

IN THE SEVENTH JUDICIAL DISTRICT
DISTRICT COURT OF DOUGLAS COUNTY, KANSAS
CIVIL DEPARTMENT

N. MILLER,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No.:
	)	
ALUMNI OF KANSAS CHAPTER	)	
OF DELTA UPSILON,	)	
	)	
KANSAS CHAPTER OF DELTA	)	
UPSILON EDUCATIONAL	)	
FOUNDATION,	)	JURY TRIAL DEMANDED
	)	
DELTA UPSILON INTERNATIONAL	)	
FRATERNITY, INC.,	)	
	)	
Mark Wappler	)	Advanced: 6572
	)	
Kale Swanson	)	
	)	
Daniel Smith	)	
	)	
Hayden Lontz	)	
	)	
Teddy Janson	)	
	)	
Mason Schutt	)	
	)	
Benjamin Fazlić	)	
	)	
Archie Carruthers	)	
	)	
Luke Bolander	)	
	)	
Defendant(s).	)	
	)	

Pursuant to K.S.A. Chapter 60

PETITION FOR DAMAGES

Plaintiff, N. Miller, by and through his counsel of record, asserts the following in support
of his Petition against Defendants:

PARTIES

1. Plaintiff is a citizen and resident of the State of Kansas and, at all times relevant, was a student at The University of Kansas and a prospective member (hereinafter, “pledge”) of the Kansas Chapter of the Delta Upsilon Fraternity.

2. Defendant Alumni of Kansas Chapter of Delta Upsilon is a domestic not-for-profit corporation organized and existing under the laws of the State of Kansas, with its principal place of business/office located within the State of Kansas, specifically, Lawrence, Kansas, and may be served by service upon its registered agent, Rob Barleen at the address of 12417 Aberdeen Road, Leawood, Kansas 66209.

3. Defendant Kansas Chapter of Delta Upsilon Educational Foundation is a domestic not-for-profit corporation organized and existing under the laws of the State of Kansas, with its principal place of business/office located within the State of Texas, specifically, The Woodlands, Texas, and may be served by service upon its President, Grant Kaufman at the address of 319 Dole Dr., Lawrence, Kansas 66049.

4. Defendant Delta Upsilon International Fraternity, Inc., is a domestic, not-for-profit corporation organized and existing under the laws of the State of Indiana, with its principal place of business/office located within the State of Indiana, specifically, Indianapolis, Indiana, and may be served by service upon its registered agent, Justin Kirk at the address 8705 Founders Rd., Indianapolis, Indiana 46268.

5. Defendant Mark Wappler (“Fraternity President”) was, at all times relevant, the elected or acting president of the Kansas Chapter of the Delta Upsilon Fraternity during the Fall 2025 Semester and exercised authority over fraternity operations, DU active fraternity member (hereinafter, “active member”) conduct, and pledge activities. Defendant Wappler is an adult individual with a last known address at 10926 Cedarberry Pl., Saint Louis, Missouri 63123, who

committed a tortious act in Kansas within the meaning of K.S.A. 60-308(b), and may be served with process at the above address pursuant to K.S.A. 60-308.

6. Defendant Kale Swanson (“Risk Manager”) was, at all times relevant, responsible for risk management, safety policies, compliance, and enforcement at the Kansas Chapter of the Delta Upsilon Fraternity during the Fall 2025 Semester. Defendant Swanson is an adult individual with a last known address at 3371 SW Kessler Dr., Unit 5102, Lee’s Summit, Missouri 64081, who committed a tortious act in Kansas within the meaning of K.S.A. 60-308(b), and may be served with process at the above address pursuant to K.S.A. 60-308.

7. Defendant Daniel Smith (“House Manager”) was, at all times relevant, serving as the officer responsible for all house management conduct, including mandatory house cleaning activities by pledges and oversight of any activities taking place in the house, for the Kansas Chapter of the Delta Upsilon Fraternity during the Fall 2025 Semester. Defendant Smith is an adult individual with a last known address at 25740 W Sunnymere Dr., Plainfield, Illinois 60585, who committed a tortious act in Kansas within the meaning of K.S.A. 60-308(b), and may be served with process at the above address pursuant to K.S.A. 60-308.

8. Defendant Hayden Lontz (“Pledge Master”) was, at all times relevant, serving as the officer responsible for all pledge “education”, activities (including hazing activities), and pledge discipline for the Kansas Chapter of the Delta Upsilon Fraternity during the Fall 2025 Semester. Defendant Lontz is an adult individual with a last known address at 9412 S Sandusky Pl., Tulsa, Oklahoma 74137-2328, who committed a tortious act in Kansas within the meaning of K.S.A. 60-308(b), and may be served with process at the above address pursuant to K.S.A. 60-308.

