



1 affordable housing to low-income residents through the federal Department of Housing  
2 and Urban Development’s HOME Investment Partnership Program (“HOME Program”).  
3 (Doc. Nos. 11-2 at 10, 13 at 8.)<sup>1</sup> In July 2004, Picazo entered into a new lease agreement  
4 with CFSD. In August 2015, Picazo renewed her lease by signing a lease addendum, also  
5 subject to the HOME Program. Each lease, including the 2015 addendum, required Picazo  
6 to verify her income annually, and “acknowledge[] that Tenant’s failure to provide accurate  
7 information regarding such requirements (regardless of whether such inaccuracy is  
8 intentional or unintentional) or the refusal to comply with the request for information with  
9 respect thereto, shall be deemed a violation of this lease provision, and a material breach  
10 of the tenancy and shall constitute cause for immediate termination of the tenancy.” (Doc.  
11 No. 11-3 (“Ruiz Decl.”) Exh. 4.)

12 On December 29, 2015, the San Diego Housing Commission (“Commission”),  
13 which administers the HOME Program in San Diego, informed CFSD that Picazo had  
14 withheld information regarding her income and directed CFSD to issue Picazo a notice to  
15 terminate tenancy. (Ruiz Decl. Exh. 5.) As a result, CFSD issued Picazo a sixty-day notice  
16 of termination of tenancy on February 3, 2016. (Ruiz. Decl. Exh. 6.)

17 In May 2016, CFSD sent Picazo’s file to KTS for possible legal action regarding  
18 Picazo’s alleged failure to verify her income with the Commission. (Ruiz. Decl. ¶ 10.)  
19 KTS is a law firm. One service KTS offers, among others, is to collect debts for its clients.  
20 (See Doc. No. 13-2 (“Lickel Decl.”) Exh. U.) CFSD retained KTS to evaluate the lease  
21 for legal action regarding Picazo’s alleged failure to comply with the Commission’s annual  
22 income certification. (Ruiz Decl. ¶ 10.)

23 On May 16, 2016, KTS issued Picazo a new sixty-day notice of termination (“Notice  
24 of Termination”), superseding the February notice. KTS declared a forfeiture of Picazo’s  
25 lease based on the Commission’s notice that Picazo had failed to report income from her  
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27 <sup>1</sup> The court will cite to the pagination provided by CM/ECF rather than original pagination  
28 throughout.

1 2015 employment. The Notice of Termination gave Picazo until July 18, 2016, to terminate  
2 her tenancy. (Doc. No. 11-10 (“Fortune Decl.”) Exh. 1.) In response, Picazo met with  
3 CFSD personnel to inform them that she had already provided the documents needed to  
4 verify her income for 2015. (Doc. No. 13-1 (“Picazo Decl.”) ¶ 21.) The Notice of  
5 Termination did not allege that Picazo owed any rent at this time.

6 Plaintiffs remained on the property and Picazo paid July 2016 rent in full. (Picazo  
7 Decl. Exhs. K–K.1.) On July 22, 2016, KTS initiated an unlawful detainer action against  
8 Plaintiffs on CFSD’s behalf. (Ruiz Decl. ¶ 11.) In its complaint, KTS sought forfeiture of  
9 the lease agreement and damages for each day that Plaintiffs remained in possession from  
10 July 19, 2016, through entry of judgment. KTS did not select the box to seek past-due rent.  
11 (Doc. No. 11-12 (“RJN”) Exh. A.)<sup>2</sup> During the course of discovery in the unlawful detainer  
12 action, KTS learned that Picazo’s failure to report income was likely the result of an  
13 inadvertent mistake on her recertification documents, possibly due to a language barrier.  
14 Accordingly, CFSD asked KTS to voluntarily dismiss the unlawful detainer action.  
15 (Fortune Decl. ¶ 13; Ruiz Decl. ¶ 12.)

16 On July 17, 2017, Plaintiffs filed this action against KTS for violations of the  
17 FDCPA and Rosenthal Act. (Doc. No. 1.) In response, KTS filed the instant special motion  
18 to strike Plaintiffs’ Rosenthal Act claims and motion for summary judgment on Plaintiffs’  
19 FDCPA claims. (Doc. No. 11.)

