

IN THE OHIO COURT OF CLAIMS

Shari Foltz, Administrator of the Estate of Stone J. Foltz,)	CASE NO. 2022-00498JD
)	
Plaintiff,)	JUDGE PATRICK E. SHEERAN
)	
vs.)	
)	
Bowling Green State University,)	
)	
Defendant.)	

ANSWER

1. Defendant Bowling Green State University (the “University”) lacks information sufficient to form a belief as to the allegations contained in Paragraph 1 of the Complaint and therefore denies the same.

2. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 2 of the Complaint and therefore denies the same.

3. The University admits that Stone Foltz pledged the Pi Kappa Alpha International Fraternity, Inc. (“PIKE”) and its Delta Beta Chapter at the University during the second semester of his sophomore year. The University, otherwise, lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 3 of the Complaint and therefore denies the same.

4. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz was the subject of hazing while he pledged PIKE, and he consumed an entire bottle of alcohol on the night of March 4, 2021. The University further admits that Stone Foltz died on March 7, 2021. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 4 of the Complaint and therefore denies the same.

5. The University denies the allegations contained in Paragraph 5 of the Complaint. The University worked tirelessly to end hazing, within PIKE and every other student organization on its campus. The University instituted and actively enforced a policy against hazing. The University is not responsible for the off-campus, criminal actions of the now-expelled students who violated University policy, actively concealed the activity from the University and thwarted the University's investigation.

6. The University denies the allegations contained in Paragraph 6 of the Complaint. Plaintiff's plan to use this case as a "model for . . . every University" is a misguided attempt to place blame for *all* fraternity hazing with BGSU, which has long had a policy against hazing, and actively enforced that policy. Judge Kuhlman's comments were neither a factual finding nor a legal decision, and they speak for themselves. No response is needed. The University denies any further allegations in Paragraph 6 of the Complaint.

THE PARTIES

7. The University admits the allegations contained in Paragraph 7 of the Complaint.

8. The University admits the allegations contained in Paragraph 8 of the Complaint.

JURISDICTION & VENUE

9. The University admits the allegations contained in Paragraph 9 of the Complaint.

BACKGROUND FACTS

Stone Foltz and his family

10. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 10 of the Complaint and therefore denies the same.

11. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 11 of the Complaint and therefore denies the same.

12. The University admits the allegations contained in Paragraph 12 of the Complaint.
13. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 13 of the Complaint and therefore denies the same.
14. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 14 of the Complaint and therefore denies the same.
15. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 15 of the Complaint and therefore denies the same.
16. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 16 of the Complaint and therefore denies the same.
17. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 17 of the Complaint and therefore denies the same.
18. The University admits that Stone Foltz died at the age of twenty.
19. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 19 of the Complaint and therefore denies the same.
20. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 20 of the Complaint and therefore denies the same.
21. The University lacks information sufficient to form a belief as to the allegations about the website contained in Paragraph 21 of the Complaint and therefore denies the same.
22. The University lacks information sufficient to form a belief as to the allegations about the website contained in Paragraph 22 of the Complaint and therefore denies the same.
23. The University lacks information sufficient to form a belief as to the allegations about the website contained in Paragraph 23 of the Complaint and therefore denies the same.

24. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 24 of the Complaint and therefore denies the same.

25. The University denies that it had any tolerance for hazing. The University has long had a “zero tolerance” for hazing policy. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 25 of the Complaint and therefore denies the same.

26. The University denies the characterization of any list of Greek organizations as “free advertising.” The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 26 of the Complaint and therefore denies the same.

27. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 27 of the Complaint and therefore denies the same.

28. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 28 of the Complaint and therefore denies the same.

29. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 29 of the Complaint and therefore denies the same.

30. The University admits that it opened the “Greek Village” in 2016 as on-campus housing for 33 Greek organizations to replace housing that was built between the 1940s and 1960s. The University denies that the “Greek Village” was opened to “funnel students” toward Greek organizations and allow the Greek organizations to thrive. The University denies the remaining allegations and implications contained in Paragraph 30 of the Complaint.

31. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 31 of the Complaint and therefore denies the same.

32. The University admits that it registers and supervises fraternity and sorority organizations on its campus through its Office of Sorority & Fraternity Life. The University denies the legal conclusion that it exercised “substantial control” over such organizations on its campus, and that it considered itself “in partnership with” fraternity and sorority organizations. The University further denies the remaining allegations and implications contained in Paragraph 32 of the Complaint.

33. The University admits that it has the ability and authority to establish rules that apply to Greek organizations on its campus. The University denies the legal conclusion that it exercised “substantial control” over Greek organizations on its campus. The University further denies the remaining allegations and implications contained in Paragraph 33 of the Complaint.

Hazing and Drinking Within BGSU’s Greek Community

34. The University denies the allegations contained in Paragraph 34 of the Complaint.

35. The University does not currently know of internal records dating back to 1996, and is therefore not in a position to admit the allegations of Paragraph 35. For that reason, the University denies the allegations of Paragraph 35.

36. The University does not currently know of internal records dating back to 1999, and is therefore not in a position to admit the allegations of Paragraph 36. For that reason, the University denies the allegations of Paragraph 36.

37. The University does not currently know of internal records dating back to 2000, and is therefore not in a position to admit the allegations of Paragraph 37. For that reason, the University denies the allegations of Paragraph 37.

38. The University does not currently know of internal records dating back to 2006, and is therefore not in a position to admit the allegations of Paragraph 38. For that reason, the University denies the allegations of Paragraph 38.

39. The University does not currently know of internal records dating back to 2008, and is therefore not in a position to admit the allegations of Paragraph 39. For that reason, the University denies the allegations of Paragraph 39.

40. The University denies Paragraph 40's characterization that hazing was a problem at BGSU as of 2010. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 40 of the Complaint and therefore denies the same.

41. The University admits that it punished Phi Kappa Tau for violation of the University's policy against hazing in the Student Code of Conduct by suspending the fraternity. The University further admits that it learned, through its investigation into Phi Kappa Tau, that pledges had been forced to consume alcohol and perform various physical exercises. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 41 of the Complaint and therefore denies the same.

42. The University admits that it punished Delta Tau Delta for violation of the University's policy against hazing in the Student Code of Conduct by placing the fraternity on University Warning Status. The University further admits that the examples provided in Paragraph 42 of the Complaint were reported to the University. The University denies that this was the only punishment imposed on Delta Tau Delta, and the implication that its punishment was inadequate. The University further denies the characterization that the anonymous report stated hazing had been occurring "for years." The University admits that it suspended the Delta Tau Delta fraternity

in July 2021. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 42 of the Complaint and therefore denies the same.

43. The University admits that it received a complaint regarding hazing at Phi Kappa Psi in late 2017 and early 2018. The University denies that the complaint stated Phi Kappa Psi members hit pledges with sticks. The complaint stated that a non-Phi-Kappa-Psi member struck a new member with a stick. The complaint also stated that the alleged hazing involved alcohol. The University further states that it suspended Phi Kappa Psi. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 43 of The Complaint and therefore denies the same.

44. The University admits that it punished Delta Chi for violation of the University's Student Code of Conduct. The University admits that the events described in Paragraph 44 of the Complaint were reported to the University. The University further states that it worked with the national Delta Chi organization to implement additional sanctions.

45. The University admits that it punished Delta Chi for violation of the University's Student Code of Conduct in the fall of 2019. The University denies the implication that this punishment was not sufficient. The University admits that the events described in Paragraph 45 of the Complaint were reported to the University.

46. The University admits that it punished Sigma Chi for violation of the University's Student Code of Conduct in the fall of 2019, and placed Sigma Chi—not Delta Chi, which the University assumes was a typo—on University Warning Status. The University denies that the incident referred to in Paragraph 46 of the Complaint related to hazing. The Sigma Chi member overconsumed alcohol on their birthday. The University lacks information sufficient to form a

belief as to the remaining allegations contained in Paragraph 46 of the Complaint and therefore denies the same.

