

1 Justin H. Sanders (SBN 211488)  
jsanders@sandersroberts.com  
2 Melvin L. Felton (SBN 276047)  
mfelton@sandersroberts.com  
3 G. Edwin Rush, II (SBN 272450)  
erush@sandersroberts.com  
4 **SANDERS ROBERTS LLP**  
1055 West 7th Street, Suite 3200  
5 Los Angeles, CA 90017  
Telephone: (213) 426-5000  
6 Facsimile: (213) 234-4581

7 Attorneys for Defendant  
8 **ALPHA PHI ALPHA FRATERNITY – PI**  
9 **EPSILON CHAPTER**

10 SUPERIOR COURT OF CALIFORNIA  
11 COUNTY OF RIVERSIDE

12  
13 MYEASHA KIMBLE, an individual and  
successor in interest to TYLER HILLIARD,  
14 WILLIAM HILLIARD, an individual and  
successor in interest to TYLER HILLIARD,

15 Plaintiffs,

16 v.

17 ALPHA PHI ALPHA FRATERNITY, INC.,  
18 ALPHA PHI ALPHA FRATERNITY – PI  
EPSILON CHAPTER at UC RIVERSIDE, an  
19 incorporated Association; and DOES 1 through  
20 100, inclusive,

21 Defendants.

**CASE NO. RIC1906176**

**DEFENDANT PI EPSILON CHAPTER'S  
ANSWER TO PLAINTIFFS' THIRD  
AMENDED COMPLAINT**

Judge: Hon. Carol Greene  
Dept.: Dept. 2

Complaint Filed: December 20, 2019  
Trial Date: None Set





1           **TO THE COURT, ALL PARTIES AND THEIR ATTORNEYS OF RECORD:**

2           COMES NOW Defendant ALPHA PHI ALPHA FRATERNITY - PI EPSILON CHAPTER  
3 (erroneously sued as Alpha Phi Alpha Fraternity Pi Epsilon Chapter at UC Riverside) (hereinafter  
4 “Pi Epsilon” or “Defendant”), answering Plaintiffs’ MYESHA KIMBLE’s and WILLIAM  
5 HILLIARD’s (“Plaintiffs”) Third Amended Complaint for Damages on file herein, and responds to  
6 the allegations contained in Plaintiffs’ Third Amended Complaint as follows:

7   **GENERAL DENIAL**

8           Pursuant to the provisions of the California Code of Civil Procedure section 431.30,  
9 subdivision (d), Defendant denies, generally and specifically, each and every allegation in Plaintiffs’  
10 Third Amended Complaint, and the whole thereof, and further specifically deny Plaintiffs were  
11 damaged in the sum, or sums, alleged, or in any other sum or sums, or at all. Further answering  
12 Plaintiffs’ Third Amended Complaint on file herein and the whole thereof, Defendant denies  
13 Plaintiffs sustained any injury, damage, or loss, if any, by reason of any act or omission on the part  
14 of this answering Defendant.

15   **AFFIRMATIVE DEFENSES**

16           The Defendant further asserts the following defenses. By asserting these defenses,  
17 Defendant does not concede to have the burden of production of proof as to any affirmative defense  
18 asserted below. Moreover, Defendant does not presently know all the facts concerning the conduct  
19 of Plaintiffs sufficient to state all affirmative defenses at this time. Accordingly, Defendant will seek  
20 leave to this Court to amend this answer should it later discover facts demonstrating the existence  
21 of additional affirmative defenses.

22   **FIRST AFFIRMATIVE DEFENSE**

23   **(Failure to State a Cause of Action)**

24           AS A FIRST, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED  
25 COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering  
26 Defendant alleges that said Third Amended Complaint for Wrongful Death, and each alleged cause  
27 of action thereof, fails to state facts sufficient to constitute a cause of action against this answering  
28 Defendant.



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**SECOND AFFIRMATIVE DEFENSE**

**(Contributory Negligence)**

AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges that Decedent Tyler Hilliard (“Decedent”) was himself careless and negligent in and about the matters alleged in the Third Amended Complaint and each alleged cause of action thereof, and that said carelessness and negligence on said Decedent’s own part proximately contributed to the happening of the loss and damages complained of, if any there were. Under the doctrine of *Li v. Yellow Cab Co.*, 13 Cal.3d 804 (1975), Decedent’s own contributory negligence shall reduce any and all damages sustained by Plaintiffs.

