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September 6, 2017

VIA ECF

Honorable Ronnie Abrams, U.S.D.J.
United States District Court for the
Southern District of New York
40 Foley Square, Room 2203
New York, New York 10007

Re: *McMorris et al. v. Rider University*,
No. 1:17-cv-04611-RA

Dear Judge Abrams:

The undersigned counsel submit this joint letter for the Court's consideration pursuant to the June 27, 2017 Order and Notice of Initial Conference [Dkt. No. 4]. This submission is without waiver of and without prejudice to defendant Rider University's ("Rider") position that this court lacks personal jurisdiction over it as outlined in the pending Motion to Dismiss found at Dkt. Nos. 25-28. The information identified in the Order is discussed in separate paragraphs below.

1. A brief description of the nature of the action and the principal defenses thereto.

a. **Nature of the Action** - Plaintiffs, a group of current students and parents of current students that attend Rider University's Westminster Choir College Campus, together with or alumni, donors, and/or former trustees of the Westminster Choir College have brought this litigation against Rider University seeking declaratory and injunctive relief. In their First Amended Complaint, or in their anticipated additional amendment, Plaintiffs allege or will allege, among other things, breach of contract claims directly between the Plaintiffs and Rider, fraud in the inducement, and in addition, that Rider University anticipatorily breached or breached the terms of a 1991 Merger Agreement between Westminster Choir College ("WCC") and Rider University (the "Merger Agreement"). That Merger Agreement resulted in WCC being merged into

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Rider in 1992. Plaintiffs contend that Rider's expressed intention to sell its Westminster Choir College to a commercial developer or non-profit developer and cease operations on the Westminster Choir College campus is improper and contrary to the express or implied provisions in the Merger Agreement. Plaintiffs further contend that the conditions, if any, under which Rider may sell or otherwise alienate any part of the Westminster campus have not arisen and that such conditions do not allow or authorize the sale or closing of the College. The Plaintiffs contend that they are both intended parties to the Merger Agreement and intended 3rd party beneficiaries of the Merger Agreement. The above is a summary of the assertions. Plaintiffs do not limit their claims to this paragraph and rest on the Amended Complaint and other pleadings to be filed.

b. **Defenses** – Rider has argued in its August 18, 2017 motion to dismiss that this Court lacks personal jurisdiction over it. Specifically, the Plaintiffs have not alleged in the First Amended Complaint that this Court has specific jurisdiction over it and Plaintiffs have not alleged – and cannot allege – that the Court has general jurisdiction over. *See* Dkt. Nos. 25-28. Rider further disputes that it breached the terms of the Merger Agreement. The premise of all of Plaintiffs' claims - - i.e., that Rider intends to sell the Westminster Choir College campus to a developer and cease operations - - simply does not exist. On August 17, 2017, Rider publicly announced a decision to move forward with negotiations with a party that would acquire Westminster Choir College and continue to maintain its existing programs and curriculum on the campus in Princeton. *See* Dkt. No. 27, Ex. C. Thus, there is no breach or even an anticipatory breach of the Merger Agreement (or any other purported agreement) at this time. Further, even in the absence of Rider's expressed intention, no breach or anticipatory breach of the Merger Agreement exists. Under Section 2.3 of the Merger Agreement, the parties to that agreement – who are not the plaintiffs – expressly recognize that “Rider shall not be obligated to continue any specific programs of [Westminster Choir College], or to continue to operate or maintain the existing [Westminster Choir College] 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.” *See* Dkt. No. 27, Ex. B.

2. **A brief explanation of why jurisdiction and venue lie in this Court. If any party is a corporation, the letter shall state both the place of incorporation and the principal place of business. If any party is a partnership, limited partnership, limited liability company or trust,**

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the letter shall state the citizenship of each of the entity's members, shareholders, partners and/or trustees.

a. Plaintiffs' Position - Plaintiffs assert that jurisdiction arises under the Amended Complaint as a matter of the diverse citizenship of the plaintiffs and defendants pursuant to 28 U.S.C. §1332; in particular, plaintiffs Howard McMorris, Mona Davids, Mymoena Davids, Jonathan Ryan Slawson reside in New York County in the State of New York in the Southern District of New York and defendant Rider University is a citizen of New Jersey. The Plaintiff will allege specific jurisdiction under CPLR 302, where Rider transacts business in New York which is directly related to the cause of action, by virtue of the contracts between the Plaintiffs and Rider regarding the degrees, programs, scholarships and facilities, the terms of donations, and in addition the torts of fraud in the inducement for both constituting the commission of a tort within New York State. In addition, Plaintiffs assert that Rider has substantial, continuing and systematic contacts with the Southern District of New York consisting of regular business carried out by Rider University in this District as set forth in the Complaint and that will be further developed.

