

STATE OF NEW YORK SUPREME
COURT, TOMPKINS COUNTY

CASE NO.

JOHN TSIALAS and FLAVIA
TOMASELLO, as Personal Representatives
of the Estate of Antonio Tsialas, deceased,

Plaintiffs,

v.

CORNELL UNIVERSITY,
PHI KAPPA PSI FRATERNITY, INC.,
NEW YORK ALPHA OF PHI KAPPA PSI
ASSOCIATION, INC.,
ANDREW SCHERR, SHANE ROHE,
WILLIAM GRANATH, RYAN BERMAN,
NOLAN BERKENFELD,
PIETRO PALAZZOLO RUSSO,
FELIPE HANUCH and JOHN JACOBS,

Defendants.

COMPLAINT

COME NOW, the Plaintiffs, JOHN TSIALAS and FLAVIA TOMASELLO, as Personal Representatives of the Estate of Antonio Tsialas, deceased, and hereby sue the Defendants, CORNELL UNIVERSITY, PHI KAPPA PSI FRATERNITY, INC., NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC., ANDREW SCHERR, SHANE ROHE, WILLIAM GRANATH, RYAN BERMAN, NOLAN BERKENFELD, PIETRO PALAZZOLO RUSSO, FELIPE HANUCH and JOHN JACOBS, and allege as follows:

1. This is an action for damages exceeding the jurisdictional limits of all courts other than this court.

2. At all times material hereto, the Plaintiffs were and are residents of Coral Gables, Miami-Dade County, Florida and are the duly appointed Personal Representatives of the estate of their son, Antonio Tsialas, by the Miami-Dade Circuit Court, Probate Division, by the court's order dated January 23, 2020.

3. At all times material hereto, CORNELL UNIVERSITY ("CORNELL") was and is a not-for-profit corporation authorized to do business in the State of New York and is, in fact, doing business in Ithaca, New York as a university for both undergraduate and graduate students.

4. At all times material hereto, CORNELL represented to prospective students, parents of prospective students and to the community at large that CORNELL UNIVERSITY "is a caring community" that "takes its responsibility to look out for one another very seriously" and that the university's interest in governing the conduct of students includes "the protection of the health, safety and welfare of all members of the university community."

5. At all times material hereto, the Defendant, PHI KAPPA PSI FRATERNITY, INC. ("PHI KAPPA PSI"), was and is an Indiana corporation doing business in the State of New York on the campus of CORNELL UNIVERSITY in Ithaca, New York.

6. At all times material hereto, the Defendant, NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC. ("PHI KAPPA PSI, CORNELL CHAPTER" or "CORNELL CHAPTER" or "the local chapter") was and is a New York not-for-profit corporation doing business on the campus of CORNELL UNIVERSITY as the local chapter of PHI KAPPA PSI FRATERNITY, INC.

7. At all times material hereto, PHI KAPPA PSI FRATERNITY, INC. does and did business in Tompkins County, New York through the promotion of its fraternity including its control and/or management of the CORNELL CHAPTER at 120 Mary Ann Wood Drive, Ithaca,

New York on the CORNELL UNIVERSITY campus. That control included, but was not limited to, controlling the recruitment of new members, controlling the conduct of the members, controlling the manner in which traditions and rituals of the fraternity were carried out and controlling how and when the rush activities of the chapter were to be conducted.

8. At all times material hereto, the Defendant, ANDREW SCHERR ("SCHERR") was and is a student at CORNELL UNIVERSITY and resides during the school year in Ithaca, New York.

9. At all times material hereto, the Defendant, SHANE ROHE ("ROHE") was and is a student at CORNELL UNIVERSITY and resides during the school year in Ithaca, New York.

10. At all times material hereto, the Defendant, WILLIAM GRANATH ("GRANATH") was and is a student at CORNELL UNIVERSITY and resides during the school year in Ithaca, New York.

11. At all times material hereto, the Defendant, RYAN BERMAN ("BERMAN") was and is a student at CORNELL UNIVERSITY and resides during the school year in Ithaca, New York.

12. At all times material hereto, the Defendant, NOLAN BERKENFELD ("BERKENFELD") was and is a student at CORNELL UNIVERSITY and resides during the school year in Ithaca, New York.

13. At all times material hereto, the Defendant, PIETRO PALAZZOLO RUSSO ("RUSSO") was and is a student at CORNELL UNIVERSITY and resides during the school year in Ithaca, New York.

14. At all times material hereto, the Defendant, FELIPE HANUCH (“HANUCH”) was and is a student at CORNELL UNIVERSITY and resides during the school year in Ithaca, New York.

15. At all times material hereto, the Defendant, JOHN JACOBS (“JACOBS”) was and is a resident of the State of New York.

16. The Plaintiffs bring this action in their capacity as Personal Representatives of the Estate of Antonio Tsialas and seek the following damages:

- a. Compensation for the injuries and mental and physical pain, suffering and anguish suffered by their son Antonio Tsialas prior to his death.
- b. Compensation for Antonio Tsialas’ fear of impending death.
- c. Compensation for the consequences to John Tsialas and Flavia Tomasello from the death of their son, Antonio Tsialas, including, but not limited to, past, present and future economic losses and compensation for their mental pain and suffering caused by his death.

17. One or more of the exceptions set forth in CPLR §1602 apply to this action.

18. This case arises from the death of Antonio Tsialas, age 18, on or about October 25, 2019 in Ithaca, New York.

19. Antonio, who was a freshman at CORNELL UNIVERSITY at the time, was found dead in Fall Creek gorge in Ithaca, New York on Saturday, October 26, 2019 after attending an unauthorized and illegal “dirty rush” party at the PHI KAPPA PSI chapter house on the CORNELL UNIVERSITY campus on Thursday evening, October 24, 2019.

20. At all times material hereto, the PHI KAPPA PSI, CORNELL CHAPTER had an executive board consisting, at least in part, of the following:

- a. ANDREW SCHERR – President
- b. WILLIAM GRANATH – Vice President
- c. RYAN BERMAN – Secretary

These defendants voluntarily undertook the duties and responsibilities of those positions including the duty to properly manage the fraternity's meetings and events. They also agreed to perpetuate the traditions and rituals of PHI KAPPA PSI in a manner that would comply with the rules and regulations of PHI KAPPA PSI FRATERNITY, INC., PHI KAPPA PSI, CORNELL CHAPTER, CORNELL UNIVERSITY and the laws of the State of New York.

21. At all times material hereto, ROHE was a member of the PHI KAPPA PSI, CORNELL CHAPTER and escorted Antonio Tsialas and his group of six freshmen to each of the hazing and drinking events described below.

22. At all times material hereto, PIETRO PALAZZOLO RUSSO voluntarily undertook the duties and responsibilities of House Manager for the PHI KAPPA PSI, CORNELL CHAPTER including the duty to control the manner in which the chapter house would be utilized for events and activities.