## 20 LEGAL STANDARDS

### 21 I. California Code of Civil Procedure Section 425.16 – Anti-SLAPP

22 “California law provides for the pre-trial dismissal of certain actions, known as  
23 Strategic Lawsuits Against Public Participation, or SLAPPs, that masquerade as ordinary  
24 lawsuits but are intended to deter ordinary people from exercising their political or legal  
25 rights or to punish them for doing so.” Makaeff v. Trump Univ., LLC, 715 F.3d 254, 261  
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28 <sup>2</sup> The court grants KTS’s request for judicial notice of the verified unlawful detainer  
complaint. (RJN Exh. A.)

1 (9th Cir. 2013) (internal quotation marks omitted).

2 Although the statute providing for an anti-SLAPP motion is codified as a state  
3 procedural rule, anti-SLAPP motions can be used in federal court. See Batzel v. Smith,  
4 333 F.3d 1018, 1025–26 (9th Cir. 2003); Vess v. Ciba-Geigy Corp. USA, 317 F.3d 1097,  
5 1109 (9th Cir. 2003). However, an anti-SLAPP motion in federal court can only be used  
6 to challenge state-law claims. See Hilton v. Hallmark Cards, 599 F.3d 894, 901 (9th Cir.  
7 2009); see also In re Bah, 321 B.R. 41, 46 (B.A.P. 9th Cir. 2005) (noting that the anti-  
8 SLAPP statute applies also to state-law claims asserted pendent to federal question claims)  
9 (citing Globetrotter Software, Inc. v. Elan Computer Grp., Inc., 63 F. Supp. 2d 1127, 1130  
10 (N.D. Cal. 1999)).

11 To prevail, “the moving defendant must make a prima facie showing that  
12 the plaintiff’s suit arises from an act in furtherance of the defendant’s constitutional right  
13 to free speech.” Makaeff, 715 F.3d at 261. “The burden then shifts to the plaintiff . . . to  
14 establish a reasonable probability that it will prevail on its claim in order for that claim to  
15 survive dismissal.” Id.

16 A “prevailing defendant on a special motion to strike shall be entitled to recover his  
17 or her attorney’s fees and costs.” Cal. Civ. Proc. Code § 425.16(c).

## 18 **II. Federal Rule of Civil Procedure 56 – Summary Judgment**

19 A motion for summary judgment shall be granted where “there is no genuine issue  
20 as to any material fact and . . . the moving party is entitled to judgment as a matter of law.”  
21 Fed. R. Civ. P. 56(c). The moving party bears the initial burden of informing the court of  
22 the basis for its motion and identifying those portions of the file that it believes demonstrate  
23 the absence of a genuine issue of material fact. Celotex Corp. v. Catrett, 477 U.S. 317, 323  
24 (1986). But Rule 56 contains “no express or implied requirement . . . that the moving party  
25 support its motion with affidavits or other similar materials negating the opponent’s claim.”  
26 Id. (emphasis in original).

27 In response to a motion for summary judgment, the nonmoving party cannot rest on  
28 the mere allegations or denials of a pleading, but must “go beyond the pleadings and by

1 [its] own affidavits, or by the depositions, answers to interrogatories, and admissions on  
2 file, designate specific facts showing that there is a genuine issue for trial.” Id. at 324  
3 (internal citations omitted). In other words, the nonmoving party may not rely solely on  
4 conclusory allegations unsupported by factual data. Taylor v. List, 880 F.2d 1040, 1045  
5 (9th Cir. 1989). The court must examine the evidence in the light most favorable to the  
6 nonmoving party, United States v. Diebold, Inc., 369 U.S. 654, 655 (1962), and any doubt  
7 as to the existence of an issue of material fact requires denial of the motion, Anderson v.  
8 Liberty Lobby, Inc., 477 U.S. 242, 255 (1986).

## 9 DISCUSSION

### 10 I. California Code of Civil Procedure Section 425.16 – Anti-SLAPP

11 KTS brings a special motion to strike Plaintiffs’ Rosenthal Act claims pursuant to  
12 California’s anti-SLAPP statute. Under that statute,

13 A cause of action against a person arising from any act of that person in  
14 furtherance of the person’s right of petition or free speech under the United  
15 States Constitution or the California Constitution in connection with a public  
16 issue shall be subject to a special motion to strike, unless the court determines  
17 that the plaintiff has established that there is a probability that the plaintiff will  
18 prevail on the claim.

