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UNITED STATES DISTRICT COURT
DISTRICT OF NEW JERSEY

HERMELA MEBRAHTU, on behalf of herself and all others similarly situated, Plaintiff, v. MANCHESTER UNIVERSITY, Defendant.	Civil Action No. 3:20-cv-05457 **BRIEF IN SUPPORT OF DEFENDANT'S MOTION TO DISMISS**

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Defendant Manchester University, Inc. ("Manchester"), by counsel, respectfully submits this Brief in Support of its Motion to Dismiss the Class Action Complaint ("Complaint") filed by Plaintiff Hermela Mebrahtu ("Mebrahtu").

I. INTRODUCTION

Mebrahtu, on behalf of herself and all others purportedly similarly situated, filed the current lawsuit against Manchester, alleging breach of contract, unjust enrichment, and conversion following the government-mandated closure of Manchester's campuses for a portion of the Spring 2020 semester due to the COVID-19 pandemic. Because of this closure, and to allow students to continue classes and receive full credit toward graduation, Manchester converted all classes to remote teaching and online learning, effective March 23, 2020 for its Fort Wayne campus and March 25, 2020 for its North Manchester campus.

Mebrahtu now seeks the refund of a portion of tuition and fees paid for the Spring 2020 semester and to certify the following class: "[A]ll people who paid Manchester tuition and/or fees for in-person educational services that Manchester failed to provide during the Spring 2020 Semester, and whose tuition and fees have not been refunded." (Compl. ¶26). She also seeks to represent a subclass consisting of class members who reside in New Jersey. (*Id.* at ¶27). For the reasons set forth below, this Court lacks personal jurisdiction over Manchester. Therefore, Manchester respectfully requests that this Court grant its motion to dismiss.

II. FACTUAL BACKGROUND

A. Defendant Manchester University.

Manchester is a private, liberal arts university incorporated as a nonprofit corporation in Indiana with its principal office at 604 East College Avenue, North Manchester, Indiana. (Ex. A, Declaration of Clair Knapp ("Knapp Decl.") at ¶¶4-5). Manchester's main campus is located in North Manchester, Indiana, and it also has a campus in Fort Wayne, Indiana for its graduate programs in pharmacy, pharmacogenomics, and athletic training. (*Id.* at ¶6). Manchester provides educational services from these two northeast Indiana campuses, which combined had roughly 1400 students during the 2019-2020 academic year. (*Id.* at ¶7). The vast majority of Manchester's students are Indiana residents, with 859 of Manchester's 1078 undergraduate students residing in Indiana. (*Id.* at ¶9). Manchester focuses its recruiting efforts primarily in Indiana and the surrounding states and uses its website to provide general information about the educational, extracurricular, and other opportunities afforded to its students. (*Id.* at ¶¶8, 10). Since 2014, only *one* New Jersey resident has matriculated at Manchester, and that individual attended the University from 2011 to 2014 and, therefore, is not a member of the putative class. (*Id.* at ¶12). Manchester does not actively recruit or target its website to potential students from New Jersey, and indeed, no New Jersey residents are in Manchester's 2019-2020 cohort. (*Id.* at ¶¶11, 13). Manchester

neither owns property in New Jersey nor has employees, officers, or agents that reside in New Jersey. (*Id.* at ¶14).

B. Plaintiff Hermela Mebrahtu.

Originally from Ethiopia, Mebrahtu came to the United States to attend Manchester and lived in on-campus housing for international students. (*Id.* at ¶¶16-17). She was permitted to study at Manchester pursuant to an F-1 Visa. (*Id.* at ¶16). At the time Mebrahtu filed her Complaint, she was enrolled as an undergraduate student at Manchester. (*Id.* at ¶15). Because of the great lengths Manchester undertook to convert quickly and seamlessly to online learning in response to the COVID-19 pandemic, Mebrahtu was able to complete her coursework and has since graduated from Manchester. (*Id.*).