23. At all times material hereto, NOLAN BERKENFELD voluntarily undertook the duties and responsibilities of Rush Chairman for the PHI KAPPA PSI, CORNELL CHAPTER including the duty to plan and implement rush activities that complied with the rules and regulations of PHI KAPPA PSI FRATERNITY, INC., PHI KAPPA PSI, CORNELL CHAPTER, CORNELL UNIVERSITY and the laws of the State of New York.

24. Defendants SCHERR, ROHE, GRANATH, BERMAN, RUSSO and BERKENFELD, controlled the operations of the PHI KAPPA PSI, CORNELL CHAPTER fraternity house including how and when the house would be used for rush activities and had the

authority to control what events, activities and traditions took place in the house. Said defendants also had the authority to refuse to permit rush activities from taking place in the house, to regulate the manner in which the rush activities were to take place and to determine who would be and would not be permitted to be present for the activities occurring in the house.

25. At all times material hereto, PHI KAPPA PSI FRATERNITY, INC. exercised significant and ongoing control over the PHI KAPPA PSI, CORNELL CHAPTER and its officers and members, as evidenced by the following:

- a. Issuing a charter to the CORNELL CHAPTER that authorized it to do business as PHI KAPPA PSI, New York Alpha.
- b. Requiring that the leadership of the CORNELL CHAPTER attend training sessions and meetings where the operational standards and expectations for a local chapter were reviewed and mandated.
- c. Requiring that the PHI KAPPA PSI, CORNELL CHAPTER be known as “PHI KAPPA PSI, New York Alpha.”
- d. Requiring that the logo for PHI KAPPA PSI and the official colors of PHI KAPPA PSI be used at the local chapter house and on various publications, banners and paraphernalia of the local chapter.
- e. Requiring that the officers of the Cornell chapter meet with the chapter’s members at least once a year to explain the rules, regulations and policies promulgated by PHI KAPPA PSI.
- f. Requiring that the local chapter and its members comply with the official anti-hazing policies of PHI KAPPA PSI, CORNELL UNIVERSITY and the laws of the State of New York.

- g. Requiring that the local chapter and its members comply with the alcohol policies of PHI KAPPA PSI and the laws of the State of New York.
- h. Requiring that the local chapter plan and host social events in the name of PHI KAPPA PSI.
- i. Reserving the right to discipline the local chapter and any of its members for conduct that was deemed to violate the rules and regulations of PHI KAPPA PSI or the laws of the State of New York.
- j. Controlling the matter in which new members were recruited and initiated by the local chapter.
- k. Requiring the members and new initiates of the local chapter pay initiation fees, dues and taxes to PHI KAPPA PSI.
- l. Requiring the officers and members of the local chapter meet with representatives of PHI KAPPA PSI when they made visits to the CORNELL campus.
- m. Requiring the members of the local chapter to learn the history of PHI KAPPA PSI.
- n. Requiring the members of the local chapter to learn the traditions and rituals of PHI KAPPA PSI.
- o. Requiring the members of the local chapter to devote time to community service in the name of PHI KAPPA PSI.
- p. Requiring the members of the local chapter to devote a certain grade point average.
- q. Requiring each member of the local chapter to have an "attitude to become a better student, fraternity man, gentleman and citizen."
- r. Requiring the local chapters to send delegates to the meetings of the Grand Arch Council.

- s. Authorizing the members of the local chapters to use the badge, grip and ceremonies as the Executive Council of PHI KAAPA PSI may determine.
 - t. Requiring the local chapters to hold at least two regular meetings each month.
 - u. Requiring the local chapters to have at least five standing committees consisting of Governing, Membership, Grievance, Scholarship, Alumni and Public Relations and Fraternity Education.
26. At all times material hereto, JACOBS was acting as the chapter advisor for the local chapter. Accordingly, JACOBS voluntarily undertook the duty to supervise and guide the chapter and ensure that its officers and members complied with the rules and regulations promulgated by PHI KAPPA PSI FRATERNITY, INC., PHI KAPPA PSI, CORNELL CHAPTER, CORNELL UNIVERSITY and the laws of the State of New York.
27. During the Fall of 2019, Defendants SCHERR, ROHE, GRANATH, BERMAN, RUSSO and BERKENFELD made the decision to host the chapter's "Christmas in October" tradition at the PHI KAPPA PSI, CORNELL CHAPTER house in an attempt to identify CORNELL freshman who might be persuaded to become pledges of the fraternity. In pursuit of that goal, the members of the fraternity were told to look for suitable candidates and to invite them to the event.
28. As in past years, "Christmas in October" was meticulously planned by the officers and members of the chapter acting individually and as actual and/or apparent agents of PHI KAPPA PSI and PHI KAPPA PSI, CORNELL CHAPTER.
29. This "dirty rush event," as it was commonly known, was not permitted to take place per the rules and regulations of PHI KAPPA PSI FRATERNITY, INC., PHI KAPPA PSI, CORNELL CHAPTER and CORNELL UNIVERSITY, because alcohol would be served in

violation of the laws of the State of New York. Nevertheless, Defendants SCHERR, ROHE, GRANATH, BERMAN, RUSSO and BERKENFELD were determined to perpetuate the tradition despite the fact that the chapter had just attended a disciplinary hearing the day before the planned event to address their misconduct and bad behavior involving a previous event that they hosted.

30. Antonio Tsialas was identified as a good pledge prospect for the fraternity by FELIPE HANUCH, a fraternity member, who knew Antonio from playing soccer with the Cornell Mundial F.C. Soccer Club. HANUCH invited Antonio to the “Christmas in October” event knowing that the party was not supposed to take place, knowing that the freshmen would be subjected to various acts of hazing and knowing that the freshmen would be served large quantities of alcohol.

31. Antonio Tsialas’ invitation to the event came in the form of a text message telling him to be in front of the Robert Purcell Community Center on the CORNELL campus at approximately 8:30 p.m. on October 24, 2019 where he would be picked up and driven to the fraternity house by a fraternity member.

32. October 24, 2019 happened to be the start of First Year Parents Weekend at CORNELL and Antonio’s parents were excited to visit him. Flavia Tomasello, Antonio’s mother, arrived in Ithaca that day and John Tsialas, Antonio’s father, was scheduled to arrive the following afternoon.

33. On Thursday evening, October 24, 2019, Antonio and his mother had their last meal together. They went to dinner at a local Thai restaurant and, at that moment, everything seemed perfect in their lives. Antonio loved CORNELL; he enjoyed his classes, was meeting new people and was making friends. He had just been selected to be a campus tour guide after a rigorous interview process, was selected to play on a club soccer team and he was excited to see his father

the next day. A photograph of Antonio and his mother at dinner that evening shows a happy and relaxed young college student who was continuing to succeed in life. That was the last known photograph of Antonio ever taken.

