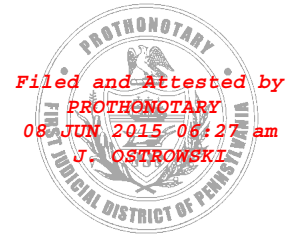


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JAMES VIVENZIO

Plaintiff

v.

THE PENNSYLVANIA STATE
UNIVERSITY, NATIONAL FRATERNITY
OF KAPPA DELTA RHO, ZETA CHAPTER
OF KAPPA DELTA RHO, THE
PENNSYLVANIA STATE UNIVERSITY
INTERFRATERNITY COUNCIL, and
PANHELLENIC ASSOCIATION

Defendants

**COURT OF COMMON PLEAS
PHILADELPHIA COUNTY**

April Term, 2015
NO. 001671

JURY TRIAL DEMANDED

NOTICE

You have been sued in court. If you wish to defend against the claims set forth in the following pages, you must take action within twenty (20) days after this complaint and notice are served, by entering a written appearance personally or by attorney and filing in writing with the court your defenses or objections to the claims set forth against you. You are warned that if you fail to do so the case may proceed without you and a judgment may be entered against you by the court without further notice for any money claimed in the complaint or for any other claim or relief requested by the plaintiff. You may lose money or property or other rights important to you.

You should take this paper to your lawyer at once. If you do not have a lawyer or cannot afford one, go to or telephone the office set forth below to find out where you can get legal help.

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Le han demandado a usted en la corte. Si usted quiere defenderse de estas demandas expuestas en las paginas siguientes, usted tiene veinte (20) dias de plazo al partir de la fecha de la demanda y la notificacion. Hace flata asentar una comparencia escrita o en persona o con un abogado y entregar a la corte en forma escrita sus defensas o sus objeciones a las demandas en contra de su persona. Sea avisado que si usted no se defiende, la corte tomara medidas y puede continuar la demanda en contra suya sin previo aviso o notificacion. Ademas, la puede decidir a favor del demandante y requiere que usted cumpla con todas las provisiones de esta demanda. Usted puede perder dinero o sus propiedades u otros derechos importantes para usted.

Lieve esta demanda a un abogado inmediatamente. Si no tiene abogado o si no tiene el dinero suficiente de pagar tal servicio. Vaya en persona o llame por telefono a la oficina cuya direccion se encuentra escrita abajo para averiguar donde se puede conseguir asistencia legal.

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COMPLAINT

I. Introduction

1. This case arises from reckless, barbaric, and life-threatening hazing at the Kappa Delta Rho (KDR) fraternity house at Penn State University (“Penn State”).



2. The hazing to which Plaintiff James Vivenzio was subjected as a KDR pledge included physical assault and battery including cigarette burns; physically and mentally abusive late-night line-ups that featured force-feeding bucketfuls of liquor mixed with urine, vomit, hot sauce and other liquid and semi-solid ingredients; “gladiator” games that subjected pledges to significant bodily injuries; directing fraternity pledges to guzzle hard liquor without stopping until vomiting was induced (a “ritual” in which fraternity alumni eagerly participated);

requiring pledges to spend hours scrubbing floors and to pick up large quantities of garbage that was deliberately strewn about the fraternity house; and to serve as on-call errand-boys and laborers for older members.

3. The hazing activities at KDR took place despite fraternity and university assurances of a “zero tolerance” for hazing and, indeed, were perpetrated by both current students and fraternity alumni, with the actual knowledge of PSU officials.
4. The KDR fraternity operated much like a gang, obtaining some of its funding by converting the pre-paid food plans of its pledges and confiscating and selling their prescription drugs. These funds were then used to pay for countless socials, pre-socials and parties at the fraternity house at which underage students were plied with alcohol and, in some cases, with drugs to facilitate sexual assault and abuse. Crucial to the fraternity’s routine schedule of parties, alcohol and drug use, and sexual misconduct, was the regular and violent hazing of fresh recruits.
5. Plaintiff James Vivenzio is the whistleblower who, in January 2015, brought evidence to police in the adjoining Borough of State College, Pennsylvania, where KDR’s fraternity house is located, about an invitation-only Facebook site that was used by KDR members to post photos of, among other subjects, female students naked, unconscious and, in some cases, in the act of being sexually assaulted. This Facebook site was also used to facilitate hazing by enabling instant communication with pledges and also to humiliate, harass and beckon pledges on a 24/7 basis.