19 Cal. Civ. Proc. Code § 425.16(b)(1). The court will first address whether Plaintiffs’ claims  
20 arise from protected activity before turning to whether Plaintiffs have established a  
21 probability of prevailing on their claims.

#### 22 A. Plaintiffs’ Rosenthal Act Claims Arise From Activity Protected Under 23 California Code of Civil Procedure Section 425.16

24 First, KTS must “make a prima facie showing that [Plaintiffs’] suit arises from an  
25 act in furtherance of the defendant’s constitutional right to free speech.” Makaeff, 715  
26 F.3d at 261. Plaintiffs’ subjective intent in bringing the lawsuit is not relevant. See City  
27 of Cotati v. Cashman, 29 Cal. 4th 69, 74 (2002). Rather, “the critical point is whether the  
28 plaintiff’s cause of action itself was based on an act in furtherance of the defendant’s right  
of petition or of free speech.” Id. at 78 (emphasis in original).

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1 Plaintiffs allege that KTS violated the Rosenthal Act by filing an unlawful detainer  
2 action that claimed that Plaintiffs owed \$17.26 for each day they remained in possession  
3 of the premises as of July 19, 2016, even though Plaintiffs had already paid July rent in  
4 full. According to Plaintiffs, filing the unlawful detainer action, “constituted a  
5 misrepresentation as to the amount or nature of an alleged debt.” (Doc. No. 1 ¶ 32.) “Filing  
6 an unlawful detainer complaint is protected activity under the anti-SLAPP statute, as is  
7 service of a notice of termination preceding an unlawful detainer complaint.” Ulkarim v.  
8 Westfield LLC, 227 Cal. App. 4th 1266, 1275 (2014); see also Birkner v. Lam, 156 Cal.  
9 App. 4th 275, 281 (2007) (“The prosecution of an unlawful detainer action indisputably is  
10 protected activity within the meaning of section 425.16.”). Because Plaintiffs’ Rosenthal  
11 Act claims are based on conduct protected by California’s anti-SLAPP statute, which  
12 Plaintiffs do not deny, the burden shifts to Plaintiffs to establish a reasonable probability  
13 that they will prevail on their Rosenthal Act claims.

14 **B. Plaintiffs Have Not Established a Reasonable Probability That They Will**  
15 **Prevail on Their Rosenthal Act Claims**

16 A cause of action that arises from protected activity is subject to dismissal unless the  
17 “plaintiff has established that there is a probability that the plaintiff will prevail on the  
18 claim.” Cal. Civ. Proc. Code § 425.16(b)(1). To establish the requisite probability, the  
19 plaintiff need only have “stated and substantiated a legally sufficient claim.” Greka  
20 Integrated, Inc. v. Lowrey, 133 Cal. App. 4th 1572, 1580 (2005). “The court cannot weigh  
21 the evidence, but must determine as a matter of law whether the evidence is sufficient to  
22 support a judgment in the plaintiff’s favor.” Ulkarim, 227 Cal. App. 4th at 1274 (citations  
23 omitted). If the defendant presents evidence that establishes as a matter of law, not merely  
24 contradicts, that the plaintiff cannot prevail, such evidence will defeat the plaintiff’s  
25 evidentiary showing. Id. at 1275.

26 The court will first address KTS’s claim that the litigation privilege bars Plaintiffs’  
27 Rosenthal Act claims before turning to the merits of Plaintiffs’ Rosenthal Act claims.

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1                   **1. California Litigation Privilege**

2                   First, KTS argues that its actions are protected by the litigation privilege set forth in  
3 California Civil Code Section 47(b). KTS argues the alleged violations of the Rosenthal  
4 Act in the complaint, filing the unlawful detainer action seeking forfeiture of the lease and  
5 seeking damages, are all actions properly protected from attack by the litigation privilege.  
6 Plaintiffs argue that the Rosenthal Act prevails over the litigation privilege as the more  
7 specific statute.

