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16 UNITED STATES DISTRICT COURT
 17 SOUTHERN DISTRICT OF CALIFORNIA

18 TRACY HORN, individually and on
 19 behalf of all others similarly situated,

20 Plaintiff,

21 vs.

22 BLEIER & COX, APC; NATIONAL
 23 COLLEGIATE STUDENT LOAN
 24 TRUST 2006-3; and DOES 1
 25 through 10, inclusive,

26 Defendants.
 27

Case No.: '18CV0335 MMANLS

28 NOTICE OF REMOVAL OF ACTION
 UNDER 28 U.S.C. § 1441(a)
 [FEDERAL QUESTION]

1 TO THE CLERK OF THE ABOVE-ENTITLED COURT:

2 PLEASE TAKE NOTICE THAT defendants Bleier & Cox, APC (“B&C”)
3 and National Collegiate Student Loan Trust 2006-3 (“NCSLT”) (collectively
4 “Defendants”) hereby jointly remove to this Court the state court action described
5 below.

6 1. This action is a civil action of which this Court has original
7 jurisdiction under 28 U.S.C. § 1331 and is one which may be removed to this
8 Court by defendant pursuant to the provisions of 28 U.S.C. § 1441(a) in that it
9 arises under the Fair Debt Collections Practices Act, 15 U.S.C. § 1692, *et. seq.*
10

11 2. On or about January 3, 2018 the action was commenced in the
12 Superior Court of the State of California, County of San Diego, entitled, *Tracy*
13 *Horn, et al. v. Bleier & Cox, APC; National Collegiate Student Loan Trust 2006-*
14 *3, et al.* Case No. 37-2018-00000378-CU-MC-CTL (the “State Court Action”). A
15 copy of the Plaintiff’s Summons and Complaint (“Complaint”) is attached hereto
16 as Exhibit A.

17 3. The date upon which B&C first received a copy of the said
18 Complaint was January 11, 2018, when B&C was served with a copy of the
19 Complaint. Thus, pursuant to 28 U.S.C. § 1446(b), Defendants have timely filed
20 this Notice of Removal.

21 4. A copy of this Notice of Removal is being served upon Plaintiff and
22 will be filed in the State Court Action.

23 5. The State Court Action is located within the Southern District of
24 California. Therefore, venue for purposes of removal is proper because the United
25 States District Court for the Southern District of California embraces the place in
26 which the removed action was pending 28 U.S.C. § 1441(a).
27
28

1 6. Removal of the State Court Action is therefore proper under 28
2 U.S.C. §§ 1441 and 1446.
3

4
5 Dated: 2/12/18

SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.
/s/Damian P. Richard
Damian P. Richard
Attorney for Defendant
National Collegiate Student Loan Trust 2006-3

6
7
8
9
10 Dated: 2/12/18

PATENAUDE & FELIX, APC
/s/Raymond Patenaude
Raymond Patenaude
Attorney for Defendant
Bleier & Cox, APC

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Tracy Horn, individually and on behalf of all others similarly situated,

(b) County of Residence of First Listed Plaintiff (EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Andrew Rundquist, Esq. Tel: 619-992-9148
501 W. Broadway, Suite A144, San Diego, CA 92101

DEFENDANTS

National Collegiate Student Loan Trust 2006-3

'18CV0335 MMANLS

County of Residence of First Listed Defendant (IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF THE TRACT OF LAND INVOLVED.

Attorneys (If Known)
Damian P. Richard, Esq. Tel: 619-758-1891
Sessions Fishman Nathan & Israel, LLP
1545 Hotel Circle South, Suite 150. San Diego, CA 92108

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- 1 U.S. Government Plaintiff
2 U.S. Government Defendant
3 Federal Question (U.S. Government Not a Party)
4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

Table with columns for Plaintiff (PTF) and Defendant (DEF) citizenship: Citizen of This State, Citizen of Another State, Citizen or Subject of a Foreign Country, Incorporated or Principal Place of Business In This State, Incorporated and Principal Place of Business In Another State, Foreign Nation.

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Large table with categories: CONTRACT, REAL PROPERTY, CIVIL RIGHTS, PRISONER PETITIONS, TORTS, PERSONAL INJURY, FORFEITURE/PENALTY, LABOR, IMMIGRATION, BANKRUPTCY, SOCIAL SECURITY, FEDERAL TAX SUITS, OTHER STATUTES.

V. ORIGIN (Place an "X" in One Box Only)

- 1 Original Proceeding
2 Removed from State Court
3 Remanded from Appellate Court
4 Reinstated or Reopened
5 Transferred from Another District (specify)
6 Multidistrict Litigation - Transfer
8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
15 USC 1692 et al.
Brief description of cause:
Alleged Violations of the Fair Debt Collection Practices Act.