6. Beginning in the Fall 2012 and even continuing through the Spring 2013, Plaintiff Vivenzio was subjected to violent hazing at Penn State's KDR.
7. In April 2014, one year before Plaintiff Vivenzio disclosed KDR's secret Facebook page to local police, he met with a senior investigator from the Penn State Office of Student Conduct at his home in Virginia and shared print outs of group text messages and provided information about the Facebook site that was clear evidence of the unlawful and dangerous hazing activities at KDR and acts of sexual harassment and abuse at the fraternity. Plaintiff also told the Penn State investigator that he had evidence relating to sexual assault at KDR and could provide access to both the group text messages and the Facebook site. This was the same Facebook site that Plaintiff later shared with local police prompting its criminal investigation.
8. During the meeting with Plaintiff Vivenzio and his parents at their home in Virginia, Plaintiff Vivenzio pledged his continued cooperation with the Penn State official to ensure that these activities were stopped and implored the Penn State official to gain access to the Facebook page so he could see for himself the atrocities taking place on a daily basis at KDR.
9. After the meeting, the Penn State official vowed to promptly and thoroughly investigate these activities at KDR. However, despite these assurances, the University did absolutely nothing.
10. In May 2015, Penn State announced a three-year suspension for KDR based on the hazing and sexual misconduct that Plaintiff Vivenzio brought to the attention of State College police in January 2015. In making its announcement about the

suspension, Penn State made it sound like University officials first learned about KDR's unlawful activities when the State College Police learned about them.

11. In fact, Penn State recklessly and unconscionably sat on the information Whistleblower Vivenzio had first brought the Penn State's attention, causing further harm to Mr. Vivenzio and to untold numbers of students whose injuries and damages from hazing and sexual misconduct could have been prevented had Penn State acted quickly, responsibly and decisively.
12. All of the Defendants in this case, notwithstanding the recent three-year suspension of KDR, have yet to act quickly, responsibly or decisively.
13. As a result of extreme hazing at KDR, Plaintiff Vivenzio failed out after his freshman year; entered rehabilitation and therapy programs for alcohol abuse; and, in early-2015 was hospitalized as a result of post traumatic stress disorder from the hazing.
14. Plaintiff Vivenzio, now 21 years old, brings this action for compensatory and punitive damages, as the law permits if he proves the claims in this action. Importantly, Plaintiff also brings this action because he believes that Penn State and the other Defendants have demonstrated through their actions, and through their inaction, that they cannot be trusted to resolve the problem of widespread hazing and sexual assault on campus through self-policing.
15. Through this action, therefore, Plaintiff Vivenzio hopes to bring attention to the unlawful, disturbing and dangerous hazing and sexual assault that takes place at Penn State and at other university and college campuses as well and to force

Defendants to take all necessary steps to stop hazing and sexual assault so as to protect the health and well-being of all students.

II. Parties

16. Plaintiff James Vivencio is an adult citizen of the Commonwealth of Virginia who attended Penn State in 2012 and in 2014.
17. Defendant The Pennsylvania State University (“Penn State”) is a state-supported land-grant university founded in 1855 with a campus located at 201 Old Main, University Park, Pennsylvania 16802. Penn State manages and operates 24 campuses all together throughout Pennsylvania, including several in Southeastern Pennsylvania located within a few miles of this forum, as well as a global World Campus.
18. Penn State also has extensive ties to Philadelphia including an engineering program operated out of the Philadelphia Navy Yard. Penn State’s website features a page entitled “Penn State in Philadelphia” that includes a large photograph of the Philadelphia skyline and a caption that states, “Penn State Lives Here.” See www.philly.psu.edu.
19. Defendant National Fraternity of Kappa Delta Rho (“KDR National”) is the national organization of which Penn State’s KDR chapter is affiliated. KDR National maintains offices at 331 South Main Street, Greensburg, Pennsylvania 15601. KDR National provides the local KDR chapter and its members at Penn State with a full-time chef and a grounds keeper/handyman.
20. KDR National talks a good game when trying to portray itself as being anti-hazing. As recently as May 18, 2015, KDR National posted a letter on its website

touting that it had joined a consortium of national organizations that maintains an anti-hazing hotline.

21. The National Fraternity's track record, however, tells a terribly different story.
 - a. In 2003, KDR was banned from Colgate University in New York for hazing;
 - b. In 2009, several members of the KDR chapter at the University of Toledo were "held accountable" and the chapter underwent a "reorganization" because of hazing violations;
 - c. Also in 2009, KDR was suspended at Bucknell University for "brotherhood conduct" and "safety violations";
 - d. In March 2015, KDR was suspended at Middlebury College for violating hazing policies, with conduct that included verbal abuse, blindfolding and encouraging the use of alcohol;
 - e. In April 2015, a KDR member was arrested at West Chester University for alleged rape and sexual assault at a KDR fraternity party; and
 - f. In May 2015, as a result of information provided by Plaintiff Vivenzio, Penn State finally suspended the local chapter of Kappa Delta Rho for three years.
22. Defendant Zeta Chapter of Kappa Delta Rho ("KDR") is the local chapter of KDR National that owns and operates a house and fraternity organization on the Penn State campus, with an address at 420 East Prospect Avenue, State College, Pennsylvania 19038.
23. Over the door to the KDR house at Penn State is a sign that reads (in Latin), "Honor Above All." Defendant KDR's conduct, as described in detail in this Complaint, could not be further from honorable. Defendant KDR's conduct

included acts of sadistic violence, sexual assault, physical and psychological intimidation, racial and anti-Semitic epithets, and widespread alcohol and illicit drug use and abuse.