47. The University admits that it received an anonymous report that stated a member of Delta Chi referred to the basement of a house as Delta Chi's "pledge dungeon." The University denies the report was made in the fall of 2020; instead, the report was made in March 2021 regarding an incident from November 2020. The University denies the report included any details regarding acts of hazing. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 46 of the Complaint and therefore denies the same.

48. The University admits that it suspended Delta Chi in July 2021. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 48 of the Complaint and therefore denies the same.

49. The University admits that Phi Delta Theta hosted parties in October 2021. The University denies that these parties resulted in "numerous hospitalizations." They resulted in two hospitalizations, neither of which was a 16-year-old. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 49 of the Complaint and therefore denies the same.

50. The University admits that, after a thorough investigation and confirmation of allegations of hazing at Sigma Gamma Rho, it expelled Sigma Gamma Rho. The University admits that the acts described in Paragraph 50 of the Complaint were reported to the University. The University denies any remaining allegations and implications contained in Paragraph 50 of the Complaint.

51. The University admits that, after a thorough investigation and confirmation of allegations of hazing at Phi Delta Gamma, it expelled Phi Delta Gamma. The University denies

the implication that the allegations included the forced consumption of alcohol. The University received reports of pledges being sprayed with alcohol. The University further denies that a pledge was sent to the hospital due to hazing. The University received reports that a date of a new Phi Delta Gamma member went to the hospital after overconsuming at an event hosted by Phi Delta Gamma. The University denies any remaining allegations and implications contained in Paragraph 51 of the Complaint.

The Pi Kappa Alpha Fraternity and its Long History of Hazing

52. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 52 of the Complaint and therefore denies the same.

53. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 53 of the Complaint and therefore denies the same.

54. The allegations contained in Paragraph 54 of the Complaint are vague and ambiguous. Therefore, the University lacks information sufficient to form a belief as to the allegations contained in Paragraph 54 of the Complaint and therefore denies the same.

55. The University lacks information sufficient to form a belief as to the 57-year-old news story regarding a different institution referenced in Paragraph 55 of the Complaint and therefore denies the same.

56. The University lacks information sufficient to form a belief as to the 45-year-old news story regarding a different institution referenced in Paragraph 56 of the Complaint and therefore denies the same.

57. The University lacks information sufficient to form a belief as to the 33-year-old news story regarding a different institution referenced in Paragraph 57 of the Complaint and therefore denies the same.

58. The University denies the allegations contained in Paragraph 58 of the Complaint because the court records referenced, but not cited, speak for themselves.

59. The University denies the allegations contained in Paragraph 59 of the Complaint because the court records referenced, but not cited, speak for themselves.

60. The University lacks information sufficient to form a belief as to the 21-year-old news story regarding a different institution referenced in Paragraph 60 of the Complaint and therefore denies the same.

61. The University lacks information sufficient to form a belief as to the 20-year-old news story regarding a different institution referenced in Paragraph 61 of the Complaint and therefore denies the same.

62. The University lacks information sufficient to form a belief as to the 18-year-old news story regarding a different institution referenced in Paragraph 62 of the Complaint and therefore denies the same.

63. The University lacks information sufficient to form a belief as to the 14-year-old news story regarding a different institution referenced in Paragraph 63 of the Complaint and therefore denies the same.

64. The University lacks information sufficient to form a belief as to the 11-year-old news story regarding a different institution referenced in Paragraph 64 of the Complaint and therefore denies the same.

65. The University lacks information sufficient to form a belief as to the 10-year-old news story regarding a different institution referenced in Paragraph 65 of the Complaint and therefore denies the same.

66. The University lacks information sufficient to form a belief as to the 10-year-old news story regarding a different institution referenced in Paragraph 66 of the Complaint and therefore denies the same.

67. The University does not have access to records from other institutions. Therefore, it lacks information sufficient to form a belief as to the allegations contained in Paragraph 67 of the Complaint and therefore denies the same.

68. The University does not have access to records from other institutions. Therefore, it lacks information sufficient to form a belief as to the allegations contained in Paragraph 68 of the Complaint and therefore denies the same.

