

CAUSE NO. 2018-509-5

DONNA DOE

Plaintiffs,

vs.

PHI DELTA THETA, et al

Defendants.

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IN THE DISTRICT COURT

414th JUDICIAL DISTRICT

MCLENNAN COUNTY, TEXAS

**PLAINTIFFS' FIRST AMENDED PETITION
AND REQUEST FOR DISCLOSURE**

TO THE HONORABLE JUDGE OF SAID COURT:

COMES NOW Donna Doe (hereinafter "Plaintiff") and files her Original Petition and Request for Disclosure, complaining of Defendants Phi Delta Theta Fraternity and Phi Delta Theta Fraternity – Texas Lambda Chapter, Jacob Walter Anderson, Matthew Donaldson, John Cabot, Spencer Flora, Dusty Wright, Derek John Williams, Daniel Marc De Simon, Ethan Reid Mason, Addison Rodriguez, Colin Christopher Ruska, Landon Joseph Belcher, Riley Hale, Adam Livchak, Blake Berry, Clark Russell Quisenberry, Parker Kennemer, Jordan Dawsey, Mark Allen Garrison, Graham Patrick Bates, Hilton Hatchett Howell III, Martin Conner, Jason Czarnecki and Jenette Hunicutt, and states the following:

I. DISCOVERY CONTROL PLAN

Plaintiff affirmatively pleads that she seeks monetary relief aggregating more than one million dollars, and requests that the Court enter a Discovery Control Plan pursuant to Discovery Control Level III.

II. PARTIES

1. Plaintiff Donna Doe, a natural person known to Defendants. To the extent necessary, Plaintiff seeks protective order from this court permitting her to proceed under pseudonym, Donna Doe.

2. Defendant Jacob Walter Anderson is a natural person for whom process should issue and for whom process should be served wherever he may be found.
3. Defendant Matthew Donaldson is a natural person for whom process should issue and for whom process should be served wherever he may be found.
4. Defendant John Cabot is a natural person for whom process should issue and for whom process should be served wherever he may be found.
5. Defendant Spencer Flora is a natural person for whom process should issue and for whom process should be served wherever he may be found.
6. Defendant Dusty Wright is a natural person for whom process should issue and for whom process should be served wherever he may be found.
7. Defendant Derek John Williams is a natural person for whom process should issue and for whom process should be served wherever he may be found.
8. Defendant Daniel Marc De Simon is a natural person for whom process should issue and for whom process should be served wherever he may be found.
9. Defendant Ethan Reid Mason is a natural person for whom process should issue and for whom process should be served wherever he may be found.
10. Defendant Addison Rodriguez is a natural person for whom process should issue and for whom process should be served wherever he may be found.
11. Defendant Colin Christopher Ruska is a natural person for whom process should issue and for whom process should be served wherever he may be found.
12. Defendant Landon Joseph Belcher is a natural person for whom process should issue and for whom process should be served wherever he may be found.

13. Defendant Riley Hale is a natural person for whom process should issue and for whom process should be served wherever he may be found.
14. Defendant Blake Berry is a natural person for whom process should issue and for whom process should be served wherever he may be found.
15. Defendant Clark Russell Quisenberry is a natural person for whom process should issue and for whom process should be served wherever he may be found.
16. Defendant Parker Kennemer is a natural person for whom process should issue and for whom process should be served wherever he may be found.
17. Defendant Jordan Dawsey is a natural person for whom process should issue and for whom process should be served wherever he may be found.
18. Defendant Mark Allen Garrison is a natural person for whom process should issue and for whom process should be served wherever he may be found.
19. Defendant Adam Livchak is a natural person for whom process should issue and for whom process should be served wherever he may be found.
20. Defendant Graham Patrick Bates is a natural person for whom process should issue and for whom process should be served wherever he may be found.
21. Defendant Hilton Hatch Howell III is a natural person for whom process should issue and for whom process should be served wherever he may be found.
22. Defendant Martin Conner is a natural person for whom process should issue and for whom process should be served wherever he may be found.
23. Defendant Jason Czarnecki is a natural person for whom process should issue and for whom process should be served wherever he may be found.

24. Defendant Jennette Hunicutt is a natural person for whom process should issue and for whom process should be served wherever she may be found.

25. Defendant Phi Delta Theta Fraternity (hereinafter sometimes referred to as “Phi Delta National”) is an non-profit corporation doing business in the State of Texas. Service of process on this defendant may be completed by serving its registered agent, Robert A. Biggs, 2 S Campus, Oxford, Ohio 45056.

26. Defendant Phi Delta Theta – Texas Lambda Chapter (hereinafter sometimes referred to as “Phi Delta Local”) is an unincorporated association organized and existing under the laws of the State of Texas at the time this cause of action arose, with its principal location in Waco, McLennan County, Texas. Service of process on this defendant may be completed by serving its President, Jacob Walter Anderson.