9. Defendants Teddy Janson, Mason Schutt, Benjamin Fazlić, and Archie Carruthers (“Pledge Trainers”) were, at all times relevant, serving as officers responsible for carrying out all pledge “education”, activities (including hazing activities), and pledge discipline, both at the direction of Defendant Lontz and of their own authority and direction, for the Kansas Chapter of the Delta Upsilon Fraternity during the Fall 2025 Semester. These Defendants are adult individuals who each committed tortious acts in Kansas within the meaning of K.S.A. 60-308(b), and pursuant to K.S.A. 60-308 may be served with process at the following last known addresses:

- a. Defendant Janson: 1416 Kendon Dr, Des Peres, Missouri 63131
- b. Defendant Schutt: 208 W 70th St, Kansas City, Missouri 64113
- c. Defendant Fazlić: 12519 Cinema Ln, Saint Louis, Missouri 63127
- d. Defendant Carruthers: 7401 Nottingham Ave., Saint Louis, Missouri 63119

10. Defendant Luke Bolander was, at all times relevant, an active member at the Kansas Chapter of the Delta Upsilon Fraternity during the Fall 2025 Semester. Defendant Bolander is an adult individual with a last known address at 7828 Town Site Road, Winchester, Wisconsin 54557, who committed a tortious act in Kansas within the meaning of K.S.A. 60-308(b), and may be served with process at the above address pursuant to K.S.A. 60-308.

JURISDICTION AND VENUE

11. Venue is proper in Douglas County, Kansas, and this Court has jurisdiction over the parties to this action with regard to the negligent and tortious acts resulting in injury to Plaintiff as the conduct alleged herein occurred on the property located in Lawrence, Douglas County, Kansas; the injuries alleged herein were suffered there; and the DU Defendants exercised control over the Kansas chapter in Kansas.

AGENCY

12. At the time of the negligent acts complained of herein, and at all times mentioned, Defendant Alumni of Kansas Chapter of Delta Upsilon, Defendant Kansas Chapter of Delta Upsilon Educational Foundation, and Defendant Delta Upsilon International Fraternity, Inc. (hereinafter "DU Defendants"), as well as the Fraternity President, Risk Manager, House Manager, Pledge Master, and Pledge Trainers (hereinafter "Fraternity Officer Defendants") were acting by and through their active members, servants, employees, and/or agents, actual or ostensible, at the time of the negligent acts complained of herein, and at all times mentioned, the DU Defendants' and Fraternity Officer Defendants' active members, servants, employees and/or agents were acting in the course and scope of their agency for the DU Defendants and Fraternity Officer Defendants.

13. Additionally, at all times relevant, DU Defendants and Fraternity Officer Defendants had control over, the right to discipline, chartering and policy setting power over, and prior knowledge of hazing activity by active members through the 2018 ban and 2025 KU findings.

14. At all times relevant, the Fraternity Officer Defendants acted individually and in concert with one another and other active members in directing, authorizing, facilitating, encouraging, and/or permitting pledge hazing activities and hazing "appointments" while retaining the ability and authority to stop such activities.

15. The Fraternity Officers Defendants are liable for the acts and omissions of the active members under principles including agency, apparent authority, ratification, and/or right of control, and further for their own negligent acts and omissions in directing, authorizing, facilitating, encouraging, permitting, and having oversight over pledge hazing activities while retaining the ability and authority to stop such activities as alleged herein.

16. The DU Defendants are liable for the acts and omissions of the Fraternity Officer Defendants and other active members under principles including agency, apparent authority, ratification, and/or right of control, and further for their own negligent acts and omissions in oversight, training, monitoring, and enforcement as alleged herein.

FACTS OF THE OCCURRENCE

17. At all times relevant, the DU Defendants owned, operated, managed, oversaw, and/or otherwise exercised control over the property located at 1025 Emery Rd., Lawrence, Kansas.

18. At all times relevant, the DU Defendants operated, oversaw, and/or otherwise managed a fraternity organization, offering membership to young men, including those attending the University of Kansas.

19. In promoting themselves, the DU Defendants encouraged and solicited membership through advertising that "fraternity membership is one of the most valuable extra-curricular experiences available to college men," that the DU Defendants in particular offered "a modern fraternity experience [for] Building Better Men," and that their organization abided by core, founding principles of "the promotion of friendship," "the development of character," "the diffusion of liberal culture," and "the advancement of justice" in their efforts to encourage and solicit membership.

20. The DU Defendants further promoted their organization as one which "builds good men who are difference makers," and that the "experiences we offer are relevant and better prepare men for the world than the typical college experience."

