**IN THE UNITED STATES DISTRICT COURT**
**FOR THE 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,<br><br>Plaintiffs,<br><br>v.<br><br>RIDER UNIVERSITY,<br><br>Defendant. | **Civil Action No.: 17-cv-4611 (RA)** |

**RIDER UNIVERSITY'S BRIEF IN SUPPORT OF ITS MOTION TO DISMISS PLAINTIFFS' SECOND AMENDED COMPLAINT**

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## I. PRELIMINARY STATEMENT

Plaintiffs allege they are students and parents of students ("Student and Parent Plaintiffs") and donors, alumni, and former trustees ("Donor Plaintiffs") of Westminster Choir College ("WCC"). In 1991, WCC merged into Defendant Rider University. Plaintiffs are unhappy that now, over twenty-five years after the merger, Rider is considering options for the disposition of WCC and the Princeton, New Jersey campus on which WCC is located ("Westminster Campus"). But unhappiness does not equate to a cause of action. And none of the fourteen counts in the Second Amended Complaint—all of which challenge Rider's contemplated disposition of WCC and the Westminster Campus in one way or another—actually state a viable claim. More specifically, the Second Amended Complaint should be dismissed in its entirety under Rules 9(b) and 12(b)(6) for the following reasons:

- ***First***, Plaintiffs' claims based on an alleged actual and/or anticipatory breach of the 1991 Rider-WCC merger agreement should be dismissed because Plaintiffs are neither parties to nor third party beneficiaries of the agreement and therefore lack contractual standing to enforce it. (Counts 1-6, 9, 14.)

- ***Second***, Plaintiffs' claims based on an alleged enrollment contract between the Student and Parent Plaintiffs and Rider should be dismissed for failure to identify any specific contractual term that Rider allegedly breached. (Counts 7-8.)

- ***Third***, Plaintiffs' fraudulent inducement claims should be dismissed for lack of the specificity that Rule 9(b) demands. (Counts 10, 12.)

- ***Fourth***, Plaintiffs' claims based on Sections 349 and/or 350 of the New York General Business Law should be dismissed for failure to allege the type of injury required for such claims. (Counts 11, 13.)

## II. RELEVANT FACTUAL BACKGROUND

### A. The Merger of WCC into Rider University

On June 28, 1991, Rider and WCC entered into a merger agreement (the "Merger Agreement"). Decl. of Jonathan Meer, ¶ 2 & Ex. A(Merger Agreement).[1] Under that Merger Agreement, WCC and Rider became affiliated and then, after a period of due diligence, WCC merged into Rider (the "Merger"). *Id.*, Ex. A, ¶¶ 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. A, ¶ 2.1(d); Sec. Am. Compl. (Dkt. No. 36) ¶ 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. A, ¶ 2.1(d). But the Agreement also recognizes that Rider's obligation to preserve, promote, and enhance is not perpetual. To that end, 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.

[1] This Court may consider the Merger Agreement because, even though Plaintiffs did not attach it to their Amended Complaint, they rely on it extensively throughout. *DiFolco v. MSNBC Cable L.L.C.*, 622 F.3d 104, 111 (2d Cir. 2010) (explaining that, in ruling of a 12(b)(6) motion, a court may "consider [a document] where the complaint relies heavily upon its terms and effect, thereby rendering the document integral to the complaint" (internal quotation marks omitted)).

*Id.,* Ex. A, ¶ 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.*

Section 8.2 of the Merger Agreement contains a choice-of-law provision calling for the application of New Jersey law, *id.*, Ex. A, ¶ 8.2, and Section 8.4 of the Merger Agreement contains the following "Parties in Interest" provision:

> This Agreement shall be binding and shall inure to the benefit of the parties hereto and their respective successors and assigns. This Agreement shall not create any rights in or be enforceable by any other person.

*Id.,* Ex. A, ¶ 8.4.

