

1 John Ryan Gustafson (SBN 220802)  
2 Adam C. Nicolai (SBN 289290)  
3 **GUSTAFSON NICOLAI pc**  
4 222 N. Sepulveda Blvd., Suite 2000  
5 El Segundo, CA 90245  
6 T: (310) 361-0787  
7 F: (310) 846-8938  
8 E: JRG@gnlawpc.com; ACN@gnlawpc.com

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10 Attorneys for **Plaintiff,**  
11 **Leah Roscoe**

12 **UNITED STATES DISTRICT COURT**  
13 **CENTRAL DISTRICT OF CALIFORNIA**

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15 **LEAH ROSCOE**, an individual, on  
16 behalf of herself and all others  
17 similarly situated,

*Plaintiff,*

18 v.

19 **SIMM ASSOCIATES, INC.**, a  
20 Delaware Corporation,

*Defendant.*

**Case No.:**

**Class Action Complaint for:**

**1. Violations of the Fair Debt  
Collection Practices Act (15 U.S.C.  
§1692, et seq.)**

**JURY TRIAL DEMANDED**

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1           14. Defendant is in the business of collecting past-due or defaulted debts  
2 or alleged debts of natural persons.

3           15. Defendant uses the mails, telephone, the internet and other  
4 instruments of interstate commerce in engaging in the business of collecting past-  
5 due or defaulted debts or alleged debts of natural persons which arise from  
6 transactions which are primarily for personal, family, or household purposes.

7           16. Defendant is engaged in the collection business.

8           17. In or about the middle of February, 2017, Plaintiff Ms. ROSCOE  
9 received a letter from Defendant SAI, which stated, in pertinent part, as follows:  
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11           February 13, 2017

12           OUR CLIENT:           NATIONAL COLLEGIATE STUDENT  
13                                    LOAN TRUST 2006-3  
14           ORIGINAL LENDER: BANK OF AMERICA  
15           FOR:                    BALANCE: \$20,755.62  
16                                    ACCOUNT #: \_\_\_\_\_2-002-PHEA  
                                  [REDACTED]

17           Dear Leah Roscoe,

18                            Your account has been forwarded to this office for collections.  
19           This is a formal demand upon you for your payment of this debt. This  
20           is an important matter, which needs to be resolved, and requires your  
21           attention. . . .

22           [The “February 13, 2017 Letter.” A complete copy of the February 13, 2017 Letter  
23           is attached to this Complaint as Exhibit 1.]

24           18. On or about March 10, 2017, Ms. ROSCOE retained Adam C.  
25           Nicolai, Esq., of Gustafson Nicolai pc, to represent her in connection with the  
26           February 13, 2017 Letter. Mr. Nicolai, counsel for Ms. ROSCOE, contacted  
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1 Defendant SAI by telephone and spoke with Farrah Ali, a representative of  
2 Defendant SAI. Mr. Nicolai informed Ms. Ali that Ms. ROSCOE had forwarded  
3 the February 13, 2017 letter to Mr. Nicolai and had retained him and Gustafson  
4 Nicolai pc to represent her in connection with the February 13, 2017 Letter and any  
5 debt collection efforts by Defendant SAI against Ms. ROSCOE. Mr. Nicolai  
6 further demanded that Defendant SAI and any of its representatives or agents  
7 immediately cease and desist any direct communication with Ms. ROSCOE, and  
8 instead direct any further communications concerning the matter to Mr. Nicolai or  
9 his law firm directly. Ms. Ali requested that Mr. Nicolai send an email addressed  
10 to “adelaidam@simmassociates.com” reflecting his representation of Ms.  
11 ROSCOE and his demand that Defendant SAI cease and desist contacting Ms.  
12 ROSCOE directly and address any further communications regarding Ms.  
13 ROSCOE to Mr. Nicolai and his law firm. Mr. Nicolai promptly obliged. (A true  
14 and correct copy of Mr. Nicolai’s March 10, 2017 email to Defendant SAI  
15 confirming in writing his telephone conversation with Ms. Ali and his  
16 representation of Ms. ROSCOE is attached to this Complaint as Exhibit 2.)

17 19. **Subsequent to** Mr. Nicolai’s March 10, 2017 email to Simm  
18 Associates, representatives of Defendant SAI, including Ms. Ali herself, proceeded  
19 to contact Ms. ROSCOE *directly* by telephone and leave voicemail messages for  
20 Ms. ROSCOE in attempts to collect alleged debts owed by Ms. ROSCOE. These  
21 phone calls/voicemail messages occurred on no less than four (4) occasions after  
22 Mr. Nicolai’s March 10, 2017 email. They took place on or about April 25, 2017,  
23 May 1, 2017, May 4, 2017, and July 10, 2017.