21. Furthermore, the DU Defendants promoted themselves as the "world's oldest nonsecret, non-hazing fraternity," and made it a point of emphasis in their promotion of

themselves, their fraternity, and their desire to encourage young men to join their fraternity in advertising that their fraternity was a "non-hazing fraternity."

22. Plaintiff relied on DU Defendants' promotions and assertions of their commitment to offering a modern, non-hazing fraternity experience, as reiterated by and through their officers/active members/employees/agents during the new member solicitation or "rushing" process, in making his decision to join the Kansas Chapter of Delta Upsilon.

23. At all times relevant, the DU Defendants authored, set, controlled, directed, and/or had the power to author, set, control and/or direct DU Defendants' operating procedures, policies, and officer/active member/employee/agent training, including but not limited to authoring "The Ritual Book" and other requirements for admissions, operations, and oversight as well as the "Policies and Procedures Manual" for the fraternity.

24. At all times relevant, the DU Defendants likewise set, controlled, directed and/or otherwise had the power to set, control, and/or direct the access to a Charter for the fraternity location operating at the University of Kansas, including but not limited to through procedures, policies, and guidelines, such as "Chartering Requirements" and "Men of Merit Chapter Standards."

25. At all times relevant, the DU Defendants possessed the authority to supervise the active members of the DU Chapter at the University of Kansas and possessed the authority to enforce rules against hazing pledges and to intervene and prevent hazing of pledges by active members of the DU Chapter at the University of Kansas.

26. Previously, in 2018, the DU Defendants were aware of wide-spread, rampant hazing behaviors conducted by its members/agents/employees within the chapter at the University of Kansas, including pledges being subjected to sleep deprivation, physical violence,

and forced alcohol consumption by active members/officers/agents/employees of the DU Defendants. Those pledges were then retaliated against in cruel, inhumane manners by those same active members/officers/agents/employees of the DU Defendants for bringing such rampant hazing behavior and conduct to the attention of authorities and the University of Kansas.

27. As the result of such atrocities which had been occurring at the chapter/charter which was operated/controlled by the DU Defendants, the charter/chapter at the University of Kansas lost its charter and was banned for four (4) years, not re-opening until 2022.

28. As of the date of Plaintiff's pledge enrollment in 2025, the DU Defendants knew or reasonably should have known that pledges, including Plaintiff, would be subjected to hazing by active members and officers absent reasonable supervision, enforcement, and intervention.

29. As of the date of Plaintiff's pledge enrollment in 2025, the DU Defendants were aware of the prior hazing conduct and culture of dehumanization of pledges which had become widespread and led to the charter/chapter being banned in 2018. Nonetheless, Plaintiff was subjected to the very same such hazing, dehumanization, and acts of violence as which had led to the chapter/charter having been banned in the first place.

30. As of the date of Plaintiff's pledge enrollment and throughout the events described herein, the Fraternity Officer Defendants likewise knew or should have known of the chapter's prior hazing history and the foreseeable risk that pledges would be subjected to hazing absent reasonable supervision, enforcement, and intervention.

31. At all times relevant herein, the Fraternity Officer Defendants personally took part in and oversaw, directed, authorized, facilitated, encouraged, and permitted other active members to engage in physically and mentally injurious hazing activities against Plaintiff and other pledges.

32. In more detail, Plaintiff was subjected to ongoing, systematically abusive hazing activity beginning in August of 2025, including scheduled hazing "appointments" which were what the active members/agents/employees of DU Defendants and Fraternity Officer Defendants dubbed their hazing rituals, throughout which Plaintiff was subjected to such acts which include but are not limited to the following:

- a. Being subjected to/ordered to drink repulsive alimentary concoctions made from unknown food substances, including a smoothie made with a ground up hamburger on August 25, 2025, and a cake injected with profuse amounts of hot sauce on a date to be determined through discovery, at the direction of Defendant Fazlić;
- b. Being subjected to/ordered to drink alcohol on numerous occasions, including: during "testing" incidents in which Plaintiff was forced to binge drink liquor if he failed to remember historical facts about the fraternity or "sounded rude" to active members, scheduled "appointments" as described above, an incident in which Plaintiff and other pledges were locked in a room and forced to consume 60 beers between them while completing active member's school assignments, and another incident in early September in which Plaintiff was forced to drink a beer containing a large dose of laxatives by Defendant Schutt;
- c. Being repeatedly subjected to/ordered to endure sensory deprivation, including being kept in a basement in pitch-black/no-light conditions, where music was blared at deafening volumes from a large speaker placed near Plaintiff's head;