**B. Rider's Decision to "Consider" Options for the Potential Disposition of WCC**

From 1991 to the present, Rider has continued to maintain and operate WCC and the Westminster Campus. Sec. Am. Compl., ¶ 97. In November 2016, however, Rider announced that it was "***considering***" options for the potential disposition of WCC and 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 1000 students since 2011. *Id.*, ¶¶ 134, 138. Yet Plaintiffs nonetheless claim that the continued operation of WCC and 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 WCC and the Westminster Campus is thus an actual and/or anticipatory violation of the Merger

Agreement. *Id.*, ¶¶ 129, 146-148. Based on this alleged contractual violation, Plaintiffs seek a variety of declaratory and injunctive relief to either block or dictate the terms of any disposition of WCC or the Westminster Campus by Rider. They also challenge the contemplated disposition through a variety of other contract, tort, and statutory claims. And they have persisted with their suit even though, 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, ¶ 3 & Ex. B.

**C. Plaintiffs' Second Amended Complaint**

Plaintiffs originally filed a complaint in this matter on June 20, 2017. (Dkt. No. 1.) Thereafter, on July 14, 2017, Plaintiffs filed an Amended Complaint. (Dkt. No. 23.) On August 18, 2017, Rider moved to dismiss the Amended Complaint for lack of specific or general personal jurisdiction. (Dkt. Nos. 25-27.) On September 25, 2017, in an effort to avoid dismissal and establish specific personal jurisdiction over Rider, Plaintiffs filed a Second Amended Complaint, wherein they added eight new counts (some asserted by the Student and Parent Plaintiffs and others asserted by the Donor Plaintiffs) that were based on four new theories.

Specifically, in Counts 7 and 8, the Student and Parent Plaintiffs allege that Rider breached an enrollment contract with them, but aside from describing WCC programs, degrees, and facilities, they fail to identify any contract in which Rider agreed to provide any of the foregoing on an ongoing basis. Sec. Am. Compl., Counts 7-8. In Counts 9 and 14, the Student and Parent Plaintiffs and Donor Plaintiffs essentially concede they have no direct standing to pursue breaches of the Merger Agreement and therefore allege, in direct contravention of the express language in Section 8.4 of the Merger Agreement, that they are third party beneficiaries of the Merger Agreement and therefore can enforce its terms. *Id.*, Counts 9, 14.

In Counts 10 and 12, the Student and Parent Plaintiffs allege that they were somehow fraudulently induced into entering into contracts for student admission to WCC, and the Donor Parents allege that they were somehow fraudulently induced to donate funds to WCC in response to an unidentified invitations they received to fundraising events at the New York Racquet Club in 2015 and 2016. *Id.*, Counts 10, 12. In Counts 11 and 13, Plaintiffs repurpose their enrollment contract and fraudulent inducement claims and state that Rider violated Section 349 and/or 350 of the New York General Business Law by concealing its intent to close or sell WCC and the Westminster Campus. *Id.*, Counts, 11, 13.

As discussed below, despite including fourteen separate counts in their Second Amended Complaint, Plaintiffs' third bite at the apple nevertheless fails to state a single cognizable claim.

## III. LEGAL ARGUMENT

### A. Plaintiffs Lack Contractual Standing to Bring Their Claims Based on the Merger Agreement Because They Are Neither Parties to nor Third-Party Beneficiaries of It. (Counts 1-6, 9, 14.)

Counts 1-6, 9, and 14 all arise out of an alleged actual and/or anticipatory breach of a contract, the Merger Agreement. But only Rider and WCC are parties to the Merger Agreement. Therefore, to have standing to pursue their claims, Plaintiffs must establish that they are third-party beneficiaries of the Merger Agreement. *See Rieder Cmtys v. N. Brunswick*, 546 A.2d 563, 566-67 (N.J. App. Div. 1998) ("a third party has no cause of action" based on a contract unless it is a "third-party beneficiary" of that contract); *Washington v. Correctional Med. Servs.*, Civ. No. 05-3715 (AET), 2006 U.S. Dist. LEXIS 25127, at *15-16 (D.N.J. Apr. 28, 2006) ("[u]nder New Jersey law, a third-party may only enforce a contract" if it is a "third-party beneficiary" of that contract). The express language of the Merger Agreement, however, makes it impossible for Plaintiffs to establish that they are third-party beneficiaries of it.