8                   **a. The Rosenthal Act**

9                   Section 1788.17 of the Rosenthal Act establishes liability under California law for  
10 violations of the FDCPA. Cal. Civ. Code § 1788.17. The FDCPA, in turn, prohibits false  
11 or deceptive practices in connection with the collection of debts. 15 U.S.C. § 1692 et seq.  
12 The purpose of the FDCPA is to “eliminate abusive debt collection practices by debt  
13 collectors, to insure that those debt collectors who refrain from using abusive debt  
14 collection practices are not competitively disadvantaged, and to promote consistent State  
15 action to protect consumers against debt collection abuses.” Id. § 1692(e).

16                   In their Rosenthal Act claims, Plaintiffs allege that KTS violated sections 1692d,  
17 1692e, 1692e(2), 1692e(4), 1692e(5), 1692f, and 1692f(1) of the FDCPA by filing the  
18 unlawful detainer action against them. Cal. Civ. Code § 1788.17. Section 1692d prohibits  
19 a debt collector from “engag[ing] in any conduct the natural consequence of which is to  
20 harass, oppress, or abuse any person in connection with the collection of a debt.” Section  
21 1692e prohibits a debt collector from “us[ing] any false, deceptive, or misleading  
22 representation or means in connection with the collection of any debt,” with violations of  
23 section 1962e(2) including the false representation of “the character, amount, or legal status  
24 of any debt.” Section 1962e is violated under section 1962e(4) by the “representation or  
25 implication that nonpayment of any debt will result in the arrest or imprisonment of any  
26 person or the seizure, garnishment, attachment, or sale of any property or wages of any  
27 person unless such action is lawful and the debt collector or creditor intends to take such  
28 action,” and is violated under section 1962e(5) by the “threat to take any action that cannot

1 legally be taken or that is not intended to be taken.” Finally, section 1692f prohibits a debt  
2 collector from “us[ing] unfair or unconscionable means to collect or attempt to collect any  
3 debt,” with violations of section 1962f(1) including the “collection of any amount . . .  
4 unless such amount is expressly authorized by the agreement creating the debt or permitted  
5 by law.”

6 **b. California Civil Code Section 47(b)**

7 California Civil Code section 47(b) provides, in relevant part, that a privilege  
8 attaches to a publication or broadcast made in any judicial proceeding. The privilege “is  
9 not limited to statements made during a trial or other proceedings, but may extend to steps  
10 taken prior thereto, or afterwards.” Rusheen v. Cohen, 37 Cal. 4th 1048, 1057 (2006). The  
11 litigation privilege “clearly protect[s]” the filing of a lawsuit. Action Apartment Ass’n,  
12 Inc. v. City of Santa Monica, 41 Cal. 4th 1232, 1249 (2007). However, the California  
13 Court of Appeal has held that the litigation privilege does not bar claims under the  
14 Rosenthal Act where the two statutes conflict. See Komarova v. Nat’l Credit Acceptance,  
15 Inc., 175 Cal. App. 4th 324 (2009). “The recognition of these exceptions has been guided  
16 by the rule of statutory construction that particular provisions will prevail over general  
17 provisions. If a statute is more specific than the litigation privilege and would be  
18 significantly or wholly inoperable if the privilege applied, the privilege will not shield  
19 violations of that statute.” People v. Persolve, LLC, 218 Cal. App. 4th 1267, 1274 (2013).

20 **c. The California Litigation Privilege Does Not Apply Here**

21 KTS argues that the litigation privilege bars Plaintiffs’ Rosenthal Act claim. KTS  
22 asserts that although the litigation privilege does not apply where the Rosenthal Act is the  
23 more specific statute, here, there is no specific Rosenthal Act provision prohibiting the  
24 filing of an unlawful detainer action and seeking daily holdover damages. Plaintiffs argue  
25 that KTS falsely alleged a debt by claiming that Plaintiffs owed money for a past period of  
26 occupancy, thereby violating provisions of the FDCPA incorporated in the Rosenthal Act  
27 and creating a conflict between the Rosenthal Act and the litigation privilege. Furthermore,  
28 Plaintiffs argue that the litigation privilege does not apply because the Rosenthal Act is



1 always the more specific statute.