27. Phi Delta National, Phi Delta Local, Anderson, Donaldson, Cabot, Flora, Wright, Williams, De Simon, Mason, Rodriguez, Ruska, Belcher, Hale, Livchak, Berry, Quisenberry, Kennemer, Dawsey, Garrison, Bates, Howell, Martin and Czamecki are hereinafter referred to sometimes both separately and collectively as the “Phi Delta” or “Phi Delta Defendants”.

28. Anderson, Donaldson, Cabot, Flora, Wright, Williams, De Simon, Mason, Rodriguez, Ruska, Belcher, Hale, Livchak, Berry, Quisenberry, Kennemer, Dawsey, Garrison, Bates, Howell, Martin and Czamecki are hereinafter referred to sometimes both separately and collectively as the “Individual Phi Delta Defendants,” and are also proper parties for service of Phi Delta Local under Chapter 252 of the Texas Business Organization Code.

III. JURISDICTION & VENUE

13. Jurisdiction is proper in this Court because the amount in controversy exceeds the minimum jurisdictional requirements of this Court.

14. Venue is proper in McLennan County pursuant to Section 15.001 et seq. of the Texas Civil Practice & Remedies Code because all or part of this cause of action accrued in McLennan County and one or more Defendants reside or have their principal location in McLennan County.

IV. FACTUAL BACKGROUND

15. Phi Delta National owns, controls, maintains and/or operates an all-male social fraternity, organized into chapters at various institutions of higher learning throughout the United States of America and Canada. Said Defendant provides each chapter of Phi Delta Theta with policies, guidelines, certificates, contracts, agreements, and other materials pertaining to risk management. Many of these policies, guidelines, certificates, contracts, agreements, and other materials purport to address the management of risks created by the purchase, sale, service and/or consumption of alcohol by fraternity members and their guests.

16. On or about February 20, 2016, said Phi Delta National and Phi Delta Local owned, controlled, maintained and/or operated a fraternity chapter in Waco, Texas, affiliated with Baylor University. Each chapter of Phi Delta Theta Fraternity has its own Greek-letter designation; the first chapter founded was designated "Alpha;" the second chapter founded was designated "Beta;" the third chapter was designated "Gamma," and so forth in like fashion. The Baylor chapter of Phi Delta Theta bore the Greek letter designation "Lambda."

17. At times material, Anderson was the President of the Phi Delta Local; Cabot, Donaldson and De Simon served as Vice President; Flora, Wright and Mason served as Treasurer; Rodriguez served as Recruitment Chairman; Ruska served as Scholarship Charirman; Williams and Belcher served as Risk Management Officer; Hale served as Secretary; Livchak served as Community Service Chair; Berry served as Warden; Quisenberry served as Alumni Secretary; Kennemer and Dawsey served as Chaplain; Garrison served as Chorister; Bates served as Historian; Howell III served as Public Relations and Webmaster; Martin served as Reporter; and Czarnecki served as recipient for funds

collected by those who attended the fraternity even in question. At all relevant times, these parties engaged in a joint enterprise with all co-Defendants.

18. At times material, Defendants, acting by and through their members, agents, and officers, hosted a party at the “Phi Delt Ranch”, a house owned by Defendant Jennette Hunicutt. Although Baylor University prohibits fraternity houses, the Phi Delta and Jennette Hunicutt knew this de facto fraternity house was being occupied and used by the Phi Delta in violation of Baylor University policy.

19. Phi Delta, by and through its members, agents, and officers, paid in advance for the alcoholic beverages that were served at the Frat House during the party in question. The funds used to purchase the said alcoholic beverages consisted of contributions made by the members of Phi Delta, including but not limited to money paid in the form of membership dues, and/or money paid for admission to the party in question. Phi Delta knowingly and intentionally served alcoholic beverages to minors at this party.

20. On or about February 20, 2016, Plaintiff was 19 years of age.

21. Plaintiff was invited to a party at the Phi Delt Ranch, which was held on February 20, 2016 and assaulted there by an individual who was a member of Phi Delta National and Phi Delta Local (hereinafter referred to as “Assailant”).

22. Defendants were aware of the substantial likelihood of sexual assaults at this and other similar events.

23. Following the sexual assault, Plaintiff was taken to a local hospital by friends.

24. At times material, Cabot and Donaldson were residents of the “Phi Delt Ranch”

25. At all times relevant to this lawsuit, all the Phi Delta Defendants and Jennette Hunicutt were engaged in a joint venture.

