

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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HOWARD McMORRIS; MONA DAVIDS;  
ELIZABETH COOKSEY; CHRISTIAN KOLLER;  
MATTHEW KOLLER; MARK D. HAFFNER;  
MYMOENA DAVIDS; CHARLES GOLDBERG;  
JOSEPH G. BECK; JONATHAN RYAN SLAWSON;  
PALMER HAFFNER,

Docket No: 17-cv-4611

**JURY TRIAL DEMANDED**

Plaintiffs,

vs.

RIDER UNIVERSITY,

**SECOND AMENDED  
COMPLAINT**

Defendant.

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Plaintiffs, by their respective counsel Bruce I. Afran and Eric Vaughn-Flam, assert as follows:

**PARTIES, JURISDICTION AND VENUE**

1. RIDER UNIVERSITY is a not for profit charitable educational foundation organized under the laws of the State of New Jersey and operates an institution of higher education that provides degrees to undergraduate and graduate students in liberal arts, fine arts, music, business and other fields.

2. WESTMINSTER CHOIR COLLEGE is a college in New Jersey that awards degrees in study of the fine arts and music arts including voice, conducting, composition, chorus and liturgical studies and related fields and operates a conservatory for the teaching of music to non-

matriculated students and youth, along with other cultural and music-oriented studies, research and activities.

3. Plaintiffs are stakeholders in and members of the Westminster Choir College community including former Westminster board members, students past and present, donors and parents of current students who have incurred financial obligations to send their children to Westminster and others occupying leadership positions in the Westminster community.

4. Plaintiff HOWARD McMORRIS was a member of the Board of Trustees of Westminster that authorized the 1991 merger between Westminster and then-Rider College under the terms and conditions of the 1991 agreement of merger (the “1991 Merger Agreement”) and was also co-Chair of the fundraising effort for the Cullen Center, the performing arts complex at the Westminster campus that opened in October 2014; plaintiff MONA DAVIDS is a parent of a student who entered Westminster in the fall semester 2016 and has paid monies and/or taken loans to pay for her daughter’s tuition at Westminster; plaintiff ELIZABETH COOKSEY is a parent of a student who entered Westminster student in the fall 2016 semester and who has paid monies and/or taken loans to pay for her child’s tuition at Westminster; plaintiff CHRISTIAN KOLLER is a student at Westminster who entered in the fall semester 2016 and who has paid monies and/or taken loans for his tuition at Westminster; plaintiff MATTHEW KOLLER is an alumnus of Westminster and a parent of a Westminster student who entered Westminster in the fall semester 2016 and who has paid monies and/or taken loans to pay for his son’s tuition at Westminster; plaintiff CHARLES GOLDBERG is a member of the Westminster Leadership Council and is a donor to Westminster; plaintiff PALMER HAFFNER is a student at Westminster who entered Westminster in the fall semester 2016 and who has paid monies and/or taken loans

for his tuition at Westminster; plaintiff MARK HAFFNER is a parent of a Westminster student who entered Westminster in the fall semester 2016 and who has paid monies and/or taken loans to pay for his son's tuition at Westminster; MYMOENA DAVIDS is a student at Westminster who entered Westminster in the fall semester 2016 and who has paid monies and/or taken loans for her tuition at Westminster; plaintiff JOSEPH BECK is an alumnus of Westminster who has donated at least \$100,000 to Westminster and was also co-Chair of the fundraising effort for the Cullen Center; plaintiff JONATHAN RYAN SLAWSON is a member of the Westminster Alumni Council and is a Westminster donor.

5. Jurisdiction arises as a matter of the diverse citizenship of the plaintiffs and defendants pursuant to 28 U.S.C. §1332 and, in particular, is further based on specific jurisdiction in the case of the Parent and Student Plaintiffs arising out of (i) the offering, making and inducement of contracts to attend Westminster in this District, (ii) acts of, or measures relating to, actual and/or anticipatory breach of said contracts in this District, (iii) fraudulent inducement of said contracts in this District, and iv) deceptive or fraudulent acts or practices as to said contracts in this District; and b) in the case of plaintiffs McMorris, Goldberg, Beck and Slawson the Rider University's fraudulent inducement in this District of donations and fundraising activities relating to Westminster and its deceptive acts and practices in this District relating to such donations and fundraising. General jurisdiction arises as to all plaintiffs on all Counts as alleged hereinbelow.

6. Venue and personal jurisdiction is properly in the Southern District of New York by virtue of the residence of plaintiffs Howard McMorris, Mona Davids and Jonathan Ryan Slawson in this district and because defendant conducts business in this district by means, *inter alia*, of 1)

direct recruitment in this district of high school students for admission to Westminster College of the Arts; 2) regular contracted appearances each year of Westminster performing groups at New York performance venues and New York performing orchestras, including the New York Philharmonic, Carnegie Hall and others; 3) direct solicitation of fundraising to residents in this district; 4) the holding in this district each year of the major Westminster fundraising event at the New York Racquet and Tennis Club to which Rider invites hundreds of Westminster donors; 5) collaborative academic performances with student/academic orchestras in this district; 6) Rider's membership in the Metro Atlantic Athletic Conference in which Rider sports teams and undergraduates appear and play on pre-scheduled, regular cycles each academic year at Iona College and Manhattan College in this district; and 7) scheduled trips for undergraduates to Manhattan venues, including, *inter alia*, Broadway theaters, the Rock and Roll Hall of Fame, "Beatles Brunch" at BB King, as part of the academic course in Rider's "American Studies" program.

### **SUMMARY OF THE COMPLAINT**

7. Plaintiffs bring this complaint to seek a declaration and injunctive relief declaring illegal Rider University's expressed intent to sell Westminster Choir College and its campus with its lands and buildings to a commercial developer or to a non-profit developer that will cease to operate Westminster at its Princeton Campus.

8. Westminster has resided at its Princeton campus for 83 years continuously and has emerged as one of the world's leading institutions of academic music, choral, voice, conducting

and sacred music instruction, as well as one of the nation's leading training grounds for music teachers. Westminster and its performance groups are among the world's elite cultural enterprises and are irreplaceable in their current form.

9. Rider University's expressed intent to close Westminster and sell its Princeton campus is in direct violation of the 1991 merger agreement under which Rider agreed it would continue to operate, maintain and fund Westminster Choir College and its Princeton campus, except under limited financial circumstances that have not arisen.

10. Westminster's Trustees, including plaintiff Howard McMorris, a surviving member of the Westminster Board of Trustees that agreed in 1991 to merger with Rider, agreed to give the Westminster campus and programs, along with its goodwill and faculty, to Rider University in exchange for a continuing commitment to operate and maintain this vaunted school of music education.

11. Rider's current administration's intent to sell the Westminster campus, close Westminster Choir College and use the proceeds to fund Rider's deficit, violates the 1991 agreement and violates public policy and will result in the dismemberment and destruction of this school of music and sacred music instruction and the loss of one of the world's truly great academic and cultural institutions.

### **FACTUAL BACKGROUND**

#### **History of Westminster Choir College and Its Academic and Cultural Significance**

12. Westminster Choir College is a residential school of higher education and conservatory training situated in Princeton, New Jersey.

13. Westminster was founded in 1920 by John Finley Williamson as the Westminster Choir of the Westminster Presbyterian Church then-situated in Dayton, Ohio.

14. By 1926 Finley had founded a school known as the Westminster Choir School focusing on liturgical musical education producing graduates who came to be known as Ministers of Music for their work in church-based choral programs.

15. In addition to its academic courses, Westminster Choir College provides performance-based academic training through its Westminster Choir and its Westminster Symphonic Choir, along with other performance groups and has done so for nearly 100 years, with such performance groups being widely regarded internationally as among the world's leading choral and religious choral programs.

16. Almost immediately, the Westminster Choir began featuring prominently in the nation's cultural life.

17. For example, in 1928 the Westminster Choir and the Cincinnati Symphony made the nation's first coast-to-coast radio broadcast, a major media achievement.

18. After this historic broadcast, the Westminster Choir, because of its growing reputation, continued to feature in America's early radio history, making a total of 60 half-hour broadcasts from NBC's New York facilities, just 8 years after its initial founding.

19. Its first European tour took place in 1929 and was sponsored by Dayton philanthropist Katharine Hauk Talbott and endorsed by Walter Damrosch, conductor of the New York Symphony Orchestra; the tour included 26 concerts in major cities of Europe.

20. In 1934 the Westminster Choir served as the vehicle for early Soviet and American diplomacy when the Choir was invited as the first official American guests of the Soviet Union and made the first broadcast from Russia to the United States.

21. In 1938 the Westminster Choir was invited to perform at the dedication of the New York World's Fair.

22. Also, in 1938 the Choir under Dr. Williamson as conductor performed the first U.S. presentation of Hadyn's Passion, the performance including Albert Einstein in the violin section along with other Princeton musicians.