34. At approximately 8:00 p.m., while still at dinner with his mother, Antonio realized that he was supposed to be picked up by PHI KAPPA PSI members in approximately thirty (30) minutes and he hurriedly left his mother and told her he would meet her the next morning at 11:00 a.m. at the CORNELL bookstore. He then called for a Lyft vehicle, said good-bye to his mother and was driven to the community center on the CORNELL campus. It was the last time Flavia Tomasello ever saw her son.

35. Upon arriving at the Robert Purcell Community Center, Antonio asked a friend to take his backpack to his room because he did not have time to do it himself and then, right on schedule, a parade of vehicles from PHI KAPPA PSI arrived to pick up Antonio and the other unsuspecting freshmen. Antonio had no idea what was in store for him.

36. Upon arrival at the PHI KAPPA PSI, CORNELL CHAPTER house, Antonio and the other freshmen were escorted to the basement of the house while they waited to be told what was going on. About fifteen minutes after arriving, the fraternity leaders appeared and made an announcement to the group: "If you are ever asked, you were never here. No phones. No video. No photographs." And with that, the PHI KAPPA PSI tradition of "Christmas in October" was underway.

37. Following these admonitions, a fraternity leader read from a list of names and divided the freshmen into six groups of six students. Each group was then assigned a fraternity member whose job it was to escort the freshmen to each of the planned drinking events set-up throughout the house. Defendant ROHE escorted Antonio Tsialas and his group.

38. On the main floor of the fraternity house seven rooms had been prepared for the evening's events, each with a different theme and each group of freshmen was to visit each room. The activities in the rooms were focused on a series of drinking events where the freshmen were induced, encouraged and coerced to drink large quantities of alcohol. The Defendants knew or should have known that these events would pose a serious threat to the safety and well-being of those who participated and expose each of them to a serious risk of bodily harm.

39. The carefully prepared rooms consisted of the following:

- a. The Tropical Room. To get into the tropical room the freshmen had to limbo under a stick and, while their back was arched and their head was tilted back, sorority women would pour alcohol down their throats. In addition, a pong game was held in that room where each freshman was given more alcohol to drink.
- b. The Beer Room. In the beer room each group of six was divided into two three person teams and they were to compete against each other to see how fast they could chug the beer. After the first round of drinking beer, each freshman was then held upside down over a trash can filled with water as their head was submerged under the water. When that process was completed for each of the freshmen, the group continued the beer chugging competition.
- c. The Wine Room. In the wine room each group of six were given dice to roll and each freshman would have to say "high" or "low." If they guessed correctly they would pass the pitcher of wine to the next person but, if they got it wrong, they would have to chug the wine from the pitcher.

- d. The Jewish Room. The Jewish room was set up to look like a bar mitzvah except the fraternity had arranged a pyramid of glasses with vodka and beer and each freshman would be given the vodka and beer to drink.
 - e. The Milk and Rum Room. In this room, milk and rum were mixed together and each group would compete to see who could drink it the fastest. The drinks were followed by the serving of a Christmas cookie to each of them.
 - f. The Santa Claus Room. In the Santa Claus room, the fraternity had someone dressed as Santa Claus sitting in a chair and each freshman would have to sit on his lap and would be told whether he had been “naughty” or “nice.” Santa’s proclamation determined what type of alcohol the freshmen then had to drink. Before leaving Santa’s room, each group was given a “Christmas gift” consisting of a full bottle of New Amsterdam vodka and they were told that they could not leave the room until they finished drinking the entire bottle.
 - g. The Lounge. After the visit to Santa Claus, each group was escorted to a makeshift lounge where there was an inflatable Santa on display. To cap off the evening, the fraternity then had whip cream squirted into each freshman’s mouth followed by more shots of alcohol that were poured into their mouths.
40. By the time the freshmen completed the drinking games in the seven different rooms they were intoxicated and many were “black out drunk.” Many were vomiting and lost all memory of what they did next or how they eventually got back to their rooms.
41. Antonio Tsialas was one of the unwitting victims of PHI KAPPA PSI’s “Christmas in October” tradition. He had no idea what he was getting himself into and had been hand-picked to attend the event because of the promise he demonstrated as a potential PHI KAPPA PSI member.

The very qualities that made him such an attractive candidate for pledging were the same qualities that caused him to participate in the events of that night; he had always trusted fellow soccer players since his early days in high school, he respected older students and he always wanted to please others. Like most young college freshman who are away from home for the first time, Antonio wanted to make new friends, find a group to be part of and wanted to be accepted by those he looked up to. When he received the invitation to the event from HANUCH, a soccer teammate at CORNELL, he placed the same trust in him as he had for his prior teammates. That trust, however, proved to be misplaced.

42. Sometime after the drinking games ended, Antonio Tsialas was allowed to leave the fraternity house intoxicated or was taken from the fraternity house while intoxicated with no efforts by any of the defendants to stop him or get him safely back to his dormitory. The PHI KAPPA PSI members who had so carefully arranged for his transportation to the fraternity house made absolutely no arrangements for his transportation from the fraternity house. Not a single defendant in this case has come forward to tell Antonio's parents about the circumstances of their son's departure from the fraternity house that night and none have provided any information about where he went afterwards. Their refusal to share information about what they know has only made the pain and suffering they are experiencing by the loss of their son that much worse.

43. The "Christmas in October" event was a dangerous and unsafe tradition that posed a foreseeable risk of harm to all of the freshmen who attended including Antonio Tsialas. The defendants knew or should have known that the unsuspecting freshmen would be vulnerable to the peer pressure that is associated with fraternity rushing events and could foresee that by exposing them to drinking games where excessive alcohol was to be consumed in rapid fire succession, the freshmen would accede to whatever was expected of them in order to fit in and be socially accepted.

Compounding matters, by having no plan in place to get Antonio Tsialas safely back to his room and by either taking him to a remote and pitch dark area of the campus while he was intoxicated or, alternatively, allowing him to disappear into the dark of night, alone and without assistance, the defendants could foresee that he would be at great risk of serious bodily harm. His subsequent death was the direct and proximate result of the defendants' actions and would not have happened if the hazing event had not taken place.

44. On Friday, October 25, 2019 at 11:00 a.m. Flavia Tomasello, Antonio's mother, went to the CORNELL bookstore to meet her son as they had agreed to do at dinner the night before, but he never arrived. She then texted him and called his cell phone but there was no answer. She later asked his friends where he was when they last saw him and she was told that he had gone to a fraternity party that they did not attend because their names were "not on the list." She subsequently contacted the Cornell Police Department who, later that day, issued a "missing person" notice.

45. While Antonio's mother was desperately searching for her son, ANDREW SCHERR, the fraternity president, was panicking. He knew that Antonio was missing following his attendance at the unauthorized and illegal "dirty rush" the night before and he knew the legal consequences of his actions. As a result, he repeatedly called a friend of Antonio's and was, according to the friend, "frantic." Rather than trying to do all he could to assist in the search for Antonio, which one would expect from a fraternity president with nothing to hide and who cared about those who were invited to the event, he was instead scrambling to try and obstruct the investigation and mislead Antonio's mother and the Cornell Police. His message according to the friend: "... if anyone asks you, don't tell them he came to our house." Antonio's friend thought

SCHERR's request was "the most suspicious thing ever" and reported it directly to the Cornell Police Department.