V. CAUSES OF ACTION AGAINST PHI DELTA LOCAL

26. The allegations against co-Defendants asserted herein are incorporated as claims against Phi Delta Local and the Individual Phi Delta Defendants.

27. Defendant Phi Delta Local, acting by and through its members, agents and officers, was negligent and/or negligent per se by providing alcohol to Plaintiff and permitting her to be drugged. Phi Delta Local, acting through its members, agents and officers, was negligent and/or grossly negligent in:

- a) Failing to have adequate policies and procedures in place to monitor their guests' alcohol consumption;
- b) Failing to employ adequate risk management policies and procedures, and
- c) Failing to enforce adequate risk management policies and procedures.
- d) Providing alcoholic beverages to Plaintiff in violation of Tex. Alco. Bev. Code 52.03;
- e) Allowing Plaintiff to be drugged;
- f) Failing to have adequate policies and procedures in place to prevent the provision of alcohol to persons under the age of 21;
- g) Negligently providing alcohol to persons under the age of 21;
- h) Deliberately and intentionally providing alcohol to persons under the age of 21;
- i) Failing to adequately monitor guests to assure they were not drugged;
- j) In allowing Assailant, and individual known by Phi Delta to engage in improper sexual harassment, to not only be within leadership of Phi Delta, but also to prey on Plaintiff.
- k) Failing to proper hire, train and retain officers and staff as to proper methods to deal with reports of sexual abuse, investigate same and accommodate victims in a manner that would permit them to without undue hindrance, complete their higher education;
- l) Failing to properly and timely report incidents of claims sexual assault;

- m) Failing to provide an adequate and safe environment to invitees;
- n) Failing to adequately monitor and supervise lower level staff, students and divisions;
- o) Failing to discover, develop and/or implement basic safeguards designed to prevent and/or minimize incidents of sexual assault;
- p) Failing to investigate and/or monitor persons accused of sexual assault to ensure additional events did not occur;
- q) Failing to adopt and implement adequate safeguards to prevent known sexual harassment occurring at events;
- r) Tolerating sexual assailants at events despite reports to the highest levels;
- s) Failing to adopt education programs to promote awareness of rape, acquaintance rape, and other sex crimes;
- t) Failing to adopt and enforce institutional sanctions for sex offenses, both forcible and non-forcible;
- u) Failing to adopt and enforce procedures event attendees should follow if they become sexual assault victims, including who should be contacted, the importance of retaining evidence, and to whom the offense should be reported; and
- v) Failing to put in place an accurate routine procedure to notify the campus community about serious criminal activity that is likely to be a threat to students and employees;

28. Phi Delta Local is a subsidiary of Phi Delta National. At all relevant times, these parties engaged in a joint enterprise.

29. Each of the negligent acts and/or omissions outlined above were individually and in the aggregate a proximate cause of the damages set forth below, for which Defendants are jointly and severally liable.

VI. CAUSES OF ACTION AGAINST PHI DELTA NATIONAL

30. The allegations against co-Defendants asserted herein are incorporated as claims against Phi Delta National.

31. Phi Delta National, acting by and through its members, agents and officers, was negligent, negligent per se, and/or grossly negligent. Phi Delta National, acting through its members, agents and officers, was negligent, negligent per se, and/or grossly negligent in:

- a) Failing to have adequate policies and procedures in place to monitor their guests' alcohol consumption;
- b) Failing to employ adequate risk management policies and procedures, and
- c) Failing to enforce adequate risk management policies and procedures.
- d) Providing alcoholic beverages to Plaintiff in violation of Tex. Alco. Bev. Code 52.03;
- e) Allowing Plaintiff to be drugged.
- f) Failing to have adequate policies and procedures in place to prevent the provision of alcohol to persons under the age of 21;
- g) Negligently providing alcohol to persons under the age of 21;
- h) Deliberately and intentionally providing alcohol to persons under the age of 21;
- i) Failing to adequately monitor guests' to assure they were not drugged, and
- j) In allowing Assailant, and individual known by Phi Delta to engage in improper sexual harassment, to not only be within leadership of Phi Delta, but also to prey on Plaintiff
- k) Failing to have adequate policies and procedures in place to monitor their guests' alcohol consumption;
- l) Failing to employ adequate risk management policies and procedures;
- m) Failing to enforce adequate risk management policies and procedures.