69. The University does not have access to records from other institutions. Therefore, it lacks information sufficient to form a belief as to the allegations contained in Paragraph 69 of the Complaint and therefore denies the same.

70. The University does not have access to records from other institutions. Therefore, it lacks information sufficient to form a belief as to the allegations contained in Paragraph 70 of the Complaint and therefore denies the same.

71. The University does not have access to records from other institutions. Therefore, it lacks information sufficient to form a belief as to the allegations contained in Paragraph 71 of the Complaint and therefore denies the same.

72. The University denies the allegations contained in Paragraph 72 of the Complaint.

The Pi Kappa Alpha Fraternity – Delta Beta Chapter at BGSU

73. The University denies the allegations contained in Paragraph 73 of the Complaint.

74. The University denies the allegations contained in Paragraph 74 of the Complaint.

75. The University does not currently know of internal records dating back to 2005, and is therefore not in a position to admit the allegations of Paragraph 75. For that reason, the University denies the allegations of Paragraph 75.

76. The University does not currently know of internal records dating back to 2010, and is therefore not in a position to admit the allegations of Paragraph 76. For that reason, the University denies the allegations of Paragraph 76. The University further states that Paragraph 76 mischaracterizes the article it references, in that the article only refers to fighting between members of two different fraternities, as opposed to the organizations themselves.

77. The University admits that it punished the PIKE fraternity for violating its Student Code of Conduct by placing it on University Warning Status on October 27, 2016. The University further admits that PIKE's president admitted to purchasing alcohol using funds from a GoFundMe. The University denies the characterization that its punishment was a "warning," or its enforcement of its policies was a "slap on the wrist" or was in any way insufficient. The University denies any remaining allegations and implications contained in Paragraph 77 of the Complaint.

78. The University admits the allegations contained in Paragraph 78 of the Complaint.

79. The University admits the allegations contained in Paragraph 79 of the Complaint.

80. The University denies the allegations of Paragraph 80 of the Complaint. The University did not "accept [the] denial" of the PIKE pledge in question. Rather, the University was faced with two conflicting stories, and no corroborating evidence either way. Further, the initial reporter admitted that his report (aside from the part about his roommate being in a hurry) was based not on fact, but rumors shared by third parties. The University determined that the

information provided by the initial reporter was not reliable enough to conduct further investigation.

81. The allegations contained in Paragraph 81 of the Complaint are vague and ambiguous. The University denies all characterizations and implications of Paragraph 81. BGSU does admit that, following an investigation, an individual PIKE member took sole responsibility for several empty beer bottles discovered in the house. He had friends over to the PIKE house who were not members of the fraternity. Individuals living in fraternity houses, like the PIKE house, may accept sole responsibility for their behavior.

82. The University admits that it punished PIKE fraternity for violations of the University's Student Code of Conduct in 2019. The University admits that the punishment stemmed from violations of the University's alcohol policy, and that, in addition to organization-wide punishments, 80% of PIKE's members were required to attend alcohol abuse education programs.

83. The University admits that it received a report regarding PIKE hosting four parties in May 2020. The report referred to in Paragraph 83 of the Complaint is one of several reports the University received. The University was not able to substantiate the claim that PIKE threw multiple parties but did have sufficient proof of one party thrown on May 25, 2020. The University admits that it placed PIKE on probation but denies the implication that this punishment was inadequate. The University further denies the implication that this was the sole punishment it instituted. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 83 of the Complaint and therefore denies the same.

84. The University admits that it investigated PIKE fraternity for violations of the University's Student Code of Conduct in 2021, and that a formal hearing had been scheduled for

March 2021. The University met with the chapter several times, but the PIKE president made multiple attempts to prolong the investigation. The University charged PIKE on February 3, 2021. PIKE requested a formal hearing on February 5, 2021. The University admits the hearing was cancelled because of Mr. Foltz's death. The University denies any implication that enforcement of its Student Code of Conduct was inappropriately delayed or otherwise improper.