23. In 1929 the school moved to Ithaca, New York where it became associated with Ithaca College and began offering a four-year degree program culminating in a Bachelor of Music degree; the school had moved from Dayton in order to gain ready rail access to major cultural destinations including New York City, Chicago and Philadelphia, cities where its choir had performed during each musical season.

24. Later that same year the choir sang with the NBC Symphony Orchestra conducted by Arturo Toscanini.

25. After four years as an affiliate of Ithaca College, Westminster began its nearly century-long tenure and residence in Princeton, its permanent home.

26. While construction was ongoing on its permanent campus, Westminster conducted classes and its academic program at the First Presbyterian Church in Princeton and at what was then known as the Princeton Seminary, today known as Princeton Theological Seminary.

27. In 1934 Westminster occupied its permanent campus on Hamilton Street in Princeton, where it has remained continuously without interruption for the past 83 years.

28. The creation of the campus was made possible by the grant of Sophia Strong Taylor who endowed Westminster with the land and buildings on its campus with the condition that the site must continue to be used as a place of liturgical music education; the grant contained an additional condition that if Westminster ceased such function the property would revert to the Princeton Theological Seminary.

29. Westminster has remained one of the Nation's leading cultural institutions with its students performing regularly in most of the world's primary choral and orchestral venues including the New York Philharmonic, Philadelphia Orchestra, National Symphony Orchestra, NBC Symphony Orchestra, Pittsburgh Symphony Orchestra, Boston Symphony Orchestra, Cleveland Orchestra, Atlanta Symphony Orchestra, San Francisco Symphony Orchestra, and Los Angeles Philharmonic.

30. The Westminster Symphonic Choir has regularly performed with nearly all of the world's leading classical conductors including Claudio Abbado, Daniel Barenboim, Leonard Bernstein, Herbert von Karajan, Eugene Ormandy, William Steinberg, Leopold Stokowski, Arturo Toscanini, and Bruno Walter, and such contemporary figures as Pierre Boulez, Mariss Jansons, Erich Leinsdorf, James Levine, Zdeněk Mácal, Kurt Masur, Lorin Maazel, Michael Tilson Thomas, Riccardo Muti, Claudio Abbado, Seiji Ozawa, Wolfgang Sawallisch, Robert Shaw, Zubin Mehta, Albert Wolff, and Rafael Frübeck de Burgos.

32. Recognizing its international position, the Westminster Choir and the Westminster Symphonic Choir are regularly invited to perform with leading touring orchestras including the Berlin Philharmonic, the Berlin State Opera Orchestra, the Dresden Philharmonic Orchestra, the Bavarian Radio Symphony Orchestra, the Korean Broadcasting Symphony Orchestra, the Royal

Concertgebouw Orchestra, and the Vienna Philharmonic, when these well known orchestras travel to New York and Philadelphia.

33. Working with Walt Disney, the Westminster Choir appeared in the groundbreaking film "Fantasia" (1940) where it performed Ave Maria Op. 52 No. 6 (1825) by Franz Schubert, a film nominated for preservation in 1990 in the United States National Film Registry by the Library of Congress as being "culturally, historically, or aesthetically significant"; the film is ranked at number 96 in the American Film Institute's Top 300 films and at number 5 in their Top 10 Animation films. See e.g. <http://www.hollywoodgoldenage.com/movies/fantasia.html>.

34. Westminster ensembles, choirs and faculty have won or been nominated for multiple Grammy awards including:

James Whitbourn: Annelies, 2014  
Westminster Williamson Voices,  
James Jordan, Ariana Zukerman, and The Lincoln Trio  
Naxos Records

Dvořák: Requiem; Symphony No.9 "From the New World", 2000  
The Westminster Symphonic Choir  
Zdeněk Mácal and the New Jersey Symphony Orchestra  
Delos Records

Berlioz: Romeo & Juliet, 1986  
The Westminster Symphonic Choir  
Riccardo Muti and the Philadelphia Orchestra  
Angel/EMI

Barber: Anthony & Cleopatra, 1983  
The Westminster Symphonic Choir  
C. Badea and the Spoleto Festival Orchestra  
New World Records

Haydn: Lord Nelson Mass, 1977  
The Westminster Symphonic Choir  
Leonard Bernstein and the New York Philharmonic  
Columbia

35. Since 1939 the Westminster Choir began regular performances with the New York Philharmonic, at that time conducted by Sir John Barbirolli.

36. In the years since the Westminster Choir has had more than three hundred performances with the Philharmonic the largest number of engagements of any single performing group with this esteemed orchestra.

37. Unique among undergraduate choirs, the Westminster Choir has held at least three world tours:

- in 1934 when it toured the Soviet Union and other nations as the first invited American guests of the communist state
- in 1957 when it undertook a five month world tour in 22 nations under the U.S. State Department Cultural Exchange Program, in 1957;
- in 1996 when, conducted by Joseph Flummerfelt, it traveled on a concert tour of Korea and Taiwan and the Colmar Music Festival in Colmar, France

38. Before departing on their 1957 State Department tour, President Dwight Eisenhower acknowledged the Westminster Choir as American emissaries to the world:

“To the young men and women of the Westminster Choir celebrating the beginning of their world concert tour, I send greetings. You have been chosen to represent America. As cultural ambassadors, you are showing the countries of the world how Americans can sing and, also, how Americans can listen and learn. You will return home with a new understanding of other nations even as you take them a new appreciation of our musical heritage. In this exchange, you will make a real contribution to the peace of the world. Best wishes as you begin this great adventure.

See e.g. <https://slippedisc.com/2017/03/americas-top-choir-college-is-about-to-be-homeless/#sthash.OEhMHRrYR.dpuf>.

39. In 1964 the Westminster Choir performed on the Telstar World-Wide Telecast for the dedication of the 1964 New York World’s Fair, the largest television audience up to that date.

40. In 1965 the Choir, for the first time, appeared with three major orchestras in one year: the Berlin Philharmonic, the American Symphony Orchestra and the Philadelphia Orchestra.

41. By this time, the Westminster Choir had become recognized as one of the world's leading musical institutions regularly appeared at major cultural inaugurations.

42. For example, in 1970 the Westminster Choir began an annual concert series featuring the National Symphony and the Westminster Choir performing in Washington and New York.

43. That same year the Choir performed the world premiere of Panufnik's *Universal Prayer* at the Cathedral of St. John the Divine.

44. In 1972, the Westminster Choir was among the invited groups to perform at the inaugural week of concerts at the Kennedy Center in Washington performing *The Dawn of Glory* by Christian Latrobe with the Piedmont Chamber Orchestra directed by Nicholas Harsanyi.

45. Following this inauguration at the Kennedy Center, in 1972 the Westminster Choir performed and recorded the American premiere of Messiaen's *The Transfiguration of Our Lord Jesus Christ* with the National Symphony at the Kennedy Center, marking the Choir's debut with Maestro Antal Dorati.

46. Also, in 1972 at the invitation of Gian Carlo Menotti, the Westminster Choir began its first summer as the chorus-in-residence for the Festival dei Due Mondi (Festival of Two Worlds) in Spoleto Italy, a collaboration that for two decades until 1991.

47. In 1977 Maestro Gian Carlo Menotti inaugurated Westminster Choir as the first chorus-in-residence at the Spoleto Festival USA in Charleston a collaboration that continues annually.

48. Following its tradition of world premieres, in 1975 Westminster Choir premiered William Schuman's *Casey at the Bat* with the National Symphony Orchestra.

49. Among its many honors, in 1980 the Westminster Choir was the first choir to be featured on the "Live from Lincoln Center" telecast series over National Public Television where it performed Verdi's Requiem with the New York Philharmonic and Zubin Mehta.

50. The Choir has appeared many times since on "Live from Lincoln Center".

51. Recognizing its unique place in the classical music world, Westminster Choir was invited to participate in the 10,000th performance of the New York Philharmonic.

52. In 1991 the Westminster Choir was invited to perform at Carnegie Hall's 100th anniversary celebration.

53. At the 45th anniversary of Leonard Bernstein's conducting debut at the New York Philharmonic in 1988, the Westminster Choir sang Bernstein's *Chichester Psalms* under his direction at Carnegie Hall.

54. Two years later, in a unique recognition of its place in the music world, the Westminster Choir performed in the Leonard Bernstein memorial concert at the invitation of the Bernstein family.

55. In 1990 Westminster Choir performed the world premiere of Menotti's *Salve Regina* at Spoleto.

56. In 1993 the Westminster Symphonic Choir was invited to perform in a tribute to Maestro Riccardo Muti in "A Tribute to Riccardo Muti" with the Philadelphia Orchestra broadcast nationally on Arts and Entertainment Network (A&E).