2 KTS relies on two cases to support its argument. The first, Nickoloff v. Wolpoff &  
3 Abramson, LLP, 511 F. Supp. 2d 1043 (C.D. Cal. 2007), is a pre-Komarova case that  
4 concerned the sufficiency of documentary evidence connecting the chain of title of the  
5 debt—evidence that was provided during a legitimate arbitration proceeding. Because  
6 Nickoloff predates Komarova and is a case the court previously declined to follow in Sial  
7 v. Unifund CCR Partners, No. 08cv905 JM (CAB), 2008 WL 4079281, at \*5 (S.D. Cal.  
8 Aug. 28, 2008) (finding that the Rosenthal Act prevails over the statutory litigation  
9 privilege), the court declines to follow it now. The second is Boon v. Prof’l Collection  
10 Consultants, 958 F. Supp. 2d 1129 (S.D. Cal. 2013), in which the court applied the  
11 litigation privilege to a Rosenthal Act claim premised on a time-barred state court action.  
12 The court respectfully opts not to follow the decision in Boon because, as the court noted  
13 in Petley v. San Diego Cty. Credit Union, 2017 WL 385742, at \*5 (S.D. Cal. Jan. 27, 2017),  
14 the court cited only pre-Komarova district court cases.

15 Furthermore, apart from Boon, only one other federal court decision since Komarova  
16 has applied the litigation privilege to Rosenthal Act claims. See Ordinario v. LVNV  
17 Funding, LLC, 2016 WL 852843, at \*2 (S.D. Cal. Mar. 4, 2016). All other cases have  
18 rejected that approach. See, e.g., Welker v. Law Office of Daniel J. Horwitz, 699 F. Supp.  
19 2d 1164, 1174 (S.D. Cal. 2010) (Gonzalez, J.); Huy Thanh Vo v. Nelson & Kennard, 931  
20 F. Supp. 2d 1080, 1097 (E.D. Cal. 2013) (noting in 2013 that following Komarova, “not a  
21 single federal court has found Rosenthal Act claims to be barred by the litigation  
22 privilege”); Holmes v. Elec. Document Processing, Inc., 966 F. Supp. 2d 925, 937 (N.D.  
23 Cal. 2013); Derr v. Kimball, Tirey & St. John LLP, 2012 WL 12874923, at \*3 (S.D. Cal.  
24 Aug. 14, 2012) (“Applying the litigation privilege would . . . eviscerate the Rosenthal  
25 Act.”).

26 Given this weight of recent authority, the California Court of Appeal’s opinions in  
27 Komarova and Persolve, and this court’s own decisions in Sial and Petley, the court holds  
28 that the litigation privilege and the Rosenthal Act conflict in this case and, consequently,

1 the Rosenthal Act must prevail.<sup>3</sup>

2 **2. KTS as a “Debt Collector” Under the Rosenthal Act**

3 KTS asserts that Plaintiffs cannot prevail because KTS is not a debt collector under  
4 the Rosenthal Act. The definition of “debt collector” under the Rosenthal Act expressly  
5 excludes “an attorney or counselor at law.” Cal. Civ. Code § 1788.2(c). KTS argues that  
6 law firms are included in that statutory exemption, largely based on the California Court  
7 of Appeal’s opinion in Carney v. Rotkin, Schmerin & McIntyre, 206 Cal. App. 3d 1513  
8 (Ct. App. 1988).<sup>4</sup> (See Doc. No. 11-2 at 23.) The court joins the majority of federal judges  
9 in California and holds that the Rosenthal Act does apply to law firms.<sup>5</sup> See, e.g., Lyon v.  
10 Bergstrom Law, Ltd., 2017 WL 2350447 (E.D. Cal. May 31, 2017); Davis v. Hollins Law,  
11 942 F. Supp. 2d 1004, 1008, 1011 (E.D. Cal. 2013) (collecting cases and holding that “the  
12 ‘attorney’ exemption from the definition of ‘debt collector’ under the Rosenthal Act does  
13 not extend to ‘law firms’”); see also Huy Thanh Vo, 931 F. Supp. 2d at 1091–92 (analyzing  
14 Carney and finding it “is simply not persuasive precedent for the proposition that the  
15 Rosenthal Act exempts law firms from the definition of ‘debt collector’”).