46. John Tsialas arrived at CORNELL for First-Year Parents Weekend at approximately 6:30 p.m. on Friday, October 25, 2019 and met his wife Flavia at the Cornell Police Department. At approximately 10:30 p.m. they drove to the PHI KAPPA PSI house searching for their son. Once there, they spoke to several fraternity members including ANDREW SCHERR. At least one of the members confirmed that Antonio had been at the fraternity house the night before and that alcohol had been served. When Antonio's mother asked whether anything had been put into the alcohol that Antonio was given to drink, those she was speaking to claimed that they had not done that and that all of the drinks were opened in front of the freshmen. That claim about opening the drinks was false; the alcohol had not been opened in front of them. They then told Antonio's parents that Antonio had probably gone to College Town after leaving the fraternity house. That claim was also false. Based upon that misleading tip, Antonio's parents subsequently went door to door in College Town with "missing person" flyers trying to find him but not a single person said they saw him there the night before.

47. On Saturday, October 26, 2019 at approximately 3:20 p.m. Flavia Tomasello and John Tsialas were notified by the Cornell Police Department that the body of their son had been found in Fall Creek gorge. This was an area far from his dormitory and not on the route that one would take whether walking or driving from the fraternity house to his dormitory. When he was found, Antonio was still wearing the Ransom Everglades soccer sweatshirt (his high school) that he had worn at dinner with his mother on Thursday night, but the white polo shirt he had been wearing under his sweatshirt, was found up the side of the gorge in a bush. The polo shirt had vomit on it and the imprint of a shoe or sneaker. Antonio's wallet and keys were with him, but his cell phone

was missing. After a search of the scene, it was not found. Its last known location was the PHI KAPPA PSI house on the CORNELL campus.

48. Antonio's parents could not believe that their son was dead just eight weeks after he arrived at CORNELL. At the time he enrolled at the school neither he nor his parents knew anything about the out of control Greek life at the university and they knew nothing about the university's grossly inadequate efforts to try and stop it.

49. Unbeknownst to the Tsialas family, CORNELL UNIVERSITY has had a long history and culture of fraternity hazing and other forms of misconduct which have marred its reputation. The first known hazing death at CORNELL occurred in 1873 when Mortimer N. Leggett, a Kappa Alpha Society pledge, was brought to the woods by fraternity members, blind folded and then fell into a gorge at the university. Since then there has been an ongoing pattern of hazing and other offenses by members of various Greek letter organizations at CORNELL and the misconduct has been well known to the CORNELL administration. The administration has known for years that it threatens the health and safety of CORNELL's students, particularly the freshmen, and casts a shadow over the entire CORNELL community.

50. In 2001, Susan Murphy, CORNELL's former Vice President of Student and Academic Affairs, created a Hazing Task Force in order to "investigate hazing incidents on campus and come up with a solution to the problem." In an interview she gave in 2003, she acknowledged that hazing continued to be a problem on campus and that unauthorized parties had become increasingly prevalent on campus.

51. In 2003, another CORNELL administrator, Suzy Nelson, acknowledged that CORNELL had a problem with hazing and sought to enact new programs to prevent hazing and

monitor new member programs at the fraternities. The efforts however, were inadequate and, as a result, hazing continued at CORNELL UNIVERSITY.

52. On February 25, 2011 George Desdunes, a sophomore at CORNELL UNIVERSITY, died as a result of hazing at the SAE fraternity. As with Antonio Tsialas, George Desdunes and a group of other students were picked-up by an SAE driver and transported to the fraternity event. While being subjected to a series of hazing rituals he was given excessive amounts of alcohol and was found dead the next day. The fraternity officers and members who had carefully planned every aspect of the event that night failed to make any efforts to ensure that he was safe and properly cared for after they were done with him.

53. As a result of the death of George Desdunes, in 2011 CORNELL UNIVERSITY attempted to further control the behavior of Greek organizations yet again by abolishing all fraternity pledging and instituting other reforms. Those efforts, however, like the ones before them, were inadequate and insufficient to change the culture of hazing. Not surprisingly, the hazing continued.

54. On May 4, 2018 Martha Pollack, the current President of CORNELL UNIVERSITY, issued a public statement acknowledging the history of hazing problems at CORNELL and announcing new reforms that were “aimed at protecting our students and improving cultural norms in Greek letter organizations at Cornell.”

“... over the years and in recent months (the legacy of great contributions by Greek letter organizations) has been marred by numerous incidents of hazing and other forms of misconduct.

Today, the outcome of yet another investigation of hazing violations at Cornell was announced. This latest incident along with other pending cases and allegations of hazing on campus are extremely disturbing. Even more troubling is the fact that these are just the latest episodes in what has become an ongoing pattern of hazing and other offenses by members of various Greek letter organizations at Cornell. This misconduct threatens the

health and safety of our students and casts a shadow over our community of scholars.

I believe that it is important for the community to understand that the behavior in question goes well beyond innocent fun. It includes extremely coercive ... and physically dangerous activities that jeopardize students' health and lives. The danger of such reckless actions cannot be ignored. Such activities are not tolerated in society and must stop in our Greek letter organizations."

55. The reforms announced by President Pollack on May 4, 2018 were, once again, inadequate and failed to focus on the root cause of the problem. As a result, the Greek organizations at CORNELL, including PHI KAPPA PSI, continued with their misbehavior.

56. In a public statement issued by President Pollack on December 18, 2019 regarding Antonio Tsialas' death, she reflected back on the university's previous responses to the hazing epidemic and admitted that the university's efforts to stop the history of hazing were inadequate:

Regrettably, this is not an isolated incident. We have on this campus, as do many of our peers on their campuses, a persistent culture of misconduct in the Greek-letter system; a pattern that dates back years, if not decades, and one that I have witnessed during my two-and-a-half years as Cornell's president. Indeed, a series of troubling hazing episodes in the winter of 2018 led to my announcing a set of new Greek policies in May of that year. At that time, naysayers told me that the new policies would not have their intended impact of eliminating misconduct. Unfortunately, those naysayers were correct. In the 19 months since those new policies went into effect, fully six Greek organizations have engaged in behavior so problematic as to merit suspension of their recognition by the university. This number does not include the current interim suspension of Phi Kappa Psi.

It is clear to me and to my leadership team that in order to promote the health and safety of our students we must impose additional – and meaningful – reforms on Greek life at Cornell.

57. The "dirty rush" that PHI KAPPA PSI hosted on October 24, 2019 represented yet another example of the misconduct and ongoing pattern of hazing that CORNELL UNIVERSITY had known about for years. Eighteen months had gone by since President Pollack's "new reforms," CORNELL knew how serious the problems were, knew that dramatic and swift solutions were

immediately necessary yet nothing meaningful was done to stop them. Antonio Tsialas died because of CORNELL's inadequate response to the longstanding and very serious hazing problems that have plagued it for years.