- d. Being subjected to/ordered to endure multiple forms of abusive physiological punishment, including having his mattress repeatedly flipped and stripped of its sheets and bedding on August 12, 2025, being repeatedly ordered to perform prolonged “wall-sit” exercises while standing on slippery floors and plank exercises while supporting himself with his elbows known as “bows and toes,” and having ice cubes thrown at him from behind while he was forced to keep his face pressed against a wall;
- e. Having his bed/bedding urinated onto on August 12, 2025 by unidentified active members, who snidely claimed to have been “sleep-walking”;
- f. Being subjected to/ordered to endure waterboarding torture techniques including having his face submerged in a 32-gallon trash can which had first been contaminated with feces before being filled with ice-cold water, namely at the direction of Defendants Janson and Carruthers;
- g. Being subjected to/ordered to endure spontaneous “appointments” as described above, including one such “appointment” on September 24, 2025, in which Plaintiff was subjected to the above-described forced consumption of alcohol and repulsive alimentary concoctions, blasting of loud music in pitch darkness, “wall-sits” and “bows and toes,” pelting with ice cubes, and waterboarding with feces contaminated ice water;
- h. Being forcibly put into a chokehold, brought to the ground, and choked by Defendant Bolander; and
- i. Being subjected to enduring retaliation and harassment by members even after Plaintiff dissociated with the fraternity, including being harassed and shoved

in public, having substances smeared onto the door of his apartment after active members discovered where Plaintiff was living following Plaintiff's moving out of the fraternity house, being sent messages along the lines of "we know where you live" by active members who had again discovered where Plaintiff lived after Plaintiff left the apartment and moved into a student dormitory, active members blasting loud music and screaming insults from the hallway of Plaintiff's sister's apartment around 3:00 a.m. on March 6, 2026, after they discovered that Plaintiff often spent time and slept there, repeated sexual threats and comments being made about Plaintiff's sister to him, and online harassment including a death threat being made against Plaintiff on an anonymous social media platform known as "Yik Yak" on February 26, 2026.

33. In addition to personally taking part in hazing activities, Defendant Lontz, as Pledge Master, and Defendants Janson, Schutt, Fazlić, and Carruthers, Pledge Trainers, had explicit authority over most all pledge activities, including, most notably, all hazing activities or events, and exercised that authority with the approval of and in conjunction with the rest of the Fraternity Officer Defendants, including Defendant Wappler, President.

34. Upon information and belief, Defendant Wappler exhibited his authorization, enthusiastic approval, and even his desire for the escalation of such hazing activities and events by angrily instructing Defendant Lontz, Pledge Master, to start "doing his job" in regard to conducting hazing activities and events, implying that the level of hazing activity which had been going on at that time was not sufficiently extreme in Defendant Lontz's opinion.

35. The Fraternity Officer Defendants, by and through their active members/agents/employees, including but not limited to the President, the Pledge Master, and

Pledge Trainers, were not only knowledgeable of but active participants in the hazing activities which occurred and caused injury to Plaintiff.

36. The above-described hazing “appointments” were organized, scheduled, and carried out under the authority and/or directly by the Fraternity Officer Defendants, including but not limited to the President, the Pledge Master, and Pledge Trainers, all of whom thereby exhibited direct authority and oversight over any hazing activities carried out by non-officer active members.

37. Alternatively, any of the Fraternity Officer Defendants who did not personally take part in or otherwise personally authorize the hazing activities and events knew or reasonably should have known of the hazing practices occurring during Plaintiff’s pledgship period and nevertheless failed to stop the conduct.

38. After any such hazing activities or events occurred, the Fraternity Officer Defendants failed to take reasonable corrective action, including failing to promptly investigate, discipline responsible members, implement safeguards, and/or report the conduct to the DU Defendants, the University, and/or law enforcement.

39. The Fraternity Officer Defendants further permitted and/or failed to stop the above-described retaliation and harassment directed at Plaintiff by active members after he dissociated from the fraternity, despite having the authority and ability to intervene and prevent further harm.

40. As the result of the hazing to Plaintiff, as well as other pledges to the fraternity, the University of Kansas Student Conduct and Community Standards office initiated an investigation beginning on October 6, 2025, which revealed "verified reports of hazing with the

Kansas Chapter of Delta Upsilon, which occurred during the fall 2025 semester." The report detailed:

Throughout the investigation interviews, members provided a substantial amount of information about the new member experience in Delta Upsilon. Interviewees confirmed appointments, or lineups occurred multiple times in which new members were taken to the basement. New members were told to face the wall with their noses touching the wall, the lights were turned off, loud music was played, and beer was poured over them. Several new members shared additional information regarding forced physical activity including planks and intense workouts, forced consumption of alcohol and undesirable food concoctions, pre-determined 'pledge roles,' and sleep deprivation.