24. Defendant The Pennsylvania State University Interfraternity Council (“IFC”) is a campus organization that participates in setting and enforcing policies, procedures and regulations relating to Greek life at Penn State, including matters relating to hazing. IFC’s offices are located at 218 HUB-Robeson Center, University Park, Pennsylvania 16802.
25. Defendant the Panhellenic Association (“Panhellenic”) is a campus organization that participates in setting and enforcing policies, procedures and regulations relating to Greek life at Penn State, including matters relating to hazing. The offices of Panhellenic are located at 217 HUB-Robeson Center, University Park, Pennsylvania 16802.
26. Defendants are liable, jointly and severally, for the negligent, reckless and intentional acts of their agents, servants, employees and ostensible/apparent agents.
27. Defendant Penn State is indirectly liable for the conduct of its agents but is also directly liable for all the harm Plaintiff has suffered to the extent Penn State provided an environment, a culture and the opportunity for the other Defendants, through their agents, to act unlawfully in the specific ways set forth in detail in this Complaint.

III. Factual Allegations

28. Plaintiff James Vivencio was raised in Northern Virginia with his parents and siblings.
29. James was a successful high school student and was active in his classes and athletic programs, including track and field, football and wrestling.
30. James entered Penn State in the Fall 2012, living in a freshman dorm on the University's main campus in University Park, Pennsylvania.
31. Early on in his first semester at PSU, James took an interest in joining or "rushing" the KDR fraternity.
32. James had a couple of older friends who had attended his high school and who had become members at KDR. They had spoken highly of the fraternity.
33. In the Fall 2012, prior to the start of the rush period for fraternities at Penn State, Defendant IFC held informational meetings for prospective fraternity pledges. At these meetings, the IFC stressed repeatedly that Penn State and the IFC had zero tolerance for hazing.
34. When KDR members, including the members who had attended James' high school, spoke of KDR, they were always careful to reassure that there was no hazing.
35. Penn State has a strongly worded anti-hazing policy that states:

The University defines Hazing as

any action or situation that recklessly or intentionally endangers the mental or physical health or safety of a student or that willfully destroys or removes public or private property for the purpose of initiation or admission into or affiliation with, or as a condition of continued membership in, any registered student organization.

Hazing includes, but is not limited to

any brutality of a physical nature, such as whipping, beating, branding, forced calisthenics, exposure to the elements, forced consumption of any food, liquor, drug, or other substance or any other forced physical activity that could adversely affect the extreme mental stress, such as sleep deprivation, forced exclusion from social contact that could result in extreme embarrassment, or any other forced activity that could adversely affect the mental health or dignity of the individual, or any willful destruction or removal of public or private property.

Any activities as described in this definition upon which the initiation or admission into or affiliation with or continued membership in a registered student organization is directly or indirectly conditioned shall be presumed to be “forced” activity, the willingness of the individual to participate in such activity notwithstanding. Any registered student organization that commits hazing is subject to disciplinary action by the appropriate registering organization.

36. Pennsylvania law uses the identical definition of hazing and makes it unlawful for any person to engage in hazing. 24 P.S. § 5352-5353.
37. Defendants Penn State, the IFC and Panhellenic contributed to creating Penn State’s anti-hazing policy and shared responsibility for enforcing this policy.
38. KDR publishes a detailed booklet called, The Pathfinder, Kappa Delta Rho Educational Manual and Historical Handbook.
39. New pledges were expected to memorize lengthy passages from The Pathfinder, including information about KDR’s history, organizational chart and other details about the fraternity.
40. The Pathfinder contains express assurances that KDR is a no hazing fraternity. Indeed, the National KDR has a “National Policy Against Hazing” that reads, as follows:

WHEREAS, The National Fraternity of Kappa Delta Rho, Inc, recognizes the value of pledgship, and of a sound pledge program as a means whereby a man may develop the highest ideals, be made more fully aware of those humans around him, and become better able to make worthwhile contributions to his life, as well as the lives of those around him, the Fraternity.

DECLARES, then, that it will do its best to propagate a program which will accomplish these ideals emphasizing human dignity, and the development of spirit, and understanding.

WHEREAS, certain undesirable practices of physical, and mental hazing are not in accord with the principles of Kappa Delta Rho, and of the fraternity system as a whole,

NOW, therefore, The National Fraternity of Kappa Delta Rho, Inc.