58. The inadequacy of CORNELL's response to the problem was underscored by the fact that the day before the "Christmas in October" event, PHI KAPPA PSI had been called before a judicial hearing for misconduct regarding an earlier unauthorized event. Incredibly, less than 24 hours after attending that disciplinary hearing, they were at it again. Based upon prior experience, the officers and members of PHI KAPPA PSI knew that CORNELL was not likely to impose any meaningful discipline upon them personally for violating the anti-hazing and alcohol rules and therefore they had nothing to fear by doing it again. As events have turned out, they were right. To date, none of the defendants in this case have been expelled from CORNELL for planning or hosting the "dirty rush" or for illegally serving alcohol or for illegally hazing the young freshmen or for anything else they did that led to Antonio Tsialas' death. Failure to expel the perpetrators of hazing and make them personally accountable for their actions has allowed the misconduct in the fraternities to continue and Antonio's death is just one more horrible, but predictable, consequence of CORNELL's inadequate response to the misconduct of Greek letter organizations on its campus.

59. Since then, the Defendants have failed to provide any information to Antonio's parents about the events of October 24, 2019 at the PHI KAPPA PSI house or any information about what happened to their son thereafter. Their refusal to share information about what they know has only made the pain and suffering that the Plaintiffs are experiencing by the loss of their son that much worse.

60. CORNELL UNIVERSITY had a duty to put an end to hazing long before Antonio Tsialas arrived on campus. The university knew that by not finally stopping the hazing culture

young freshmen in Antonio Tsialas' class, away from home for the first time and eager to make new friends, were vulnerable to fraternity peer pressure from upper classmen who did not care about CORNELL's new "reforms." President Pollack acknowledged as much in her letter to the CORNELL community dated December 18, 2019:

We also must address the exclusionary culture that contributes significantly to the problems that we see. Peer pressure that results from feeling that one may be excluded leads to bad and risky behavior choices, which is only heightened during the annual recruitment process; hazing, of course, is a direct result of an "in-group" coercing others who aspire to join that group. It is time to bring our Greek policies in line with Cornell's core value of being a community of belonging.

61. President Pollack's statement notwithstanding, it was long past time to bring CORNELL's Greek policies in line with their professed "core values" and it was long past time to enforce those policies so that students would actually know and fear the consequences for violating them. Not one of the PHI KAPPA PSI members who hazed Antonio Tsialas on the night of October 24, 2019 gave any indication that they were concerned about being expelled from CORNELL or denied a CORNELL diploma for flagrantly violating every rule and policy that CORNELL had put in place to try and stop such conduct. CORNELL's failure to implement a policy of "meaningful" hazing consequences prior to October 24, 2019 allowed the hazing culture to continue and directly resulted in the death of Antonio Tsialas.

COUNT I
NEGLIGENCE OF CORNELL UNIVERSITY

62. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

63. CORNELL UNIVERSITY had a duty to provide a safe environment for its students to live, socialize and attend school. As detailed above, CORNELL exerted significant control over Greek life on campus and, therefore, the university had a duty to act in a non-negligent manner with respect to stopping the misconduct of Greek letter organizations that were subject to its control.

64. CORNELL breached that duty and was negligent in at least the following respects:
- a. In failing to implement meaningful anti-hazing measures on the CORNELL campus prior to October 24, 2019.
 - b. In failing to enforce its policies regarding fraternity parties and rush activities.
 - c. In failing to properly discipline the officers and members of the PHI KAPPA PSI chapter house on October 23, 2019 for a rules violation pertaining to a different event so they would understand that they should not plan or host any type of hazing event in the future.
 - d. In failing to properly discipline the officers and members of other fraternities and sororities on the CORNELL campus who participated in unauthorized and illegal hazing events in order to send a message to the Greek Letter organizations prior to October 24, 2019 that there would be severe personal consequences, including expulsion from school, for those who haze and otherwise violate the rules and regulations at CORNELL.
 - e. In failing to require the Cornell Police Department or roving security teams to conduct random spot checks of fraternity and sorority houses, including the PHI KAPPA PSI house, for potential violations of event management policies or the law when they knew that there was a continuing pattern of misconduct by Greek Letter organizations.
 - f. In allowing the PHI KAPPA PSI, CORNELL CHAPTER house, which the university owns to be used for an unauthorized and illegal “dirty rush.”
 - g. In failing to install security cameras on the inside and outside of the fraternity and sorority houses that the university owns, including the PHI KAPPA PSI house, in

order to monitor the activities taking place there and as a deterrent to the ongoing misconduct.

- h. In failing to require Greek Letter organizations, including PHI KAPPA PSI, to retain independent event monitors for all events.
- i. In failing to require Greek Letter organizations, including PHI KAPPA PSI, to retain third-party vendors for both alcohol service and security.
- j. In failing to inquire about the reason for multiple vehicles from PHI KAPPA PSI picking up a group of freshmen males in front of the Robert Purcell Community Center at approximately 8:30 p.m. on October 24, 2019.
- k. In failing to stop the “Christmas in October” rush event from taking place in the PHI KAPPA PSI chapter house on October 24, 2019.
- l. In failing to require all chapter advisors to know enough about the events that were being planned for the fraternities or sororities that they are advising so that they would intervene and stop unauthorized and illegal activities from taking place.
- m. In failing to require that every Greek organization chapter house have a live-in adult who would be responsible for monitoring and supervising the events taking place in the chapter house.

65. The negligence of this defendant was a substantial factor in causing all of the injuries, compensatory damages, punitive damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

66. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT II
PREMISES LIABILITY – CORNELL UNIVERSITY

67. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

68. CORNELL UNIVERSITY owned the PHI KAPPA PSI chapter house at 120 Mary Ann Wood Drive.

69. CORNELL UNIVERSITY knew or should have known that the property was being used by the PHI KAPPA PSI, CORNELL CHAPTER to perpetuate its traditions, commit acts of hazing, and otherwise violate the policies of CORNELL UNIVERSITY, PHI KAPPA PSI and the laws of the State of New York.

70. On the night of October 24, 2019 Antonio Tsialas was an invitee at the PHI KAPPA PSI chapter house.

71. CORNELL UNIVERSITY had a duty to ensure that the premises that it owned were reasonably safe and would be used in a reasonably safe manner and for reasonably safe purposes and to warn those who would be using the premises of conditions which it knew or should have known would pose a risk of harm to an invitee.

72. CORNELL UNIVERSITY breached those duties and was negligent in at least the following respects:

- a. In allowing the premises to be used for hazing activities.
- b. In allowing alcohol to be served to freshmen students, including Antonio Tsialas, who were under the age of 21.

73. CORNELL UNIVERSITY knew or should have known about these illegal and unsafe conditions and taken immediate action to correct them.