Under New Jersey law, which governs the Merger Agreement pursuant to the choice of law provision, Decl. of Jonathan Meer, Ex. A, ¶ 8.2, the third-party-beneficiary inquiry turns on "whether the contracting parties intended that a third party should receive a benefit which might be enforced in the courts." *Ross v. Lowitz*, 120 A.3d 178, 190 (N.J. 2015). Thus, "[i]f there is no intent to recognize the third party's right to contract performance, the third person is only an incidental beneficiary, having no contractual standing." *Id.* (internal quotation marks omitted). While it may be difficult to determine the parties' intent in some situations, it is quite easy to do so where the parties expressly state their intent in the contract itself. For as the New Jersey Supreme Court put it, "parties of course may expressly negate any legally enforceable right in a third party" and "[l]ikewise they may expressly provide for that right." *Broadway Maintenance Corp.*, 447 A.2d 906, 909 (N.J. 1982).

Here, the parties have "expressly negated any legally enforceable right" in any third party by including section 8.4 in the Merger Agreement. *Id.* That section provides that the Merger Agreement "shall be binding and shall inure to the benefit of the parties hereto and their respective successors and assigns" and that the Merger Agreement "shall not create any rights in or be enforceable by any other person." Decl. of Jonathan Meer, Ex. A, ¶ 8.4. Thus, there can be no question that the parties to the contract at issue in this case—Rider and WCC—did not intend for Plaintiffs to "receive a benefit which might be enforced in the courts." *Ross*, 120 A.3d at 190. Indeed, relying on *Broadway Maintenance*, one court reached the same conclusion just last year where the contract at issue included language similar to section 8.4. *See Sanofi-Aventis U.S., LLC v. Great Am. Lines, Inc.*, No. 10-2023 (MAS) (TJB), 2016 U.S. Dist. LEXIS 112171, at *11 (D.N.J. Aug. 22, 2016) ("Here, the Transportation Contract specifically states that 'it shall be binding upon and inure to the benefit of the parties hereto only.' Such language is

demonstrative of the parties' intent not to create any rights in any third party beneficiary." (internal citation omitted)). Therefore, Counts 1-6, 9, and 14 of Plaintiffs' Second Amended Complaint should be dismissed under Rule 12(b)(6) for lack of contractual standing.

**B. The Student and Parent Plaintiffs' Enrollment Contract Claim Fails to Identify Any Specific Contractual Term That Rider Allegedly Breached. (Counts 7-8.)**

The Student and Parent Plaintiffs assert that Rider has breached a contract that was formed when they agreed to enroll themselves or their children at WCC. To state a breach of contract claim under New Jersey or New York law, the Student and Parent Plaintiffs must identify a specific contractual term that Rider allegedly breached. *See EnviroFinance Group, LLC v. Environmental Barrier Co.*, 113 A.3d 775, 787 (N.J. App. Div. 2015) (explaining that, under New Jersey law, "[t]o prevail on a breach of contract claim, a party must prove a valid contract between the parties, the opposing party's failure to perform a defined obligation under the contract, and the breach caused the claimant to sustain damages"); *Sang v. Hai*, 951 F. Supp. 2d 504, 527 (S.D.N.Y. 2013) (explaining that, under New York law, "a plaintiff alleging breach of contract must, at a minimum, allege the terms of the contract, each element of the alleged breach and the resulting damages in a plain and simple fashion" (internal quotation marks omitted); *see also Clear Choice Enters., Inc. v. Cellebrite USA, Inc.*, No. 14-cv-3372 (ADS) (SIL), 2015 U.S. Dist. LEXIS 40782, at *13 (E.D.N.Y. Mar. 12, 2015) ("[T]here is no conflict regarding the elements of a breach [of] contract claim in New York and New Jersey.").

