



## ALLEGATIONS OF THE COMPLAINT

1. On December 5, 2018, Plaintiff Keven Robinson filed a Class Action Complaint for Damages in the Circuit Court of Jefferson County, Alabama, in the civil action styled as *Keven Robinson v. Virginia College, LLC, et al.*, No. 1-CV-2018-904888. (*See generally* Complaint, attached hereto as “**Exhibit 1**”).

2. The Complaint contains claims seeking relief on behalf of a putative nationwide class, *inter alia*, alleging the following claims: (1) negligence; (2) wantonness; (3) Alabama Deceptive Trade Practices Act; (4) breach of implied warranty; (5) breach of contract; (6) unjust enrichment; and (7) injunctive relief. (*Id.*)

3. The Complaint alleges four different purported classes. One putative class is defined as: “All students who paid tuition to and obtained a degree from Virginia College and who were not enrolled there as of noon central time on December 4, 2018 (“Former Student Class”).” (*Id.* ¶ 22(a)). There is no geographical limitation on this purported class and thus the Complaint seeks a Former Student Class of all such former students nationwide.

4. The Complaint also alleges a “Current Student Class” defined as: “All students who paid tuition to and were enrolled at Virginia College as of noon central time on December 4, 2018 but who had not yet obtained the degree for which they paid tuition.” (*Id.* ¶ 22(b)). There is no geographical limitation on this

purported class and thus the Complaint seeks a Current Student Class of all such current students nationwide.

### **REMOVAL PROCEDURES**

5. In accordance with 28 U.S.C. § 1446(a), a copy of all “process, pleadings and orders” received by Defendants are attached hereto as “**Exhibit 2.**”

6. Defendant Virginia College, LLC (“Virginia College”) and Defendant Education Corporation of America (“ECA”) were served with the Complaint in this case on December 13, 2018. (Declaration of Roger Swartzwelder, ¶ 5, attached as “**Exhibit 3**”). Therefore, this Notice of Removal has been timely filed pursuant to 28 U.S.C. § 1446(b), because Defendants are filing this Notice of Removal “within 30 days after the receipt by the defendant[s], through service or otherwise, of a copy of the initial pleading . . . .”

7. This action is removable pursuant to 28 U.S.C. § 1441, which authorizes removal of any civil action brought in a state court in which the United States District Court has original jurisdiction. This Court has original jurisdiction based upon 28 U.S.C. § 1332(d) because this is a class action with at least 100 putative class members, there is diversity of citizenship between at least one class member and a defendant, and the aggregate amount in controversy exceeds \$5,000,000.

8. Pursuant to 28 U.S.C. § 1441(a), this case is properly removable to this Court, which is the United States District Court for the district and division embracing Jefferson County, Alabama, where the state court action is pending. *See* 28 U.S.C. § 81(a)(3).

9. Pursuant to 28 U.S.C. § 1446(d), a copy of this Notice of Removal is being served on Plaintiff on this date, and a copy of this Notice of Removal is being filed with the Clerk of Court for the Circuit Court of Jefferson County, Alabama.

### **CAFA JURISDICTION**

10. This Court has subject matter jurisdiction pursuant to CAFA because this is a class action with at least 100 putative class members, there is diversity of citizenship between at least one class member and one defendant (minimal diversity), and the aggregate amount in controversy exceeds \$5,000,000.

#### **Plaintiff's Action is a Class Action for Purposes of CAFA**

11. The Complaint is titled: "Class Action Complaint." (Complaint, p. 1). It states: "Plaintiff Robinson brings this action as a class action pursuant to Rule 23 of the Alabama Rules of Civil Procedure for the following classes" and then defines four separate purported classes, including the Former Student Class and Current Student Class identified above. (*Id.* ¶ 22). The Complaint alleges that there are "common questions of law and fact that are of general interest to the

Class,” that the “claims of Plaintiff Robinson are typical of the claims of the Class,” that “Plaintiff Robinson will fairly and adequately protect the interests of the Class,” that “[b]ased on information and belief, the total number of members of the Class exceeds 100 members and is so numerous that separate joinder of each member is impracticable,” that the “class action is superior to other available methods for the fair and efficient adjudication of the controversy,” and that “[q]uestions of law and fact predominate over any questions affecting only individual members.” (*Id.* ¶¶ 22-29).

12. As such, this matter is a class action as that term is defined pursuant to 28 U.S.C. § 1332(d)(1)(B) and 28 U.S.C. § 1453.<sup>1</sup>

#### The Number of Alleged Class Members Exceeds 100

13. Plaintiff alleges that the putative class he seeks to represent exceeds one hundred (100) members. (*See* Complaint, ¶ 26). This purported class action thus meets the requirements of 28 U.S.C. § 1332(d)(5)(B).

#### Diversity of Citizenship Exists

14. CAFA requires only minimal diversity for class actions in which “any member of a class of plaintiffs is a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A). With minimal diversity under CAFA, “only one

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<sup>1</sup> Although this action was filed by Plaintiff as a putative class action and is therefore removable under the relevant statutes, Defendants do not admit that this action can properly proceed as a class action. Defendants expressly reserve the right to challenge whether the action brought by Plaintiff meets the requirements of Fed. R. Civ. P. 23 or any other applicable rule.

member of the plaintiff class – named or unnamed – must be diverse from any one defendant.” *Lowery v. Ala. Power Co.*, 483 F. 3d 1184, 1194 n. 24 (11th Cir. 2007).