57. In 1993 the Westminster Choir performed the world premier of Carlisle Floyd's *A time to Dance* with the San Antonio Symphony Orchestra at the American Choral Directors Association's national convention.

58. Also, that same year, the Westminster Symphonic Choir was led by Maestro Wolfgang Sawallisch at the Philadelphia Orchestra's first performance of Benjamin Britten's *War Requiem*.

59. Continuing its series of world premieres, in 1999 the Westminster Symphonic Choir performed the world premiere of Kaija Saariaho's *Oltra Mar, 7 Preludes for the New Millennium* with the New York Philharmonic conducted by Kurt Masur.

60. In 2001, the New York Philharmonic honored the Westminster Choir by playing for its world premiere of Stephen Paulus' *Voices of Light* commissioned to honor the 75th founding of Westminster Choir College.

61. The Choir has been recognized as one of the staples of our national life, being chosen to commemorate in 2002 the events of September 11, 2001 in the PRI national radio broadcast of *In the Shadow of the Towers* where the choir was joined by President George W. Bush and former Mayor Rudolph Giuliani.

62. That same year Westminster Symphonic Choir's performance of Verdi's *Requiem* with the New Jersey Symphony was broadcast nationally by PBS.

63. In 2004 Westminster's artistic director, Dr. Joseph Flummerfelt, was named Musical America's 2004 Conductor of the Year, the first choral conductor to be so honored.

64. At the Westminster Choir's farewell performance at DePauw University on its 2004 tour that preceded Dr. Flummerfelt's retirement, the Choir and Dr. Flummerfelt were described by one commentator as the world's leading choral performance group:

"There are few American choruses more celebrated than the Westminster Choir and probably no current American chorusmaster as renowned as Joseph Flummerfelt..."

Andrew Adler, *Louisville Courier-Journal*, March 28, 2004; see e.g. <http://www.depauw.edu/news-media/latest-news/details/13327/>.

65. Westminster Symphonic Choir performed Ravel's *Daphnis et Chloë (complete)* for the first time in 2006 with the New York Philharmonic, again under Maestro Lorin Maazel.

66. Continuing with its long series of noted openings, in 2007 the Westminster Symphonic Choir opened the Carnegie Hall season performing Beethoven's Symphony No. 9 with the Lucerne Festival Orchestra, conducted by David Robertson.

67. And in 2009 Westminster Symphonic Choir performed Mahler's *Symphony No. 2 "Resurrection"* with the New York Philharmonic, conducted by Gilbert Kaplan, a commemoration of the 100th anniversary of the work's American premiere.

68. Westminster Symphonic Choir was invited to participate in 2005 in the New York Philharmonic's first performance of Mozart's *Mass in C, K. 317 "Coronation"*, conducted by Lorin Maazel, a premiere presentation of this work by the nation's leading orchestra.

69. Following these noted premiers, world openings, anniversary performances and commemorations with America's leading orchestral performance organizations, in 2009 American Record Guide describes the Choir as "the gold standard for American academic choirs."

70. No academic performance group has ever received the recognition and performance opportunities regularly accorded to the Westminster Choir and Westminster Symphonic Choir.

71. In recent years, the Westminster Symphonic Choir has had premiere performances with emerging modern conductors, in 2011 with the Philadelphia Orchestra under the direction of Yannick Nezet-Seguin and in 2012 with Gustavo Dudamel and the Simon Bolivar Symphony Orchestra.

72. In 2014, Westminster Voices' and James Jordan's joint recording of James Whitbourn's *Annelies*, the first major choral setting of The Diary of Anne Frank, was nominated for a Grammy Award for Best Choral Performance.

73. Beginning 2002 Westminster Choir joined with Julie Andrews, Christopher Plummer and Charlotte Church and London's Royal Philharmonic Concert Orchestra for the international tour of "A Royal Christmas".

74. In 2015 the Westminster Symphonic Choir performed Bernstein's *Mass: A Theater Piece for Singers, Players and Dancers* for the first time with the Philadelphia Orchestra conducted by Yannick Nezet-Seguin.

75. In yet another milestone, the Westminster Williamson Voices ensemble appeared at the Metropolitan Museum of Art's Temple of Dendur for a performance of Arvo Part's *Kanon Pokajanen*.

76. Westminster Choir is known internationally for the breadth and scope of its classical repertoire and the complexity of its performance works and in recent seasons has performed the complete choral works of Aaron Copland at Avery Fisher Hall in a concert presented by the New York Philharmonic Orchestra, L.v. Beethoven's *Symphony No. 9* with Kurt Masur conducting the

New York Philharmonic Orchestra; Gustav Mahler's *Symphony No. 3* and Debussy's *Nocturnes* with Claudio Abbado conducting the Berlin Philharmonic; L.v. Beethoven's *Symphony No. 9* with Mark Laycock conducting the Princeton Chamber Symphony; Felix Mendelssohn's *Elijah* with Wolfgang Sawallisch conducting The Philadelphia Orchestra; and J.S. Bach's *Missa Brevis No. 1 in F* and *O Jesu Christ, meins Lebens Licht* with Joseph Flummerfelt conducting the New Jersey Symphony Chamber Orchestra.

77. Recent performances have also included Mussorgsky/Schebalin's *Dream of the Peasant Grischko* from *The Fair of Sorotchinsky* with Zdenek Macal conducting the New Jersey Symphony Orchestra, Benjamin Britten's *War Requiem*, with Kurt Masur and the New York Philharmonic Orchestra and Debussy's *Le martyre de Saint Sebastien* with Kurt Masur conducting the New York Philharmonic Orchestra.

78. Recently, the Westminster Chapel Choir and Westminster Schola Cantorum performed masterworks by W.A. Mozart Masterworks with the Juilliard Orchestra conducted by Juilliard faculty member Gary Thor Wedow at the Princeton University Chapel, representing a performance collaboration between two of the world's leading schools of music education.

79. In 1978 the Westminster Choir and Westminster Symphonic Choir created a recording label, and released its first recording, *Six Motets of Johann Sebastian Bach*, with conductor Wilhem Ehmann.

80. As part of the larger Westminster Symphonic Choir, the Westminster Choir has made over 50 recordings on the Columbia, RCA, EMI, Deutsche Grammophon and Philips Classics labels.

81. Other Westminster performance groups are widely acknowledged as the world leaders, including the Westminster Concert Bell Choir described as being “Hailed for their virtuosity...”, <http://www.malmark.com/html/westminster.php>, by Malmark Company, the world’s leading manufacturer of church hand bells.

82. The Westminster Concert Bell Choir has appeared on Public Television’s “Mister Rogers’ Neighborhood” and several holiday broadcasts of the “Today” show, including one in which the ensemble was joined by NBC television personalities Katie Couric and Willard Scott.

83. Its holiday performances have been heard annually on National Public Radio’s “Performance Today,” and it is included on NPR’s Christmas Around The Country II recording.

84. The Westminster Concert Bell Choir has performed at Carnegie Hall twice during the Christmas season and was featured on New Jersey Network’s State Of The Arts program.

85. In December 2002 the ensemble joined leading musical theater stars Julie Andrews, Christopher Plummer, Charlotte Church and the Royal Philharmonic Orchestra for the critically acclaimed 15-city tour entitled “A Royal Christmas.”

86. Most recently, the Choir joined singer Josh Groban, appearing at NBC’s nationally televised Lighting of the Rockefeller Center Christmas tree.

87. The Westminster Concern Bell Choir has made nine recordings: The Pealing Bells, Westminster Concert Bell Choir, Christmas Bells, Westminster Rings!, Praise and Adoration, Christmas at Westminster: The Westminster Concert Bell Choir, By Request, Westminster Concert Bell Choir: 30th Anniversary Collection and A Time To Dance.

88. As the US/1 newspaper commented at the time of the A Royal Christmas tour, the Westminster Choir College is the world leader in handbell education and performance:

When it comes to handbell choirs, Westminster Choir College (WCC) of Rider University is a world-recognized expert. The first institution anywhere to develop a handbell program, WCC has been both pioneer and leader in the field for more than a generation.

Elaine Strauss, US/1, December 3, 2014 reprinted in <http://princetoninfo.com/index.php/component/us1more/?key=12-3-14bells>, downloaded June 17, 2017.

89. Among national music education schools, Westminster Choir College is ranked among the leaders, as for example, by [musicschoolcentral.com](http://musicschoolcentral.com) that ranked Westminster number 5 out of 10 ahead of such well-known institutions as Columbia University, University of Michigan Ann Arbor, Eastman School of Music, SUNY-Fredonia and University of Wisconsin Madison. As [musicschoolcentral.com](http://musicschoolcentral.com) stated, Westminster is one of the nation's leading schools of music education and has a 100% job placement rate for graduates:

Widely considered to be among the very finest programs in the entire country for vocal music education, the Westminster Choir College is an intriguing choice for the aspiring music ed. major. As the name suggests, the school's most famous specialties lie within choral music education, choral music conducting, and vocal performance, invaluable strengths that will prepare a musician to be a great teacher to any K-12 student body.