VII. REQUESTED IN COMPLAINT:

CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P. DEMAND \$ CHECK YES only if demanded in complaint: JURY DEMAND: Yes No

VIII. RELATED CASE(S) IF ANY

(See instructions): JUDGE DOCKET NUMBER

DATE 02/12/2018 SIGNATURE OF ATTORNEY OF RECORD /s/Damian P. Richard

FOR OFFICE USE ONLY

RECEIPT # AMOUNT APPLYING IFP JUDGE MAG. JUDGE

Exhibit A

SUM-100

SUMMONS (CITACION JUDICIAL)

FOR COURT USE ONLY
(SOLO PARA USO DE LA CORTE)

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/03/2018 at 01:39:12 PM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

**NOTICE TO DEFENDANT:
(AVISO AL DEMANDADO):**

BLEIER & COX, APC; NATIONAL COLLEGIATE STUDENT LOAN TRUST
2006-3; AND DOES 1-10, INCLUSIVE

**YOU ARE BEING SUED BY PLAINTIFF:
(LO ESTÁ DEMANDANDO EL DEMANDANTE):**

Tracy Horn, Individually and On Behalf of All Others Similarly Situated

NOTICE! You have been sued. The court may decide against you without your being heard unless you respond within 30 days. Read the information below.

You have 30 CALENDAR DAYS after this summons and legal papers are served on you to file a written response at this court and have a copy served on the plaintiff. A letter or phone call will not protect you. Your written response must be in proper legal form if you want the court to hear your case. There may be a court form that you can use for your response. You can find these court forms and more information at the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), your county law library, or the courthouse nearest you. If you cannot pay the filing fee, ask the court clerk for a fee waiver form. If you do not file your response on time, you may lose the case by default, and your wages, money, and property may be taken without further warning from the court.

There are other legal requirements. You may want to call an attorney right away. If you do not know an attorney, you may want to call an attorney referral service. If you cannot afford an attorney, you may be eligible for free legal services from a nonprofit legal services program. You can locate these nonprofit groups at the California Legal Services Web site (www.lawhelpcalifornia.org), the California Courts Online Self-Help Center (www.courtinfo.ca.gov/selfhelp), or by contacting your local court or county bar association. **NOTE:** The court has a statutory lien for waived fees and costs on any settlement or arbitration award of \$10,000 or more in a civil case. The court's lien must be paid before the court will dismiss the case.

¡AVISO! Lo han demandado. Si no responde dentro de 30 días, la corte puede decidir en su contra sin escuchar su versión. Lea la información a continuación.

Tiene 30 DÍAS DE CALENDARIO después de que le entreguen esta citación y papeles legales para presentar una respuesta por escrito en esta corte y hacer que se entregue una copia al demandante. Una carta o una llamada telefónica no lo protegen. Su respuesta por escrito tiene que estar en formato legal correcto si desea que procesen su caso en la corte. Es posible que haya un formulario que usted pueda usar para su respuesta. Puede encontrar estos formularios de la corte y más información en el Centro de Ayuda de las Cortes de California (www.sucorte.ca.gov), en la biblioteca de leyes de su condado o en la corte que le quede más cerca. Si no puede pagar la cuota de presentación, pida al secretario de la corte que le dé un formulario de exención de pago de cuotas. Si no presenta su respuesta a tiempo, puede perder el caso por incumplimiento y la corte le podrá quitar su sueldo, dinero y bienes sin más advertencia.

Hay otros requisitos legales. Es recomendable que llame a un abogado inmediatamente. Si no conoce a un abogado, puede llamar a un servicio de remisión a abogados. Si no puede pagar a un abogado, es posible que cumpla con los requisitos para obtener servicios legales gratuitos de un programa de servicios legales sin fines de lucro. Puede encontrar estos grupos sin fines de lucro en el sitio web de California Legal Services, (www.lawhelpcalifornia.org), en el Centro de Ayuda de las Cortes de California, (www.sucorte.ca.gov) o poniéndose en contacto con la corte o el colegio de abogados locales. **AVISO:** Por ley, la corte tiene derecho a reclamar las cuotas y los costos exentos por imponer un gravamen sobre cualquier recuperación de \$10,000 ó más de valor recibida mediante un acuerdo o una concesión de arbitraje en un caso de derecho civil. Tiene que pagar el gravamen de la corte antes de que la corte pueda desechar el caso.

The name and address of the court is:

(El nombre y dirección de la corte es):

Superior Court of California, County of San Diego
330 W Broadway San Diego, CA 92101

CASE NUMBER:

(Número del Caso): 37-2018-00000378-CU-MC-CTL

The name, address, and telephone number of plaintiff's attorney, or plaintiff without an attorney, is:

(El nombre, la dirección y el número de teléfono del abogado del demandante, o del demandante que no tiene abogado, es):

Andrew Rundquist SBN 262523; 501 W Broadway Suite A144 San Diego CA 92101; (619)992-9148

DATE: 01/04/2018
(Fecha)

Clerk, by
(Secretario)

E. Engel
E. Engel

Deputy
(Adjunto)

(For proof of service of this summons, use Proof of Service of Summons (form POS-010).)