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19 <sup>3</sup> Because the FDCPA preempts California’s litigation privilege, FDCPA claims are not  
20 subject to the privilege. See, e.g., Oei v. N. Star Capital Acquisitions, LLC, 486 F. Supp.  
21 2d 1089, 1098 (C.D. Cal. 2006). Plaintiffs argue that because FDCPA remedies are not  
22 subject to the litigation privilege, by extension, they are not subject to the privilege when  
23 incorporated in the Rosenthal Act. (See Doc. No. 13 at 14.) KTS did not rebut this  
24 argument, nor any other argument raised by Plaintiffs on the litigation privilege, in its reply  
25 brief. While the court declines to decide the issue on this basis, it recognizes the appeal of  
26 Plaintiffs’ argument and believes it further supports the court’s conclusion.

25 <sup>4</sup> The court grants KTS’s request for judicial notice of portions of the clerk’s transcript on  
26 appeal in Carney, including portions of the record and filings. (RJV Exhs. B, C, D, E.)

27 <sup>5</sup> The court grants KTS’s request for judicial notice of the legislative history of the  
28 Rosenthal Act filed in a case before the United States Bankruptcy Court for the Eastern  
District of California, (RJV Exh. F), but finds KTS’s argument that the legislative history  
of the Rosenthal Act supports its interpretation of “debt collectors” unpersuasive.

1                   **3. Underlying Litigation as Collection of a Consumer Debt**

2           The Rosenthal Act concerns “consumer debt,” which it defines as “money, property  
3 or their equivalent, due or owing or alleged to be due or owing from a natural person by  
4 reason of a consumer credit transaction.” Cal. Civ. Code § 1788.2(f). A “consumer credit  
5 transaction” is “a transaction between a natural person and another person in which  
6 property, services or money is acquired on credit by that natural person from such other  
7 person primarily for personal, family, or household purposes.” Id. § 1788.2(e) (emphasis  
8 added). Thus, Plaintiffs’ Rosenthal Act claims turn on whether the unlawful detainer action  
9 KTS filed was an attempt to collect a consumer debt.

10           Plaintiffs argue that KTS attempted to collect a debt through the unlawful detainer  
11 action filed on July 22, 2016, by alleging that Plaintiffs owed money for a period in the  
12 past because KTS sought damages from July 19, 2016, onward. (RJN Exh. A.) In essence,  
13 Plaintiffs argue that KTS sought to collect rent for a period in the past, even though  
14 Plaintiffs had already paid July rent in full.<sup>6</sup> KTS argues that it did not seek past-due rent,  
15 but rather future damages from July 19, 2016, for each day Plaintiffs remained in  
16 possession through entry of judgment. The complaint in the unlawful detainer action  
17 supports KTS, as it did not check the box for “past-due rent” but did check the box seeking  
18 damages after July 19. (RJN Exh. A.) Furthermore, KTS notes that the damages sought  
19 were contingent, and not due and payable until a court enters judgment declaring them so.  
20 (Doc. No. 14 at 10.) The court finds these arguments persuasive, but declines to rule on

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22 <sup>6</sup> Plaintiffs argue that CFSD’s acceptance of July rent from Plaintiffs waived the Notice of  
23 Termination “under applicable California law.” (See Doc. No. 13 at 11, 31.) Plaintiffs fail  
24 to provide legal support in their brief, instead directing the court to a declaration submitted  
25 by their attorney. (See Lickel Decl. ¶¶ 20–22.) The court does not consider legal  
26 arguments outside the moving papers, and uses declarations only for factual support. See  
27 Fed. R. Civ. P. 56(c)(4) (“An affidavit or declaration used to support or oppose a motion  
28 must be made on personal knowledge, set out facts . . .”) (emphasis added); Asetek  
Danmark A/S v. CMI USA, Inc., 100 F. Supp. 3d 871, 892 (N.D. Cal. Apr. 21, 2015)  
 (“[C]laims, defenses, theories, and arguments must be articulated and be presented with  
 proper support in order for them to be considered by the court.”) (internal citation omitted).

1 this basis because Plaintiffs could not prevail even if KTS had attempted to collect past-  
2 due rent.