41. The results of the University of Kansas' investigation into the hazing allegations against the DU Defendants included the following findings:

- a. Section VI A 9. Behavior that violates the core value of Respect – Hazing; **Responsible**; and
- b. Section VI A 4. Behavior that violates the core value of Respect – Harm to Persons; **Responsible**.

42. Having investigated and confirmed the above-referenced incidents of hazing, the University of Kansas placed DU Defendants, and consequently all Defendants, on a two-year disciplinary probation until the conclusion of the Spring 2028 semester and required they comply with the Kansas Chapter Redevelopment Plan 2026-2028, outlined by Defendant Delta Upsilon International Fraternity.

43. Upon information and belief, and prior to August 2025, instances of hazing were made known to DU Defendants, sufficient so that the DU Defendants knew or should have known that such instances were often occurring and continually posed a threat to those on DU Defendants' property.

44. Furthermore, the DU Defendants and the Fraternity Officer Defendants, by and through their agents, servants, members, and/or employees, knew or should have known that

Plaintiff was being subjected to the above-referenced hazing activity and hazing "appointments", and further subjected to physical bodily harm and injury as well as mental/psychological injury.

45. In which case, the DU Defendants were aware of the conduct occurring on their property, for a sufficient time prior to the hazing "appointments" occurring to have taken action to avert and avoid the injuries and harm to Plaintiff, particularly since at all times maintaining the right to exclusive control over the property where such injuries and harm occurred.

46. As a result of the above-described hazing activities and events, as directed, authorized, facilitated, encouraged, and/or permitted by the Fraternity Officer and DU Defendants, and as a result of the Fraternity Officer and DU Defendants' failure to properly monitor, train, and supervise against such hazing activities, or to author, enact, or otherwise implement safety and security procedures, rules, and policies so as to protect pledges including Plaintiff from hazing activities, Plaintiff sustained the following physical and emotional injuries:

- a. Extreme and severe emotional distress as a cumulative effect of the hazing activities carried out against him, including ongoing psychological trauma from being waterboarded; from being subjected to prolonged darkness while deafeningly loud music was played near his head, having his mattress and bedding flipped and stripped persistently; being urinated on or near to; being forced to consume and/or be exposed to harmful substances including alcohol and repulsive alimentary concoctions, and fecal matter within a trash can of ice water; from being subjected to humiliating and painful exercises such as "wall-sits" on slippery floors and "bows and toes"; and from continued harassment including death threats made against him online and sexual comments and threats being made regarding Plaintiff's older sister;

- b. Significant physical injuries occurring simultaneously or shortly after the above referenced emotional injuries, including bloodshot eyes, sore nose and throat, and a bacterial sinus infection as the result of being waterboarded, which caused Plaintiff to visit Watkins Memorial Health Center to receive care and medication for those injuries; scratches, bruising, sores, and soreness to his legs, feet, back, arms, and elbows as a result of being subjected to humiliating exercises such as “wall-sits” and “bows and toes,” resulting in Plaintiff being nearly too sore to walk to class; pain from being placed in a chokehold; pain from being pelted with ice cubes by active members; and significant abdominal and gastro-intestinal pain from being forced to ingest alcohol, repulsive alimentary concoctions, and heavy doses of laxatives.

**COUNT I – ASSAULT AND BATTERY
(Against all Fraternity Officer Defendants; Defendant Bolander)**

47. Plaintiff incorporates all previously asserted and alleged Paragraphs, above, as if fully set forth herein.

48. On August 25, 2025, Plaintiff was ordered to drink a repulsive concoction containing ground up hamburger, and on a later date was ordered to eat a cake infused with a copious amount of hot sauce at the direction of Defendant Fazlić; on an early September date, Defendant Schutt forced Plaintiff to drink a beer dosed with a copious amount of laxatives.

49. On several different occasions, including on September 24, 2025, Plaintiff was subjected/ordered to endure prolonged, painful, and humiliating exercises, including “wall-sits” and “bows and toes” at the collective, intentional direction of the Fraternity Officer Defendants and other active members, and as a result of physical contact with walls and the floor therefrom, Plaintiff suffered scratches, bruising, sores, and soreness throughout his body.

50. On September 24, 2025, several unidentified active members intentionally threw ice cubes at Plaintiff while he was instructed to face and stand directly in front of a wall, thereby preventing Plaintiff from identifying the responsible parties, and Plaintiff was struck by those ice cubes.

51. On September 24, 2025, Defendants Janson and Schutt intentionally engaged in waterboarding the Plaintiff by holding him by the legs and submerging him head-first into a large trash can filled with ice cold water and contaminated with feces, and keeping Plaintiff submerged to simulate the sensation of drowning.

52. On a date to be determined through discovery, upon seeing Plaintiff in public following his dissociating from the fraternity, one active member intentionally approached and then shoved Plaintiff.