(Para prueba de entrega de esta citación use el formulario Proof of Service of Summons, (POS-010)).



NOTICE TO THE PERSON SERVED: You are served

- 1. as an individual defendant.
- 2. as the person sued under the fictitious name of (specify):

3. on behalf of (specify): **Bleier & Cox, APC**

- under: CCP 416.10 (corporation) CCP 416.60 (minor)
- CCP 416.20 (defunct corporation) CCP 416.70 (conservatee)
- CCP 416.40 (association or partnership) CCP 416.80 (authorized person)
- other (specify):

4. by personal delivery on (date):

MMA
S

17-306

ELECTRONICALLY FILED
Superior Court of California,
County of San Diego

01/03/2018 at 01:39:12 PM

Clerk of the Superior Court
By Erika Engel, Deputy Clerk

1 Law Offices of Andrew P Rundquist SBN 262523 501
2 W Broadway Suite A144
3 San Diego CA 92101
4 (619) 992-9148
5 andrew@rundquistlaw.com
6 Attorney for Plaintiff TRACY HORN and Others
7 Similarly Situated

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SUPERIOR COURT OF THE STATE OF CALIFORNIA
FOR THE COUNTY OF SAN DIEGO

37-2018-00000378-CU-MC-CTL

TRACY HORN, INDIVIDUALLY AND
ON BEHALF OF ALL OTHERS
SIMILARLY SITUATED

Plaintiff,

vs.

BLEIER & COX, APC; NATIONAL
COLLEGIATE STUDENT LOAN
TRUST 2006-3; AND DOES 1-
10, INCLUSIVE

Defendants

UNLIMITED JURISDICTION AS
AMOUNT DEMANDED EXCEEDS
\$25,000

CLASS ACTION COMPLAINT FOR
VIOLATION OF:

1. FAIR DEBT COLLECTION
PRACTICES ACT 15 U.S.C. § 1692,
ET SEQ.; AND,

2. THE ROSENTHAL FAIR DEBT
COLLECTION PRACTICES ACT,
CAL. CIV. CODE § 1788 ET SEQ.

JURY TRIAL DEMANDED

Now COMES Plaintiff Tracy Horn, individually, and on behalf of all others
similarly situated by and through her attorney THE LAW OFFICES OF ANDREW
P RUNDQUIST, in her claim for damages against Defendants BLEIER & COX,
APC ("Bleier"); NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-3
("NCT"); and DOES 1- 10, INCLUSIVE.

1 **I. INTRODUCTION**

2
3 1. This is a consumer action brought pursuant to the Fair Debt Collection
4 Practices Act ("FDCPA"), 15 U.S.C. §§ 1692, et. seq., and the Rosenthal Fair Debt
5 Collection Practices Act, California Civil Code § 1788 et seq (hereinafter
6 "RFDCPA") which prohibit debt collectors from engaging in abusive, deceptive
7 and unfair practices. Congress intended the FDCPA to eliminate abusive debt
8 collection practices by debt collectors, to insure those debt collectors who do
9 refrain from using abusive debt collection practices are not competitively
10 disadvantaged and to promote consistent State action to protect consumers against
11 debt collections abusers.

12 2. This is a class action brought on behalf of all individuals in the United
13 States, inside the state of California who received debt collection letters from
14 Defendant containing false threats of legal action Defendant did not intend to take,
15 thus violating the Federal Fair Debt Collection Practices Act, 15 U.S.C. § 1692 et
16 seq. ("FDCPA"). This action is also brought on behalf of a subclass all California
17 residents who were the recipients of the same false and deceptive debt collection
18 letters sent by Defendant, in violation of the Rosenthal Fair Debt Collection
19 Practices Act, *Cal. Civ. Code* §§1788, et seq. ("RFDCPA").

20 **II. JURISDICTION AND VENUE**

21 3. The California Superior Court has jurisdiction over this action
22 pursuant to California Code of Civil Procedure § 410.10 and California
23 Constitution Article VI, § 10. Which grants the Superior Court "original
24 jurisdiction in all cases except those given by statute to other trial courts." This
Court also has jurisdiction over this action pursuant to California Civil Code §

1 1788.30(f). which provides for enforcement in any court of competent jurisdiction.
2 The statutes under which this action is brought do not grant jurisdiction to any
3 other trial court in California.