3 Even if KTS sought unpaid rent in the unlawful detainer action, Plaintiffs still could  
4 not prevail on their Rosenthal Act claims because “residential rent collection is not a  
5 consumer credit transaction protected under the Rosenthal Act.” Phillips v. Archstone Simi  
6 Valley LLC, 2016 WL 7444550, at \*5 (C.D. Cal. Dec. 15, 2016). Residential tenancies  
7 that require monthly rent paid in advance do not involve any extension of credit by the  
8 landlord. “Renting an apartment is not truly a credit transaction” because the landlord  
9 “neither sells property on time nor makes funds available to tenants.” Ortiz v. Lyon Mgmt.  
10 Grp., Inc., 157 Cal. App. 4th 604, 619 (2007). Because Plaintiffs did not acquire their  
11 leasehold on credit, no consumer credit transaction occurred between Plaintiffs and CFSD,  
12 and the rent paid by Plaintiffs is not a consumer debt under the Rosenthal Act. See Leasure  
13 v. Willmark Communities, Inc., 2013 WL 6097944, at \*4 (S.D. Cal. Mar. 14, 2013)  
14 (concluding that residential rent collection does not qualify as a consumer credit  
15 transaction). The cases cited by Plaintiffs to support a different result are inapposite. See  
16 Phillips, 2016 WL 7444550, at \*4–6 (explaining why Gouskos v. Aptos Village Garage,  
17 Inc., 94 Cal. App. 4th 754 (2001) and Koller v. West Bay Acquisitions, LLC, No. C 12-  
18 00117 CRB, 2012 WL 2862440 (N.D. Cal. July 11, 2012), which dealt with car repairs and  
19 monthly video rentals, respectively, are not analogous to the landlord-tenant relationship).

20 In an effort to avoid this outcome, Plaintiffs argue that this particular lease with  
21 CFSD was acquired on credit, making it a consumer credit transaction. (Doc. No. 13 at  
22 23.) Plaintiffs spend a significant portion of their opposition brief going through CFSD’s  
23 history with the property in question. When CFSD obtained a loan from the Commission  
24 to purchase the property, one of the conditions of the contract required CFSD to offer  
25 residential leases to low income individuals for a period of fifty-five years. (Doc. No. 13  
26 at 8.) These leases, subject to the HOME Program, must be renewed absent good cause  
27 for termination, which does not include an increase in a tenant’s income. 24 C.F.R.  
28 92.253(c). According to Plaintiffs, this situation gives Picazo a property interest until 2052,

1 and because “she does not pay for the right to force CFSD to renew her lease all the way  
2 through to 2052 absent good cause,” the lease is property that Plaintiffs obtained on credit.  
3 (Doc. No. 13 at 25.) In short, Plaintiffs attempt to extend the 1997 credit transaction  
4 between CFSD and the Commission to Plaintiffs, arguing that that “[i]f the lease is a  
5 consumer transaction, then the rent that may be alleged due in connection with that lease  
6 is a consumer debt because it is owed by reason of the lease.” (Doc. No. 13 at 30.)  
7 Plaintiffs fail to provide any legal support for that assertion.

8 The court is not convinced. Although Plaintiffs’ lease is subject to the HOME  
9 Program and cannot be terminated based on Plaintiffs’ income, it is still a month-to-month  
10 tenancy that requires rent in advance. Thus, no credit is extended to Plaintiffs. While  
11 CFSD may owe a debt to the Commission for the loan it received in 1997, Plaintiffs do not  
12 owe anything apart from their monthly rent for the right to renew their lease absent good  
13 cause to terminate it.

14 Therefore, Plaintiffs have failed to establish that there is a probability that they will  
15 prevail on their Rosenthal Act claims because the unlawful detainer action was not an  
16 attempt to collect a “consumer debt” as defined by the Rosenthal Act. Accordingly, the  
17 court grants KTS’s anti-SLAPP motion to strike and dismisses Plaintiffs’ Rosenthal Act  
18 claims.

19 KTS, as the prevailing defendant, is entitled to recover its attorney’s fees and costs.  
20 Cal. Civ. Proc. Code § 425.16(c). KTS has three weeks from the date of this order to file  
21 a motion attorney’s fees and costs.

## 22 **II. Summary Judgment – Federal Rule of Civil Procedure 56**

23 KTS also moves for summary judgment on Plaintiffs’ FDCPA claims, arguing that  
24 KTS is not a debt collector under the FDCPA and KTS did not attempt to collect a debt.  
25 Because the court finds that KTS is not a debt collector under the FDCPA, and grants  
26 summary judgment on that basis, it does not reach KTS’s argument that it did not attempt  
27 to collect a debt under the FDCPA.