Here, the Student and Parent Plaintiffs have failed to identify any specific contractual terms to which the parties agreed, let alone any such terms that Rider allegedly breached. In these counts of the Second Amended Complaint, the Student and Parent Plaintiffs describe various aspects of the programs, degrees, and facilities that Rider allegedly offers WCC students. Sec. Am. Comp., ¶¶ 177-194. But they do not specify what, if anything, on this list of

programs, degrees, and facilities Rider contractually agreed to provide on an ongoing basis in exchange for the Student and Parent Plaintiffs' agreement to enroll themselves or their children at WCC. Nor do they identify anything on this list that Rider has not been providing to date. This lack of specificity dooms Counts 7 and 8 and requires them to be dismissed. *See, e.g.*, *Sang*, 951 F. at 527 (dismissing New York breach of contract claim because "Plaintiff does not allege which specific terms of the parties' contract Defendants breached"); *Lacroce v. M. Fortuna Roofing, Inc.*, No. 14-7329, 2017 U.S. Dist. LEXIS 12957, at *11-13 (D.N.J. Jan. 31, 2017) (granting summary judgment on New Jersey breach of contract claim because party "failed to identify with any particular definiteness any contractual terms breached").

A decision from the Virginia Supreme Court in *Dodge v. Trustees of Randolph-Macon Woman's College*, 661 S.E.2d 801 (Va. 2008), further supports the conclusion that the Student and Parent Plaintiffs' enrollment contract claims are not cognizable. There, the plaintiffs enrolled in a four-year program at Randolph-Macon Woman's College, an all-women's school. *Id.* at 802. When the College decided to admit men, the plaintiffs sued for breach of contract, alleging that when they enrolled in the school, the College contractually agreed to provide a four-year, single-sex education. *Id.* The Virginia Supreme Court disagreed and affirmed dismissal because "the plaintiffs failed to plead facts, which if established at trial, would demonstrate the existence of a contract that required the College to operate an academic institution predominantly for women during the four years that the plaintiff expected to attend the College." *Id.* at 803. The Student and Parent Plaintiffs here have likewise "failed to plead facts, which if established at trial, would demonstrate the existence of a contract that required" Rider to continue to offer the programs, degrees and facilities described by the Student and Parent Plaintiffs' throughout the students' anticipated time at the WCC. *Id.* This failure to demonstrate any contract for Rider to

continue to offer the programs, degrees, and facilities for the entirety of the Student Plaintiffs' careers warrants dismissal of Counts 7 and 8 of the Second Amended Complaint.

### C. The Student and Parent Plaintiffs' Fraudulent Inducement Claim Lacks the Specificity That Rule 9(b) Requires. (Count 10.)

The Student and Parent Plaintiffs also allege that Rider fraudulently induced them to enroll themselves or their children at WCC "based on the express and implied representation that the students would be admitted for a four-year academic program and/or five-year masters degree programs to be administered by an accredited non-profit institution of higher education." Sec. Am. Compl. ¶ 220. Because this is a fraud claim, Rule 9(b) requires the Student and Parent Plaintiffs to plead it with "particularity." This means that they must "(1) specify the statements that [they] contend were fraudulent, (2) identify the speaker, (3) state where and when the statements were made, and (4) explain why the statements were fraudulent." *Chen v. ESML Analytical, Inc.*, 966 F. Supp. 2d 282, 301 (S.D.N.Y.) (Abrams, J.) (internal quotation marks omitted). Put differently, they must "set forth the who, what, when, where and how of the alleged fraud." *Id.* (internal quotation marks omitted).

