	1 2 3 4 5 6	Electronically FILED by Superior Court of California Case Number RIC1906176 0000005232664 - W. Samuel Hamrick Jr Justin H. Sanders (SBN 211488) jsanders@sandersroberts.com Melvin L. Felton (SBN 276047) mfelton@sandersroberts.com G. Edwin Rush, II (SBN 272450) erush@sandersroberts.com SANDERS ROBERTS LLP 1055 West 7th Street, Suite 3200 Los Angeles, CA 90017 Telephone: (213) 426-5000 Facsimile: (213) 234-4581					
	7 8	Attorneys for Defendant ALPHA PHI ALPHA FRATERNITY – PI EPSILON CHAPTER					
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	10	SUPERIOR COURT OF CALIFORNIA COUNTY OF RIVERSIDE					
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\mathbf{C}	12		I				
S	13	MYEASHA KIMBLE, an individual and	CASE NO. RIC	1906176			
SANDERS ROBERTS	14	successor in interest to TYLER HILLIARD, WILLIAM HILLIARD, an individual and successor in interest to TYLER HILLIARD,		ANT PI EPSILON CHAPTER'S TO PLAINTIFFS' THIRD			
1055 W. 7 TH STREET Suite 3200 Los Angeles, ca 90017	15	Plaintiffs, AMENDED COMPLAINT					
	16	V.	Judge:	Hon. Carol Greene Dept. 2			
	17	ALPHA PHI ALPHA FRATERNITY, INC.,	Dept.:	-			
	18 19	ALPHA PHI ALPHA FRATERNITY – PI EPSILON CHAPTER at UC RIVERSIDE, an incorporated Association; and DOES 1 through	Trial Date:	December 20, 2019 None Set			
		100, inclusive,					
	20	Defendants.					
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		- 1 - DEFENDANT PI EPSILON CHAPTER'S ANSWER TO	O PLAINTIFFS' THIRI	Case No.: RIC1906176 D AMENDED COMPLAINT			

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

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 the allegations contained in Plaintiffs' Third Amended Complaint as follows: 6

GENERAL DENIAL

Pursuant to the provisions of the California Code of Civil Procedure section 431.30, 8 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 damaged in the sum, or sums, alleged, or in any other sum or sums, or at all. Further answering Plaintiffs' Third Amended Complaint on file herein and the whole thereof, Defendant denies Plaintiffs sustained any injury, damage, or loss, if any, by reason of any act or omission on the part of this answering Defendant.

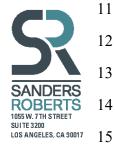
AFFIRMATIVE DEFENSES

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.

FIRST AFFIRMATIVE DEFENSE

(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.



SECOND AFFIRMATIVE DEFENSE

(Contributory Negligence)

3 AS A SECOND, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD 4 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this 5 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 6 7 of action thereof, and that said carelessness and negligence on said Decedent's own part proximately 8 contributed to the happening of the loss and damages complained of, if any there were. Under the 9 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. 10

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.

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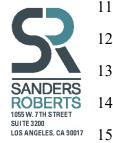
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FOURTH AFFIRMATIVE DEFENSE

(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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2 (Failure to State Claim for Punitive Damages) AS A FIFTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED 3 4 COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this answering 5 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. 6 7 SIXTH AFFIRMATIVE DEFENSE

(Unforeseeable Condition)

FIFTH AFFIRMATIVE DEFENSE

9 AS A SIXTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this 10 answering Defendant alleges that each of Decedent's injuries and damages, if any, were proximately 11 12 caused or contributed to by Decedent's unforeseeable idiosyncratic condition, unusual 13 susceptibility, or hypersensitive reactions for which this answering Defendant is not liable.

SEVENTH AFFIRMATIVE DEFENSE

(Intervening and Supervening Causes)

16 AS A SEVENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD 17 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this 18 answering Defendant is informed and believes and on that basis alleges that the injuries, damages, 19 losses and/or detriment of which Plaintiffs' Third Amended complaint and for which Plaintiffs seek 20 recovery, if any, were the result of causes independent of the purported acts or omissions of this 21 answering Defendant, which causes operated as intervening and superseding causes, thereby cutting 22 off any liability on the part of this answering Defendant.

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EIGHTH AFFIRMATIVE DEFENSE

(No Proximate Cause)

25 AS AN EIGHTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD 26 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this 27 answering Defendant alleges that no conduct by or attributable to this answering Defendant was the 28 cause in fact or the proximate cause of the damages, if any, suffered by Plaintiffs, nor a substantial

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- 4 -Case No.: RIC1906176 DEFENDANT PI EPSILON CHAPTER'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT

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NINTH AFFIRMATIVE DEFENSE

(Ratification or Consent)

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

TENTH AFFIRMATIVE DEFENSE

(Waiver)

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

ELEVENTH AFFIRMATIVE DEFENSE

(Estoppel)

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

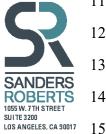
TWELFTH AFFIRMATIVE DEFENSE

(Damages Caused by Decedent)

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

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



THIRTEENTH AFFIRMATIVE DEFENSE

(Failure to Exercise Ordinary Care)

3 AS A THIRTEENTH, SEPARATE AND AFFIRMATIVE DEFENSE TO THE THIRD 4 AMENDED COMPLAINT AND EACH ALLEGED CAUSE OF ACTION THEREOF, this 5 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, 6 and that as a direct and proximate result of Decedent's failure to exercise ordinary care, the negligent 7 acts and omissions of Decedent did directly and proximately cause, in whole or in part, the 8 9 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 10 as alleged or otherwise. 11