DECLARES that no member of pledge of any chapter shall engage in, or commit any act in Pledge training, initiation, or any fraternity activity which may, in any way injure, degrade, disgrace, be morally objectionable, or hold a member or a pledge up to ridicule, either publicly or privately, and further

DECLARES that such activity is prohibited in its chapters, and by its members, and states that the National Fraternity will full [sic] investigate any alleged violation of this policy, and will take such remedial, or disciplinary action as may be warranted by the offense.”

41. Students interested in rushing a fraternity at Penn State were first required to attend an on-campus informational session sponsored by the IFC at which various presentations were conducted by IFC officials and fraternity presidents. These information sessions included discussion about Penn State’s anti-hazing policies and the dangers of hazing.
42. During the IFC information sessions, packets containing anti-hazing literature were provided to the students as well as information about an anti-hazing hotline.
43. Based on the official positions of Penn State, KDR and other campus organizations involved in Greek life at Penn State, including the IFC and Panhellenic, Plaintiff James Vivenzio believed quite reasonably that KDR would not haze him.
44. Notwithstanding the clear proscriptions against hazing in Penn State’s policy, Pennsylvania state law, and the statements and representations of the IFC and of

KDR itself, James Vivenzio and others were repeatedly, violently and viciously hazed.

45. Hazing at KDR took many forms, including physical, financial and psychological.
46. The older KDR members responsible for organizing and coordinating the hazing, attracted new pledges by making the first days of the pledge experience fun and friendly. Then the hazing began.
47. KDR members fostered a “bro” culture, which meant that members and pledges were not to divulge details of what went on inside the fraternity to anyone outside the fraternity.
48. Much like a gang or other criminal organization, secrecy and loyalty were crucial to the fraternity members being able to engage in a wide range of illicit and unlawful activity, including under age drinking, drug use and sexual misconduct.
49. Pledges were taught not only to value loyalty to the fraternity itself and to the older members of the fraternity but also to consider the bond among the members of the pledge class to be sacred and strong.
50. By forging a strong bond among the members of the pledge class, the older fraternity members were unchallenged as they carried out hazing rituals. If any new recruit refused to participate, the other members of the pledge class would receive more severe hazing.
51. Plaintiff Vivenzio was subjected to extreme and violent hazing, including the following:
 - a. Forced “line ups”, during which pledges were called to line up in the basement of the fraternity house, often in the middle of the night, and then to

perform a number of “ritual” activities, including: drinking large quantities of liquor while performing wall sits and push ups until passing out; force-fed drinking from a bucket filled with a concoction of hot sauce, liquor, cat food, urine and other liquid and semi-solid ingredients, the smell of which was often enough to induce vomiting;

- b. Physical battery, such as the time a six-foot-five KDR member, without warning, punched and battered the defenseless Mr. Vivenzio multiple times in the face and body for missing a line up;
- c. Cigarette burns to the chest;
- d. Forced consumption of large quantities of hard liquor, sometimes with the aid and participation of KDR alumni, until vomiting was induced;
- e. “Gladiator” games, such as pledge tackle football without pads, that subjected the fraternity recruits to significant physical injuries;
- f. Confiscation of cafeteria food-plan funds, worth several thousands of dollars, to pay for fraternity parties, liquor, food, cigarettes, blunts and condoms. All pledges were required to have cigarettes, blunts and condoms in their possession at all times in case an older KDR member requested these items;
- g. Work as guards at the entrance to the fraternity during parties, sometimes four or five nights a week, in case a member from the Penn State IFC came and then to warn the members inside so that liquor could be stashed until the IFC left, always after only a wink and a nod to what was going on inside the fraternity house.

52. Older KDR members maintained text message groups that were used to text message groups

that were used to communicate work assignments, command attendance at the fraternity house and also to berate pledges with racial and ethnic slurs, post daily photos of sexually explicit images and



publicize humiliating and sexually abusive photos of drunken, “blacked out” visitors to the fraternity house and of the pledges themselves.

53. KDR members sent text messages to one another and in text message groups that made frequent references to offensive, hate-filled language such as “kike”, “faggot” and “nigga” and to unlawful activity such as using cocaine and other illegal drugs.

54. KDR members also maintained a members-only Facebook page that featured numerous photos – as well as running commentary from fraternity members – of pledges and other students passed out from over-consumption of alcohol and

sprawled on sofas, on the floor or in a wide open “Port-a-potty”; female students unconscious and naked and, in one case, passed out after losing control of her bowel; female students apparently in the act of being sexually assaulted while heavily intoxicated; and various hazing activities such as branding the buttocks of two pledges with a hot clothes hangar.