4 4. This Court has jurisdiction over each Defendant named herein
5 because, based on information and belief each Defendant is a corporation or
6 association authorized to do business in California and registered with the
7 California Secretary of State, or does sufficient business, has sufficient minimum
8 contacts in California, is a citizen of California, or otherwise intentionally avails
9 itself of the California market through the promotion, sale, marketing and/or
10 distribution of goods and services in California and thereby having such other
11 contacts with California so as to render the exercise of jurisdiction over it by the
12 California courts consistent with traditional notions of fair play and substantial
13 justice.

14 5. Venue is proper in the San Diego County Superior Court, pursuant to
15 California Code of Civil Procedure §§ 395 and 395.5, because one or more of the
16 violations alleged in this Complaint arise in the County of San Diego. Venue is
17 also proper in the San Diego County Superior Court, pursuant to California Code
18 of Civil Procedure § 395(b), because this action arises from an extension of credit
19 intended primarily for personal, family or household use end Plaintiff (the
20 borrower) resided in the County of San Diego at the commencement of this action.

21 **III. PARTIES**

22 6. Plaintiff Tracy Horn is a natural person residing in San Diego County,
23 California from whom a debt collector sought to collect a consumer debt which
24 was due and owing or alleged to be due and owing from Plaintiff and is a
“consumer” as that term is defined by 15 U.S.C. § 1692 (a)(3) and a “debtor”
within the meaning of Cal. Civil Code § 1788.2(h).

1 11. Pursuant to Pursuant to *Fox v. Citicorp Credit Services*, 15 F.3d 1507,
2 1505, (9th Cir. 1994) the actions of the attorney are to be imputed to the client on
3 whose behalf they are taken.

4 12. At all relevant times, the actions taken by Bleier were in the scope of
5 the agency relationship and in furtherance of NCT interests, and therefore, imputed
6 upon NCT.

7 13. Prior to the debt collection activities contained herein, NCT retained
8 Bleier as NCT's legal representative to collect on outstanding debt.

9 14. Bleier's representation of NCT, and all acts and omissions described
10 herein were conducted at the direction and control of NCT, and thus, imputed on
11 NCT under the common-law agency doctrine of respondeat superior, and vicarious
12 liability.

13 V. FACTUAL ALLEGATIONS

14 A. DEFENDANTS THREATEN PLAINTIFF WITH ACTION THAT 15 CANNOT LEGALLY BE TAKEN OR THAT IS NOT INTENDED 16 TO BE TAKEN

17 15. On a date or dates unknown to Plaintiff, Plaintiff is alleged to have
18 incurred a financial obligation incurred primarily for personal, family or household
19 purposes and therefore a "debt" as that term is defined by 15 U.S.C. § 1692a(5).
20 The financial obligation alleged to be owed by Plaintiff is a "consumer debt" as
21 that term is defined by the RFDCPA, Cal. Civil Code § 1788.2(f).

22 16. Sometime thereafter on a date unknown to Plaintiff, the alleged debt
23 was consigned, placed or otherwise transferred to Bleier & Cox.

24 17. On or about January 12th, 2017, Bleier sent a Demand Letter
("Demand Letter") to Plaintiff seeking to collect an alleged debt due to NCT

1 account # "XXXXXXXXXX-XXX-PHEA" and assigned Bleier's internal account #
2 17-00306-0. The Demand Letter is signed by attorney Laura M. D'Anna Esq.

3 18. The Demand Letter stated in part:

4 NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-3, A
5 Delaware Statutory Trust, prompted by your failure to pay the above-
6 referenced debt, has sought legal assistance in collecting the amount
7 owed. Before we take any further action, we want to provide you
8 with an opportunity to resolve the account.

9 19. The Demand Letter also stated:

10 If your obligation remains in default, further action, including the
11 possibility of litigation, may be taken account you, which could result
12 in a judgment being entered which may include litigation costs.

13 20. As of December 2017, no legal action had been taken again Plaintiff.
14 Defendant's use of the above language led Plaintiff to believe she was under an
15 imminent threat of litigation as it was sent from a law firm.

16 21. Consequently, Defendants, by their actions, have used false and
17 deceptive practices in connection with attempts to collect a debt and threatened to
18 take legal action against Plaintiff that was not intended to be taken.

19 **B. NCT HAS NO ACCOUNT LEVEL DOCUMENTATION YET**
20 **PLAINTIFF WAS THREATENED WITH ACTION THAT**
21 **CANNOT LEGALLY BE TAKEN OR THAT IS NOT INTENDED**
22 **TO BE TAKEN**

23 22. In September 2017, the Consumer Financial Protection Bureau
24 ("CFPB") commenced an enforcement action against NCT et. al. styled as
"COMPLAINT FOR PERMANENT INJUNCTION AND OTHER RELIEF" filed
in the United States District Court for the District of Delaware 17-cv-01323-GMS
("CFPB Complaint").

