IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF NEW YORK

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, Plaintiffs, v. RIDER UNIVERSITY, Defendant.	**Civil Action No.: 17-cv-4611 (RA)**

RIDER UNIVERSITY'S BRIEF IN SUPPORT OF THE MOTION TO DISMISS PLAINTIFFS' AMENDED COMPLAINT

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I. PRELIMINARY STATEMENT

Plaintiffs have filed this lawsuit in the wrong state. This case involves claims against a New Jersey not-for-profit corporation—Rider University—that maintains its principal place of business in New Jersey. Plaintiffs do not assert that this Court has specific personal jurisdiction over Rider, as none of their claims relate to contacts between Rider and New York. And while Plaintiffs attempt to allege that this Court has general personal jurisdiction over Rider, the United States Supreme Court, the Second Circuit, and this Court have been abundantly clear that when a defendant is not incorporated and does not maintain its principal place of business in the forum state, only exceptional circumstances will justify exercising general jurisdiction over that defendant. As set forth below, Plaintiffs do not come remotely close to demonstrating such exceptional circumstances here. Accordingly, Plaintiffs' Amended Complaint should be dismissed under Rule 12(b)(2) for lack of personal jurisdiction over Rider.

II. RELEVANT FACTUAL BACKGROUND

A. Rider University Is Incorporated in New Jersey, and Its Principal Place of Business Is in New Jersey.

Defendant Rider University is a New Jersey not-for-profit corporation that owns and operates a private university located in Mercer County, New Jersey. Decl. of Jonathan Meer, ¶ 2 & Ex. A.[1] Rider's two campuses are both within Mercer County—its main campus is in Lawrenceville and its second campus is in Princeton (the "Westminster Campus"). *Id.*, ¶ 3. Rider does not have a campus in any state other than New Jersey. *Id.*, ¶ 4. Consequently, New

[1] In ruling on a Rule 12(b)(2) motion to dismiss for lack of personal jurisdiction, a Court may consider "affidavits of the parties or their counsel." *Seiden v. Schwartz, Levitsky & Feldman LLP*, No. 16-CV-5666 (RA), 2017 U.S. Dist. LEXIS 91288, at *1 n.1 (S.D.N.Y. June 14, 2017).

Jersey is Rider's state of incorporation, the state of Rider's principal place of business, and the only state where Rider is at home. *Id.*, ¶ 5.

B. The Merger Agreement.

All of Plaintiffs' claims in this case arise from a June 28, 1991 Agreement of Merger between WCC, which was a New Jersey not-for-profit corporation at the time, and Rider (the "Merger Agreement"). *Id.*, ¶ 6 & Ex. B (Merger Agreement) pp. 1-2. That Merger Agreement resulted in WCC and Rider becoming affiliated and then, after a period of due diligence, WCC being merged into Rider (the "Merger"). *Id.*, Ex. B, ¶¶ 1.1-1.3. As a result of the Merger, Rider became the owner of all property that WCC had owned—including the Westminster Campus where WCC was and continues to be located. *Id.*, Ex. B, ¶ 2.1(d); Am. Compl. ¶ 99.

The Merger Agreement states that Rider will, among other things, "[p]reserve, promote and enhance the existing missions, purposes, programs and traditions of WCC" and "[e]nsure that the separate identity of WCC, its programs and activities and its faculty will be recognized." *Id.*, Ex. B, ¶ 2.1(d). But the Agreement also recognizes that Rider's obligation to preserve, promote, and enhance is not perpetual. Instead, Section 2.3 of the Merger Agreement states:

> Future Program. The parties recognize that over time there may be changes in the organizational, economic and financial needs and requirements of colleges generally, and WCC and Rider particularly. Accordingly, the parties agree that, notwithstanding anything to the contrary in this Agreement, Rider shall not be obligated to continue any specific programs of WCC, or 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.

Id., Ex. B, ¶ 2.3.