C. Manchester closes its campuses and converts all classes to distance learning due to the COVID-19 pandemic, after which Mebrahtu travels to New Jersey where her boyfriend resides.

On March 17, 2020, in accordance with government directives related to the COVID-19 pandemic, Manchester announced it was closing its North Manchester and Fort Wayne campuses and moving to remote teaching and online learning for the remainder of the Spring 2020 semester. (*Id.* at ¶18). As part of the campus closure and move to online learning, Manchester closed all residence halls on its North Manchester campus, effective March 22, 2020. (*Id.* at ¶19). To accommodate international students like Mebrahtu—who is originally from

Ethiopia—and other students who did not have suitable alternative housing options, Manchester allowed some students to remain on campus for the remainder of the 2020 Spring semester. (*Id.* at ¶20). After the campus shutdown, Manchester was advised that Mebrathu traveled to New Jersey where her boyfriend resides for the remainder of the Spring 2020 semester. (*Id.* at ¶21).

III. LEGAL STANDARD

Federal Rule of Civil Procedure 12(b)(2) provides for the dismissal of claims if a court lacks personal jurisdiction over a defendant. Fed. R. Civ. P. 12(b)(2). "The plaintiff bears the burden of showing that personal jurisdiction exists." *Marten v. Godwin*, 499 F.3d 290, 295-96 (3d Cir. 2007). "Once [a Rule 12(b)(2)] defense has been raised, then the plaintiff must sustain its burden of proof in establishing jurisdictional facts through sworn affidavits or other competent evidence[,]" and cannot "rely on the bare pleadings alone in order to withstand a defendant's Rule 12(b)(2) motion to dismiss for lack of [personal] jurisdiction." *Patterson v. F.B.I.*, 893 F.2d 595, 603-04 (3d Cir. 1990) (quoting *Time Share Vacation Club v. Atl. Resorts, Ltd.*, 735 F.2d 61, 66 n.9 (3d Cir. 1984)).

In diversity cases, a federal court undertakes a two-step inquiry to determine whether it has personal jurisdiction over a defendant. *IMO Indus., Inc. v. Kiekert AG*, 155 F.3d 254, 258-59 (3d Cir. 1998). First, the court applies the state's long-arm statute to see if it permits the exercise of personal jurisdiction. *Id.* Next, the

court applies the principles of due process under the Constitution. *Id.* In New Jersey, this inquiry becomes a single step because the state's "long-arm statute is coextensive with the due process requirements of the United States Constitution." *Miller Yacht Sales, Inc. v. Smith*, 384 F.3d 93, 96 (3d Cir. 2004) (citing N.J. Court R. 4:4-4(c)).

The personal jurisdiction analysis focuses on "the relationship among the defendant, the forum, and the litigation." *Shaffer v. Heitner*, 433 U.S. 186, 204 (1977). The exercise of personal jurisdiction over a non-resident defendant is proper in this Court if the defendant has "certain minimum contacts with [New Jersey] such that the maintenance of the suit does not offend 'traditional notions of fair play and substantial justice.'" *Int'l Shoe Co. v. Washington*, 326 U.S. 310, 316 (1945) (quoting *Milliken v. Meyer*, 311 U.S. 457, 463 (1940)).

A court may exercise personal jurisdiction under one of two theories—either general jurisdiction or specific jurisdiction. *Bristol-Myers Squibb Co. v. Sup. Ct. of Cal.*, 137 S.Ct. 1773, 1779-80 (2017). General jurisdiction over a foreign corporation is appropriate only when the "corporation's affiliations with the State are so continuous and systematic as to render [it] essentially at home in the forum state." *Daimler AG v. Bauman*, 571 U.S. 117, 122 (2014) (internal quotation marks and citation omitted). A corporate defendant is "at home" in its state of incorporation and the state in which the corporation maintains its principal place of

business. *See id.; Senju Pharm. Co., Ltd. v. Metrics, Inc.*, 96 F. Supp. 3d 428, 435 (D.N.J. 2015).