1 23. The CFPB Complaint specifically identified the “debt collection and
2 litigation practices of the fifteen (15) Delaware statutory trusts referred to as the
3 National Collegiate Student Loan Trusts” including Defendant NATIONAL
4 COLLEGIATE STUDENT LOAN TRUST 2006-3. ¶2 CFPB Complaint.

5 24. The CFPB Complaint alleged “...the affiants asserted that they had
6 personal knowledge that the loans were transferred, sold, and assigned to the
7 Trusts on dates certain. ¶ 37 CFPB Complaint. “In fact, affiants lacked personal
8 knowledge of the chain of assignment records necessary to prove that the relevant
9 Trust owned the subject loan. ¶ 38 CFPB Complaint.

10 25. The CFPB Complaint states “In these lawsuits (1,214), documentation
11 of a complete chain of assignment evidencing that the subject loan was transferred
12 to the Defendants was missing.” ¶ 53 CFPB Complaint. “In addition, the
13 Defendants filed at least 812 collection lawsuits where the documentation did not
14 support Trusts’ ownership of the loans. The chain of assignment documentation
15 shows that these loans were allegedly transferred to Defendants before they were
16 in fact disbursed to consumers.” ¶ 54 CFPB Complaint.

17 26. The CFPB Complaint states “For each collections lawsuit described in
18 Paragraphs 52-55 (i.e. 2,234 collection lawsuits), Defendants could not prove that a
19 debt was owed to Defendants, if contested.” ¶ 56 CFPB Complaint. “Defendants
20 knew, or their processes should have uncovered, that these chain of assignment
21 documents were missing or flawed, yet Defendants continued to file collection
22 lawsuits. ¶ 57 CFPB Complaint.

23 27. On September 18th, 2017 a consent decree was signed by NCT in the
24 CFPB Complaint (currently awaiting approval of the United States District Judge)
whereby NCT agreed to pay nearly \$19 million in penalties and borrower refunds.

1 28. The consent decree also requires NCT to hire a Compliance Auditor
2 to review all its 800,000 loans and NCT is prohibited from collecting on any loan
3 on which it cannot prove the account level documentation needed. Relevant to
4 reasons here, the purpose of the Compliance Audit must determine, at a minimum:

5 a. For each and every student loan, whether Defendants, or their
6 agents (including Defendants' Servicers), have or ever had in their
7 possession sufficient loan documentation, including signed
8 promissory notes and documentation reflecting the complete chain of
9 assignment since the loan's origination, to support the claim that a
10 Debt is currently owed to a Trust, including but not limited to,
11 assignments from the Debt's originator to the Trust claiming
12 ownership and any subsequent assignments by the Trust to a student
13 loan guarantor (such as The Education Resources Institute or its
14 successors);

15 e. Whether any student loans were disbursed to the Consumers
16 after the loans allegedly were transferred to the Defendants;

17 f. Whether any of Defendants' agents, including but not limited to
18 any of Defendants' Servicers, have failed to comply with any Federal
19 consumer financial law or any of the Servicers' Servicing Guidelines;
20 and

21 g. Whether any of Defendants' agents, including but not limited to
22 any of Defendants' Servicers, are or have engaged in any practices on
23 behalf of Defendants after the Effective Date that violate this Order.

24 ¶ 19 Consent Decree

25 C. MEANINGFUL ATTORNEY INVOLVEMENT DID NOT OCCUR
26 PRIOR TO BLEIER'S DISPATCH OF THE DEMAND LETTER

27 29. Discussed in ¶¶10-13 supra, printed on the January 12th, 2017
28 Demand Letter in large font and bold typeface "**BLEIER & COX, APC**".

29 30. "BLEIR & COX, APC" is also printed above the signature line of
30 Bleier's attorney "LAURA M. D'ANNA".

1 31. Upon information and belief, Laura M. D’Anna, Esq. did not review
2 Plaintiff’s account information prior to sending the January 12th, 2017 Demand
3 Letter. Specifically, Laura M. D’Anna did not first obtain and review account
4 level documentation confirming National Collegiate Student Loan Trust 2006-3, A
5 Delaware Statutory Trust, including but not limited to chain of title assignments
6 from the Debt’s originator to the Trust claiming ownership and any subsequent
7 assignments by the Trust to a student loan guarantor (such as The Education
Resources Institute or its successors).

8 32. January 12th, 2017 Demand Letter did not include a disclaimer
9 notifying Plaintiff an attorney had not reviewed Plaintiff’s file or formed an
10 independent professional judgment about the subject debt, including the proper
11 chain of assignment.

12 33. January 12th, 2017 Demand Letter misrepresents Laura M. D’Anna
13 Esq. reviewed Plaintiff’s file and determined Plaintiff owes the amount demanded
14 to its client National Collegiate Student Loan Trust 2006-3, A Delaware Statutory
Trust.