55. Through his experiences at KDR, Plaintiff came to understand that first-year female students, because of their lack of experience, were the targets of the numerous KDR parties that featured heavy drinking and punch spiked with drugs designed to induce unconsciousness.
56. The hazing at KDR was extreme and life threatening. One time during Plaintiff’s pledge period, they were forced to lie on the floor of a dirty basement while garbage, broken glass and cigarettes and bleach was strewn about the room. One of the pledges was allergic to bleach and, along with the other pledges was required to do push ups on the glass strewn, bleach-covered floor. This pledge developed an acute reaction so severe that he was administered an epinephrine pen by one of the fraternity brothers.
57. On another occasion, a pledge was so ill after being hazed with alcohol (required to drink large quantities of hard liquor) that he pleaded to be taken to the hospital only to be denied by the older fraternity members.
58. Plaintiff tried to flee the fraternity a number of times, but each time an older fraternity member who Plaintiff had known in high school persuaded him to stay, assuring him the hazing was nearly over and then he would be a member, too.
59. The intense period of hazing at KDR went on daily, week after week, for nearly

three months, culminating in a week-long hazing known as hell week.” The pledges’ obligations to the older members of the fraternity, including cleaning, doing homework, paying for parties with cafeteria plan funds and even hazing continued through the Spring 2013 semester.

60. Plaintiff became increasingly concerned about the hazing but it was difficult to extricate himself. He was under intense social pressures and he feared for his physical safety and the physical well being of his fellow pledges. At times, the physical intimidation did actually result in physical violence.
61. KDR pledges were required to submit to their class schedules so that older KDR members could determine at any time the whereabouts of any pledge when they were absent from a required line up or other mandatory fraternity activities.
62. The fraternity inculcated a sense of obligation and commitment and loyalty among the members of the pledge class. Abandoning the fraternity would mean leaving behind the other members of the pledge class to face even harsher hazing.
63. In the broader culture at Penn State, membership in a fraternity was a privilege granted to a relatively small number of applicants and so fraternity membership carried a high social status. Plaintiff also knew that leaving the fraternity, in turn, would carry a powerful negative stigma.
64. Part of the hazing also involved photographing pledge members in embarrassing positions, such as passed out on a sofa. Sometimes, the older members posed an unconscious pledge member by writing on their face with a marker or placing a member’s genitalia on the face of the passed-out pledge. These photos then were part of what compelled pledges not to speak out against the hazing.

65. In addition, continuous alcohol use, to the point of extreme intoxication, was a daily part of the KDR pledge process and this severely affected Plaintiff's ability to understand clearly what alternatives might be available.
66. Still, Plaintiff's concerns became increasingly unbearable, finally to the point that he submitted an anonymous report to a Penn State anti-hazing hotline. However, he would later learn that reports to this hotline were fielded by a student-run organization that then immediately leaked the report back to KDR. In the days after Plaintiff submitted his hotline report, there was great commotion inside KDR as older members attempted to identify the "rat" within the pledge class.
67. Plaintiff was intimidated and fearful for his physical well-being and for the safety of his fellow pledge class members if he fled KDR.
68. To document the hazing so he could later prove what really went on, Plaintiff began taking hundreds of screen shots from his mobile phone of text messages that referred to the hazing at KDR. Later, knowing the risks involved, he took many screen shots of photos on KDR's secret Facebook page.
69. The hazing activities at KDR were so extreme and had such an impact on Plaintiff physically and psychologically that Plaintiff failed all of his classes during the Fall semester and he was unable to complete the Spring semester. Several other members of Plaintiff's pledge class failed out or were unable to continue at Penn State.
70. At the end of his freshman year, Plaintiff dropped out of Penn State and spent a year trying to regain his footing with the hope of returning to the university he

had so admired as a Virginia high school student and from which he still aspired to graduate.

71. During his time away from Penn State, Plaintiff attended counseling, including alcohol abuse counseling, and worked to be able to return to Penn State. Plaintiff was determined not only to resume his academic program but to return to campus to change the fraternity culture at school.
72. By the Spring 2014, Plaintiff was able to arrange for re-instatement to Penn State through their “trauma drop” process after he informed a Penn State investigator that he had been hazed at KDR during his freshman year.
73. The meeting with the Penn State official, Danny Shaha, a senior investigator from Penn State’s Office of Student Conduct, took place in April 2014 at Plaintiff’s home.
74. At the meeting with the Penn State investigator, Plaintiff and his parents described the hazing to which Plaintiff had been subjected and showed him dozens of text messages and images from Plaintiff’s collection of screen shots, which clearly documented the abuse at the fraternity. Plaintiff also alerted the Penn State official to KDR’s members-only Facebook page and the fact that there was sexual misconduct and sexual assault taking place at the fraternity.
75. The Penn State investigator informed Plaintiff and his parents that the University was “aware that hazing takes place.”
76. The Penn State investigator was appalled at the documentation presented by Plaintiff and his parents, took detailed notes of all the information provided, and promised to launch an investigation into hazing and other misconduct at KDR.

Months went by, during which time Plaintiff and his parents assumed Penn State indeed was looking into the matter.