For the court to exercise specific jurisdiction, "the plaintiff's claim must arise out of or relate to the defendant's activities in the forum state." *Bristol-Myers Squibb v. Superior Court*, 137 S. Ct. 1773, 1785-86 (2017). "[T]here must be an 'affiliation between the forum and the underlying controversy, principally, [an] activity or an occurrence that takes place in the forum State.'" *Id.* (quoting *Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 923 (2011)). The specific jurisdiction analysis requires the court to undertake a "fact-intensive analysis." *Austar Int'l Ltd. v. Pharma LLC*, 425 F. Supp. 3d 336, 360 (D.N.J. 2019) (citing *Strategic Prod. & Servs., LLC v. Integrated Media Techs., Inc.*, No. 18-00694, 2019 WL 2067551, at *7 (D.N.J. May 10, 2019)). The "primary concern" in the specific jurisdiction analysis "is the burden on the defendant." *Bristol-Myers Squibb,* 137 S.Ct. at 1780. As discussed below, this Court has neither general nor specific jurisdiction over Manchester.

IV. ARGUMENT AND AUTHORITY

A. This Court lacks general jurisdiction over Manchester.

With the exception of a bare allegation that Manchester "generally has minimum contacts in New Jersey" to satisfy the Due Process Clause, Mebrahtu does not allege facts that support a finding of general jurisdiction. Rather,

Mebrahtu alleges Manchester has sufficient contacts with New Jersey to satisfy the Due Process Clause and subject it to jurisdiction through soliciting students in New Jersey, accepting money from students residing in New Jersey, having a website accessible to students in New Jersey, and entering into contracts with New Jersey residents. (Compl. ¶10). These bare allegations, even if true—which they are not—are insufficient to render Manchester "at home" in New Jersey for purposes of general jurisdiction. *See Kloth v. S. Christian Univ.*, 320 F. App'x 113, 117 (3d Cir. 2008) ("[M]aintenance of a website that posts information about the school and is accessible to potential students in foreign jurisdictions is insufficient to subject a non-resident defendant to general jurisdiction.")

Manchester is incorporated in Indiana and has its principal place of business in Indiana. (Knapp Decl. at ¶¶5-6). Plaintiff does not allege otherwise. *See* Comp. ¶ 8 (alleging Manchester has "its principal place of business" in Indiana). Manchester neither owns property in New Jersey nor has employees, officers, or agents that reside in New Jersey. (*Id.* at ¶14). Manchester neither recruits students in New Jersey nor enters into contracts with New Jersey residents, had no enrolled students residing in New Jersey at the time of the COVID-19 campus closure, and did not target New Jersey residents through its website or other means. (*Id.* at ¶10-13).

Given the absence of any showing that Manchester is incorporated in or has systematic and continuous contacts with New Jersey, this Court cannot exercise general jurisdiction over Manchester.

B. This Court lacks specific jurisdiction over Manchester

To establish specific jurisdiction over Manchester under *Bristol-Myers Squibb Co.*, Mebrahtu must show that her claims arise out of or relate to Manchester's activities in New Jersey. *See Bristol-Myers Squibb*, 137 S. Ct. at 1785-86. Even if all of Mebrahtu's bald assertions regarding Manchester's alleged contacts with New Jersey were true, they are not tied, as they must be, to the alleged injury here,

Courts in this circuit have routinely declined to exercise specific jurisdiction over institutions of higher education when a plaintiff's claims do not arise out an institution's contacts with New Jersey. In *Gorbaty v. Mitchell Hamline Sch. of Law*, No. 18-16691, 2019 WL 3297211, at *1 (D.N.J. July 23, 2019), the plaintiff alleged several claims related to his acceptance and the subsequent rescission of his admission to Mitchell Hamline School of Law. The plaintiff contended that jurisdiction was proper in New Jersey because Mitchell Hamline purposefully directed its activity at New Jersey by advertising to New Jersey residents, contracting with prospective students from New Jersey, and receiving a monetary benefit from four New Jersey residents that attended the law school. *Id.* at *3. In