53. Defendant Bolander intentionally placed Plaintiff in a chokehold, holding Plaintiff's neck in the crux of his arm, brought Plaintiff to the ground while maintaining this chokehold, and proceeded to choke Plaintiff for several seconds, causing pain and discomfort to Plaintiff, on a date to be determined through discovery.

54. In addition to the several Fraternity Officer Defendants who personally took part in the above-described instances of assault and battery of Plaintiff, the remaining Fraternity Officer Defendants who did not personally engage in such conduct exhibited actual authorization of such conduct by directing, facilitating, encouraging, and/or permitting such conduct directly to those Defendants who personally carried it out.

55. Additionally, any Fraternity Officer Defendants who did not personally engage in the above-described instances of assault and battery of Plaintiff ratified such actions after gaining actual knowledge of it by failing to take reasonable corrective actions, including failing to

promptly investigate, discipline responsible members, implement safeguards, and/or report the conduct to the DU Defendants, the University, and/or law enforcement, and by failing to prevent further retaliation and harassment directed at Plaintiff by active members after he dissociated from the fraternity.

56. The Fraternity Officer Defendants and Defendant Bolander's actions caused Plaintiff to be in apprehension of imminent bodily harm.

57. The Fraternity Officer Defendants and Defendant Bolander's physical contacts with the Plaintiff were physically harmful and severely emotionally offensive to Plaintiff.

58. As a direct and proximate result of Defendant's conduct as described herein, Plaintiff has sustained the damages set forth in Paragraph 46.

59. Defendant's conduct as described above was outrageous due to his evil motive or reckless indifference to the rights of others, thereby justifying the imposition of punitive damages.

WHEREFORE, Plaintiff prays for Judgment on Count I against The Fraternity Officer Defendants and Defendant Bolander for an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00), together with pre and post judgment interest as allowed by law, any costs incurred herein, and for such other and any further relief this Court deems fair, just, and equitable.

**COUNT II – NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS
(Against all Fraternity Officer Defendants; Defendant Bolander)**

60. Plaintiff incorporates all previously asserted and alleged Paragraphs, above, as if fully set forth herein.

61. At all times relevant, The Fraternity Officer Defendants and Defendant Bolander had a duty of care to safeguard against reasonably foreseeable harms to Plaintiff, to refrain from

hazing Plaintiff, and to protect Plaintiff from harm arising from their supervisory role, undertaking, and special relationship with Plaintiff and other pledge members.

62. As described more fully in Paragraph 46, Plaintiff has suffered numerous physical injuries as a result of Defendant's negligence.

63. Plaintiff also suffers from extreme, severe, and genuine emotional distress as a result of Defendant's negligence. Plaintiff fears and experiences substantial upset from: traumatic memories he incurred from the absurdly abusive conduct he was subjected to including being waterboarded; being forced to consume alcohol and repulsive alimentary concoctions on multiple occasion under coercive conditions; being subjected to sensory-deprivation/pitch-black conditions while having music blared from a large speaker near his head; taking part in humiliating and painful exercises such as “wall-sits” and “bows and toes”; from continued harassment and retaliation against him, both online and in person, including death threats made against him; and from past and present harassment and threats regarding the sexual abuse of his sister, another University of Kansas student, made both to him directly and his sister indirectly.

64. Another reason for Plaintiff’s emotional distress is his fear of general retribution from the University of Kansas student and fraternal communities for his role as a “whistleblower” regarding his coming forth with these allegations, as evidenced by his need to transfer from the University of Kansas to the University of Missouri following completion of his freshman year of undergraduate studies.

65. Yet another reason for Plaintiff’s emotional distress is the direct negative effect that his being hazed had on his academic success, as caused by being ordered/subjected to long sleepless nights and very limited studying time, resulting in his grades slipping significantly – a

permanent detriment to Plaintiff's undergraduate cumulative grade point average, which could injure Plaintiff's career success.

66. The physical injuries Plaintiff suffered, including but not limited to bloodshot eyes, a sore throat and nose, and a bacterial sinus infection from his being waterboarded, were part and parcel of Defendants' negligence and appeared either simultaneously or within a short span of time after the emotional disturbance.

67. The Fraternity Officer Defendants and Defendant Bolander acted both intentionally and with reckless disregard to the damage they have caused and are continuing to cause Plaintiff.

68. The actions of the Fraternity Officer Defendants and Defendant Bolander, including waterboarding plaintiff, and the litany of other hazing activities carried out against Plaintiff, plainly constitute extreme, outrageous, and utterly intolerable conduct.