77. Plaintiff and his family heard nothing from Penn State, even after they pledged their full support and cooperation.
78. Indeed, to this day, no one from Penn State has met with Plaintiff to further discuss the information he provided to the Penn State investigator in April 2014 or to obtain copies of the evidence Plaintiff has.
79. To this day, no one from Penn State has officially apologized to Plaintiff for the horrific experiences he suffered being hazed at KDR.
80. Indirectly, however, Penn State has acknowledged some responsibility for the hazing Plaintiff suffered: When the University agreed to re-instate Plaintiff under the “trauma drop” program, Penn State granted Plaintiff a full reimbursement of his first-semester freshman year tuition and a partial refund of the thousands of dollars in food-plan funds that KDR had confiscated.
81. During the Fall 2014, Plaintiff was again hazed by the fraternity and was provided alcohol though he was a still younger than the legal drinking age.
82. At this time, Plaintiff saw that Penn State had done nothing with the information he had provided to the senior investigator about his freshman-year experiences.
83. As a result, Plaintiff continued to collect evidence against KDR, taking screen shots of text messaging and from the KDR Facebook page.
84. Plaintiff was under extreme stress during this time because of the trauma of the hazing he had experienced and the anxiety he felt that his role as an informant to the University about KDR’s activities would be discovered.

85. In December 2014, Plaintiff was overcome by the stress and anxiety and had to leave school and return home to his parents in Virginia.
86. After nearly eight months went by and Penn State failed to follow up on Plaintiff's evidence of hazing at KDR, Plaintiff determined to take matters to the police.
87. On January 17, 2015, Plaintiff reported his concerns about hazing and sexual misconduct to the police in State College, bringing some of the screen shots from the KDR Facebook page as evidence to support his claims.
88. In February 2015, overwhelmed by stress and anxiety, and fearful of retaliation or retribution from KDR members, Plaintiff obtained medical treatment for post-traumatic stress disorder and was hospitalized.
89. As a result of extreme hazing at KDR, Plaintiff has suffered severe injuries and losses, including:
 - a. Post traumatic stress;
 - b. Anxiety disorder;
 - c. Alcohol abuse disorder;
 - d. Life threatening activities;
 - e. Physical abuse, including facial injuries and cigarette burns to the body;
 - f. Mental anguish and distress;
 - g. Loss of academic opportunities;
 - h. Loss of future earning capacity;
 - i. Financial losses from confiscated cafeteria plan funds;
 - j. Medical care costs for medical and psychological treatment; and

k. Other incidental and out of pocket costs.

IV. Claims

**COUNT ONE: NEGLIGENCE
Plaintiff James Vivenzio vs. All Defendants**

90. The preceding paragraphs are incorporated here by reference.
91. Defendants owed a duty of care to Plaintiff.
92. Defendant KDR breached its duty to Plaintiff by failing to take reasonable steps to safeguard him from injury while on the fraternity's property.
93. Defendant KDR also breached its duty to Plaintiff by failing to follow and enforce fraternity and university policies against hazing.
94. Defendant KDR is liable for the negligent acts of its agents, servants, employees, and fraternity members.
95. Defendant KDR National breached its duty by failing to supervise the action of its alumni who participated in hazing and by failing to supervise the members of KDR who participated in hazing and by failing to enforce its policies regarding hazing.
96. Defendant KDR National is liable for the negligent acts of its agents, servants, employees, and fraternity members.
97. Penn State breached its duty to Plaintiff by failing to enforce its policies against hazing.
98. Penn State also breached its duty to Plaintiff by failing to follow up on clear signs that Plaintiff was being harmed by his fraternity experience, including the fact that he received Fs in almost every one of his first semester classes and frequently had to seek medical treatment in the Penn State health clinic for various illnesses

resulting from the hazing line ups (during which Plaintiff and other pledges were, among other things, forced to ingest bucketfuls of liquor mixed with urine, vomit, hot sauce and other liquid and semi-solid ingredients.)

99. Penn State further breached its duty to Plaintiff by failing to investigate claims of hazing and other misconduct at KDR when Penn State had constructive or actual knowledge of such activities.
100. Penn State also breached its duty to Plaintiff by fostering a culture of non-enforcement of anti-hazing policies, a culture that was permissive to underage drinking, sexual mistreatment of female and male students, and excessive, unsupervised and dangerous fraternity social behavior.
101. Penn State is liable for the negligent acts of its agents, servants, employees, and KDR's fraternity members.
102. Defendants IFC and Panhellenic breached their duty to Plaintiff by failing to enforce Penn State policies against hazing and by failing to investigate clear evidence that hazing and sexual and physical assault were taking place at KDR.
103. Defendants IFC and Panhellenic also breached their duty to Plaintiff by fostering a culture of non-enforcement of anti-hazing policies, a culture that was permissive to underage drinking, sexual mistreatment of female and male students, and excessive, unsupervised and dangerous fraternity social behavior.
104. The standard of conduct Defendants were expect to follow in regard to prevent of fraternity hazing is set forth clearly and succinctly in Pennsylvania's anti-hazing law, which is quoted above and is found at 24 P.S. § 5352-5353.