15 **VI. CLASS ALLGEGATIONS**

16 34. Plaintiff brings this action individually and on behalf of all others
17 similarly situated, and as a member of the proposed class (hereafter “The Classes”)
18 defined as follows:

19 a. **Class One:** All persons in the state of California, who received
20 collection letters from Defendant falsely implying said persons would be subject to
21 legal action, where Defendant had no intention of taking such action.

22 b. **Class Two:** All persons in the state of California, who received
23 collection letters from Bleier wherein Bleier did not first obtain and review account
level documentation regarding NCT, including but not limited to chain of title

1 assignments from the Debt's originator to the Trust claiming ownership and any
2 subsequent assignments by the Trust to a student loan guarantor (such as The
3 Education Resources Institute or its successors).

4 35. Plaintiff represents, and is a member of The Class consisting of All
5 persons within California who received any collection letters from Defendant
6 wherein Defendant used false and deceptive practices when implying to said
7 person via dunning letter that said person was subject to a possible legal action
8 when such action was not actually intended to be taken.

9 36. Plaintiff represents, and is a member of The Class consisting of All
10 persons in the state of California, who received collection letters from Bleier
11 wherein Bleier did not first obtain and review account level documentation
12 regarding NCT, including but not limited to chain of title assignments from the
13 Debt's originator to the Trust claiming ownership and any subsequent assignments
14 by the Trust to a student loan guarantor (such as The Education Resources Institute
15 or its successors).

16 37. Defendant, its employees and agents are excluded from The Class.
17 Plaintiff does not know the number of members in The Class, but believes the
18 Class members number in the thousands, if not more. Thus, this matter should be
19 certified as a Class Action to assist in the expeditious litigation of the matter.

20 38. The Class is so numerous that the individual joinder of all of its
21 members is impractical. While the exact number and identities of The Class
22 members are unknown to Plaintiff at this time and can only be ascertained through
23 appropriate discovery, Plaintiff is informed and believes and thereon alleges that
24 The Class includes thousands of members. Plaintiff alleges that The
Class members may be ascertained by the records maintained by Defendant.

1 39. Plaintiff and members of The Class were harmed by the acts of
2 Defendant in at least the following ways: Defendant illegally contacted Plaintiff
3 and Class members via collection letters thereby causing Plaintiff and Class
4 members to believe that they could be, or were about to be, sued by Defendant.

5 40. Plaintiff and members of The Class were harmed by the acts of
6 Defendant in at least the following ways: Bleier did not first obtain and review
7 account level documentation regarding NCT, including but not limited to chain of
8 title assignments from the Debt's originator to the Trust claiming ownership and
9 any subsequent assignments by the Trust to a student loan guarantor (such as The
Education Resources Institute or its successors).

10 41. Common questions of fact and law exist as to all members of The
11 Class which predominate over any questions affecting only individual members of
12 The Class. These common legal and factual questions, which do not vary between
13 Class members, and which may be determined without reference to the individual
14 circumstances of any Class members, include, but are not limited to, the
following:

15 a. Whether, within the one year prior to the filing of this
16 Complaint, Defendant sent any collection letters to a Class member wherein
17 Defendant used false and deceptive practices when implying to a Class member via
18 dunning letter that Class member could be subject to legal action where such action
was not actually intended to be taken;

19 b. Whether, within the one year prior to the filing of this
20 Complaint, prior to Bleier dispatching Demand Letters, Bleier did not first obtain
21 and review account level documentation regarding NCT, including but not limited
22 to chain of title assignments from the Debt's originator to the Trust claiming
23

1 ownership and any subsequent assignments by the Trust to a student loan guarantor
2 (such as The Education Resources Institute or its successors).

3 c. Whether Plaintiff and the Class members were damaged
4 thereby, and the extent of damages for such violation; and

5 d. Whether Defendant should be enjoined from engaging in such
6 conduct in the future.

7 42. As a person that received collection letters from Defendant wherein
8 Defendant used false and deceptive practices when implying to said person via
9 dunning letter that said person could be subject to legal action where such action
10 was not actually intended to be taken is typical of The Classes.

11 43. As a person that received collection letters from Bleier wherein Bleier
12 did not first obtain and review account level documentation regarding NCT,
13 including but not limited to chain of title assignments from the Debt's originator to
14 the Trust claiming ownership and any subsequent assignments by the Trust to a
15 student loan guarantor (such as The Education Resources Institute or its
16 successors), is typical of The Classes.

17 44. Plaintiff will fairly and adequately protect the interests of the
18 members of The Classes. Plaintiff has retained attorneys experienced in the
19 prosecution of class actions.