Section 2.3 of the Merger Agreement goes on to recognize that Rider can sell the Westminster Campus:

> In the event that the [Westminster] campus is sold within 3 years of the Date of Affiliation, 50% of the Net Proceeds of sale received by Rider . . . will be used as quasi-endowment funds to support programs, activities, curriculum, instruction, or facilities substantially of the nature offered by WCC.

Id., Ex. B, ¶ 2.3.

C. Rider's Alleged Breach of the Merger Agreement

From 1991 to the present, Rider has continued to maintain and operate the Westminster Campus. Am. Compl., ¶ 97. In December 2016, however, Rider announced that it was ***considering*** options for the potential disposition of the Westminster Campus. *Id.*, ¶ 116. Plaintiffs acknowledge that, at that time, Rider was operating at a significant deficit and its enrollment had declined by more than 1,000 students since 2011. *Id.*, ¶¶ 134, 138. Yet Plaintiffs nonetheless claim that the continued operation of the Westminster Campus is not "substantially impracticable" and does not "adversely affect the affiliated or merged institutions" and that Rider's ***consideration*** of the disposition of the Westminster Campus is thus an actual and/or anticipatory violation of the Merger Agreement. *Id.*, ¶¶ 129, 146-148. Based on this alleged actual and/or anticipatory contractual violation, Plaintiffs seek a variety of declaratory and injunctive relief to either block or dictate the terms of any disposition of the Westminster Campus by Rider. Among the relief sought, Plaintiffs ask the Court to compel Rider to "identify an academic institution to merge with Westminster Choir College on terms substantially analogous to the terms and conditions of the 1991 merger agreement." *Id.* at p. 35.

For reasons lost on Rider, Plaintiffs are pursuing their lawsuit in New York—despite the fact that Rider is incorporated and located ***in New Jersey*** and despite the fact that this dispute does not arise out of any of Rider's minimal contacts with New York. Even more

troubling is the fact that the lawsuit was filed prematurely and before Rider even finished exploring alternatives for the disposition of WCC. In fact, on August 17, 2017, Rider announced a decision to move forward with negotiations with a party to acquire WCC and continue to maintain its existing programs and curriculum at the Westminster Campus. *See* Decl. of Jonathan Meer, ¶ 7 & Ex. C. This motion to dismiss now follows.

III. LEGAL ARGUMENT:

A. This Court Lacks Personal Jurisdiction over Rider Because Rider Is a New Jersey Not-for-Profit Corporation with a New Jersey Principal Place of Business and Is Not At Home in New York.

Rider's right to due process prohibits this Court from exercising personal jurisdiction over it unless Plaintiffs can establish that Rider has a sufficient connection to the State of New York. The United States Supreme Court recently reiterated that there are two different avenues for crossing this constitutional threshold to suit: (1) "specific or case-linked jurisdiction" and (2) "general or all-purpose jurisdiction." *BNSF Railway Co. v. Tyrrell*, 137 S. Ct. 1549, 1558 (2017). Plaintiffs can satisfy neither here.

Plaintiffs do not attempt to invoke specific jurisdiction, which is only applicable where—unlike here—the lawsuit "arise[s] out of or relate[s] to the defendant's contacts with the forum." *Bristol-Myers Squibb Co. v. Superior Ct. of Cal.*, 137 S. Ct. 1773, 1780 (2017). Plaintiffs' six causes of action all relate to alleged violations of a Merger Agreement, and New Jersey is the location of both the parties and the subject matter of the Agreement and the location where Rider's alleged violations of the Agreement occurred. There can thus be no specific jurisdiction.

Plaintiffs also cannot satisfy the extraordinary rigid standard that now governs the exercise of general jurisdiction. In an effort to show general jurisdiction, Plaintiffs maintain that

there is personal jurisdiction in New York because Rider "conducts business" in New York. Am. Compl., ¶ 6. Specifically, they allege the following acts constitute conducting "business":

> 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.

Id.