74. The negligence of this defendant was a substantial factor in causing all of the injuries, compensatory damages, punitive damages, harms, losses and wrongful death suffered by

the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

75. As a direct and proximate result of CORNELL's negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT III
DIRECT NEGLIGENCE OF PHI KAPPA PSI FRATERNITY, INC.

76. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

77. At all times material hereto, PHI KAPPA PSI FRATERNITY, INC. owed a duty to Antonio Tsialas, who was invited to the CORNELL CHAPTER house as part of a rush event, to act in a non-negligent manner. That duty included, but was not limited to, ensuring that dangerous traditions that created a foreseeable risk of harm to unsuspecting freshmen were not continued.

78. PHI KAPPA PSI FRATERNITY, INC. breached that duty and was negligent in at least the following respects:

- a. Failing to adequately enforce its policies and procedures at its CORNELL CHAPTER.
- b. Failing to ensure that alcohol was not served in the chapter house to students under the age of 21.
- c. Failing to end the "Christmas in October" tradition where alcohol and illegal acts of hazing were the focus of the event.
- d. Failing to ensure that the PHI KAPPA PSI, CORNELL CHAPTER had a properly trained and qualified chapter advisor.
- e. Failing to properly train the officers of the PHI KAPPA PSI, CORNELL CHAPTER so that they would not violate the laws of the State of New York and the rules and

regulations of PHI KAPPA PSI FRATERNITY, INC. and CORNELL UNIVERSITY.

- f. Failing to replace JACOBS, who was not doing his job properly, as the chapter advisor.
- g. Failing to take adequate precautions to ensure that Antonio Tsialas was not served alcohol in the chapter house on October 24, 2019.
- h. Failing to revoke the charter of the PHI KAPPA PSI, CORNELL CHAPTER when it knew or should have known of repeated instances of unacceptable behavior.
- i. Failing to install a risk manager of the PHI KAPPA PSI, CORNELL CHAPTER.
- j. Failing to visit the CORNELL CHAPTER frequently enough and interview its officers and members in order to uncover the hazing and alcohol activities that it had hosted in the past and had planned for the future.
- k. Failing to have met with the officers and members of the chapter on October 23, 2019 or October 24, 2019 following their appearance before the CORNELL disciplinary panel for other misconduct which would have revealed the planning for “Christmas in October” so that it could have been stopped before it happened.

79. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

80. As a direct and proximate result of PHI KAPPA PSI FRATERNITY, INC.’s negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT IV
DIRECT NEGLIGENCE OF
NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC.

81. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

82. At all times material hereto, NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC. owed a duty to Antonio Tsialas, who was invited to its CORNELL CHAPTER house for the event on October 24, 2019, to act in a non-negligent manner. That duty included, but was not limited to, ensuring that the officers and members of the CORNELL CHAPTER did not engage in activities that were illegal and prohibited by the rules and regulations of PHI KAPPA PSI FRATERNITY, INC., CORNELL UNIVERSITY and the laws of the State of New York.

83. Said defendant breached that duty and was negligent in at least the following respects:

- a. In conducting the illegal and unauthorized “Christmas in October” on October 24, 2019 which unreasonably exposed Antonio Tsialas to a foreseeable risk of harm.
- b. In serving alcohol to Antonio Tsialas that caused him to become intoxicated in violation of the laws of the State of New York and the rules and regulations of PHI KAPPA PSI FRATERNITY, INC. and CORNELL UNIVERSITY.
- c. In providing the venue for the illegal hazing of Antonio Tsialas.
- d. In allowing its officers and members to haze Antonio Tsialas.
- e. In failing to make any efforts to ensure that Antonio Tsialas got safely back to his dormitory after the “Christmas in October” event concluded.

84. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

85. As a direct and proximate result of NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC.'s negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT V
NEGLIGENCE OF SCHERR, GRANATH and BERMAN

86. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

87. Defendants SCHERR, GRANATH and BERMAN, as officers and members of the chapter's executive board, had a duty to act in a non-negligent manner with respect to how they managed the chapter house and the events that they would allow to be hosted in the chapter house.

88. Said defendants breached that duty and were negligent in at least the following respects:

- a. In authorizing the "Christmas in October" event to take place on October 24, 2019 just one day after the chapter was disciplined for its misconduct regarding a previous event.
- b. In planning the "Christmas in October" event.
- c. In authorizing the purchase and serving of alcohol at the "Christmas in October" event knowing that students under the age of 21 would be served.
- d. In attending the "Christmas in October" event and failing to stop it.
- e. In authorizing the hazing activities that took place at the "Christmas in October" event.

- f. In witnessing the hazing activities that took place at the “Christmas in October” event and failing to stop them.
- g. In failing to designate sober monitors who would oversee the “Christmas in October” event to ensure that the freshmen, including Antonio Tsialas, were not hazed and encouraged to get intoxicated.
- h. In failing to put procedures in place so that after the freshmen were hazed and illegally served alcohol they would be safely transported back to their dormitories.
- i. In failing to put procedures in place so that after Antonio Tsialas was hazed and illegally served alcohol, he could not leave the chapter house unescorted or, alternatively, stopping Antonio from being taken from the fraternity house to a remote area where he subsequently died.

89. The negligence of these defendants was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

90. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT VI
NEGLIGENCE OF ROHE

91. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

92. Defendant ROHE had a duty as a member of PHI KAPPA PSI fraternity to refrain from utilizing his position to expose Antonio Tsialas to an unreasonable risk of harm.

93. Said defendant breached that duty and was negligent in at least the following respects:

- a. In escorting Antonio Tsialas to each of the rooms in the fraternity house that had been set up to illegally serve alcohol to Antonio.
- b. In escorting Antonio Tsialas to each of the rooms in the fraternity house that had been set up to illegally haze Antonio.
- c. In failing to ensure that Antonio Tsialas was not permitted to leave the fraternity house unescorted or, alternatively, failing to prevent him from being taken from the fraternity house by other to a remote area far from his dormitory which ultimately led to his death.
- d. In failing to ensure that Antonio Tsialas was safely returned to his dormitory after having been illegally hazed and served alcohol.

94. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

95. As a direct and proximate results of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT VII
NEGLIGENCE OF BERKENFELD

96. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

97. Defendant BERKENFELD had a duty as the chapter's Rush Chairman to act in a non-negligent manner with respect to when and how the chapter's rush activities were carried out.