20 45. A class action is superior to other available methods of fair and
21 efficient adjudication of this controversy, since individual litigation of the claims
22 of all Class members is impracticable. Even if every Class member could afford
23 individual litigation, the court system could not. It would be unduly burdensome to
24 the courts in which individual litigation of numerous issues would proceed.
Individualized litigation would also present the potential for varying, inconsistent,
or contradictory judgments and would magnify the delay and expense to all parties

1 and to the court system resulting from multiple trials of the same complex factual
2 issues. By contrast, the conduct of this action as a class action presents fewer
3 management difficulties, conserves the resources of the parties and of the court
4 system, and protects the rights of each Class member.

5 46. The prosecution of separate actions by individual Class members
6 would create a risk of adjudications with respect to them that would, as a practical
7 matter, be dispositive of the interests of the other Class members not parties to
8 such adjudications or that would substantially impair or impede the ability of such
9 non-party Class members to protect their interests.

10 47. Defendant has acted or refused to act in respects generally applicable
11 to The Classes, thereby making appropriate final and injunctive relief with regard
12 to the members of the California Class as a whole.

13 **VII. FIRST CAUSE OF ACTION:**
14 **VIOLATION OF FEDERAL FAIR DEBT COLLECTION PRACTICES**
15 **ACT ALLEGED AGAINST DEFENDANT BLEIER & COX, APC ONLY**

16 48. Plaintiff hereby incorporates the preceding paragraphs as if set forth in
17 full.

18 49. Based on the foregoing, Defendant's conduct violated the FDCPA in
19 multiple ways, including but not limited to:

20 a) In connection with collection of a debt, using language the natural
21 consequence of which was to abuse Plaintiff (§ 1692d(2));

22 b) Falsely representing the character, amount, or legal status of Plaintiff's
23 debt (§ 1692e(2)(A));

24 c) Falsely representing or implying any individual is an attorney or that any
communication is from an attorney (§ 1692e(3));

Falsely representing or implying nonpayment of Plaintiff's debt would result in the
seizure, garnishment, attachment, or sale of Plaintiff's property or wages, where

1 such action is not lawful or Defendant did not intend to take such action (§
2 1692e(4));

3 d) Threatening to take an action against Plaintiff that cannot be legally taken
4 or that was not actually intended to be taken (§ 1692e(5))

5 e) Using false representations and deceptive practices in connection with
6 collection of an alleged debt from Plaintiff (§ 1692e(10));

7 f) Using unfair or unconscionable means against Plaintiff in connection with
8 an attempt to collect a debt (§ 1692f);

9 g) The collection of any amount (including any interest, fee, charge, or
10 expense incidental to the principal obligation) unless such amount is expressly
11 authorized by the agreement creating the debt or permitted by law (§ 1692f(1));

12 h) Failing to provide Plaintiff with the notices required by 15 USC § 1692g,
13 either in the initial communication with Plaintiff, or in writing within 5 days
14 thereof (§ 1692g(a)).

15 50. Plaintiff alleges that to the extent that Defendant's actions, counted
16 above, violated the FDCPA, those actions were done knowingly and willfully

17 51. As a direct and proximate result of Defendant's violations of 15
18 U.S.C. § 1692 et seq., Plaintiff and the members of the California Class have
19 suffered injury, and may recover from Defendant one thousand dollars (\$1,000.00)
20 in statutory damages in addition to actual damages and reasonable attorneys' fees
21 and costs.

22 52. The violations of 15 U.S.C. § 1692 et seq. described herein present a
23 continuing threat to members of the California Class and members of the general
24 public in that Plaintiff is informed and believes and thereon alleges that Defendant
continues to engage in these practices, and will not cease doing so unless and until
forced to do so by this Court.

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**VIII. SECOND CAUSE OF ACTION:
VIOLATION OF ROSENTHAL FAIR DEBT COLLECTION PRACTICES
ACT ASSERTED AGAINST DEFENDANTS BLEIER & COX, APC;
NATIONAL COLLEGIATE STUDENT LOAN TRUST 2006-3**

53. Plaintiff hereby incorporates the preceding paragraphs as if set forth in full.

54. Section 1788.17 of the RFDCPA states:
Notwithstanding any other provision of this title, every debt collector collecting or attempting to collect a consumer debt shall comply with the provisions of Sections 1692b to 1692j, inclusive, of, and shall be subject to the remedies in Section 1692k of, Title 15 of the United States Code.

55. By engaging in conduct prohibited by §§ d(2), e, e(2)(A), e(3), e(4), e(5), e(10), f, f(1) and g(a), Defendant violated the RFDCPA.

56. As a direct and proximate result of Defendant's violations of the RFDCPA Plaintiff and the members of the California Class have suffered injury, and may recover from Defendant one thousand dollars (\$1,000.00) in statutory damages in addition to actual damages and reasonable attorneys' fees and costs.