b. Rider's Position – Rider has not seen the “to be” filed Amended Complaint that Plaintiffs reference. The only operative pleading in this matter is the First Amended Complaint that is found at Dkt. No. 23. Rider has a motion to dismiss the First Amended Complaint on the basis of lack of personal jurisdiction. Rider is a New Jersey not-for-profit entity with its principal place of business located in the State of New Jersey. The First Amended Complaint fails to allege any basis for the Court to exercise specific jurisdiction over Rider and, as to general jurisdiction, the First Amended Complaint fails to allege any exceptional circumstances to give rise to general jurisdiction. Accordingly, under the holdings from *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017), *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 628-29 (2d Cir. 2016) and *Seiden v. Schwartz*, No. 16-CV-5666 (RA), 2017 U.S. Dist. LEXIS 91288, at *5-7 (S.D.N.Y. June 14, 2017) the First Amended Complaint should be dismissed. If Plaintiffs file a Second Amended Complaint, Rider will review the allegations contained in that pleading and respond accordingly. Rider, however, believes there is no basis for this Court to assert general or specific jurisdiction over it.

3. A brief description of all contemplated and/or outstanding motions.

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Rider has a pending motion to dismiss all claims under Fed. R. Civ. P. 12(b)(2) on the basis of a lack of personal jurisdiction. *See* Dkt. Nos. 25-28. Plaintiffs have advised the Court that they intend to file a Second Amended Complaint in response to the pending Motion to Dismiss. Rider reserves the right to review and then move to dismiss that Second Amended Complaint.

4. A brief description of any discovery that has already taken place, and/or that which will be necessary for the parties to engage in meaningful settlement negotiations.

The parties have not exchanged discovery. Rider does not believe the exchange of discovery will foster settlement discussions. The parties previously had settlement discussions that were not productive. Given that Rider is now currently negotiating a transaction that provides Plaintiffs with exactly what they requested in their First Amended Complaint, Rider does not believe that settlement negotiations would be beneficial at this time.

Plaintiffs assert that they have not been made privy to the information concerning the current Rider negotiations with a purported purchaser and do not have sufficient information to accept that Rider's actions are consistent with the law or the 1991 merger agreement.

5. A brief description of prior settlement discussions (without disclosing the parties' offers or settlement positions) and the prospect of settlement.

Prior to the litigation being commenced and prior to Rider's litigation counsel being retained, the parties had a meeting to discuss settlement. That meeting revealed that a settlement could not be achieved at the present time.

6. The estimated length of trial.

Plaintiffs believe a trial of this matter will be ten (10) days in length. Rider believes the trial could be completed in five (5) days.

7. Any other information that the parties believe may assist the Court in advancing the case so settlement or trial, including, but not limited to, a description of any dispositive issue or novel issues raised by the case.

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a. **Plaintiffs' Position** - Plaintiffs do not believe that Rider's current negotiations will necessarily resolve the issues presented in this action as the information as to the actual proposed terms and conditions of the proposed sale has not been disclosed to Plaintiffs. Plaintiffs have been advised that Rider plans to sell Westminster to a foreign, for-profit commercial development corporation. Plaintiffs will contend that the sale of a degree-granting accredited non-profit academic institution to a for-profit entity is not consistent with the terms and conditions of the 1991 merger agreement or with New Jersey law governing charitable foundations and non-profit educational institutions. Moreover, Plaintiffs dispute Rider's contention that the matter is not ripe as Rider has made multiple statements that it intends to sell Westminster for monetary gain to be retained by Rider and that such intended action is illegal and in violation of the 1991 merger agreement.

b. **Rider's Position** - Rider believes any lawsuit by Plaintiffs is premature. Rider is currently in negotiations with a third party to acquire Westminster Choir College and continue to maintain its existing programs and curriculum. Until those negotiations are complete and the parties determine what actions, if any, that Rider will take, all of Plaintiffs' claims are premature and all of Plaintiffs' allegations that Rider has or will violate the law or the terms of the Merger Agreement are speculative.

Respectfully,

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