- n) Failing to properly hire, train and retain officers and staff as to proper methods to deal with reports of sexual abuse, investigate same and accommodate victims in a manner that would permit them to without undue hindrance, complete their higher education;
- o) Failing to properly and timely report incidents of claims sexual assault;
- p) Failing to provide an adequate and safe environment to invitees;
- q) Failing to adequately monitor and supervise lower level staff, students and divisions;
- r) Failing to discover, develop and/or implement basic safeguards designed to prevent and/or minimize incidents of sexual assault;
- s) Failing to investigate and/or monitor persons accused of sexual assault to ensure additional events did not occur;
- t) Failing to adopt and implement adequate safeguards to prevent known sexual harassment occurring at events;
- u) Tolerating sexual assailants at events despite reports to the highest levels;
- v) Failing to adopt education programs to promote awareness of rape, acquaintance rape, and other sex crimes;
- w) Failing to adopt and enforce institutional sanctions for sex offenses, both forcible and non-forcible;
- x) Failing to adopt and enforce procedures event attendees should follow if they become sexual assault victims, including who should be contacted, the importance of retaining evidence, and to whom the offense should be reported; and
- y) Failing to put in place an accurate routine procedure to notify the campus community about serious criminal activity that is likely to be a threat to students and employees.

32. Phi Delta Local is a subsidiary of Phi Delta National. At all relevant times, these parties engaged in a joint enterprise.

33. Plaintiff entered the property as an invitee and for the benefit of Defendants. The condition of the property and the circumstances under which Plaintiff entered the property posed an unreasonable risk of harm for which Defendants had actual knowledge or should have known of. Defendants had a duty to exercise ordinary care toward Plaintiff, and a duty to inspect and make safe any dangerous condition or give adequate warning.

VII. ADDITIONAL CAUSES OF ACTION AGAINST JENNETTE HUNICUTT, JOHN CABOT, MATTHEW DONALDSON AND THE CO-DEFENDANTS

34. The allegations against co-Defendants asserted herein are incorporated as claims against Jennette Hunicutt, John Cabot and Matthew Donaldson.

35. Defendant Jennette Hunicutt, John Cabot and Matthew Donaldson, acting by and through their agents, were negligent and/or negligent per se through its acts and omissions.

36. Plaintiff entered the property as an invitee and for the benefit of all Defendants. The condition of the property and the circumstances under which Plaintiff entered the property posed an unreasonable risk of harm for which Defendants had actual knowledge or should have known of. Defendants had a duty to exercise ordinary care toward Plaintiff, and a duty to inspect and make safe any dangerous condition or give adequate warning.

37. Defendants had a duty because there was a risk of criminal conduct that was both unreasonable and foreseeable in light of what the premises owner knew, had constructive knowledge of, or should have known before the criminal act occurred.

VIII. DAMAGES

37. As a proximate result of the acts and omissions above, Plaintiff suffered physical injury, mental anguish, pain and suffering in the past and will suffer the same into the future. As a proximate result of the acts and omissions above, Plaintiff was unable to stay at Baylor University and suffered economic loss in the past and future, in both lost wages and loss of earning capacity as a proximate result of Defendants' conduct.

38. Defendants' acts and omissions were malicious, entitling Plaintiff to recover exemplary damages.

IX. REOUEST FOR DISCLOSURE

39. Pursuant to Rule 194, Tex. R. Civ. P., Defendants are requested to disclose to Plaintiff, within fifty (50) days of service of this request, the information or material described in Rule 194.2(a) through (l) to be produced at Dunnam & Dunnam LLP, 4125 West Waco Drive, Waco, Texas 76710.

X. CLAIM FOR PRE-JUDGMENT AND POST-JUDGMENT INTEREST

40. Plaintiffs claim interest at the maximum legal rate, or as allowed by law, on damages they have suffered.

XI. JURY DEMAND

41. Plaintiffs request that a jury be convened to try the factual issues in this case.

XII. PRESERVATION OF EVIDENCE

42. The Defendants are hereby given notice that any document or other material, including electronically stored information, that may be evidence or relevant to any issue in this case is to be preserved in its present form until this litigation is concluded.

XIII. PRAYER

43. WHEREFORE, Plaintiffs prays that Defendants, be served and cited to appear and answer herein and upon final hearing of this cause, that Plaintiff have judgment against Defendants, jointly and severally, for damages described herein, for cost of suit, interest as allowable by law, and for such other relief to which Plaintiff may be justly entitled.

Respectfully submitted,

/s/ Jim Dunnam

Jim Dunnam
State Bar No. 06258010
DUNNAM & DUNNAM, L.L.P.
4125 West Waco Drive
Waco, Texas 76710
Telephone: (254) 753-6437
Facsimile: (254) 753-7434
jimdunnam@dunnamlaw.com

Chad W. Dunn
State Bar No. 24036507
K. Scott Brazil
State Bar No. 02934050
BRAZIL & DUNN, L.L.P.
4201 Cypress Creek Pkwy., Suite 530
Houston, Texas 77068
Telephone: (281) 580-6310
Facsimile: (281) 580-6362
chad@brazilanddunn.com

ATTORNEYS FOR PLAINTIFF