98. Said defendant breached that duty and was negligent in at least the following respects:

- a. In authorizing the “Christmas in October” event to take place on October 24, 2019 just one day after the chapter was disciplined for its misconduct regarding a previous event.
- b. In planning the “Christmas in October” event.
- c. In authorizing the purchase and serving of alcohol at the “Christmas in October” event knowing that students under the age of 21 would be served.
- d. In attending the “Christmas in October” event and failing to stop it.
- e. In authorizing the hazing activities that took place at the “Christmas in October” event.
- f. In witnessing the hazing activities that took place at the “Christmas in October” event and failing to stop them.
- g. In failing to designate sober monitors who would oversee the “Christmas in October” event to ensure that the freshmen, including Antonio Tsialas, were not hazed and encouraged to get intoxicated.
- h. In failing to put procedures in place so that after the freshmen were hazed and illegally served alcohol they would be safely transported back to their dormitories.
- i. In failing to put procedures in place so that after Antonio Tsialas was hazed and illegally served alcohol, he could not leave the chapter house unescorted or, alternatively, allowing Antonio to be taken from the fraternity house to a remote area where he subsequently died.

99. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

100. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT VIII
NEGLIGENCE OF RUSSO

101. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

102. Defendant RUSSO had a duty as the chapter's House Manager to act in a non-negligent manner with respect to how the PHI KAPPA PSI chapter house was utilized and to ensure that it was not used for unauthorized and illegal purposes.

103. Said defendant breached that duty on October 24, 2019 and was negligent in at least the following respects:

- a. In allowing the chapter house to be used for the "Christmas in October" rush event.
- b. In allowing the chapter house to be used for the illegal serving of alcohol to those not of legal drinking age.
- c. In allowing the chapter house to be used for illegal acts of hazing.
- d. In allowing the chapter house to be used for an event where Antonio Tsialas was pressured into consuming excessive amounts of alcohol without any plan in place to get him safely back to his room.
- e. In allowing the chapter house to be used for an event that was prohibited by the rules and regulations of CORNELL UNIVERSITY.
- f. In allowing the chapter house to be used for an event that was prohibited by the rules and regulations of PHI KAPPA PSI FRATERNITY, INC.
- g. In failing to put procedures in place so that after the freshmen were hazed and illegally served alcohol they were not allowed to leave the chapter house unescorted.
- h. In witnessing the "Christmas in October" event and not stopping it.

104. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiff contributing thereto.

105. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT IX
NEGLIGENCE OF HANUCH

106. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

107. As the person who invited Antonio Tsialas to the “Christmas in October” rush event, Defendant HANUCH had a duty to ensure that Antonio Tsialas was not hazed, was not illegally served alcohol and that he returned safely to his dormitory.

108. Said defendant breached that duty and was negligent in at least the following respects:

- a. In inviting Antonio to the event and allowing him to be hazed.
- b. In inviting Antonio to the event and allowing fraternity members and others to illegally serve him alcohol.
- c. In inviting Antonio to the event and allowing him to be subjected to conduct that violated the rules and regulations of CORNELL UNIVERSITY.
- d. In inviting Antonio to an event that violated the rules and regulations of PHI KAPPA PSI FRATERNITY, INC.
- e. In failing to make arrangements for Antonio to be safely brought back to his dormitory room after he left the chapter house.

- f. In allowing Antonio to be taken from the fraternity house to a remote location where he died or, alternatively, allowing him to leave the fraternity house unescorted after he had been hazed and illegally served alcohol.

109. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

110. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT X
NEGLIGENCE OF JACOBS

111. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

112. At all times material hereto, Defendant JACOBS voluntarily undertook the responsibility to be the official “chapter advisor” for the PHI KAPPA PSI, CORNELL CHAPTER and, in doing so, acted as the direct representative to the Executive Council of PHI KAPPA PSI FRATERNITY, INC.

113. As the chapter advisor, JACOBS had a duty to act in a non-negligent manner in discharging his responsibilities including the duty to “give detailed counsel and advice with respect to general chapter management and operation.”

114. Defendant, JACOBS, breached that duty and was negligent in at least the following respects:

- a. In failing to properly plan and implement the chapter’s rushing program.
- b. In failing to stop the “Christmas in October” event from taking place on October 24, 2019.

- c. In failing to instruct the officers and members of the PHI KAPPA PSI, CORNELL CHAPTER that they were not permitted to conduct any rush events in the month of October, 2019.
- d. In failing to attend the “Christmas in October” event to ensure that it was conducted in a manner that complied with the laws of the State of New York and the rules and regulations of PHI KAPPA PSI and CORNELL UNIVERSITY.
- e. In failing to ensure that there were procedures in place at the “Christmas in October” event to prevent the freshmen who were under the age of 21 from being provided alcohol or consuming alcohol.
- f. In failing to make arrangements for Antonio Tsialas to be returned safely to his dormitory after having been illegally hazed and served alcohol.
- g. In failing to meet with the chapter officers and members on October 23 or 24, 2019, after they had attended a disciplinary hearing on another matter, to make it clear to them that there would be zero-tolerance for any further actions that violated the rules and regulations of PHI KAPPA PSI or CORNELL UNIVERSITY or the laws of the State of New York.

115. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

116. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT XI
VICARIOUS LIABILITY OF PHI KAPPA PSI FRATERNITY, INC.
(ACTUAL AGENCY)

117. The Plaintiffs reallege and reaver paragraphs 1 – 61 and 81 – 116 and further allege as follows.

118. At all times material hereto, the officers, members and chapter advisor of PHI KAPPA PSI, CORNELL CHAPTER, including the individually named Defendants herein, were the actual agents of the Defendant, PHI KAPPA PSI FRATERNITY, INC. and were acting in the course and scope of their agency relationship with PHI KAPPA PSI FRATERNITY, INC.

119. Said Defendants conducted all fraternity business and events under the direction and control of PHI KAPPA PSI FRATERNITY, INC. and subject to the rules and regulations promulgated by PHI KAPPA PSI FRATERNITY, INC.

120. Defendants SCHERR, ROHE, GRANATH, BERMAN, BERKENFELD, RUSSO and JACOBS were required to act in their capacity as officers, committee chairmen or chapter advisor of the PHI KAPPA PSI, CORNELL CHAPTER in compliance with Constitution, Bylaws, Rules and expectations of PHI KAPPA PSI FRATERNITY, INC. who had the authority to remove them from their positions or from the fraternity at any time should they not comply with the directives regarding how they were to carry out the duties and responsibilities of their positions.

121. Said defendants promoted the business of PHI KAPPA PSI FRATERNITY, INC. on the CORNELL campus in many way; they searched for new member prospects for PHI KAPPA PSI FRATERNITY, INC. such as Antonio Tsialas and the other freshmen who were selected to attend the “Christmas in October” rush event; they displayed the colors and letters of PHI KAPPA PSI FRATERNITY, INC., they held themselves out as the officers, committee

chairmen and chapter advisor of PHI KAPPA PSI and they served as representatives of PHI KAPPA PSI FRATERNITY, INC. for all community service projects in the Ithaca, New York area.

122. In addition, said defendants were charged with ensuring that the members of the CORNELL CHAPTER paid the dues, initiation fees and taxes, required by PHI KAPPA PSI FRATERNITY, INC. which would be used, at least in part, to pay for the overhead and operations of PHI KAPPA PSI FRATERNITY, INC.