24 (True and correct copies of pertinent screenshots, recordings, and other  
25 relevant documents related to these telephone calls and voicemails from Defendant  
26 Simm Associates to Ms. ROSCOE directly, and subsequent to Mr. Nicolai’s March  
27 10, 2017 email, are on the flash drive attached to this Complaint as Exhibit 3. See  
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1 also, Plaintiff Leah Roscoe’s Notice of Lodging of the flash drive containing the  
2 documents and recordings comprising Exhibit 3 to Ms. ROSCOE’s Class Action  
3 Complaint, submitted concurrently herewith.)  
4

5 **CLASS ALLEGATIONS**

6 20. It is or was Defendant’s routine policy and practice to engage in, or,  
7 alternatively, Defendant intentionally, negligently, or recklessly, engaged in, the  
8 type of conduct described in Paragraphs 12-19, above.

9 21. Plaintiff is informed, and believes, and therefore alleges that  
10 Defendant’s collection communications are designed to drive and intimidate least  
11 sophisticated consumers, such as Plaintiff, into making payments to Defendant.

12 22. Plaintiff LEAH ROSCOE asserts her FDCPA claims pursuant to Rule  
13 23 of the Federal Rules of Civil Procedure on behalf of herself and all other  
14 similarly situated, and defined as the following Class:

15 *All individuals throughout the United States who have had a collection*  
16 *account with Simm Associates, Inc. (“Simm Debtors”), and whom Simm*  
17 *Associates, Inc. contacted directly subsequent to the Simm Debtors, individually or*  
18 *by and through their attorneys, informing Simm Associates, Inc. in writing that*  
19 *they were represented by legal counsel, and that Simm Associates must cease*  
20 *communicating directly with the Simm Debtors and direct further communications*  
21 *concerning the Simm Debtors to the Simm Debtors’ attorneys.*

22 (The Simm Debtors comprising the Class are referred to herein from time to time  
23 as the “Class Members.”)

24 The Class period begins one year to the filing of this action.

25 23. The Class is so numerous that joinder of all Class Members is  
26 impractical. Defendant routinely contacted Class Members directly subsequent to  
27 the Class Members, individually or by and through their attorney, informing  
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1 Defendant SAI that they were represented by legal counsel, and that SAI must  
2 cease communicating directly with the Class Members and direct further  
3 communications concerning the Class Members to the Class Members' attorneys.  
4 Upon information and belief, Defendant SAI routinely and deliberately engages in  
5 the type of conduct set forth in this Complaint in an effort to drive and intimidate  
6 least sophisticated consumers, such as Plaintiff, into making payments to  
7 Defendant.

8         24. There are questions of law and fact common to the Class which  
9 predominate over any questions affecting only individual Class Members. The  
10 common questions of law and fact are whether the direct communications by  
11 Defendant SAI to Class Members after Class Members have informed Defendant  
12 SAI in writing that they have retained counsel to represent them, and that SAI must  
13 cease communicating directly with the Class Members and direct further  
14 communications concerning the Class Members to the Class Members' attorneys,  
15 violate pertinent sections of the FDCPA.

16         25. Plaintiff's claims are typical of those individuals within the Class, as  
17 Plaintiff and the other Class Members are victims of the same pattern of conduct  
18 by Defendant SAI, namely, SAI contacting the Class Members directly after these  
19 Class Members have informed SAI in writing that they have retained counsel to  
20 represent them, and that SAI must cease communicating directly with the Class  
21 Members and direct further communications concerning the Class Members to the  
22 Class Members' attorneys. Plaintiff will fairly and adequately represent and  
23 protect the interests of the Class, and Plaintiff does not have any interest that is  
24 antagonistic to the Class Members she seeks to represent.

25         26. The Plaintiff will fairly and adequately protect the interest of the Class  
26 Members as she prosecutes her own individual claims. Plaintiff has retained  
27 counsel experienced in class actions as well as the handling of FDCPA actions.  
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1 Neither Plaintiff nor her counsel has any interests antagonistic to the Class  
2 Members or which might cause them not to vigorously pursue this action.

3 27. Certification of a class under Rule 23(b)(3) is appropriate, in that a  
4 class action is superior to other available methods for the fair and efficient  
5 adjudication of this controversy. The interests of the Class Members in  
6 individually controlling the prosecution and defense of separate actions is minimal,  
7 in that the Class Members are unlikely to be aware their rights were violated and in  
8 that individual actions are uneconomical. Difficulties likely to be encountered in  
9 managing this class action are substantially less than those that are involved in  
10 other types of cases routinely certified.

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12 **COUNT 1: FAIR DEBT COLLECTION PRACTICES ACT (FDCPA)**  
13 **(BY PLAINTIFF AND THE CLASS AGAINST DEFENDANT SAI)**  
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15 28. The above paragraphs 1 through 27 are incorporated herein.

16 29. This is an action seeking class wide relief for Defendant's pattern and  
17 practice of contacting Plaintiff and the Class Members directly after Plaintiff and  
18 the Class Members have informed Defendant SAI in writing that they have  
19 retained legal counsel to represent them, and that SAI must cease communicating  
20 directly with the Class Members and direct further communications concerning the  
21 Class Members to the Class Members' attorneys.