But the Supreme Court has made clear that "in-state business" is not enough to justify the exercise of general jurisdiction. *BNSF Railway*, 137 S. Ct. at 1559; *see also Daimler AG v. Bauman*, 137 S. Ct. 746, 762 n. 20 (2014) (stressing that "doing business" in a state is not enough). Indeed, not even "continuous and systematic" in-state business is enough. *Daimler*, 137 S.Ct. at 761. Rather, general jurisdiction is only warranted where the defendant's "affiliations with the State are so continuous and systematic as to render it essentially at home in the forum State." *Id.* (internal quotation marks and brackets omitted).

A corporation's place of incorporation and its principal place of business are the "paradigm forums" in which it is "at home" for purposes of general jurisdiction. *BNSF Railway*, 147 S.Ct. at 1558. While "[t]he exercise of general jurisdiction is not limited to these forums," it is only the truly "'exceptional case'" in which "'a corporate defendant's operations in another forum may be so substantial and of such a nature as to render the corporation at home in that State.'" *Id.* (quoting *Daimler*, 134 S.Ct. at 761 n.19). That is why, in *BNSF Railway*, the Supreme Court found that there was no general jurisdiction in Montana—even though BNSF had over 2,000 miles of railroad track there and more than 2,000 employees working in the state. *Id.* at 1559. It is also why, in *Brown v. Lockheed Martin Corp.*, 814 F.3d 619, 628-29 (2d Cir. 2016), the Second Circuit found that there was no general jurisdiction in Connecticut—even though Lockheed Martin had registered to do business there and, during the time period at issue, leased several properties there, employed between 30 and 70 people there, and earned $160 million in gross revenues from its operations there. Therefore, as the Second Circuit put it, "when a corporation is neither incorporated nor maintains its principal place of business in a state, mere contacts, no matter how 'systematic and continuous,' are extraordinarily unlikely to add up to an 'exceptional case.'" *Id.* at 629.

Just two months ago, this Court applied these fundamental principles and found there to be no general personal jurisdiction over an entity that was not incorporated in New York and did not have its principal place of business in New York. In *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 defendant was an accounting firm that was incorporated and had its principal place of business in Canada, not New York. While the accounting firm had allegedly "done business with multiple New York companies," this Court found such allegations insufficient to establish that the defendant's New

York operations were "'so substantial and of such a nature as to render [it] at home' in New York'" for purposes of conferring general jurisdiction. *Id.* at *6 (quoting *Daimler*, 134 S.Ct. at 761 n.19). In other words, the plaintiff had failed to demonstrate that *Seiden* was the "exceptional" case in which general jurisdiction was warranted even though the defendant's place of incorporation and principal place of business were elsewhere. *Id.* at *6-7.

As in *BNSF Railway, Lockheed Martin Corp.*, and *Seiden*, this is not the "exceptional case" where general jurisdiction can be exercised over a defendant whose place of incorporation and principal place of business are both out-of-state. Rider is incorporated in New Jersey, not New York. Rider's principal (and only) place of business is in New Jersey, not New York. And the alleged minimal New York "business" in which Rider allegedly engages, Am. Compl., ¶ 6, does not otherwise "'render [Rider] at home'" in New York, *BNSF Railway*, 147 S.Ct. at 1558 (quoting *Daimler*, 134 S.Ct. at 761 n.19). Indeed, Rider's alleged contacts with New York fall far short of those forum contacts the Courts deemed insufficient to confer general jurisdiction in *BNSF Railway* and *Lockheed Martin*.

In light of the foregoing, this Court should dismiss Plaintiff's Amended Complaint under Rule 12(b)(2) for lack of personal jurisdiction. Plaintiffs have not alleged any specific jurisdiction over Rider, and their attempts to allege general jurisdiction are easily disposed of by the holdings in *BNSF Railway, Lockheed Martin*, and *Seiden.*

IV. CONCLUSION

For the reasons explained above, Plaintiff's Amended Complaint should be dismissed under Rule 12(b)(2).

Dated: August 18, 2017

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