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1           The FDCPA defines “debt collector” as “any person who uses any instrumentality  
2 of interstate commerce or the mails in any business the principal purpose of which is the  
3 collection of any debts, or who regularly collects or attempts to collect, directly or  
4 indirectly, debts owed or due or asserted to be owed or due another.” 15 U.S.C. § 1692a(6).  
5 While it is uncontested that KTS meets this definition, KTS argues that it falls within a  
6 statutory exception for “any person collecting or attempting to collect any debt owed or  
7 due or asserted to be owed or due another to the extent such activity . . . concerns a debt  
8 which was not in default at the time it was obtained by such person.” *Id.* § 1692a(6)(F)(iii).  
9 CFSD retained KTS to terminate Plaintiffs’ lease in May 2016. (Ruiz Decl. ¶ 10.) The  
10 unlawful detainer action seeking holdover damages, which Plaintiffs allege constituted a  
11 false claim for rent that was already paid and triggers the FDCPA, was filed in July 2016.  
12 KTS argues that it obtained the alleged debt prior to it being owed in July 2016, and thus  
13 15 U.S.C. § 1692a(6)(F)(iii) applies.

14           The parties agree that Plaintiffs did not owe rent for July 2016. (*See* Doc. No. 13 at  
15 21.) Because no money was owed, Plaintiffs argue that there was no debt for KTS to  
16 obtain, and thus 15 U.S.C. § 1692a(6)(F)(iii) does not apply. Plaintiffs argue that KTS did  
17 not “obtain” a debt in May 2016 because there was no “real, actual debt” to possess. (Doc.  
18 No. 13 at 21.) However, “debt,” as defined by the FDCPA, encompasses “any obligation  
19 or alleged obligation.” 15 U.S.C. § 1692a(5). Indeed, the other case Plaintiffs cite,  
20 Heathman v. Portfolio Recovery Assocs., LLC, 2013 WL 755674, at \*4 (S.D. Cal. Feb. 27,  
21 2013), made this same observation when the court found that the defendant could not  
22 escape liability because the alleged debt was nonexistent. Thus, KTS could obtain the  
23 alleged obligation, that Plaintiffs owed rent, in May 2016 when CFSD retained KTS to  
24 terminate Plaintiffs’ lease. *See Henson v. Santander Consumer USA Inc.*, 137 S. Ct. 1718,  
25 1723 (2017) (“[One] might, for example, take possession of a debt for servicing and  
26 collection even while the debt formally remains owed another.”). KTS would not have  
27 initiated the unlawful detainer action against Plaintiffs if CFSD had not retained it to handle  
28 matters related to the termination of Plaintiffs’ lease in May 2016. The Notice of

1 Termination issued by KTS purported to terminate Plaintiffs' lease by July 18, 2016. The  
2 unlawful detainer action filed by KTS sought damages for the time Plaintiffs remained on  
3 the premises after the lease terminated. Therefore, KTS obtained the alleged debt, the  
4 damages that Plaintiffs allege "constituted a misrepresentation as to the amount or nature  
5 of an alleged debt," (Doc. No. 1 ¶ 32), prior to default. Consequently, KTS is excluded  
6 from the definition of "debt collector" under the FDCPA based on the exception in  
7 15 U.S.C. § 1692a(6)(F)(iii). Because KTS is not a debt collector, Plaintiffs' FDCPA  
8 claims fail as a matter of law and KTS is entitled to summary judgment.

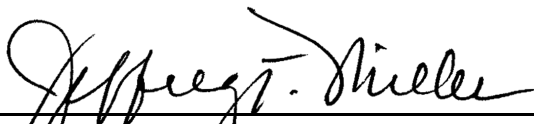
9 In sum, the court grants KTS's motion for summary judgment on Plaintiffs' FDCPA  
10 claims.

### 11 CONCLUSION

12 For the foregoing reasons, the court grants KTS's special motion to strike Plaintiffs'  
13 Rosenthal Act claims and KTS's motion for summary judgment on Plaintiffs' FDCPA  
14 claims. KTS has *three weeks* from the date of this order to move the court for attorney's  
15 fees and costs related to its anti-SLAPP motion.

16 IT IS SO ORDERED.

17  
18 DATED: April 2, 2018

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21 JEFFREY T. MILLER  
22 United States District Judge  
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