For the past 11 years, the Westminster Choir College's music education students have enjoyed a 100% job placement rate upon successful graduation. The students at the school themselves are not separated from the performance majors, but rather, are seamlessly integrated into the ensemble and studio classes of the college.

The voice faculty at Westminster is the largest voice faculty of any college in the world, which is a large reason why an emphasis on choral music education at this school exists.

If you are looking to pursue music education either as a stand-alone major or in conjunction with arts management, conducting, composition, or another performance major, with the intent of landing a job in New Jersey upon successful graduation, look no further than this prestigious college.

See <http://musicschoolcentral.com/top-10-colleges-music-education-majors-us/2/>, downloaded June 17, 2017.

90. Westminster Choir College is a superior academic organization with high admission standards and an average GPA and SAT score in excess of the remainder of Rider University's student body. In particular, Westminster's scores for reading, math and writing, respectively, are substantially higher than Rider University's student body:

|                                  |     |     |     |
|----------------------------------|-----|-----|-----|
| <b>Westminster Choir College</b> | 593 | 570 | 589 |
|----------------------------------|-----|-----|-----|

|                         |     |     |     |
|-------------------------|-----|-----|-----|
| <b>Rider University</b> | 511 | 520 | 506 |
|-------------------------|-----|-----|-----|

91. Westminster's average GPA is 3.51 while Rider's average GPA is substantially lower at 3.32. See e.g. <http://www.rider.edu/wcc/admissions/undergraduate/how-to-apply/first-year-class-profile>; <http://www.rider.edu/admissions/undergraduate/how-to-apply/first-year-students/first-year-class-profile>.

92. Yet, this outstanding academic and world-renowned institution is proposed to be sold, dismembered and turned into a commercial development by Rider University that assumed, in 1991, a trust to continue to operate, maintain and fund Westminster Choir College, as set forth below.

**The 1991 Merger of Westminster Choir College with Rider University**

93. After 70 years of academic and international achievement, success and national and world appreciation, Westminster Choir College found it necessary to seek an academic partner due to financial difficulties common to many small institutions of higher education.

94. In 1991 Rider University, a small business and liberal arts college situated in Lawrenceville, New Jersey, approximately ten miles from Westminster's campus in Princeton, agreed to merge with Westminster.

95. Rider was a college of approximately 5,000 students (compared to Westminster's small, but highly selective body of 400 undergraduates and 100 graduate students) with a focus on business, accounting and general liberal arts curriculum but without a significant or world-class fine arts or performing arts program.

96. Rider sought the merger in order to increase its curriculum offerings in the fine arts and performance arts by gaining access to Westminster's world-renowned faculty.

97. Since the merger, Rider has taken advantage of the unique Westminster faculty to open a Westminster College of the Arts in which approximately 300 Rider students study in the fine arts under Westminster faculty at Westminster's Princeton campus.

98. Following the 1991 merger, Rider College applied for and gained New Jersey state recognition as a university on the strength of the expanded schools and graduate degrees now available to Rider students through Westminster.

99. In the 1991 merger instrument Rider accepted the responsibility of continuing to maintain and operate Westminster Choir College in exchange for the gift of the Westminster property, goodwill, faculty and course offerings and represented that it would continue to operate and fund the Westminster campus in Princeton under the separate Westminster identity.

100. Such representations by Rider were the consideration for the Westminster's Trustees' agreement to the merger, including plaintiff trustees.

101. The merger agreement was conditioned on Rider's continued operation, maintenance and funding of Westminster Choir College on its Princeton campus.

102. In agreeing to the merger, the parties expressly agreed that the merger was for the specific "intention of continuing the purposes of WCC,..." Agreement of Merger at §1.3.

103. The 1991 agreement provided that the parties would act to "ensure that the WCC programs may be continued by Rider following the Merger of WCC." *Id.*

104. The agreement required that "...[A]fter the Merger of the institutions Rider will:

(a) Preserve, promote and enhance the existing missions, purposes, programs and traditions of WCC, including, without limiting the generality of the foregoing, the continuation of the mission of WCC through its emphasis on instruction in sacred music; training of minister of music; choral, vocal, and instrumental performance; and preparation of music teachers.

(b) Ensure that the separate identify of WCC, its programs and activities and its faculty will be recognized, and the current and future WCC alumni will continue to be so identified;

Agreement of Merger at §2.1 (a) and (b).

105. These provisions require, absent exigent circumstances, that Rider continue to operate Westminster Choir College for the stated purposes and maintain its "separate identity" as an institution of higher education.

106. Consistent with these purposes, the merger agreement placed limitations on Rider's ability to collateralize the Westminster property and expressly stated that the resources of Westminster must be used for the Westminster programs and mission and that "Rider will...

[u]tilize WCC's resources in support of WCC's programs and provide such additional funds as may be necessary from time to time beyond the resources of WCC to accomplish the obligations of Rider as set forth in this Agreement,..." Agreement of Merger at §Section 2.1 (c).

107. By this provision Rider recognized that it cannot close Westminster or its operation simply because Westminster requires additional annual financial support in the form of subsidies or deficit support as Rider expressly undertook the duty and obligation "to provide such additional funds as may be necessary from time to time beyond the resources of WCC...", *id.*, and Rider represented that it would be able to do so.

108. Such representations were a fundamental understanding and predicate of the merger.

109. As part of the obligation to "Utilize WCC's resources in support of WCC's programs", Agreement of Merger at §2.1(c), the merger agreement provided that Rider shall be entitled to collateralize the Westminster property for the purpose of borrowing to support the Westminster programming, a further demonstration of the intended limits to be placed on Rider's use of this property.

110. In exchange for receiving the Westminster property, goodwill, programs, faculty and the like, the agreement obligated Rider to continue to provide for the financial and administrative support of Westminster Choir College including its "real...property." Specifically the agreement provided that "after the Merger...Rider will...

(d) Assume the responsibilities for the obligations, financial liabilities, and daily management of affairs of WCC including the supervision and management of all of WCC's real and personal property."

Agreement of Merger at §2.1(d).

111. Along with this obligation, Rider assumed the duty to continue to budget for and provide administrative services to Westminster for the express purpose of continuing “the operation of WCC”:

“Rider will ensure that the necessary personnel and services are available to accomplish the foregoing, including without limitation, the necessary services relating to account, recordkeeping and other similar activities that are necessary for the operation of WCC.”

*Id.*

112. By these provisions, Rider assumed, as a condition of receiving the Westminster school and property, that it would continue at its own cost and expense where necessary beyond the revenues of Westminster, to operate a college with the separate Westminster identity for the purposes of maintaining the Westminster programs, mission and academic purposes.

113. The merger does provide, as in the case of any college or university, that after the merger Rider is not “obligated to continue any *specific* programs of WCC”, see Agreement of Merger at §2.3 [emphasis added], a condition that is an ordinary and usual element of the operation of any academic institution that may, from time to time, change course offerings or programming based on student needs, financing or faculty availability and the like, but such provision was subject to the broader obligation of Rider to continue to maintain the “separate” Westminster academic program in sacred and other music education; such provision was a recognition of the need for management flexibility as to “specific” programs but was not a license to Rider to terminate Westminster’s “separate” academic mission and purpose as an free-standing, integral school of higher music and fine arts education.

114. The merger agreement was further predicated upon the specific obligation of Rider to continue to operate and maintain the Westminster Princeton campus except where Rider determines “in good faith” that it cannot continue to do so under certain specified conditions.

115. Specifically, the merger agreement provided that Rider would not be obligated “to continue to operate or maintain the existing WCC campus, if it determines, in good faith, that such continued action would be substantially impracticable or would substantially adversely affect the affiliated or merged institutions.” Agreement of Merger at §2.3.

**Rider’s Announced Intention to Sell Westminster**

116. In November 2016, Rider announced it was considering a proposal to sell the Westminster campus and transfer its programs, in part, to either Rider’s Lawrence, New Jersey campus or to another institution, such as Montclair State University; Rider has announced that as a part of such plan it will be considering proposals to sell the land and buildings of the campus to commercial real estate developers and use the funds to fund Rider’s \$10 million deficit and construct other buildings on the Rider campus for Rider’s purposes, not Westminster’s programming.

117. Rider University did not seek merger partners for Westminster Choir College but issued a circular offering to sell Westminster to other academic institutions or to commercial developers for the market value of the Westminster campus that Rider believes is worth between \$40 and \$60 million.