declining to find it had jurisdiction, the court found there was no evidence that "Mitchell Hamline specifically targeted its website, its advertisement, or its activity at prospective students in New Jersey." *Id.* Rather, the mere fact that Mitchell Hamline had a website "accessible to a nationwide (indeed, global) audience" was insufficient to satisfy the requirements for personal jurisdiction. *Id.* Additionally, even if the plaintiff was in New Jersey at the time he applied, the court held it was not reasonably foreseeable that "accepting Plaintiff's application would place [Mitchell Hamline] into contact with New Jersey." *Id.* at *4.

Similarly, in *Gehling v. St. George's Sch. of Med., Ltd.*, 773 F.2d 539, 544-45 (3d Cir. 1985), the Third Circuit affirmed dismissal of the appellants' breach of contract claim for lack of personal jurisdiction. The Gehlings, whose son attended St. George's University, School of Medicine in Grenada, West Indies and died after a school-sponsored race in Grenada, brought a wrongful death suit in Pennsylvania alleging breach of contract, among other claims. *Id.* at 540. The Gehlings argued that St. George's was subject to personal jurisdiction in Pennsylvania because it advertised and recruited students from Pennsylvania, received hundreds of thousands of dollars in tuition from Pennsylvania residents who made up six percent of the student body, and participated in a joint international program with Waynesburg College, a school located in Waynesburg, Pennsylvania. *Id.* at 541-42. The court found the advertisements that St. George's

placed in the *New York Times* and *Wall Street Journal*—publications with international circulations—insufficient to confer jurisdiction. *Id.* at 542. Likewise, the fact that some of St. George's students were Pennsylvania residents did not signify a relevant business contact. *Id.* If that were not the case, the court noted that "[a]dvanced educational institutions . . . would [be] subject . . . to suit on non-forum related claims in every state where a member of the student body resides." *Id.* Lastly, the court found the joint international program with Waynesburg College did not subject St. George's to personal jurisdiction because St. George's did not derive any income from education services rendered in Pennsylvania. *Id.* at 543.[1]

The Third Circuit has also found a lack of specific jurisdiction in the context of a distance learning program. *Kloth*, 320 F. App'x at 117. In *Kloth*, the plaintiff enrolled in Southern Christian University's ("SCU") distance learning program and took fifteen online classes while living in Connecticut. *Id.* at 113-114. She then moved to Delaware and took two additional online classes before discontinuing her education at SCU. *Id.* at 114. Kloth brought suit in Delaware for breach of an

[1] The court held jurisdiction was proper on the Gehlings' fraudulent misrepresentation and emotional distress claims because the decedent's body was returned to Pennsylvania by the school's chancellor, and while in Pennsylvania, the chancellor fraudulently misrepresented the cause of death. *Gehling*, 773 F.2d at 544. In the present case, Mebrahtu cannot show that Manchester had any connections with New Jersey that relate to her claims.

implied contract and discrimination under Title VII, claiming jurisdiction was proper in Delaware because SCU's website is accessible nationwide, she temporarily resided in Delaware while enrolled at SCU, and one other SCU student resided in Delaware. *Id.* at 115. The Third Circuit found these contacts insufficient to confer jurisdiction. First, the court noted that Kloth failed to "show that, by using software that facilitates distance learning, SCU intended to engage in business with student citizens of Delaware." *Id.* at 116. Instead, the distance learning software shows only "that SCU intend[ed] to allow its students to attend classes and communicate with their classmates and professors when they [were] not at SCU's physical campus." *Id.* The court recognized that Kloth had just recently moved to Delaware on a temporary basis, and SCU did not purposely target Delaware citizens. *Id*. at 117. Although it may have been foreseeable that students from Delaware (or any other state) might enroll in SCU's distance learning program, "foreseeability alone cannot satisfy the purposeful availment requirement." *Id*. at 116 (citing *World-Wide Volkswagen Corp. v. Woodson*, 444 U.S. 286, 295 (1980)).