105. Defendants were also expected to follow standards of conduct defined by Penn State's own anti-hazing policies, which largely mirror Pennsylvania's anti-hazing statute.

106. The negligence of Defendants was a legal and factual cause of Plaintiff's injuries and losses.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory damages in an amount that is in excess of local arbitration limits, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

COUNT TWO: NEGLIGENCE PER SE
Plaintiff James Vivenzio vs. All Defendants

107. The preceding paragraphs are incorporated by reference here.

108. Defendants' actions in hazing Plaintiff, in failing to take all reasonable and necessary steps to prevent hazing, in failing to investigate evidence of hazing, in failing to enforce policies and procedures against hazing, and in fostering a culture at Penn State in which hazing was tolerated and accepted, all of these were in violation of Pennsylvania law against hazing and in particular 24 P.S. § 5352-5353.

109. The conduct of Defendants constitutes negligence per se because this conduct clearly violates Pennsylvania's anti-hazing statute.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory damages in an amount that is in excess of local arbitration limits, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

COUNT THREE: BATTERY
Plaintiff James Vivencio v. All Defendants

110. The preceding paragraphs are incorporated by reference here.
111. The hazing to which Plaintiff was subjected, as described in detail in this Complaint, constituted an unlawful and unconsented touching, which is a battery under Pennsylvania law.
112. Plaintiff was force-fed hard liquor; was punched in the face; was burned by a cigarette on his body; was pushed against a wall and pushed to the floor; was required to drink a concoction of liquor, hot sauce, cat food, urine and other liquid and semi-solid ingredients; and was physically battered in numerous other ways as well.
113. The repeated battery to which Plaintiff was subjected caused him severe physical injury, mental anguish and other damages and losses, some of which are described above.
114. All Defendants are liable, directly or indirectly, for the conduct of those who perpetrated the hazing and battery against Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory and punitive damages in an amount that is in excess of local arbitration limits, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

COUNT FOUR: UNLAWFUL FURNISHING ALCOHOL TO A MINOR
Plaintiff James Vivenzio vs. All Defendants

115. .The preceding paragraphs are incorporated here by reference.
116. Defendants furnished large quantities of liquor to Plaintiff, and many others, and did so repeatedly.
117. Defendants acted through conduct of their agents, servants, employees and apparent agents in furnishing alcohol to Plaintiff and many other minors.
118. Providing alcohol to a minor is unlawful and gives rise to civil liability when the violation leads to harm, as was the case here.
119. Defendants conduct in repeatedly furnishing alcohol to minors; in failing to enforce policies and procedures against hazing; in creating a culture of permissiveness for fraternity social behavior, including excessive drinking and furnishing large quantities of liquor to minors; and in refusing to follow up on evidence of this unlawful behavior when in possession of constructive and actual knowledge of this behavior; constituted not only negligent but also reckless conduct.
120. Defendants' acted recklessly in that the repeated furnishing of liquor to minors, including Plaintiff knowingly and in clear disregard for his safety and well being placed him in substantial risk of serious harm.
121. Plaintiff suffered significant physical harm, mental anguish and other injuries and losses as a result of Defendants unlawful furnishing of alcohol to minors, including Plaintiff.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory and punitive damages in an amount that is in excess of local arbitration

limits, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

**COUNT FIVE: FURNISHING LIQUOR TO ONE OBVIOUSLY INTOXICATED
Plaintiff James Vivenzio vs. All Defendant**

122. The preceding paragraphs are incorporated by reference.
123. Defendants furnished large quantities of liquor to Plaintiff, and many others, and did so repeatedly when it was clear and obvious they were intoxicated.
124. Defendants acted through conduct of their agents, servants, employees and apparent agents in furnishing alcohol to Plaintiff and many other minors when they were clearly intoxicated.
125. Providing alcohol to one already intoxicated is unlawful and gives rise to civil liability when the violation leads to harm, as was the case here.
126. Defendants conduct in repeatedly furnishing alcohol to minors; in failing to enforce policies and procedures against hazing; in creating a culture of permissiveness for fraternity social behavior, including excessive drinking and furnishing large quantities of liquor to minors; and in refusing to follow up on evidence of this unlawful behavior when in possession of constructive and actual knowledge of this behavior; constituted not only negligent but also reckless conduct.
127. Defendants' acted recklessly in that the repeated furnishing of liquor to minors, including Plaintiff, with knowledge that they were already intoxicated and did so knowingly and in clear disregard for his safety and well being, which placed Plaintiff in substantial risk of serious harm.