118. Rider’s administration has stated that it will not continue the operation of Westminster Choir College beyond the 2017-2018 academic year.

119. Rider has taken affirmative steps to carry out such sale of the Westminster property by retaining PriceWaterhouse Coopers to provide acquisition advice, consulting services and to solicit purchase inquiries from third party buyers and other activities.

120. Rider has, in fact, attempted to solicit purchase inquiries from nearly three hundred entities.

121. Although Rider has made statements that it would prefer that Westminster be sold to an academic partner that would continue the operation of Westminster at its Princeton campus, Rider has failed to make good faith efforts to solicit such interest but, instead, offered to sell the Westminster campus to other academic institutions at market value, a solicitation that is not a good faith effort to continue the purposes of the 1991 merger agreement: academic institutions do not typically purchase colleges or universities at market value but merge with existing entities in the same manner as Rider merged with Westminster, without payment but with a commitment to continue to operate and maintain the school and its programs.

122. Because Rider did not seek out merger partners from other universities but only offered to sell Westminster's property at market value, the only entities responding to Rider's solicitation circular are real estate developers or for-profit commercial businesses that do not operate non-profit fine arts or liberal arts institutions of higher education.

123. Rider has, therefore, taken affirmative steps to sell the Westminster Campus to commercial entities that will cease to operate an institution of higher education at the Westminster campus.

124. Pursuant to such purposes, Rider is considering options from the following developers who have expressed interest in purchasing the Westminster property: EPR Properties

United States; Guanghua Education Group; Bloom; Garden Homes of Princeton; Weichert Development Company; CITIC Private Equity Funds; Lunar Capital Management Ltd.; Toll Brothers; The Vistria Group.

125. Each of the above entities is a real estate developer that invests in commercial or residential real estate projects or, in the case of the Guanghua Education Group, is a commercial developer of private, for-profit business and language schools.

126. Rider has announced to its Board that it will be considering moving ahead with such interested purchasers, none of whom are institutions of higher education and will not be operating Westminster Choir College; Rider has sought and received offers for the sale and purchase of Westminster and has retained PriceWaterhouseCoopers to assist it in evaluating such offers.

127. Upon information and belief, Montclair State University has expressed interest in incorporating Westminster's choral education faculty and certain courses into Montclair's existing choral education program but will not maintain a separate Westminster Choir College as required under Rider's 1991 merger agreement.

128. In an undisclosed document, Princeton Regional Schools has allegedly offered to purchase the Westminster campus but, upon information and belief, it intends to use the land and facilities to build classroom buildings and public schools, not to continue the operation of Westminster Choir College as an institution of higher education.

129. Pursuant to the 1991 agreement Rider is obligated to continue to operate the Westminster campus unless it becomes "substantially impracticable" or "would substantially adversely affect the affiliated institutions," see Agreement of Merger at §2.3, conditions that do

not arise as Westminster has had a financial surplus, increasing revenues, increasing donations, and stable student admissions.

130. Financial documents generated by Rider's Vice President for Finance & Treasurer Julie Karns, for the 2016 fiscal year, demonstrate that in 2016 Westminster ran at a surplus of \$2,850,000 (Two Million, Eight Hundred Thousand Dollars).

131. Westminster's revenues for 2016 equaled \$24,437,000, in excess of its regular operating expenses of \$24,333,000.

132. Similarly, Rider's documents show that in fiscal year 2015 Rider showed a surplus of \$1,324,000 (one million, three hundred and twenty-four thousand dollars).

133. During this same time period Rider has operated at a deficit, for example, ending 2016 with a \$2.5 million deficit, according to its Moody's rating.

134. As such facts demonstrate, Rider's claimed \$10 million annual deficit, that it has stated is the basis on which it has determined the need to to sell Westminster, is not caused by Westminster that, in contrast to Rider University, operated in 2016 and 2015 at a surplus.

135. Westminster has also showed consistent revenue growth of 2.3% in 2014, 7.0% in 2015 and 6.3% in 2016.

136. Westminster has also shown consistent growth in tuition revenue in this same period: \$12,194,000 in 2014, \$13,567,000 in 2015 and \$14,668,000 in 2016.

137. Along with its stable student base and its surplus, Westminster's cash gifts *increased* from \$2,088,051 in 2015 to 2,196,481 for the 2016 fiscal year.

138. Unlike Rider University that has lost approximately 1,000 students over the past six years, Westminster's student census has remained stable, at least until Rider announced its intention in November 2016 to sell Westminster and close the campus.

139. Upon information and belief, Rider's projected deficit for Westminster in 2017 of \$1,297,000 arises because of a projected decline in total 2017 donations to Westminster in the amount of \$2,837,000, a decline that followed Rider's announcement in November 2016 that it intended to close the Westminster campus; as set forth above, prior to such announcement Westminster's cash gifts had increased from \$2,088,051 in 2015 to 2,196,481 in 2016.

140. Moreover, upon information and belief, Rider's accounting (and its projection of an alleged 2017 deficit for Westminster) does not account for, or credit to, Westminster the value of the Westminster goodwill used by Rider in its arts programs at Rider University in which 300 students major in arts majors offered and taught at Rider University under the trademark and tradename "Westminster College of the Arts", a tradename or trademark Rider acquired rights to only in consequence of the 1991 agreement of merger; accordingly, any claim of a future, projected Westminster deficit fails to account for the value and revenue brought to Rider by its use of the Westminster goodwill and the Westminster trademark and tradename.

141. In any event, a claim of a current or future Westminster deficit will not support a sale or closing of Westminster or its campus since, under the terms of the 1991 merger agreement, Rider is obligated to fund Westminster's operation when Westminster's revenues require supplementation.

142. Specifically, the agreement states that "During the Affiliation and upon and *after* the Merger of the institutions Rider *will*:"

\* \* \*

“...provide such additional funds as may be necessary from time to time beyond the resources of WCC...”.

See Agreement of Merger, *id.* at §2.1(c)[emphasis added].

143. Consequently, Rider’s funding of a Westminster deficit, if such actually has existed or will exist in future years, is not a basis on which Rider can terminate the Westminster operation or sell the campus.

### **CLAIMS FOR RELIEF**

#### **COUNT I**

##### **(Rider University’s anticipatory and/or actual breach of the 1991 merger agreement)**

144. Each of the above allegations are repeated as if more fully set forth below.

145. Rider has declared that it will cease to operate Westminster Choir College on its Princeton campus as of the close of the 2017-2018 academic year.

146. Such declared intention will be or is in breach of the 1991 merger agreement that requires Rider to continue to operate, maintain, fund and subsidize Westminster Choir College and its campus and maintain its “separate identity”, except under limited circumstances in which such continued operation is “substantially impracticable” or “would substantially adversely affected the affiliated institutions.” Agreement of Merger at §2.3.

147. Such conditions as set forth at §2.3 for the cessation of operation or maintenance of Westminster Choir College and/or its Princeton campus have not arisen.

148. Continued operation of Westminster Choir College is neither “substantially impracticable” nor “would substantially adversely affect the affiliated institutions”, the

conditions necessary to any cessation of operation of Westminster or its campus under the 1991 merger agreement.

149. Based on the foregoing, plaintiffs seek judgment declaring that Rider University has anticipatorily or actually breached the 1991 merger agreement, along with such other relief as to which the Court deems just and proper.

## COUNT II

### **(Declaratory judgment that Rider University must relinquish control of Westminster Choir College by virtue of its declared intent to abandon the conditions under which Rider received Westminster and its property)**

150. Each of the above assertions are repeated as if more fully set forth below.

151. Under the 1991 merger agreement Rider received the Westminster real property and campus, its conservatory, performing groups, goodwill, trade name and trademarks, recording library, archives, research library, academic programs and faculty (the “Westminster Property”) in exchange for Rider’s promise and representation that it would use the Westminster Property for the purpose of continuing to operate and maintaining Westminster Choir College as an institution of higher education.

152. In November 2016, Rider University publicly declared that it is no longer willing to continue to operate, maintain and fund Westminster Choir College.

153. The conditions under §2.3 of the 1991 merger agreement under which Rider may cease such operation and funding have not arisen.

154. Rider has determined to abandon its continued operation, maintenance and funding of Westminster Choir College.

155. Because Rider has determined to cease such continued operation, maintenance and funding of Westminster as required under the 1991 agreement, it has breached the terms under which it received the Westminster Property and such must be returned to the grantor, in this case the Trustees of Westminster Choir College.

156. Accordingly, judgment should be entered directing that the Westminster Property be reconveyed to Westminster Choir College under a Board of Trustees to be re-formed or reinstated that will resume operation of Westminster Choir College as a non-profit institution of higher education.