WHEREFORE, Plaintiff prays for Judgment on Count II against The Fraternity Officer Defendants and Defendant Bolander for an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00), together with pre and post judgment interest as allowed by law, any costs incurred herein, and for such other and any further relief this Court deems fair, just, and equitable.

**COUNT III – NEGLIGENCE
(Against all Fraternity Officer Defendants)**

69. Plaintiff incorporates all previously asserted and alleged Paragraphs, above, as if fully set forth herein.

70. The Fraternity Officer Defendants owed Plaintiff a duty to exercise reasonable care in planning, supervising, and controlling pledge activities and fraternity events to avoid foreseeable physical and emotional harm, including a duty to adopt, implement, and enforce

policies prohibiting hazing, assaultive conduct, dangerous physical conditioning, and other unreasonable risks of harm to pledges and members.

71. The Fraternity Officer Defendants further owed Plaintiff a duty to intervene to stop known or reasonably foreseeable hazing and abusive practices, to train members on safety and anti-hazing requirements, to monitor pledge activities, and to ensure that pledge activities complied with applicable law and fraternity rules.

72. The Fraternity Officer Defendants breached their duties by participating in, authorizing, permitting, encouraging, directing, failing to supervise, and/or failing to stop hazing activities, which were inherently dangerous and abusive as described more fully above, including but not limited to:

- a. Subjecting/ordering Plaintiff to binge-drink alcohol and repulsive alimentary concoctions;
- b. Subjecting/ordering Plaintiff to endure sensory deprivation, including being put against a basement wall in pitch-black/no-light conditions, where music was blared at deafening volumes;
- c. Subjecting/ordering Plaintiff to endure extreme physical abuse including waterboarding; and
- d. Subjecting/ordering Plaintiff to endure a litany of physically and emotionally abusive hazing activities, events, and punishments as described more fully above;

73. The Fraternity Officer Defendants additionally breached their duties by failing to implement reasonable anti-hazing policies, failing to train members regarding hazing

prohibitions, failing to monitor pledge activities, failing to investigate reports or patterns of abuse, and failing to discipline members who violated safety rules and laws.

74. After Plaintiff dissociated from the fraternity, the Fraternity Officer Defendants further breached their duties and ratified the above-described wrongful behavior by failing to prevent or stop the foreseeable retaliation and harassment, as more fully described above, which was carried out against Plaintiff.

75. Moreover, the Fraternity Officer Defendants breached their duty of care to Plaintiff, and Plaintiff's injuries were foreseeable and directly and proximately caused by the negligence and carelessness of Fraternity Officer Defendants in the following particulars, to wit:

- a. Failing to properly monitor, train, and supervise their active members, agents, and servants regarding pledge activities, recruitment, and membership activities;
- b. Allowing, fostering, and/or encouraging hazing activities on the premises;
- c. Failing to remove those members, agents, servants and/or employees engaging in the hazing activities on the premises;
- d. Failing to author, enact, uphold or otherwise implement safety and security procedures, rules, and policies so as to protect pledges/prospective members from hazing activities which are reasonably anticipated to cause harm;
- e. In negligently and carelessly failing to properly train and educate members, servants, agents, and/or employees with respect to recognition and prevention of hazing behaviors and activities which are reasonably anticipated to cause harm; and
- f. Other negligent actions and/or omissions to be supplemented after discovery.

76. The Fraternity Officer Defendants' breaches directly and proximately caused or contributed to causing Plaintiff to suffer the severe physical and emotional injuries and damages as set forth more fully in Paragraph 46.

WHEREFORE, Plaintiff prays for judgment on Count III against the Fraternity Officer Defendants for an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00), together with pre and post judgment interest as allowed by law, any costs incurred herein, and for such other and any further relief this Court deems fair, just, and equitable.

**COUNT IV - Negligence *Per Se*
(Against all Fraternity Officer Defendants)**

77. Plaintiff incorporates all previously asserted and alleged Paragraphs, above, as if fully set forth herein.

78. Fraternity Officer Defendants, by and through their active members, agents, servants, and/or employees, did engage in hazing conduct against Plaintiff, subjecting Plaintiff to physical and emotional harm and from which it was reasonably anticipated that physical and emotional harm would result.

79. Per K.S.A. 21-5418, "hazing is recklessly coercing, demanding or encouraging another person to perform, as a condition of membership in a social or fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death or which is done in a manner whereby great bodily harm, disfigurement or death could be inflicted."

80. Fraternity Officer Defendants' negligence constitutes negligence *per se* for violating K.S.A. 21-5418 by participating in, authorizing, permitting, encouraging, directing, failing to supervise, and/or failing to stop the reckless coercion/ordering of Plaintiff to engage in

or be exposed to the intentional and wrongful act carried out by the Fraternity Officer Defendants, Defendant Bolander, and other active members, as more fully described above, as a condition of membership into their fraternity, which would reasonably be expected to result in great bodily harm or was done in a manner whereby great bodily harm could have been inflicted.