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;

23 2. That Defendant be granted judgment for its attorney's fees and costs of suit incurred

24 herein; and

3. For such other and further relief as the Court may deem just and proper.

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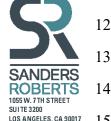
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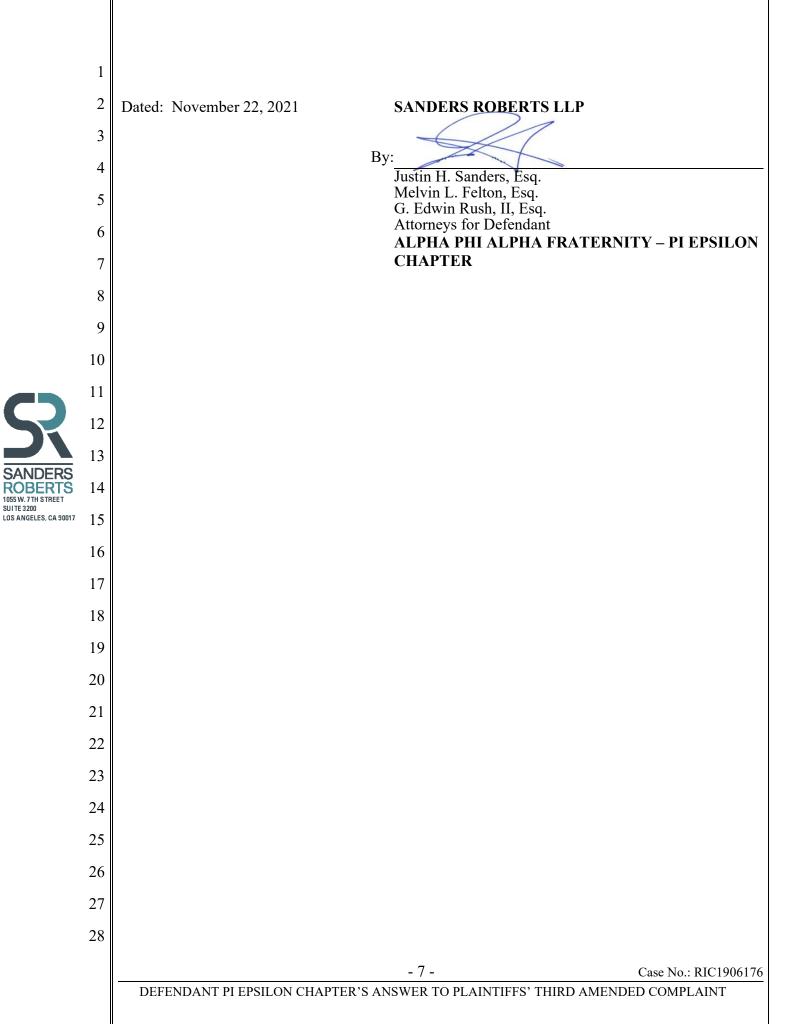
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Case No.: RIC1906176



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	2	(CODE CIV. PROC. § 1013A(3))				
	3	STATE OF CALIFORNIA, COUNTY OF LOS ANGELES				
	4 5	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.				
	6 7	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:				
	8 9 10 11 12	☑ 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.				
	13 14 15	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.				
	16 17	<u>/s/ Marilyn Perez-Garcia</u> Marilyn Perez-Garcia				
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		DEFENDANT PI EPSILON CHAPTER'S ANSWER TO PLAINTIFFS' THIRD AMENDED COMPLAINT				



	1 2	<u>SERVICE LIST</u> Myeasha Kimble, et al. vs. Alpha Phi Alpha Fraternity, Inc., et al. RSC – Case No.: RIC1906176			
	3 4 5 6 7	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		
SANDERS	14 15 16 17 18 19 20	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@tjjlaw.com Stefanie@tjjlaw.com grace@tjjlaw.com	Attorneys for Plaintiffs MYEASHA KIMBLE and WILLIAM HILLIARD		
ROBERTS 1055 W. 7TH STREET SUITE 3200 LOS ANGELES, CA 90017		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		
	 21 22 23 24 25 26 27 28 	BOHM LAW GROUP 13160 Mindinao 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		
		- 9 - DEFENDANT PI EPSILON CHAPTER'S ANSWER TO PLAI	Case No.: RIC1906176 NTIFFS' THIRD AMENDED COMPLAINT		

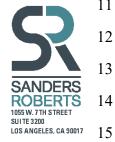
1 **Clifton Albright** Bryan Luther 2 **ALBRIGHT, YEE & SCHMIDT APC** 3 707 Wilshire Blvd., Suite 3600 Los Angeles, CA 90017 4 clifton.albright@ayslaw.com bryan.luther@ayslaw.com 5 Cristeta.Summers@ayslaw.com Connie.White@ayslaw.com 6 7 Stephen M. Harber, Esq. Nazli Alimi, Esq. 8 MCCUNE & HARBER, LLP 515 South Figueroa Street, Suite 1100 9 Los Angeles, CA 90071 Tel.: (213) 689-2500 10 sharber@mccuneharber.com 11 nalimi@mccuneharber.com

smoore@mccuneharber.com

Attorneys for Defendant ALPHA PHI ALPHA FRATERNITY, INC.

Attorneys for Defendant

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