### **COUNT III**

**(Alternately, that Rider University be judicially directed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions under which Rider received the Westminster property under the 1991 merger agreement)**

157. Each of the above assertions are repeated as if more fully set forth below.

158. As more particularly set forth in Count II, supra, Rider University has declared that it is no longer willing to continue to operate, maintain and fund Westminster Choir College and the conditions under §2.3 of the 1991 merger agreement under which Rider may cease such operation and funding have not arisen.

159. Rider University received the Westminster Property under the terms and conditions that it would continue to operate, maintain and fund Westminster as a non-profit institution of higher education specializing in the education and training of undergraduate and graduate students in the fine arts, particularly in the field of sacred and choral music instruction, voice, conducting, music teaching and related fields.

160. Because Rider University has declared its intention to abandon the grant of the Westminster Property and the purposes underlying such grant, Rider should be judicially directed to seek out and identify an academic institution or other entity that will continue to operate, maintain and fund Westminster Choir College in the manner most analogous to the stated purposes of the 1991 merger agreement, namely the operation and maintenance of the academic programs and performances of Westminster Choir College at its Princeton campus consistent with the operation and purposes of a non-profit institution of higher education in the field of sacred and choral music instruction, voice, conducting, music teaching and related fields.

161. Accordingly, plaintiffs seek judgment under this Court's equitable powers that Rider University be directed to seek out, identify and effect such transaction by contract or other instrument of merger on terms to be approved by the Court under *cy pres* or other equitable doctrine.

#### **COUNT IV**

**(As a second alternate remedy, that a special master be appointed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions of the 1991 merger agreement)**

162. Each of the above assertions are repeated as if more fully set forth below.

163. In the event that the Court finds that Rider University is unable or unwilling to seek out and identify an academic institution to assume the purposes and conditions of the 1991 merger agreement, plaintiffs request judgment that a special master be appointed to find an academic partner to merge with or acquire Westminster Choir College on terms substantially analogous to the purposes of the 1991 merger agreement and that said special master be

empowered to effect such transaction by contract or other instrument of merger on terms to be approved by the Court under *cy pres* or other equitable doctrines.

**COUNT V**

**(Permanent injunctive relief barring the sale of the Westminster property to any commercial developer or other commercial entity, corporation, partnership or association or any entity that will not continue to operate Westminster Choir College at its Princeton campus on terms substantially analogous to the 1991 agreement)**

164. Each of the above assertions are repeated as if more fully set forth below.

165. Rider University has declared its intention to sell the Westminster campus, buildings and lands to a commercial developer for commercial purposes, or for non-profit purposes, that do not include the operation of a non-profit institution of higher education in the field of choral music instruction, voice, conducting, music teaching and related fields.

166. Commercial sale and development of the Westminster campus will destroy the integrated and unique academic structures and physical plant designed for the specific purposes of the music and fine arts education to be continued under the 1991 merger agreement, along with the performance places, piano and organ structures, the church and its religious performance venue, the playhouse and the Cullen center, a performance venue designed for Westminster's specific academic mission and purposes, and will cause a complete destruction of the history associated with Westminster's Princeton campus.

167. In addition, sale of the campus, its lands and buildings and removal of its programming to other venues will cause the irreplaceable loss of the nearby ancillary structures, venues and relationships in the Princeton community and at Princeton University and Princeton Theological seminary, including religious settings and performance venues used for many decades by Westminster's faculty and students as a fundamental part of its academic mission.

168. Rider has declared that it intends to make use of the proceeds of commercial sale to cover Rider's \$10 million deficit and has created plans to use the balance of such proceeds for the construction of non-Westminster buildings for Rider's other academic programs excluding the Westminster programming.

169. Rider University has taken affirmative and overt material steps to achieve such sale including: 1) the solicitation of expressions of interest from commercial developers; 2) the retention of Price Waterhouse Coopers that has been directed to seek out such commercial developers for the Westminster campus; 3) the review of expressions of interest received from such developers; 4) the acceptance of Non-Disclosure Agreements from such commercial developers for the purpose of facilitating commercial due diligence in connection with the anticipated sale of the Westminster campus and 5) the receipt of proposals from developers and potential buyers.

170. The sale of the Westminster campus, lands and buildings for commercial purposes and development, or for non-profit use not conforming to the purposes of the 1991 agreement is contrary to and in violation of the 1991 agreement and the terms under which Rider received the Westminster Property.

171. Rider's stated intention to retain the proceeds for non-Westminster programs and academic activities is contrary to and in violation of the 1991 agreement and the terms under which Rider received the Westminster Property.

172. Accordingly, plaintiffs request issuance by the Court of permanent injunctive relief barring sale of the Westminster campus to commercial developers or to any purchaser including a non-profit purchaser that will not continue to operate and maintain Westminster and its campus

under the terms of the 1991 merger agreement or terms substantially analogous to the terms of the 1991 merger agreement, along with permanent injunctive relief barring Rider University from continuing to solicit and seek out and use university resources to facilitate such commercial or non-conforming non-profit development.

**COUNT VI**

**(Declaratory relief that Rider University's efforts and intent to sell the Westminster Campus and/or to close Westminster Choir College are in violation of the 1991 agreement and violate public policy)**

173. Each of the above assertions are repeated as if more fully set forth below.

174. As set forth above, Rider University's efforts and intent to sell the Westminster Choir College or its campus, or sell same, are in violation of the terms and conditions of the 1991 agreement and the terms and conditions under which Rider University received the Westminster property.

175. Accordingly, declaratory relief is sought that all such efforts to sell the campus, the Westminster property or to close Westminster Choir College are illegal, in violation of the 1991 agreement and violate public policy.

**COUNT VII**

**(By Plaintiffs Mona Davids, Elizabeth Cooksey, Christian Koller, Matthew Koller, Mark D. Haffner, Mymoena Davids and Palmer Haffner against the Defendant for Breach of Contract)**

176. The Plaintiffs MONA DAVIDS, ELIZABETH COOKSEY, CHRISTIAN KOLLER, MATTHEW KOLLER, MARK D. HAFFNER, MYMOENA DAVIDS and PALMER

HAFFNER (hereinafter the “*Parent and Student Plaintiffs*”) set forth as their claim for breach of contract as follows:

177. The Defendant, through its advertising and website, has offered and continues to offer to the public at large and more specifically prospective students and their parents that Westminster Choir College (“*Westminster*”) is one of the world's leading schools of music, located on a 23-acre campus in Princeton, New Jersey, offering a four-year music college and graduate school that prepares students for careers as performers and as music leaders in schools, universities, churches and professional and community organizations.

178. The Defendant further offered in the City of New York, the following facilities at its campus: 21 Pipe organs, (including a 1935 Aeolian-Skinner (restored, 1983), a Casavant (1969), a Fisk (1978) and others by Beckerath, Flentrop, Holtkamp, Moller, Noack, Phelps and Shantz); 165 Pianos, 3 Piano labs, 61 Practice Rooms, 4 Performance venues, a Music Computing Center, Voice lab, an Arts & Science Computer Lab; and a library with 67,000 books, music scores and periodicals, 5,400 choral music titles in performance quantities, 80,000 choral reference collection and 23,000 sound and video recordings, (the “*Facilities*”).

179. The Defendant further offered the Parent and Student Plaintiffs in New York a Bachelor of Arts in Music, which is a comprehensive four-year music degree and a five-year masters degree program that offers a broad liberal arts education ideal for students with a variety of academic interests and talents, including Bachelor of Music Programs such as Music Education, Piano, Organ, Performance, Sacred Music, Theory & Composition, and Voice Performance, as well as Master of Music Programs such as Choral Conducting, Composition, Music Education, Organ Performance, Piano, Piano Accompanying & Coaching, Piano

Pedagogy & Performance, Piano Performance, Sacred Music, Voice Pedagogy & Performance. Westminster also offers Master degrees in Music Education, Voice Pedagogy, and Master of Arts in Teaching. .

180. The Defendant further offered to the Parent and Student Plaintiffs in the City of New York : 8 Choirs, including the Westminster Symphonic Choir, which is composed of all juniors, seniors and half of the graduate students, which performs each year with the world's leading orchestras and conductors.

181. The Defendant has further offered that piano student would have the opportunity to study with a piano faculty whose members have reputations for international acclaim.

182. The Defendant has further offered that students in its Voice Performance program would have access to numerous resources to advance the students' skills, such as the Westminster Voice Laboratory, which offers the latest technology for voice analysis and examination.

183. The Defendant has further offered that its Music Education program has 11 consecutive years of 100 percent placement with a reputation for excellence in the field.

184. The Defendant has further offered that in its Sacred Music program millions of people around the world worship every weekend under the musical leadership of Westminster alumni.