15. Defendant Virginia College is a limited liability company. (Swartzwelder Decl. ¶ 3). A limited liability company is a “citizen wherever a member of that entity is a citizen.” *Carden v. Arkoma Assoc.*, 494 U.S. 185, 195 (1990); *Rolling Greens MHP, L.P. v. Comcast SCH Holdings, L.L.C.*, 374 F. 3d 1020, 1021 (11<sup>th</sup> Cir. 2004). The sole member of Virginia College is Defendant ECA. (*Id.*, ¶ 4).

16. Defendant ECA is a Delaware corporation with its principal place of business in Alabama. (*Id.*, ¶ 4; Compl. ¶ 13).

17. Plaintiff avers that he is an Alabama citizen, residing and domiciled in Jefferson County, Alabama. (Compl. ¶ 11). Plaintiff’s purported Former Student Class, however, includes at least one such former student who is a citizen of the state of Florida, at least one who is a citizen of the state of Georgia, at least one who is a citizen of the state of North Carolina, at least one who is a citizen of the state of South Carolina, and at least one who is a citizen of the state of Tennessee. (Swartzwelder Decl. ¶ 6). Any one of these purported class member former students satisfies minimal diversity. Because there is at least one unnamed class member who is a citizen of a state other than Delaware and Alabama, and the

defendants are citizens of Delaware and Alabama, CAFA's requirement of minimal diversity is satisfied.

The Amount in Controversy Requirement Is Satisfied

18. Under CAFA, “the claims of the individual class members shall be aggregated to determine whether the matter in controversy exceeds the sum or value of \$5,000,000 exclusive of interests and costs.” 28 U.S.C. § 1332(d)(6).

19. A removing defendant is not required to provide evidence to support the amount in controversy in its Notice of Removal. All that is required is a “short and plain statement of the grounds for removal,” including a “plausible allegation that the amount in controversy exceeds the jurisdictional threshold.” *Dart Cherokee Basin Operating Co. v. Owens*, 135 S. Ct. 547, 553, 554 (2014)). Thus, “a removing ‘defendant's amount-in-controversy allegation should be accepted when not contested by the plaintiff or questioned by the court.’” *Id.* at 553.

20. Here, Plaintiff seeks compensatory damages, including “the loss of the value of their degrees, the loss of any opportunity to complete unfinished degree programs, and the loss of all monies paid to the Defendants as tuition.” (Compl. ¶¶ 35, 42, 63, 72) (emphasis added). Although the amount of compensatory damages are not expressly stated in the Complaint, at a minimum, Plaintiff is claiming compensatory damages for the cost of tuition for the class members. Defendant Virginia College has received over \$5,000,000 in tuition

money from students and former students. (Swartzwelder Decl. ¶ 8). Thus, Plaintiffs' request for compensatory damages in the form of repayment of tuition paid alone well exceeds the \$5,000,000 amount in controversy under CAFA.

21. Plaintiff also seeks punitive damages. (Compl. ¶¶ 42, 51, 63, 72). The Eleventh Circuit has held that in "determining the jurisdictional amount in diversity cases, punitive damages must be considered, unless it is apparent to a legal certainty that such cannot be recovered." *Holley Equip. Co. v. Credit Alliance Corp.*, 821 F. 2d 1531, 1535 (11th Cir. 1987). Here, Plaintiff may potentially recover punitive damages if he successfully proves his claim for wantonness. *See Shiv-Ram v. McCaleb*, 892 So. 2d 299, 313 (Ala. 2003). Conceivably, Plaintiff could recover up to three times the compensatory damages awarded in punitive damages. *See Ala. Code § 6-11-21; see also McDaniel v. Fifth Third Bank*, 568 Fed. Appx. 729 (11th Cir. 2014) ("Any inquiry into whether [a plaintiff] *would* actually recover [sufficient punitive damage] amounts is unnecessary and inappropriate. For the purposes of establishing jurisdiction, it is enough to show that he *could*.").

22. In addition to compensatory and punitive damages, Plaintiff also seeks injunctive relief. (Compl. ¶¶ 79-82). The Eleventh Circuit has held that courts should include in the amount in controversy "the monetary value of the object of the litigation that would flow to the plaintiffs if the injunction were granted."



*Mann v. Unum Life Ins. Of Am.*, 505 Fed. Appx. 854, 856 (11<sup>th</sup> Cir. 2013) (citation omitted). Here, Plaintiff specifically seeks injunctive relief requesting that Defendants “be required to provide education at accredited institutions free of charge.” (Compl., ¶ 81). This will undoubtedly be costly for Defendants.

23. Finally, Plaintiff seeks attorneys’ fees under the Alabama Deceptive Trade Practices Act. (Compl. ¶ 51). Attorneys’ fees may be included in the amount in controversy “when an award of fees is authorized either by statute or contract.” *Smith v. GTE Corp.*, 236 F. 3d 1292, 1305 (11th Cir. 2001). Here, Plaintiff brings a claim under the Alabama Deceptive Trade Practices Act, which expressly allows for recovery of attorney fees. Ala. Code § 8-19-10(a)(3).

24. In total, the damages and relief that Plaintiff seeks easily exceeds the \$5,000,000 CAFA threshold.

25. If any question arises as to the propriety of the removal of this action, Defendants respectfully request the opportunity to submit a brief and further evidence, as well as oral argument, in support of its position that this case was properly removed.

### **CONCLUSION**

For the reasons set forth above, Defendants respectfully request that this action be, and is hereby, removed to this Court; that this Court assume jurisdiction

of this action; and that this Court enter such other and further orders as may be necessary to accomplish the requested removal.

Dated: January 11, 2019.

Respectfully submitted,

*/s/ Tres Cleveland*

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**CERTIFICATE OF SERVICE**

I hereby certify that on January 11, 2019, a copy of the above and foregoing was filed with the United States District Court for the Northern District of Alabama using the CM/ECF system which sent notification to all counsel of record, including:

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