**THIRD AFFIRMATIVE DEFENSE**

**(Comparative Negligence)**

AS A THIRD, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges that said damages alleged by Plaintiffs were either wholly or in part the fault of others, whether that fault be the proximate result of negligence, strict liability, intentional torts, breach of contract or any other type of fault caused by persons, firms, corporations or entities other than this answering Defendant, and said negligence or fault comparatively reduces the percentage of fault or negligence, if any, by this answering Defendant.

**FOURTH AFFIRMATIVE DEFENSE**

**(Assumption of Risk)**

AS A FOURTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges that the Decedent, with full appreciation of the particular risks involved, whether expressly or impliedly, nevertheless knowingly and voluntarily assumed the risks and hazards of the accident complained of and the damages if any, resulting therefrom.

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**FIFTH AFFIRMATIVE DEFENSE**

**(Failure to State Claim for Punitive Damages)**

AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges that the Third Amended Complaint and each alleged cause of action thereof fails to state facts upon which to support a claim for exemplary or punitive damages.

**SIXTH AFFIRMATIVE DEFENSE**

**(Unforeseeable Condition)**

AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges that each of Decedent’s injuries and damages, if any, were proximately caused or contributed to by Decedent’s unforeseeable idiosyncratic condition, unusual susceptibility, or hypersensitive reactions for which this answering Defendant is not liable.

**SEVENTH AFFIRMATIVE DEFENSE**

**(Intervening and Supervening Causes)**

AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant is informed and believes and on that basis alleges that the injuries, damages, losses and/or detriment of which Plaintiffs’ Third Amended complaint and for which Plaintiffs seek recovery, if any, were the result of causes independent of the purported acts or omissions of this answering Defendant, which causes operated as intervening and superseding causes, thereby cutting off any liability on the part of this answering Defendant.

**EIGHTH AFFIRMATIVE DEFENSE**

**(No Proximate Cause)**

AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges that no conduct by or attributable to this answering Defendant was the cause in fact or the proximate cause of the damages, if any, suffered by Plaintiffs, nor a substantial

1 factor in bringing about said damages.

2 **NINTH AFFIRMATIVE DEFENSE**

3 **(Ratification or Consent)**

4 AS A NINTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD  
5 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this  
6 answering Defendant alleges that Decedent acknowledged, ratified, consented to and acquiesced in  
7 the alleged acts or omissions, if any, of this answering Defendant, thus barring Plaintiffs from any  
8 relief as prayed for herein.

9 **TENTH AFFIRMATIVE DEFENSE**

10 **(Waiver)**

11 AS A TENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD  
12 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this  
13 answering Defendant alleges that Plaintiffs are barred from asserting any causes of action by the  
14 Doctrine of Waiver.

15 **ELEVENTH AFFIRMATIVE DEFENSE**

16 **(Estoppel)**

17 AS AN ELEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD  
18 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this  
19 answering Defendant alleges that Plaintiffs are estopped from asserting any causes of action caused  
20 by Decedent's own conduct.

21 **TWELFTH AFFIRMATIVE DEFENSE**

22 **(Damages Caused by Decedent)**

23 AS A TWELFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD  
24 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this  
25 answering Defendant alleges that if Decedent sustained any injuries or damages as a result of the  
26 incident(s) complained of in the Complaint, then Decedent proximately caused, aggravated and  
27 failed to take proper action to reduce and/or mitigate said injuries or damages.

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**THIRTEENTH AFFIRMATIVE DEFENSE**

**(Failure to Exercise Ordinary Care)**

AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges that Decedent failed to exercise ordinary care and caution for his own safety or welfare, or to avoid the happening of any accident, injury and damages, if any sustained, and that as a direct and proximate result of Decedent’s failure to exercise ordinary care, the negligent acts and omissions of Decedent did directly and proximately cause, in whole or in part, the occurrence of accident, injury and damages, if any sustained, by reasons stated above, Plaintiffs should be denied recovery as against answering Defendant in any sum or sums whatsoever, whether as alleged or otherwise.

**FOURTEENTH AFFIRMATIVE DEFENSE**

**(Lack of Standing)**

AS A FOURTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering Defendant alleges Plaintiffs’ Complaint, and each purported cause of action and/or form of recovery contained therein, is barred to the extent that Plaintiffs lack standing to assert any of the causes of action and/or form of recovery contained in the Complaint because Plaintiffs have not suffered any injury-in-fact or for which Plaintiffs have a private right of action.