185. The Defendant has further offered that its Theory and Composition program culminates with a recital that provides the opportunity of having the students' original music performed.

186. The Defendant has further offered that its Master of Music degree covered: American and Public Musicology; Choral Conducting; Composition; Music Education; Organ

Performance; Piano (including Piano Accompanying & Coaching; Piano Pedagogy & Performance and Piano Performance); Sacred Music and Voice Pedagogy & Performance.

187. The Defendant has further represented that its Westminster Symphonic Choir is conducted by Joe Miller, and that for more than 80 years, this ensemble performed and recorded with virtually all of the major symphony orchestras and conductors of our time, and is composed of all juniors and seniors and first-year graduate students.

188. The Defendant has further represented that its Westminster Choir has been described by American Record Guide as “the gold standard of academic choirs in America,” and that the Westminster Choir regularly records and tours throughout the United States, having been the chorus-in-residence for the Spoleto Festival U.S.A. in Charleston, S.C., since the festival's founding in 1977.

189. The Defendant has further represented that its Westminster Chapel Choir is conducted by Amanda Quist, and composed of Westminster’s newest undergraduates, the taking its name from Westminster’s rich history of leadership in the field of sacred music and its repertoire includes both sacred and secular works.

190. The Defendant has further represented that its Westminster Concert Bell Choir is conducted by Kathleen Ebling Shaw, and performs on the world’s largest range of hand bells, and is nationally renowned for its artistic and technical artistry, touring annually, having appeared on national television and having released many recordings.

191. The Defendant has further represented that its Westminster Jubilee Singers is a multi-cultural, multi-racial and interdenominational ensemble that performs literature that

includes African-American spirituals and folk songs, classical music by African-American composers, gospel music and secular songs.

192. The Defendant has further represented that its Westminster Kantorei, founded in 2004, is conducted by Amanda Quist, and is a chamber choir specializing in early and contemporary music.

193. The Defendant has further represented that its Westminster Schola Cantorum is conducted James Jordan, composed of second year students and prepares students for the Westminster Symphonic Choir through the performance and study of a major choral work. The ensemble also tours each spring.

194. The Defendant has further represented that the Westminster Williamson Voices is conducted by James Jordan, and is composed of 40 singers who combine performance with educational outreach. It is named for the founder of Westminster Choir College, John Finley Williamson, who devoted his life to bringing choral music at the highest level to churches and schools, communicating the human mission of choral singing. (The programs and degrees set forth in paragraphs 179-193. are collectively referred to as the “*Programs and Degrees*”) The terms of Defendant’s offer of its degrees, programs and facilities as set forth in paragraphs 177-194. are collectively referred to as “*Defendant’s Offer*”).

195. That the Programs and Degrees and Facilities as reflected in Defendant’s Offer are consistent with, and a direct consequence of, the merger agreement between Westminster and Rider College dated June 28, 1991 (the “*Merger Agreement*”).

196. That Plaintiff Parents and Students reviewed the terms of Defendant’s Offer made in the City of New York and accepted them in the City of New York by agreeing to enroll their

students at Westminster for the Programs and Degrees and Facilities offered by the Defendant, thereby forming a binding contract between the parties (the “*Contract*”).

197. That the Parent and Student Plaintiffs performed all of the obligations to be performed on their part under the Contract.

198. That notwithstanding the express terms of Defendant’s Offer made in the City of New York, as accepted by the Parent and Student Plaintiffs in the City of New York, and the resulting Contract between them, the Defendant has sought to sell the real property of Westminster and take other actions that would compromise if not completely dismantle the Programs and Degree as well as the Facilities of Westminster.

199. That the Defendant’s actions and conduct constitute an a breach, including anticipatory breach, of the Contract between them and the Plaintiff Parent and Students, as well as all other parents and students attending Westminster, and that, upon information and belief, defendant's acts of breach or anticipatory breach take place in this District by virtue of defendant's use of professional accounting and merger and acquisition advisors including KPMG, PricewaterhouseCoopers and Prager & Co. whose acts on behalf of defendant arranging for and planning the sale or closure of Westminster or providing professional advice in connection with same take place in substantial part in this District.

200. That any action by the Defendant to compromise or dismantle the degrees, programs or facilities of Westminster would result in severe monetary damages to the Plaintiff Parents and Students.

201. As a result of the foregoing, the Defendant is liable to the Parent and Student Plaintiff's for actual, reliance and consequential monetary damages in an amount in excess of \$75,000 to be proved at trial.

### COUNT VIII

**(By Plaintiffs Mona Davids, Elizabeth Cooksey, Christian Koller, Matthew Koller, Mark D. Haffner, Mymoena Davids and Palmer Haffner against the Defendant for Specific Performance of Contract)**

202. The Plaintiff restates and realleges the allegations contained in paragraphs 176 through 201 as if fully alleged herein.

203. That any action by the Defendant to compromise or dismantle the degrees, programs or facilities of Westminster would result in irreparable harm to the Plaintiff Parents and Students.

204. Because the Programs and Degrees as well as the Facilities of Westminster are unparalleled globally, the Parent and Student Plaintiffs would be unable to find comparable Programs and Degrees nor Facilities anywhere else in the world, should the Defendant's action be permitted to continue.

205. Such damages include lost tuition, and more importantly lost opportunity, which only the Programs and Degrees and Facilities at Westminster can provide.

206. As a result of the foregoing, there is no adequate remedy at law.

207. As a result of the foregoing, the Parents and Student Plaintiffs are entitled to specific performance of the Contract as hereinbefore alleged.

**COUNT IX**

**(By Plaintiffs Mona Davids, Elizabeth Cooksey, Christian Koller, Matthew Koller, Mark D. Haffner, Mymoena Davids and Palmer Haffner as Third Party Beneficiaries against the Defendant for Breach of the Merger Agreement)**

208. The Plaintiff restates and realleges the allegations contained paragraphs 176 through 207 as if fully alleged herein.

209. That the Merger Agreement is a valid and binding contract between Westminster and Rider College.

210. That the Merger Agreement was intended to benefit of the “future alumni” of Westminster of which the student plaintiffs are part as represented by their guardian parents.

211. The Parent and Student Plaintiffs were intended parties to the Merger Agreement.

212. The benefit of the Merger Agreement to be conferred upon the Parent and Student Plaintiffs is the continued operation of Westminster and its Programs and Degrees as well as its Facilities.

213. That the benefit is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to provide for the benefit of Parent and Student Plaintiffs, and to compensate the Parent and Student Plaintiffs if the benefit is lost.

214. That any action by the Defendant to compromise or dismantle the degrees, programs or facilities of Westminster would result in irreparable harm to the Plaintiff Parents and Students. Because the Programs and Degrees as well as the Facilities of Westminster are unparalleled globally, the Parent and Student Plaintiffs would be unable to find comparable Programs and Degrees nor Facilities anywhere else in the world, should the Defendant’s action be permitted to continue.

215. Such damages include lost tuition, and more importantly lost career opportunity, which only the Programs and Degrees and Facilities at Westminster can provide.

216. As a result of the foregoing, there is no adequate remedy at law.

217. As a result of the foregoing, and the actions by the defendant to compromise or dismantle the operations of Westminster as hereinbefore alleged, the Parent and Student Plaintiffs may enforce the Merger Agreement, and claim its breach and anticipatory breach of the Merger Agreement.

218. As a result of the foregoing, the Defendant is liable to the Parent and Student Plaintiffs, as third party beneficiaries, for anticipatory and actual breach of the Merger Agreement and the Defendant is liable to the Parent and Student Plaintiff's for actual, reliance and consequential monetary damages in an amount in excess of \$75,000 to be proved at trial.

### COUNT X

**(By Plaintiffs Mona Davids, Elizabeth Cooksey, Christian Koller, Matthew Koller, Mark D. Haffner, Mymoena Davids and Palmer Haffner against the Defendant for fraudulent inducement of contract)**

219. The Plaintiff restates and realleges each and every allegation set forth above as if fully alleged herein.

220. Defendant Rider University within this District induced the Parent and Student Plaintiffs to contract for student admission to Westminster Choir College based on the express and implied representation that the students would be admitted for a four-year academic program and/or a five-year masters degree program to be administered by an accredited non-profit institution of higher education; such representations were material and were relief upon by

plaintiffs to their detriment causing injury in the form of tuition paid on the basis of false representations or omissions of material fact.

221. At no time did defendant disclose to plaintiff students and parents its intention to close Westminster or sell the campus and its associated structures.

222. In addition to representations set forth in paragraphs 176 through 218 above, defendant affirmatively represented the Westminster campus as a material element of the academic program and its facilities, structures and amenities.

223. Based upon the foregoing, defendant fraudulently induced plaintiff parents and students to enter into contracts for academic admission and study and are liable for the value of such tuition and expenses paid, along with attorneys fees, interest, cost of suit and punitive damages in an amount in excess of \$75,000 to be proved at trial.

