. The trial court did not discuss the June 2018 letter because, as noted above, its opinion analyzed the evidence in the *Guracar* case. However, in *Guracar* the court found that SLS sent a written communication earlier than the one identified by Guracar and that this earlier communication contained the disclosures required by the Debt Buyers Act.

In its brief on appeal, SLS argued that this same rationale applies in this case. It does not. The initial communication sent to Guracar contained the statutorily-required disclosure of Guracar's right to request various records and informed him that " '[b]ecause of the age of your debt, we will not sue you for it.' " (*Guracar*, *supra*, ___ Cal.App.5th at p. ___ [p. 24].) There is no such statement in the June 2018 letter to Cung. The 2018 letter has only seven paragraphs, five fewer than the November 2017 letter to Guracar. Even more important, there is no paragraph in the letter to Cung informing her that she may request records. Nor is there any statement that SLS will not sue because of the age of her debt. Consequently, unlike the initial written communication in *Guracar*, the initial written communication in this case fails to make the disclosures required by the Debt Buyers Act.

In supplemental briefing, cross-defendants acknowledged that the initial written communications in this case did not contain the statutorily required statement concerning time-barred debts, but asserted no disclosures were required because Civil Code section 1788.14, subd. (d), which is part of the Rosenthal Act, did not become effective until January 2019, after the initial written communication to Cung. While it is true that Civil Code section 1788.14, subd. (d) did not become effective until January 2019 (see Assem. Bill No. 1526, § 1 (2017-2018 Reg. Sess.) [adding subdivision(d)]), Cung did not claim that cross-defendants failed to make the disclosures required by the Rosenthal Act; it claimed that cross-defendants failed to make the disclosures required by the Debt Buyers Act, which requires similar disclosures concerning time-barred debts. (Compare Civil Code, § 1788.14, subd. (d)(1), (2) with *id*., § 1788.52, subd. (d)(2), (3).) Moreover, the Debt Buyers Act's disclosure requirements became effective in 2013 (Sen. Bill No. 233, § 2 (2013-2014 Reg. Sess.)) and therefore were in effect when the initial written communications on behalf of SLS was made.[1]

We therefore conclude that Cung has shown a probability of prevailing on her initial disclosures cross-claim under the Debt Buyer Act.

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[1] Although cross-defendants noted in their supplemental brief that Cung did not allege a violation of Civil Code section 1788.14, subd. (d), we will presume that cross-defendants' argument concerning the section resulted from this court's mistake rather than an attempt by counsel to mislead. The court's request for supplemental briefing should have referenced the disclosure requirements in the Debt Buyers Act that Cung alleged were violated but instead mistakenly referenced the disclosure requirements under Civil Code section 1788.14, which, as noted above, closely tracks the Act's requirements. The court hopes that counsel will recognize such mistakes and bring them to the court's attention. However, the court will not question counsel for failing to do so and making misleading arguments that may be the result of the court's mistake.

E. Pleadings

Cung's final cross-claims concern SLS's alleged failure to include in its complaint allegations and documents required by the PSLCRA. The trial court ruled that Cung failed to show a probability of prevailing on these cross-claims. With one exception, we agree with the trial court.

When a private student loan collector contacts a debtor to collect a debt, the PSLCRA requires the collector to possess certain information, such as the identity of the owner of the loan, the date the loan was incurred, the date payment was first missed, and any payments made by guarantors, sureties or other third parties. (Civ. Code, § 1788.202, subds. (a)(1)-(11).) The PSLCRA also requires private student loan collectors to possess copies of certain documents, including documentation of the creditor's ownership and any self-certification form or other needs analysis that the original creditor conducted before making the loan. (*Id*. § 1788.202, subds. (a)(12)-(14).) In addition, if a private student loan collector sues to collect a loan, it must allege that it had the information, and attach the documents, it was required to possess. (*Id*. § 1788.205, subds. (a)(1), (b).) Finally, the complaint must allege that the applicable statute of limitations has not expired and that the collector complied with its obligation to possess information and documents. (*Id*. § 1788.205, subds. (a)(2), (3).)