The Student and Parent Plaintiffs fall far short of this heightened pleading standard here. They do not specify the statements they contend were fraudulent. They do not identify any person who made any allegedly fraudulent statement. They do not state where or when any allegedly fraudulent statement was made. And they do not explain why any allegedly fraudulent statement was fraudulent. The who, what, when, where, and how are altogether missing and renders Count 10 deficient. Therefore, Count 10 of the Second Amended Complaint should be dismissed for failure to plead it with the particularity that Rule 9(b) demands.

**D. The Student and Parent Plaintiffs' Section 349 and/or 350 Claim Fails to Allege the Type of Injury Required for Such a Claim. (Count 11.)**

The Student and Parent Plaintiffs assert that Rider violated Section 349 of the New York General Business Law (which deems deceptive trade practices unlawful) and/or Section 350 of the New York General Business Law (which deems false advertising unlawful) by inducing them to enroll themselves or their children at WCC "through the concealment of defendant's intent to close the school or sell the Westminster campus." Sec. Am. Compl. ¶ 225. In other words, they contend that Rider should be liable under Sections 349 and/or 350 because they would not have enrolled themselves or their children at WCC if they had known about Rider's contemplated disposition of WCC and the Westminster Campus. This claim should be dismissed for failure to allege the sort of injury that Sections 349 and 350 require.

A claim for a violation of Section 349 requires a plaintiff to demonstrate that the plaintiff actually suffered an injury as a result of the allegedly deceptive conduct. *See Stutman v. Chem. Bank*, 731 N.E.2d 608, 611 (N.Y. 2000) ("A plaintiff under section 349 must prove three elements: first, that the challenged act or practice was consumer-oriented; second, that it was misleading [i.e., deceptive] in a material way; and *third, that the plaintiff suffered injury as a result of the deceptive act*." (emphasis added)). Because deception and injury are separate elements of the claim, "[i]it is well established . . . that the claimed deception cannot itself be the only injury." *Bildstein v. MasterCard Int'l Inc.*, 329 F. Supp. 2d 410, 416 (S.D.N.Y. 2004). And given that "a section 349 claim will not lie where the deceptive act itself was the only injury," courts have "uniformly" held that "a Section 349 claim does not entitle a consumer to a refund of the price of a good or service whose purchase was allegedly secured by deception." *Servedio v. State Farm Ins. Co.*, 889 F. Supp. 2d 450, 452 (E.D.N.Y. 2012); *see also Hutter v. Countrywide Bank. N.A.*, No. 09-cv-10092 (MSR), 2015 U.S. Dist. LEXIS 122882, at *17 (S.D.N.Y. Sept. 14,

2015) ("Although Plaintiff does not specify the section under which she brings this claim, the Second Circuit has interpreted the requirements of a *prima facie* case to be the same for §§ 349 and 350.").

The New York Court of Appeals decision in *Small v. Lorillard Tobacco Co.*, 720 N.E.2d 892, 898 (N.Y. 1999), helps in understanding the injury showing needed to sustain a Section 349 or 350 claim—and in understanding what does not suffice. In *Small,* the plaintiffs claimed that they were injured because if tobacco's addictiveness had not been concealed, they would not have bought the defendants' cigarettes. The New York Court of Appeals held that this did not amount to an "injury" for purposes of Section 349:

> [The Plaintiffs] posit that consumers who buy a product that they would not have purchased, absent a manufacturer's deceptive commercial practices, have suffered an injury under General Business Law § 349. We disagree.

*Id.* According to the Court, to satisfy Section 349's injury requirement, the plaintiffs needed to allege something more—for example, than the deceptive practices inflated the price of the product that was purchased or they sought to recover an injury to their health. Crediting the plaintiffs' "deception as injury" theory, the court explained, would improperly collapse any distinction between two separate elements of the claim: (1) deception and (2) injury. *Id.*