128. Plaintiff suffered significant physical harm, mental anguish and other injuries and losses as a result of Defendants unlawful furnishing of alcohol to minors, including Plaintiff, when Plaintiff was already and clearly intoxicated.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory and punitive damages in an amount that is in excess of local arbitration limits, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

COUNT SIX: FALSE IMPRISONMENT
Plaintiff James Vivenzio vs. All Defendants

129. The preceding paragraphs are incorporated by reference here.

130. A person is liable for false imprisonment of another if he knowingly restrains another so as to substantially interfere with that other person's liberty.

131. Pennsylvania law expressly makes it unlawful for a person to engage in false imprisonment of another. 18 Pa.C.S. § 2903.

132. There were numerous instances during the hazing perpetrated against Plaintiff that KDR members restrained him physically so as to substantially interfere with his liberty.

133. The middle-of-the-night "line-ups," described in this Complaint, are clear examples of Defendants' false imprisonment of Plaintiff.

134. During the last week of pledging, known as "hell week," the pledges were physically prevented from leaving the fraternity house by being locked in the library and hazed and forced to sleep on the tile floor. Another hazing ritual during "hell week" at KDR involved blindfolding the pledges and locking them in a back room in the basement of the fraternity house for countless hours and

sadistically hazing the pledges before finally admitting them to the fraternity.

Pledge “line ups” took place every night during “hell week.”

135. All Defendants are liable, indirectly or directly, for false imprisonment of Plaintiff James Vivenzio.

136. Plaintiff suffered severe injuries as a result of the false imprisonment, including physical, emotional and psychological damages.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory and punitive damages in an amount that is in excess of local arbitration limits, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

COUNT SEVEN: FRAUD
Plaintiff James Vivenzio vs. All Defendants

137. The preceding paragraphs are incorporated by reference here.

138. Defendants all made knowingly false statements about hazing policies and practices at Penn State and at KDR specifically.

139. Defendants represented to Plaintiff, expressly and in stated policies and at informational meetings about rushing and in literature distributed by Penn State, KDR and KDR National that Penn State’s fraternities and that KDR specifically were not tolerant of hazing and sexual assault.

140. In fact, KDR openly hazed its freshman pledges, including Plaintiff.

141. In fact, KDR National, through its alumni, actively participated in hazing of Penn State freshman, including Plaintiff.

142. In fact, Penn State, IFC and Panhellenic tolerated hazing at its fraternities, including KDR, and through widespread non-enforcement of anti-hazing policies actually encouraged fraternities to engage in hazing.
143. Defendants' many false statements about hazing were made with knowledge and understanding that they were false.
144. Plaintiff James Vivenzio relied on the false statements of Defendants when he decided to pledge to the KDR fraternity.
145. Plaintiff would not have joined KDR if he had known about the rampant and violent and dangerous hazing there.
146. Plaintiff's reliance on the many false statements Defendants made about hazing were obviously to his detriment in that he suffered severe injuries and losses, both physically and psychologically.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory and punitive damages in an amount that is in excess of local arbitration limits, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

COUNT EIGHT: CONVERSION
Plaintiff James Vivenzio vs. All Defendants

147. The preceding paragraphs are incorporated by reference here.
148. Defendants, through the actions of various KDR members, confiscated Plaintiff's cafeteria food-plan money, which amounted to thousands of dollars.
149. The conduct of Defendants in taking property of substantial value belonging to Plaintiff constitutes unlawful conversion under Pennsylvania law.
150. All Defendants are liable, indirectly or directly, for the conduct of those KDR members that engaged in taking Plaintiff's property.

WHEREFORE, Plaintiff demands judgment against Defendants, jointly and severally, and seeks compensatory damages, as well as all interest and costs as Pennsylvania law permits and any and all other relief that the Court or a jury may deem appropriate.

FREIWALD LAW, P.C.



By:

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VERIFICATION

I, JAMES VIVENZIO, Plaintiff in the foregoing action, hereby verify that the statements made in the foregoing Complaint are true and correct to the best of my knowledge, information and/or belief. I understand that false statements hereunder made are subject to the penalties of 18 Pa. C.S. §4904 relating to unsworn falsifications to authorities.



JAMES VIVENZIO

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CERTIFICATE OF SERVICE

I, Aaron J. Freiwald, Esquire, hereby certify that service of a true and correct copy of the foregoing Complaint was served upon the following on this date, via first class mail, as follows:

Gaetano P. Piccirilli, Esquire
Dilworth Paxson, LLP
1500 Market Street
Suite 3500E
Philadelphia, PA 19102

Panhellenic Association
217 HUB-Roeson Center
University Park, PA 16802

The Pennsylvania State University
201 Old Main Street
University Park, PA 16801

The Pennsylvania State University of Interfraternity Council
218 HUB-Robeson Center
University Park, PA 16802

Zeta Chapter of Kappa Delta Rho
420 E Prospect Avenue
State College, PA 19038



AARON J. FREIWALD, ESQUIRE