Cung claimed that the complaint failed to include the following information that the PSLCRA required SLS to possess: (1) the date on which Cung's loan was incurred, (2) the date on which Cung first missed a payment, and (3) any payments made by guarantors, sureties, or other third parties. In fact, the complaint contained this information. It included an affidavit attaching the promissory note, which stated that Cung's loan was executed on February 19, 2008. The complaint attached a payment record showing that Cung's first partial payment was on September 28, 2010, and it alleged that the last payment was on May24, 2010. Finally, while there was no allegation in the complaint that any payments were made by a guarantor, surety, or other third party, cross-defendants presented uncontroverted evidence that no such payments were received.

Cung also alleged that the complaint failed to attach documentation of SLS's ownership of her loan or copies of the self-certification form and needs analysis conducted by the original creditor. In fact, the complaint provided documentation that SLS is the owner of Cung's loan by attaching an affidavit from SLS's general manager explaining that SLS purchased the loan on October 31, 2017 as well as a copy of the bill of sale for a group of loans, including Cung's. The complaint did not attach a self-certification form or needs analysis. However, the law requiring this self-certification was not enacted until August 2008 (see Pub. L. 110-343, Div. A., Tit. I, § 130(a), 122 Stat. 3078 § 1021 [codified at 15 U.S.C. § 1638(e)(3)]), after Cung's loan was made in February 2008. In addition, Cung presented no evidence that any needs analysis was conducted.

Finally, Cung claimed that the complaint failed to allege that the applicable statute of limitations had not expired or that SLS complied with the requirement that it possessed the information required by the PSLCRA when it contacted Cung. In fact, the complaint adequately alleged that the statute of limitations had not run: It alleged that the applicable statute of limitations is four years, that Cung's loan is an installment contract, and that Cung's loan was accelerated in July 2022.

However, as cross-defendants acknowledge, there was no allegation in the complaint that SLS complied with its obligations under section 1788.202 of the PSLCRA to possess information and documents before contacting Cung. (See Civ. Code, § 1788.205, subd. (a) ["The complaint shall allege . . . that the plaintiff has complied with Section 1788.202."].) In addition, because there was no allegation and thus no compliance at all with this requirement, defendants did not substantially comply with it. (See, e.g., *City of San José v. Superior Court* (1974) 12 Cal.3 447, 456 [" ' "[S]ubstantial compliance cannot be predicated upon no compliance." ' "].)

Admittedly, this alleged breach is highly technical. However, the PSLCRA does not automatically impose statutory damages whenever it is violated. To the contrary, the PSLCRA authorizes statutory damages in an amount “as the court *may* allow” (Civ. Code, § 1788.208, subd. (a)(1)(B), italics added), and it affords an absolute defense for unintentional violations caused by “bona fide error.” (*Id*. § 1788.208. subd. (d).)

Accordingly, we conclude that the trial court correctly struck all of Cung’s cross-claims under the PSLCRA except her cross-claim that SLS’s complaint failed to allege compliance with Civil Code section 1788.202.

III. Disposition

The judgment is reversed. The matter is remanded to the trial court, which is directed to reinstate (1) all of appellant’s cross-claims to the extent that they are based on suing to collect a time-barred debt, (2) appellant’s cross-claims under the Rosenthal Act and the FDCPA for making false or misleading representations and for misrepresenting the character or legal status of appellant’s debts, (3) appellant’s cross-claims under the Debt Buyers Act for failing to make disclosures required by Civil Code section 1788.52, and (4) appellant’s cross-claims under the PSCLRA for failing to allege compliance with Civil Code section 1788.202. The order striking appellant’s cross-claims is otherwise affirmed. Appellant is entitled to recover costs on appeal. (Cal. Rules of Court, rule 8.278(a)(1), (3).)

BROMBERG, J.

WE CONCUR:

LIE, ACTING P. J.

WILSON, J.

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