In the years since *Small*, New York Appellate courts have repeatedly rejected Section 349 and 350 claims where the only asserted injury was that the plaintiffs would not have purchased the product at issue were it not for the defendant's allegedly deceptive practices and/or false advertising. *See, e.g.*, *Barron v. Pfizer, Inc.*, 42 A.D.3d 627, 629 (N.Y. App. Div. 2007) (dismissing Section 349 claim because only asserted injury was that plaintiffs would not have purchased drug if they had known it was being prescribed for an off-label use); *Donahue v. Ferolito, Vultaggio & Sons*, 13 A.D.3d 77, 78 (N.Y. App. Div. 2004) (dismissing Section 349

and 350 claims because only asserted injury was that plaintiffs would not have purchased soft drinks if they had known the drinks would not have the advertised memory, stress, and overall health benefits); *Rice v. Penguin Putnam, Inc.*, 289 A.D.2d 318, 319 (N.Y. App. Div. 2001) (dismissing Section 349 claim because only asserted injury was that plaintiffs would not have purchased book if they have known it was only partially authored by credited author).

Here, the Student and Parent Plaintiffs' Section 349 and/or 350 claim is no different than the failed claims in *Small, Baron, Donahue*, and *Rice* because the Student and Parent Plaintiffs' claim relies on the same alleged act as both the deception and injury. Specifically, the Student and Parent Plaintiffs' Section 349 and/or 350 claim is based on being induced to enter enrollment contracts to go to WCC when Rider knew about its contemplated disposition of WCC and the Westminster Campus, and the alleged damages are a refund of the tuition and expenses they paid to attend WCC. Sec. Am. Compl. ¶¶ 220, 223, 225. Because the law is clear that the injury requirement of a Section 349 or 350 cannot be based on a refund of the price of a good or service, *Servedio*, 889 F. Supp. 2d at 452, this claim is deficient and must be dismissed.

**E. The Donor Plaintiffs' Fraudulent Inducement Claim Lacks the Specificity That Rule 9(b) Requires. (Count 12.)**

The Donor Plaintiffs allege that Rider fraudulently induced them to donate funds to WCC. Sec. Am. Compl. ¶ 335. The Donor Plaintiffs contend that Rider concealed from them the contemplated disposition of WCC and the Westminster Campus and this concealment constitutes fraud. *Id.*, ¶¶ 227, 330, 332-335. Just like the Student and Parent Plaintiffs' fraudulent inducement claim, the Donor Plaintiffs' fraudulent inducement claim fails to satisfy the pleading particularity requirement under Rule 9(b). While the Donor Plaintiffs do reference 2015 and 2016 fundraisers at the New York Racquet Club, they still do not specify any

statements they contend were fraudulent, identify any person who made any allegedly fraudulent statement, state where or when any allegedly fraudulent statement was actually made, or explain why any allegedly fraudulent statement was fraudulent at the time it was made. *See Chen*, 966 F. Supp. 2d at 301.

**F. The Donor Plaintiffs' Section 349 and/or 350 Claim Fails to Allege the Type of Injury Required for Such a Claim. (Count 13.)**

The Donor Plaintiffs also assert that Rider violated Section 349 and/or Section 350 of the New York General Business Law by "inducing [their] donations to Westminster Choir College in this District in the 2015 and 2016 fundraising events at the Racquet Club and other venues through the concealments of defendant's intent to close the school or sell the Westminster campus." Sec. Am. Comp. ¶ 337. This claim should be dismissed, too, because, as with the Student and Parent Plaintiffs' Section 349 and/or 350 claims, the Donor Plaintiffs do not allege the type of injury that such a claim requires. They appear to maintain that they would not have donated funds to WCC if they had known about Rider's contemplated disposition of WCC and the Westminster Campus. But as discussed at pages 10-12 above, the fact that a plaintiff would not have purchased a product (or, here, made a donation) absent the alleged deceptive act or false advertising does not satisfy the injury element of a Section 349 or 350 claim. Accordingly, the Donor Plaintiffs' Section 349 and Section 350 claims are not sustainable and must be dismissed.

## IV. CONCLUSION

For the reasons explained above, Plaintiff's Second Amended Complaint should be dismissed under Rules 9(b) and 12(b)(6).

Dated: October 16, 2017

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