22 30. In this case, Defendant SAI attempted to contact Plaintiff and the  
23 Class Members directly after Plaintiff and the Class Members informed Defendant  
24 SAI in writing that they had retained legal counsel to represent them, and that SAI  
25 must cease communicating directly with the Class Members and direct further  
26 communications concerning the Class Members to the Class Members' attorneys.  
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1           31. Defendant SAI had no legal or commercial right to contact Plaintiff  
2 and the Class Members directly after Plaintiff and the Class Members informed  
3 Defendant SAI in writing that they had retained legal counsel to represent them,  
4 and that SAI must cease communicating directly with the Class Members and  
5 direct further communications concerning the Class Members to the Class  
6 Members' attorneys.

7           32. At all material times herein, Plaintiff's debt and the debts of the Class  
8 Members were consumer debts as defined by the FDCPA, 15 U.S.C. § 1692a(5).

9           33. At all material times herein, Plaintiff and the Nationwide Class  
10 Members were "consumers", as defined by the FDCPA, 15 U.S.C. § 1692a(3).

11           34. At all material times herein, Defendant was a "debt collector" as  
12 defined by the FDCPA, 15 U.S.C. § 1692a(6), as SAI began servicing the accounts  
13 of Plaintiff and the Class Members after Plaintiff and the Class Members were in  
14 default.

15           35. At all material times herein, Defendant knew or should have known  
16 that its attempts to contact Plaintiff and the Class Members directly after Plaintiff  
17 and the Class Members informed Defendant SAI in writing that they had retained  
18 legal counsel to represent them, and that SAI must cease communicating directly  
19 with the Class Members and direct further communications concerning the Class  
20 Members to the Class Members' Attorneys, violated the FDCPA.

21           36. Through its conduct described herein, Defendant SAI violated the  
22 following sections of the FDCPA:

- 23  
24           (a) 15 U.S.C. § 1692c(a)(2), which prohibits debt collectors, "Without the  
25 prior consent of the consumer given directly to the debt collector or  
26 the express permission of a court of competent jurisdiction", from  
27 "communicat[ing] with a consumer in connection with the collection  
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of any debt” if “the debt collector knows the consumer is represented by an attorney with respect to such debt and has knowledge of, or can readily ascertain, such attorney’s name and address unless the attorney fails to respond within a reasonable period of time to a communication from the debt collector or unless the attorney consents to direct communications with the consumer”; . . . (At no time did Ms. ROSCOE’s attorneys fail to respond within a reasonable period of time to a communication from Defendant SAI; nor did Ms. ROSCOE’s attorneys at any time consent to direct communication by SAI with Ms. ROSCOE.);

- (b) 15 U.S.C. § 1692e which prohibits debt collectors from using “any false, deceptive, or misleading representation or means in connection with the collection of any debt”;
- (c) 15 U.S.C. § 1692e(10) which prohibits “the use of any false representation or deceptive means to collect or attempt to collect any debt or to obtain information concerning a consumer”; and
- (d) 15 U.S.C. § 1692f which prohibits debt collectors from using “unfair or unconscionable means to collect or attempt to collect any debt.”

37. As a direct and proximate result of Defendant’s FDCPA violations, Plaintiff and the Class Members have been harmed, including, but not limited to, suffering actual damages in the form of harassment and humiliation and money damages. Plaintiff and the Class Members are also entitled to statutory damages under 15 U.S.C. § 1692k(a)(2)(B), and attorneys’ fees and the costs of this action pursuant to 15 U.S.C. § 1692k(a)(3).

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WHEREFORE, Plaintiff LEAH ROSCOE requests that the Court enter judgment in favor of herself and the Class she seeks to represent against Defendant SIMM ASSOCIATES, INC., a Delaware corporation, for:

- A. Certification of this matter to proceed as a class action;
- B. Actual damages pursuant to 15 U.S.C. § 1692k(a)(1);
- C. Statutory damages pursuant to 15 U.S.C. § 1692k(a)(2)(B);
- D. Attorneys’ fees, litigation expenses and costs of suit pursuant to 15 U.S.C. § 1692k(a)(3); and
- E. Such other and further relief as the Court deems just and proper.

DATED: March 15, 2018

**GUSTAFSON NICOLAI pc**

*s/ Adam C. Nicolai*

By: \_\_\_\_\_  
John Ryan Gustafson  
Adam C. Nicolai

*Attorneys for Plaintiff, Leah Roscoe,  
an individual, on behalf of herself  
and all others similarly situated*

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**DEMAND FOR JURY TRIAL**

Plaintiff LEAH ROSCOE, an individual, on behalf of herself and all others similarly situated, hereby demands a trial by jury on all issues so triable pursuant to Rule 38 of the Federal Rules of Civil Procedure.

DATED: March 15, 2018

**GUSTAFSON NICOLAI pc**

*s/ Adam C. Nicolai*

By: \_\_\_\_\_

John Ryan Gustafson

Adam C. Nicolai

*Attorneys for Plaintiff, Leah Roscoe,  
an individual, on behalf of herself  
and all others similarly situated*

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