BGSU Knew About PIKE's Big/Little Hazing Ritual

85. The University denies the allegations contained in Paragraph 85 of the Complaint.

86. The University admits that it received the report quoted in Paragraph 86 of the Complaint. The University further admits that this report was made anonymously about events the reporter did not see first-hand and that transpired a year before the report, which created difficulties for the investigation. The University denies any remaining allegations and implications contained in Paragraph 86 of the Complaint.

87. The University admits that it received the report quoted in Paragraph 87 of the Complaint. The University further admits that this report was made anonymously about events the reporter did not see first-hand and that transpired a year before the report, which created difficulties for the investigation. The University denies any remaining allegations and implications contained in Paragraph 87 of the Complaint.

88. The University denies the allegations contained in Paragraph 88 of the Complaint. The University investigated the anonymous report as fully as it could given its anonymous nature.

89. The University denies the allegations contained in Paragraph 89 of the Complaint. The University interviewed five new members and the chapter president. The University denies the Complaint's characterizations of its investigation and enforcement of its policy against hazing.

The University further denies any remaining allegations and implications contained in Paragraph 89 of the Complaint.

90. The University admits that it contacted the PIKE national organization after receiving the report referenced in Paragraph 86 of the Complaint. The University denies the Complaint's characterization of this contact and its investigation as somehow inadequate. The University denies the characterization of the University's actions as part of a pattern of "inaction and failure to actively enforce a policy against hazing." The University further denies any remaining allegations and implications contained in Paragraph 90 of the Complaint.

91. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 91 of the Complaint and therefore denies the same. Any communications speak for themselves.

92. The University admits the allegations contained in the first sentence of paragraph 92 of the Complaint. The University denies the remaining allegations and any implications contained in Paragraph 92 of the Complaint.

93. The University denies the allegations contained in Paragraph 93 of the Complaint.

94. The University denies the allegations contained in Paragraph 94 of the Complaint.

Stone Foltz Pledges PIKE Delta Beta Chapter

95. The University admits the allegations contained in Paragraph 95 of the Complaint.

96. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that on February 18, 2021, PIKE held an event called "Pledge Education (Objects)," and Stone Foltz was forced to memorize and recite certain materials. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 96 of the Complaint and therefore denies the same.

97. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that the events listed in Paragraph 97 of the Complaint appeared on PIKE's New Member Calendar. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 97 of the Complaint and therefore denies the same.

98. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that the events listed in Paragraph 98 of the Complaint appeared on PIKE's New Member Calendar. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 98 of the Complaint and therefore denies the same.

99. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz went to 318 North Main Street on March 4, 2021. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 99 of the Complaint and therefore denies the same.

100. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that the events listed in Paragraph 100 of the Complaint appeared in PIKE's New Member Handbook. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 100 of the Complaint and therefore denies the same.

101. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that PIKE pledges discussed the pledge process during a Round Robin Event. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 101 of the Complaint and therefore denies the same.

102. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz and the other pledges were blindfolded and led them into the basement. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 102 of the Complaint and therefore denies the same.

103. The University admits the allegations contained in Paragraph 103 of the Complaint.

104. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Jacob Krinn gave Stone Foltz a bottle of alcohol, and Stone Foltz consumed the entire bottle before leaving 318 North Main Street. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 104 of the Complaint and therefore denies the same.

105. The University admits that, through the course of its 2021 investigation into PIKE, a witness approximated that Stone Foltz finished the bottle of alcohol in roughly 18 minutes. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 105 of the Complaint and therefore denies the same.

106. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz left 318 North Main Street with Jacob Krinn and two other individuals around 10:00 PM, and Stone Foltz was dropped off at his apartment. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 106 of the Complaint and therefore denies the same.

107. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz's roommate found Stone Foltz face-down on the couch of their apartment around 10:30 PM, and Stone Foltz was still breathing. The University

lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 107 of the Complaint and therefore denies the same.

108. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz's roommate stayed with him and called Stone Foltz's girlfriend. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 108 of the Complaint and therefore denies the same.

109. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz stopped breathing after his girlfriend arrived at his apartment. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 109 of the Complaint and therefore denies the same.

110. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz's girlfriend called 911. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 110 of the Complaint and therefore denies the same.

111. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that Stone Foltz's roommate performed CPR on Stone Foltz. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 111 of the Complaint and therefore denies the same.

112. The University admits that, through the course of its 2021 investigation into PIKE, the University was informed that the EMTs arrived at approximately 11:25 PM and began to treat Stone Foltz. The University lacks information sufficient to form a belief as to the remaining allegations contained in Paragraph 112 of the Complaint and therefore denies the same.

113. The University admits the allegations contained in Paragraph 113 of the Complaint.

114. The University admits the allegations contained in Paragraph 114 of the Complaint.

115. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 115 of the Complaint and therefore denies the same.

116. The University lacks information sufficient to form a belief as to the allegations contained in Paragraph 116 of the Complaint and therefore denies the same.

117. The University states that the Lucas County Coroner's report speaks for itself. To the extent a response is necessary, the University lacks information sufficient to form a belief as to the allegations of Paragraph 117, and therefore denies the same.

118. The University states that the Lucas County Coroner's report speaks for itself. To the extent a response is necessary, the University lacks information sufficient to form a belief as to the allegations of Paragraph 118, and therefore denies the same.

119. The University states that the Lucas County Coroner's report speaks for itself. To the extent a response is necessary, the University denies that the Lucas County Coroner's opinion is accurate, or that it amounts to a binding legal conclusion regarding the legal cause of Stone Foltz's death.

120. The University states that the Lucas County Coroner's report speaks for itself. To the extent a response is necessary, the University denies that the Lucas County Coroner's opinion is accurate, or that it amounts to a binding legal conclusion regarding the legal cause of Stone Foltz's death.

COUNT ONE – VIOLATION OF OHIO'S ANTI-HAZING STATUTE, R.C. 2307.44

121. Paragraph 121 of the Complaint constitutes an incorporation paragraph to which no response is required.

122. Paragraph 122 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University states that the statute speaks for itself.

123. Paragraph 123 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University states that the statute speaks for itself.

124. Paragraph 124 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University states that the statute speaks for itself.

125. The University admits the allegations contained in Paragraph 125 of the Complaint.

126. Paragraph 126 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University states that several members of PIKE have been convicted of hazing Stone Foltz. The University denies any remaining allegations and implications contained in Paragraph 126 of the Complaint

127. Paragraph 127 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 127 of the Complaint.

128. Paragraph 128 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 128 of the Complaint.

129. Paragraph 129 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 129 of the Complaint.

COUNT TWO – SURVIVAL ACTION AND WRONGFUL DEATH (NEGLIGENCE)

130. Paragraph 130 of the Complaint constitutes an incorporation paragraph to which no response is required.

131. Paragraph 131 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 131 of the Complaint.

132. Paragraph 132 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 132 of the Complaint.

133. Paragraph 133 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 133 of the Complaint.

134. Paragraph 134 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 134 of the Complaint.

135. Paragraph 135 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 135 of the Complaint.

136. Paragraph 136 of the Complaint constitutes a legal conclusion to which no response is required. To the extent a response is required, the University denies the allegations contained in Paragraph 136 of the Complaint.

AFFIRMATIVE DEFENSES

GENERAL DENIAL

The University denies each and every allegation not specifically admitted herein.

FIRST AFFIRMATIVE DEFENSE

Active Enforcement of the University's Policy Against Hazing

The University actively enforces and has enforced a Policy Against Hazing. The University's Code of Student Conduct prohibits hazing and outlines the procedures for the reporting, investigation, and consequences of hazing. (See **Exhibit A.**) The University also has a Policy on Hazing. (See **Exhibit B.**) The Policy on Hazing states

In keeping with its commitment to a positive academic environment, the BGSU community is unconditionally opposed to any situation created intentionally to produce mental or physical discomfort, embarrassment, harassment or ridicule. Respect and cooperation among peers within registered student organizations is a guaranteed right that all students possess, regardless of race, sex, sexual orientation, gender identity, gender expression, color, national origin, ancestry, genetic information, pregnancy, religion, age, marital status, disability, or status as a veteran. Hazing is a Code of Student Conduct violation and a crime in Ohio.