Consistent with the decisions in *Gorbaty*, *Gehling*, and *Kloth*, Mebrahtu has failed to establish that Manchester is subject to personal jurisdiction in this Court. Moreover, even if Manchester received income from students residing in New Jersey (and it has not), doing so would not subject it to jurisdiction in this Court.

See Rodi v. S. New England Sch. of Law, 255 F. Supp. 2d 346, 351 (D.N.J. 2003) ("Although SNESL may recognize a profit from students from other states, forcing it to defend itself in courts throughout the nation places an unreasonable burden on its recruitment efforts and would eventually lead to the result that smaller universities could only accept in-state applicants.").

Mebrahtu is originally from Ethiopia and traveled to New Jersey after the campus shutdown because her boyfriend resided there. (Knapp Decl. at ¶¶16, 21). She alleges no New Jersey contacts by Manchester—because there are none—from which her cause of action arises. *See Bristol-Myers*, 137 S. Ct. at 1780 (cause of action must "arise out of or relate to the defendant's contacts with the forum") (internal quotation marks, emphasis, and citation omitted). In addition, it was not foreseeable that Manchester would be providing online educational services to a student in New Jersey, when it had no such student enrolled when online services began. And even if it was foreseeable, that alone is not enough to confer jurisdiction in this Court. *See Kloth*, 320 F. App'x at 116. Manchester has had *one* student matriculate from New Jersey in the past four years and does not recruit students from New Jersey. Plaintiff fails to allege any basis for this Court to exercise specific jurisdiction.

C. This case cannot be transferred to the Northern District of Indiana because that court lacks subject matter jurisdiction.

Transfer is proper to a district in which the case could have been brought originally. *Gehling v. St. George's Sch. of Med., Ltd.*, 773 F.2d 539, 544 (3d Cir. 1985) (citing *Reyno v. Piper Aircraft Co.*, 630 F.2d 149, 164–65 (3d Cir. 1980), *rev'd on other grounds* 454 U.S. 235 (1981), *reh'g denied* 455 U.S. 928 (1982)). The Class Action Fairness Act of 2005 ("CAFA") relaxes the complete-diversity rule, allowing federal courts to exercise jurisdiction over class actions if there is minimal diversity. Specifically, the CAFA:

> [P]rovides district courts with original jurisdiction over cases that have (1) an amount in controversy over $5,000,000; (2) minimally diverse parties, meaning at least one member of the plaintiff class is a citizen of a state different from any defendant; and (3) a class consisting of at least 100 members.

Walsh v. Defenders, Inc., 894 F.3d 583, 586 (3d Cir. 2018) (citing *Standard Fire Ins. Co. v. Knowles*, 568 U.S. 588, 592 (2013)). However, a district court must decline to exercise jurisdiction under the CAFA if "two-thirds or more of the members of all proposed plaintiff classes in the aggregate, and the primary defendants, are citizens of the State in which the action was originally filed." 28 U.S.C. § 1332(d)(4)(B).

At first blush, Mebrahtu may appear to have satisfied the CAFA's requirements, making transfer to the Northern District of Indiana proper. However, this case fits squarely within the exception to the CAFA, depriving the Northern

District of Indiana of subject matter jurisdiction and preventing transfer to that court. Manchester is incorporated and has its principal place of business in Indiana. And, more than two-thirds of Mebrahtu's proposed class members in the aggregate reside in Indiana. During the 2019-2020 academic year, Manchester had a total of 1078 undergraduate students. (Knapp Decl. at ¶9). Of those 1078 students, 859 (or roughly 80%) are from Indiana. (*Id.*). This number exceeds the two-thirds minimum required by the CAFA. Therefore, this case cannot be transferred to the Northern District of Indiana.

V. CONCLUSION

For the reasons set forth above, Manchester respectfully requests that this Court grant its motion and dismiss Mebrahtu's complaint.

Dated: August 11, 2020

Respectfully submitted,

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