57. The violations of the RFDCPA described herein present a continuing threat to members of the California Class and members of the public in that Plaintiff is informed and believes and thereon alleges that Defendant continues to engage in these practices, and will not cease doing so unless and until forced to do so by this Court.

PRAYER FOR RELIEF

Wherefore, Plaintiff respectfully requests the Court grant Plaintiff and The Class members the following relief against Defendants, and each of them:

1 a) That this action be certified as a class action on behalf of The Classes
2 and Plaintiff be appointed as the representative of The Classes;

3 b) On the First Cause of Action, under the FDCPA, awarding Plaintiff
4 and the other members of the Class statutory and actual damages as provided by 15
5 U.S.C §1692k;

6 c) On the Second Cause of Action, under the RFDCPA, awarding
7 Plaintiff and other members of the Class statutory and actual damages as provided
8 by Cal. Civil Code § 1788.30(b);

9 d) Award Plaintiff and other members of the Class statutory damages in
10 an amount not exceeding \$1,000 pursuant to Cal. Civil Code § 1788.17;

11 e) For reasonable attorneys' fees and costs of suit;

12 f) For prejudgment interest at the legal rate; and

13 g) For such further relief as this Court deems necessary, just, and proper.

14 Dated: December 12th, 2017

Law Office of Andrew P
Rundquist

15 By: Andrew Rundquist

16 Andrew P Rundquist, Esq.
17 Attorney for Plaintiff Tracy
Horn

18 DEMAND FOR JURY TRIAL

19 PLEASE TAKE NOTICE Plaintiff Tracy Horn hereby demands a trial
20 by jury of all triable issues of fact in the above-captioned case.

21 By: Andrew Rundquist

22 Andrew Rundquist (SBN: 262523)
23 Attorney for Plaintiff Tracy Horn

1 Damian P. Richard, Esq. (SBN 262805)
 2 Debbie P. Kirkpatrick, Esq. (SBN 207112)
 3 SESSIONS, FISHMAN, NATHAN & ISRAEL, L.L.P.
 4 1545 Hotel Circle South, Suite 150
 5 San Diego, CA 92108
 6 Tel: 619/758-1891
 7 Fax: 619/296-2013
 8 drichard@sessions.legal
 9 dkirkpatrick@sessions.legal
 10 *Attorney for National Collegiate Student Loan Trust 2006-3*

11 UNITED STATES DISTRICT COURT
 12 SOUTHERN DISTRICT OF CALIFORNIA

13 TRACY HORN, individually and on
 14 behalf of all others similarly situated,

15 Plaintiff,

16 vs.

17 BLEIER & COX, APC; NATIONAL
 18 COLLEGIATE STUDENT LOAN
 19 TRUST 2006-3; and DOES 1
 20 through 10, inclusive,

21 Defendants.

Case No.: '18CV0335 MMANLS

PROOF OF SERVICE

1 CASE NAME: Tracy Horn v. Bleier & Cox et al.
2 CASE NO:

3 **PROOF OF SERVICE**

4 I, the undersigned, hereby certify that I am a citizen of the United States, over the age of
5 18 years and not a party to the within action; my business address is 1545 Hotel Circle
6 South, Suite 150, San Diego, California 92108. On this date I served the following:

7 Notice of Removal of Action Under 28 U.S.C. § 1441(a)
8 [Federal Question]; Civil Cover Sheet

9 (x) BY U.S. MAIL

10 I served a true and correct copy of the above-named documents by mail by placing
11 the same in a sealed envelope with postage fully prepaid, and depositing said envelope in
12 the U.S. mail at San Diego, California. Said envelope(s) was/were addressed as listed
13 hereafter:

14 () BY FACSIMILIE MACHINE

15 I caused to be transmitted by facsimile machine a true copy of the above-named
16 documents to the below listed.

17 (x) BY COURT'S CM/ECF ELECTRONIC FILING SERVER

18 I served on the interested parties in this action through their attorney's, as stated
19 below, who have agreed to accept electronic service in this matter, by electronically filing
20 and serving said documents via the Court's CM/ECF electronic filing server.

21 Andrew Rundquist, Esq.
22 501 W Broadway, Suite A144
23 San Diego, CA 92101

24 Raymond Patenaude, Esq.
25 PATENAUDE & FELIX, APC
26 4545 Murphy Canyon Rd., 3rd Floor
27 San Diego, CA 92123

28 I declare under penalty of perjury under the laws of the State of California that the
foregoing is true and correct.

Dated: February 12, 2018



Ann M. Coito

ClassAction.org

This complaint is part of ClassAction.org's searchable class action lawsuit database and can be found in this post: [Debt Collectors Sued Over Allegedly False Threats, Misrepresentations in Collection Letter](#)