123. All actions taken by SCHERR, ROHE, GRANATH, BERMAN, BERKENFELD, RUSSO and JACOBS with respect to Antonio Tsialas and the event he attended on October 24, 2019 were conducted for the benefit of PHI KAPPA PSI FRATERNITY, INC. and its desire for new members of the national fraternity.

124. Accordingly, PHI KAPPA PSI FRATERNITY, INC. is vicariously liable for the negligence of the individual defendants named above.

125. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

126. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT XII
VICARIOUS LIABILITY OF PHI KAPPA PSI FRATERNITY, INC.
(APPARENT AGENCY)

127. The Plaintiffs reallege and reaver paragraphs 1 – 61 and 81 – 116 and further allege as follows.

128. PHI KAPPA PSI FRATERNITY, INC. through its words and actions, presented and promoted the officers, members, and chapter advisor of PHI KAPPA PSI, CORNELL CHAPTER as its apparent agents. It did so in a variety of ways including but not limited to the following:

- a. Representing on the fraternity's website that membership in PHI KAPPA PSI could be obtained via membership in a chapter such as PHI KAPPA PSI, CORNELL CHAPTER.
- b. Listing the PHI KAPPA PSI, CORNELL CHAPTER on the PHI KAPPA PSI website's "Chapter Locator Map" as one of the fraternity's official chapters.
- c. Creating the appearance, by virtue of its uniform use of colors, letter and symbols, that PHI KAPPA PSI, CORNELL CHAPTER, including its officers, members, and chapter advisor, are one and the same with PHI KAPPA PSI.
- d. Promoting PHI KAPPA PSI, CORNELL CHAPTER events and its members on the PHI KAPPA PSI website.

129. Antonio Tsialas had an interest in joining a fraternity at CORNELL. He knew that PHI KAPPA PSI had a national "brotherhood" of young men and alumni and he believed that the members of the CORNELL CHAPTER were representatives of and part of that national brotherhood. He also believed that, should he become a member of the fraternity, he would develop relationships that would benefit him at CORNELL and later in life. Admission into the fraternity, however, would require the unanimous affirmative vote of its undergraduate members and, to get that, Antonio would have to do whatever the brother expected of him.

130. Antonio Tsialas decided to attend the fraternity party on October 24, 2019 in reliance upon these representations and with the belief that it would give him the opportunity to

consider whether he might want to join PHI KAPPA PSI and its national “brotherhood” at a later time.

131. At all times material hereto, the officers, members and chapter advisor of PHI KAPPA PSI FRATERNITY, INC., including the individually named Defendants herein, were acting in the course and scope of their agency relationship with PHI KAPPA PSI FRATERNITY, INC.

132. Accordingly, PHI KAPPA PSI is vicariously liable for the negligence of the individual defendants named herein.

133. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

134. As a direct and proximate result of said negligence, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT XIII
VIOLATION OF NEW YORK STAT. §11 – 100 AGAINST
SCHERR, ROHE, GRANATH, BERMAN, BERKENFELD, RUSSO, HANUCH,
PHI KAPPA PSI FRATERNITY, INC. and
NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC.

135. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

136. New York Stat. §11-100 provides that the parents of a person who was under the age of 21 shall have a right of action against anyone who knowingly caused the intoxication of the parents’ underage child by unlawfully furnishing or unlawfully assisting in procuring alcoholic beverages for the child if they had knowledge or reasonable cause to believe that such person was under the age of 21 years.

137. Defendants SCHERR, ROHE, GRANATH, BERMAN, BERKENFELD, RUSSO, HANUCH, PHI KAPPA PSI FRATERNITY, INC. and NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC., collectively and individually, actively participated in the planning and implementation of the “Christmas in October” event at the PHI KAPPA PSI chapter house on October 24, 2019. They did so knowing that alcohol would be given to freshmen who were under the age of 21, including Antonio Tsialas, in violation of New York Statute §11-100.

138. Said defendants carefully planned the events of that evening knowing that Antonio Tsialas and the other handpicked freshmen would participate in the drinking games in order to not be embarrassed or feel socially ridiculed for not participating. They knew that the peer pressure they would exert on the new freshmen would cause them to go along with the risky behavior that these defendants had created and, in doing so, it was foreseeable that Antonio would be harmed in some way. They knew that, as the “in-group,” they would be able to coerce the freshmen, who aspired to be accepted and possibly join the fraternity, to drink alcohol in excess which they would not otherwise have done of their own free will.

139. These defendants knew that, in the absence of the peer pressure they created, Antonio Tsialas would have never voluntarily consumed a combination of beer, vodka, rum and wine within a two-hour period of time. They knew that he would only do that if he, like so many hazing victims before him, felt the peer pressure that is the hallmark of every fraternity hazing event.

140. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

141. As a direct and proximate result of said statutory violation, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

COUNT XIV
NEGLIGENCE PER SE – HAZING STATUTE AGAINST
SCHERR, ROHE, GRANATH, BERMAN, BERKENFELD, RUSSO, HANUCH
PHI KAPPA PSI FRATERNITY, INC. and
NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC.

142. The Plaintiffs reallege and reaver paragraphs 1 – 61 and further allege as follows.

143. New York Stat. §120.16 provides that it is a criminal offense for any person, in the course of another person's affiliation with an organization, to recklessly engage in conduct which creates a substantial risk of physical injury to such other person.

144. Antonio Tsialas was a member of the class of persons that said statute was intended to protect.

145. Said statute imposed upon defendants SCHERR, ROHE, GRANATH, BERMAN, BERKENFELD, RUSSO, HANUCH, PHI KAPPA PSI FRATERNITY, INC., and NEW YORK ALPHA OF PHI KAPPA PSI ASSOCIATION, INC., a duty of due care in their actions towards Antonio Tsialas.

146. Said defendants breached that duty and were negligent in at least the following respects:

- a. In planning and creating the hazing event known as "Christmas in October" where Antonio Tsialas was invited to attend and was therefore exposed to a foreseeable risk of substantial harm or physical injury.
- b. In exerting peer pressure so that Antonio Tsialas would participate in the drinking games at the "Christmas in October" event.

c. In failing to ensure that Antonio Tsialas was safely returned to his dormitory after participating in the drinking games and being hazed by the defendants.

147. The negligence of this defendant was a substantial factor in causing all of the injuries, damages, harms, losses and wrongful death suffered by the Plaintiffs and their son without any negligence on the part of the decedent or the Plaintiffs contributing thereto.

148. As a direct and proximate result of said statutory violation, Antonio Tsialas died and the Plaintiffs were caused to suffer the damages described above.

WHEREFORE, the Plaintiffs demand judgment against the Defendants, jointly and severally, on each of the causes of action set forth hereinabove in amounts in excess of the jurisdiction of all lower courts who might otherwise have jurisdiction, together with interest as allowed by statute and costs and disbursements of this action and further demand a trial by jury of all issues triable as of right by a jury.

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