81. As a result of Fraternity Officer Defendants' negligence, Plaintiff suffered physical injuries as well as psychological injuries and emotional distress, and Plaintiff suffered damages, including but not limited to pain, suffering, and mental anguish.

WHEREFORE, Plaintiff prays for judgment on Count IV against the Fraternity Officer Defendants for an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00), together with pre and post judgment interest as allowed by law, any costs incurred herein, and for such other and any further relief this Court deems fair, just, and equitable.

**COUNT V – NEGLIGENCE
(Against all DU Defendants)**

82. Plaintiff incorporates all previously asserted and alleged Paragraphs, above, as if fully set forth herein.

83. As a pledge to DU Defendants' fraternity organization and a guest/invitee to the property, the DU Defendants had formed a special relationship with Plaintiff sufficient so that they owed him a duty of care and affirmative duties in the protection of his person.

84. The DU Defendants further had a special relationship with their officers /servants/agents /senior members/active members/employees sufficient so as to owe an obligation and duty to control the same with respect to the activities on the premises.

85. The DU Defendants breached their duty of care to Plaintiff, and Plaintiffs injuries were foreseeable and directly and proximately caused by the negligence and carelessness of DU Defendants in the following particulars, to wit:

- a. Failing to properly monitor, train, and supervise their more senior members, agents, and servants regarding pledge activities, recruitment, and membership activities;
- b. Allowing, fostering, and/or encouraging hazing activities on the premises;
- c. Failing to remove those members, agents, servants and/or employees engaging in the hazing activities on the premises;
- d. Failing to author, enact, or otherwise implement safety and security procedures, rules, and policies so as to protect pledges/prospective members from hazing activities which are reasonably anticipated to cause harm;
- e. In negligently and carelessly failing to properly train and educate members, servants, agents, and/or employees with respect to recognition and prevention of hazing behaviors and activities which are reasonably anticipated to cause harm; and
- f. Other negligent actions and/or omissions to be supplemented after discovery.

86. As a foreseeable and direct and proximate result of DU Defendants' negligence, Plaintiff suffered physical injuries as well as psychological and emotional injuries and distress, and Plaintiff suffered damages, including but not limited to pain, suffering, and mental anguish.

WHEREFORE, Plaintiff prays for judgment on Count V against the DU Defendants for an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00), together with pre and post

judgment interest as allowed by law, any costs incurred herein, and for such other and any further relief this Court deems fair, just, and equitable.

**COUNT VI - Negligence *Per Se*
(Against all DU Defendants)**

87. Plaintiff incorporates all previously asserted and alleged Paragraphs, above, as if fully set forth herein.

88. DU Defendants, by and through their officers, agents, servants, senior members, active members, and/or employees, did engage in hazing conduct against Plaintiff, subjecting Plaintiff to physical harm and from which it was reasonably anticipated physical harm would result.

89. Per K.S.A. 21-5418, "hazing is recklessly coercing, demanding or encouraging another person to perform, as a condition of membership in a social or fraternal organization, any act which could reasonably be expected to result in great bodily harm, disfigurement or death or which is done in a manner whereby great bodily harm, disfigurement or death could be inflicted."

90. DU Defendants' negligence, by and through their officers, agents, servants, senior members, active members, and/or employees, constitutes negligence *per se* for violating K.S.A. 21-5418 by engaging in hazing conduct against Plaintiff which recklessly coerced, ordered, and/or subjected him to engage in or be exposed to the intentional and wrongful act carried out by the Fraternity Officer Defendants, Defendant Bolander, and other active members, as more fully described above, as a condition of membership into their fraternity, which would reasonably be expected to result in great bodily harm or was done in a manner whereby great bodily harm could have been inflicted.

91. As a result of DU Defendants' negligence, Plaintiff suffered physical injuries as well as psychological injuries and emotional distress, and Plaintiff suffered damages, including but not limited to pain, suffering, and mental anguish.

WHEREFORE, Plaintiff prays for judgment on Count VI against the DU Defendants for an amount in excess of SEVENTY-FIVE THOUSAND (\$75,000.00), together with pre and post judgment interest as allowed by law, any costs incurred herein, and for such other and any further relief this Court deems fair, just, and equitable.

Respectfully submitted,

PRESLEY & PRESLEY LLC

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Attorneys for Plaintiff N. Miller

DEMAND FOR JURY TRIAL

Plaintiff requests a jury trial on all issues so triable.

Respectfully submitted,

PRESLEY & PRESLEY LLC

/s/ Matthew McCoy

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