(See *id.*) All prospective members of Greek Life at the University must read and agree to this policy. Pursuant to the University's Code of Student Conduct and Policy on Hazing, the University investigates and punishes all instances of hazing, as it did with PIKE. The University's active enforcement of its policy against hazing bars liability on Count One.

SECOND AFFIRMATIVE DEFENSE

Acts of Third Parties

The University cannot be liable for negligence because the negligent, reckless, knowing, and willful actions of PIKE and its members are a superseding cause. PIKE knowingly violated the University's policies, engaged in illegal activities, and endangered the University's students. PIKE members have been convicted of crimes related to the events of March 4, 2021, including:

Hazing, Failure to comply with Underage Alcohol Laws, Obstructing Official Business, Tampering with Evidence, and Reckless Homicide. These criminal acts undermined the University's efforts to protect all of its students, including Mr. Foltz, and caused Mr. Foltz's death on March 7, 2021.

THIRD AFFIRMATIVE DEFENSE
Intervening/Supervening Cause

The University cannot be liable for negligence because the negligent, reckless, knowing, and willful actions of PIKE and its members are an intervening and/or supervening cause. PIKE knowingly violated the University's policies, engaged in illegal activities, and endangered the University's students. PIKE members have been convicted of crimes related to the events of March 4, 2021, including: Hazing, Failure to comply with Underage Alcohol Laws, Obstructing Official Business, Tampering with Evidence, and Reckless Homicide. These criminal acts undermined the University's efforts to protect all of its students, including Mr. Foltz, and caused Mr. Foltz's death on March 7, 2021.

FOURTH AFFIRMATIVE DEFENSE
Primary Assumption of the Risk

The University cannot be liable for negligence based on Mr. Foltz's primary, voluntary assumption of known, inherent risks.

FIFTH AFFIRMATIVE DEFENSE
Secondary Assumption of the Risk

The University cannot be liable for negligence based on Mr. Foltz's failure to use due care for his own safety.

SIXTH AFFIRMATIVE DEFENSE
Comparative Negligence

The University cannot be liable for negligence based on Mr. Foltz's failure to use due care for his own safety, which exceeded any possible negligence of the University

WHEREFORE, the University respectfully requests that this Court:

- A. Deny and dismiss each and all of Plaintiff's claims in their entirety;
- B. Enter judgment in favor of the University and against Plaintiff; and,
- C. Grant the University all such further relief this Court deems just and appropriate.

Dated: August 8, 2022

Respectfully submitted,

DAVID YOST
ATTORNEY GENERAL OF OHIO

s/ Eric Larson Zalud

Eric Larson Zalud (0038959)

Counsel of Record

Johanes C. Maliza (0086875)

**BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP**

200 Public Square, Suite 2300

Cleveland, OH 44114

Telephone: 216.363.4500

Email: ezalud@beneschlaw.com

jmaliza@beneschlaw.com

Michael B. Silverstein (0098036)

**BENESCH, FRIEDLANDER, COPLAN &
ARONOFF LLP**

41 South High Street, Suite 2600

Columbus, OH 43215-6164

Telephone: 614.223.9300

E-Mail: msilverstein@beneschlaw.com

Special Counsel for Attorney General of Ohio

CERTIFICATE OF SERVICE

I hereby certify that on August 8, 2022, a copy of the foregoing was filed electronically. Notice of this filing will be sent to all registered parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system. The following individuals will receive an e-mail copy, pursuant to Ohio Civ. R. 5(B)(2)(f):

Rex Elliott

Sean Alto

Jonathan N. Bond

Chelsea C. Weaver

Cooper & Elliott, LLC

305 West Nationwide Boulevard

Columbus, Ohio 43215

rexe@cooperelliott.com

seana@cooperelliott.com

jonb@cooperelliott.com

chelseaw@cooperelliott.com

s/ Michael B. Silverstein

*One of the Attorneys for Special Counsel for Attorney
General of Ohio*