#### COUNT XI

**(By Plaintiffs Mona Davids, Elizabeth Cooksey, Christian Koller, Matthew Koller, Mark d. Haffner, Mymoena Davids and Palmer Haffner against the Defendant for violation of the N.Y. Deceptive Practices Act, General Business Law, §349 and/or §350)**

224. The Plaintiff restates and realleges each and every allegation set forth above as if fully alleged herein.

225. Defendant, by its inducement of plaintiffs' agreement to attend Westminster and/or its inducement of the contracts under which students attended Westminster, through the concealment of defendant's intent to close the school or sell the Westminster campus, acted to commit a deceptive act or practice in violation of the N.Y. Deceptive Practices Act, G.B.L. §349 and/or §350 for which defendant is liable for actual damages and punitive or treble damages

along with attorneys fees, interest and cost of suit in an amount in excess of \$75,000 to be proved at trial..

## COUNT XII

**(By Plaintiffs Howard McMorris, Charles Goldberg, Joseph Beck and Jonathan Ryan Slawson and others similarly situated against Defendants for fraudulent inducement of donations to Westminster Choir College)**

226. The Plaintiff restates and realleges each and every allegation set forth above as if fully alleged herein.

227. Plaintiffs and all other similarly situated were induced to donate funds to Westminster Choir College in this District at annual fundraisers in 2015 and 2016 conducted by defendant Rider University at the New York Health and Racquet Club (the “Racquet Club”) and other venues.

228. Such donations were solicited by defendant by means of invitations to the New York fundraising activity at the Racket Club, by direct solicitation at the New York Racquet Club and other means.

229. Such inducement to donate took place in this District and was intended for the purpose of inducing plaintiffs and others similarly situated to support the long-term prospects of Westminster Choir College and to continue its endowment and the building of its campus, along with the continued maintenance and operation of its academic program at its Princeton campus.

330. At all times during the 2015 and 2016 Racquet Club fundraisers defendant concealed its then intent and purpose of closing or selling the Westminster campus and the Westminster Choir College, an omission of a material fact of central importance to the plaintiff donors and others similarly situated.

331. Hundreds of potential and actual donors were invited by defendant to and did attend the New York fundraisers at the New York Racquet Club in this District.

332. Defendants placed material detrimental reliance on the representations by defendant, both implicit and explicit, that their donations were to be used for the continued operation of Westminster Choir College at its Princeton campus.

333. At no time was any disclosure made by defendant in the course of its solicitations in this District as to its intent in 2015 or 2016 of closing the Westminster Choir College or its campus or of selling the campus.

334. At no time was any disclosure made by defendant in the course of its solicitations in this District in 2015 or 2016 that it intended to or had the purpose of profiting from the sale of the Westminster Choir College or its campus.

335. Accordingly, defendant fraudulently induced donations from plaintiffs and others similarly situated in this District causing injury in the amount of such fraudulent inducement for which defendant is liable for monetary damages equal to the amount of the inducement, along with attorneys fees, cost of suit, interest and punitive damages in an amount in excess of \$75,000 to be proved at trial.

### COUNT XIII

**(By Plaintiffs Howard McMorris, Charles Goldberg, Joseph Beck and Jonathan Ryan Slawson and others similarly situated against Defendants for violation of the N.Y. Deceptive Practices Act, General Business Law, §349 and/or §350)**

336. The Plaintiff restates and realleges each and every allegation set forth above as if fully alleged herein.

337. Defendant, by its inducement of plaintiffs' donations to Westminster Choir College in this District in the 2015 and 2016 fundraising events at the Racquet Club and other venues through the concealment of defendant's intent to close the school or sell the Westminster campus, acted to commit a deceptive act or practice in violation of the N.Y. Deceptive Practices Act, G.B.L. §349 or §350 for which defendant is liable for actual damages and punitive or treble damages along with attorneys fees, interest and cost of suit in an amount in excess of \$75,000 to be proved at trial..

### COUNT IX

**(By Plaintiffs Howard McMorris, Charles Goldberg, Joseph Beck and Jonathan Ryan Slawson and others similarly situated as Third Party Beneficiaries against the Defendant for Breach of the Merger Agreement)**

338. The Plaintiff restates and realleges each and every allegation set forth above as if fully alleged herein.

339. That the Merger Agreement is a valid and binding contract between Westminster and Rider College.

340. That the Merger Agreement was intended to benefit the alumni, trustees and leadership council and other members of the Westminster Choir College community of which plaintiffs McMorris, Goldberg, Beck and Slawson and others similarly situated are a part.

341. That such plaintiffs were intended as either parties to or direct or indirect beneficiaries of the Merger Agreement.

342. These plaintiffs have engaged for many years in continued fundraising and other activity for the support and benefit of Westminster Choir College based on their understanding of

their role and rights as members of the Westminster Choir College community and that such rights were protected and intended to be protected under the 1991 Merger Agreement.

343. The benefit of the Merger Agreement to be conferred upon these plaintiffs is the continued operation of Westminster and its Programs and Degrees as well as its Facilities and its continued role in the cultural and non-profit arts community.

344. That the benefit is sufficiently immediate, rather than incidental, to indicate the assumption by the contracting parties of a duty to provide for the benefit of these plaintiffs and to either compensate these plaintiffs or enable and authorize equitable remedies on their behalf if said benefit is lost or threatened.

343. That any action by the Defendant to compromise or dismantle the degrees, programs or facilities of Westminster and its cultural and arts-oriented activity would result in irreparable harm to these plaintiffs that cannot be remedied by monetary damages.

344. As a result of the foregoing, there is no adequate remedy at law.

345. As a result of the foregoing, and the actions by the defendant to compromise or dismantle the operations of Westminster as hereinbefore alleged, these plaintiffs may enforce the Merger Agreement, and claim defendant's breach and anticipatory breach of the Merger Agreement.

346. As a result of the foregoing, the Defendant is liable to these plaintiffs, as third party beneficiaries, for anticipatory breach or actual breach of the Merger Agreement and said plaintiffs have the right to enforce said merger agreement in an amount in excess of \$75,000 to be proved at trial..

WHEREFORE, judgment is sought as follows, along with attorneys fees, pre-judgment interest and cost of suit:

On Count I, declaratory judgment that Rider University has anticipatorily breached the terms and conditions of the 1991 merger agreement;

On Count II, judgment should be entered directing that the Westminster Property be reconveyed to Westminster Choir College under a Board of Trustees to be re-formed or reinstated that will resume operation of Westminster Choir College as a non-profit institution of higher education in a manner substantially analogous to the purposes set forth in the 1991 merger agreement;

On Count III, in the alternative, that Rider University be judicially directed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions under which Rider received the grant of the Westminster property under the 1991 merger agreement;

On Count IV, in the alternative, that a special master be appointed under the Court's equitable powers to seek out and identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions of the 1991 merger agreement;

On Count V, permanent injunctive relief barring the sale of the Westminster campus to any commercial developer or any purchaser who will not continue to operate and maintain Westminster Choir College at its Princeton campus on terms substantially analogous to those set forth in the 1991 merger agreement;

On Count VI, declaratory judgment that Rider University's efforts and intent to sell the campus, the Westminster property or to close Westminster Choir College are illegal, in violation of the 1991 agreement and/or violate public policy.

On Count VII, declaratory judgment and judgment awarding monetary damages and other relief in favor of the Parent and Student Plaintiffs for breach of contract or anticipatory breach claims.

On Count VIII, judgment directing specific performance of the Contract in favor of the Parent and Student Plaintiffs..

On Count IX, declaratory judgment that Parent and Student Plaintiffs are third party beneficiaries under the 1991 merger agreement and entitled to enforce said agreement and benefit from the rights and obligations set forth therein.

On Count X, judgment and monetary relief on the Parent and Student Plaintiffs' claims of fraudulent inducement.

On Count XI, declaratory judgment and monetary relief on the Parent and Student Plaintiffs' claims arising under N.Y. GBL, §349 and/or §350.

On Count XII, declaratory judgment and monetary relief on plaintiff McMorris, Goldberg, Beck and Slawson's claims of fraudulent inducement.

On Count XIII, declaratory judgment and monetary relief on plaintiff McMorris, Goldberg, Beck and Slawson's claims arising under N.Y. GBL, §349 and/or §350.

On Count XIV, declaratory judgment that plaintiff McMorris, Goldberg, Beck and Slawson are third party beneficiaries under the 1991 merger agreement and entitled to enforce said agreement and benefit from the rights and obligations set forth therein.

Plus such other and further relief as to this Court seems just and proper.

Respectfully submitted,

s/Bruce I. Afran,  
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