**PRAYER FOR RELIEF**

**WHEREFORE**, this answering Defendant prays:

- 1. That Plaintiffs take nothing by way of their Third Amended Complaint;
- 2. That Defendant be granted judgment for its attorney’s fees and costs of suit incurred herein; and
- 3. For such other and further relief as the Court may deem just and proper.

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Dated: November 22, 2021

**SANDERS ROBERTS LLP**

By: 

Justin H. Sanders, Esq.  
Melvin L. Felton, Esq.  
G. Edwin Rush, II, Esq.  
Attorneys for Defendant

**ALPHA PHI ALPHA FRATERNITY – PI EPSILON  
CHAPTER**



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**PROOF OF SERVICE**

(CODE CIV. PROC. § 1013A(3))

STATE OF CALIFORNIA, COUNTY OF LOS ANGELES

I am employed in the County of Los Angeles, State of California. I am over the age of 18 years and am not a party to the within action; my business address is 1055 West 7th Street, Los Angeles, CA 90017. My electronic service address is mperez-garcia@sandersroberts.com.

On November 22, 2021, I served the following document(s) described as DEFENDANT PI EPSILON CHAPTER'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT on the interested parties in this action as follows:

- By Electronic Mail:** I caused the documents to be transmitted by electronic mail to the party(s) identified on the attached service list using the e-mail address(es) shown. I did not receive, within a reasonable time after transmission, any electronic message or other indication that the transmission(s) were unsuccessful.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed on November 22, 2021, at Los Angeles, California.

/s/ Marilyn Perez-Garcia  
Marilyn Perez-Garcia





**SERVICE LIST**

*Myeasha Kimble, et al. vs. Alpha Phi Alpha Fraternity, Inc., et al.*  
RSC – Case No.: RIC1906176

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V. James DeSimone  
Carmen D. Sabater  
**V. JAMES DESIMONE LAW**  
13160 Mindanao Way, Suite 280  
Marina Del Rey, CA 90292  
Tel.: (310) 693-5561  
vjdesimone@gmail.com  
cds820@gmail.com

**Attorneys for Plaintiffs**  
MYEASHA KIMBLE and  
WILLIAM HILLIARD

Toni J. Jaramilla  
**TONI JARAMILLA, A PROFESSIONAL LAW  
CORP.**  
1900 Avenue of the Stars, Suite 900  
Los Angeles, CA 90067  
Tel.: (310) 551-3020  
toni@tjlaw.com  
Stefanie@tjlaw.com  
grace@tjlaw.com

**Attorneys for Plaintiffs**  
MYEASHA KIMBLE and  
WILLIAM HILLIARD

Rodney S. Diggs  
**IVIE MCNEILL WYATT PURCELL & DIGGS**  
444 S. Flower St., Suite 1800  
Los Angeles, CA 90071  
Tel.: (213) 489-0028  
rdiggs@imwlaw.com  
lmetoyer@imwlaw.com  
awilliams@imwlaw.com  
taman@imwlaw.com  
dmeigs@imwlaw.com  
kdavis@imwlaw.com

**Attorneys for Plaintiffs**  
MYEASHA KIMBLE and  
WILLIAM HILLIARD

**BOHM LAW GROUP**  
13160 Mindanao Way, Suite 280  
Marina Del Rey, California 90292  
Tel.: (866)920-1292  
psharma@bohmlaw.com  
VJD000057@bohmlaw.com  
rhall@bohmlaw.com  
aqua@bohmlaw.com

**Attorneys for Plaintiffs**  
MYEASHA KIMBLE and  
WILLIAM HILLIARD



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Clifton Albright  
Bryan Luther  
**ALBRIGHT, YEE & SCHMIDT APC**  
707 Wilshire Blvd., Suite 3600  
Los Angeles, CA 90017  
clifton.albright@ayslaw.com  
bryan.luther@ayslaw.com  
Cristeta.Summers@ayslaw.com  
Connie.White@ayslaw.com

**Attorneys for Defendant**  
ALPHA PHI ALPHA  
FRATERNITY, INC.

Stephen M. Harber, Esq.  
Nazli Alimi, Esq.  
**MCCUNE & HARBER, LLP**  
515 South Figueroa Street, Suite 1100  
Los Angeles, CA 90071  
Tel.: (213) 689-2500  
sharber@mccuneharber.com  
nalimi@mccuneharber.com  
smoore@mccuneharber.com

**Attorneys for Defendant**  
THE REGENTS OF THE  
UNIVERSITY OF  
CALIFORNIA

