UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF PENNSYLVANIA

SAVANNAH RUIZ-RIVERA	:	
vs.	:	
	:	NO. 19-CV-01636-UN1
YORK COLLEGE OF PENNSYLVANIA	:	
and	:	
YORK COLLEGE OF PENNSYLVANIA d/b/a SPRING GARDEN APARTMENTS	:	
and	:	
PHI KAPPA PSI FRATERNITY	:	
	:	
PHI KAPPI PSI – PENNSYLVANIA RHO CHAPTER	:	
and	:	
KAPPA DELTA PHI NATIONAL FRATERNITY	:	
and	:	
ZETA BETA TAU FRATERNITY	:	
and	:	
ZETA BETA TAU – BETA ALPHA CHI CHAPTER	:	
and	:	
SIGMA DELTA TAU NATIONAL SORORITY	:	
and	:	
SIGMA DELTA TAU – GAMMA PHI CHAPTER	:	
and	:	
BRYAN SOTO	:	
and	:	
JOHN DOE 1-10	:	

BRIEF OF DEFENDANT, SIGMA DELTA TAU SOCIETY, I/I/A SIGMA DELTA TAU NATIONAL SORORITY, IN SUPPORT OF ITS MOTION TO DISMISS PURSUANT TO F.R.C.P. 12(B)(6)

Defendant, Sigma Delta Tau Society, incorrectly identified in Plaintiff's Complaint as Sigma Delta Tau National Sorority (hereinafter referred to as "SDT National"), by and through its undersigned counsel, files this Brief in support of its Motion to Dismiss Plaintiff's Complaint against it pursuant to Federal Rule of Civil Procedure 12(b)(6).

I. PROCEDURAL HISTORY

Plaintiff commenced this action by filing a Complaint on September 20, 2019. On November 7, 2019, Plaintiff's counsel served SDT National's counsel with a Request to Waive Service of Summons, which SDT National timely returned. Pursuant to Federal Rule of Civil Procedure 4(d)(3), SDT National filed this Motion to Dismiss pursuant to Rule 12(b)(6) and an alternative Motion for More Definite Statement on January 7, 2019.

II. STATEMENT OF FACTS

This action arises out of an incident that allegedly occurred when Plaintiff, Savannah Ruiz-Rivera, a resident of New York, sustained injuries outside of an apartment complex on the campus of York College of Pennsylvania in the early morning hours of September 23, 2017. According to the Complaint, Plaintiff was found on the ground below the balcony of the Spring Garden Apartments after a night of underage drinking and consumption of illicit drugs at a series of social events. (*See* Doc. 1 at ¶¶43-53). Plaintiff generally alleges in the Complaint that all of the Defendants, including SDT National, are responsible for the condition of the premises where she was injured; that all Defendants provided her with alcohol and/or illicit drugs; and that all Defendants had an agency relationship with each other.

SDT National is a national collegiate sorority located at 714 Adams Street, Carmel, Indiana. SDT National was not, and is not alleged to have been, present for or involved in the planning or preparation of any of the social events described in Plaintiff's Complaint. SDT National did not host, and is not alleged to have hosted, any of the social events described in Plaintiff's Complaint, and did not own, possess, or otherwise occupy any of the premises allegedly visited by Plaintiff on the night of the incident. Moreover, SDT National had no knowledge of the

activities allegedly involving the SDT local chapter and/or its members on the night of the incident, nor did it have the ability to control said activities.

In the Complaint, Plaintiff asserts against all Defendants a premises liability-based negligence claim with respect to the apartment complex where she was found (Count I), and a Dram Shop and/or social host claim with respect to the social events she attended on the night of the incident (Count II). Plaintiff's Complaint, however, fails to set forth facts sufficient to establish either of these claims against SDT National, which had no involvement with the premises where Plaintiff alleges she was injured and owed no duty to Plaintiff under a theory of social host lability as a matter of law. Moreover, to the extent Plaintiff's claims are based on the existence of an agency relationship with any other Defendant, Plaintiff has failed to plead facts sufficient to establish the existence of such a relationship. As such, Plaintiff's Complaint against SDT National must be dismissed, with prejudice, for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).

III. STATEMENT OF THE QUESTIONS INVOLVED

Question One: Whether Count I of Plaintiff's Complaint (Negligence) should be dismissed, with prejudice, as to SDT National because Plaintiff has not, and cannot, establish a prima facie case of negligence based on a theory of premises liability against SDT National as a matter of law?

Suggested Answer: Yes.

Question Two: Whether Count II of Plaintiff's Complaint (Dram Shop / Social Host) should be dismissed, with prejudice, as to SDT National because Plaintiff has not, and cannot, establish that SDT National may be liable under Pennsylvania's Dram Shop Act, and because SDT National owed no social host duty to Plaintiff as a matter of law.

Suggested Answer: Yes.

Question Three: Whether Plaintiff's Complaint should be dismissed, with prejudice, as to SDT National because Plaintiff fails to establish the existence of an agency relationship between SDT National and any of the other named Defendants.

Suggested Answer: Yes.

IV. LEGAL ARGUMENT

STANDARD OF REVIEW

Federal Rule of Civil Procedure 12(b)(6) empowers a court to dismiss a case for failure to state a claim upon which relief can be granted. F.R.C.P. No. 12(b)(6). The requirements for pleading are set forth in Federal Rule of Civil Procedure 8(a), which requires that a pleading, to state a claim for relief, must contain a short and plain statement of the grounds for the court's jurisdiction, a short and plain statement of the claim showing that the pleader is entitled to relief, and a demand for the relief sought. F.R.C.P. No. 8(a). Specifically, Rule 8(a) requires "enough facts to state a claim to relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). If the plaintiff "has not nudged [her] claim across the line from conceivable to plausible, [her] complaint must be dismissed." Id.

In Twombly, supra, the United States Supreme Court clarified, and partially reformulated, the standard for federal notice pleading under Rule 8(a) by abrogating the "no set of facts" standard set forth in Conley v. Gibson, 355 U.S. 41, 45-46 (1957) in favor of the "plausibility" standard requiring a plaintiff to plead "enough facts to state a claim to relief that is plausible on its face." Twombly, 550 U.S. at 570. Specifically, the Supreme Court held:

> While a Complaint attacked by a Rule 12(b)(6) motion to dismiss does not need detailed factual allegations ... a plaintiff's obligation [under Rule 8(a)] to provide the grounds of his entitlement to relief requires more than labels and conclusions, and the formulaic

> recitation of the elements of a cause of action will not do.... Factual allegations must be enough to raise a right to relief above the speculative level[.]
>
> Id. at 555 (internal citations and quotations omitted).

The Supreme Court also cautioned against bare bones pleading in Ashcroft v. Iqbal, 556 U.S. 662 (2009) as follows:

> As the Court held in Twombly ..., the pleading standard Rule 8 announces does not require 'detailed factual allegations,' but it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation[.]... A pleading that offers 'labels and conclusions' or a 'formulaic recitation of the elements of a cause of action will not do.' ... Nor does a complaint suffice if it tenders 'naked assertions devoid of further factual enhancement.'
>
> Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 555, 557).

The Court further held in Iqbal that, while a plaintiff need not prove its case in the complaint, it must meet a plausibility standard that requires "more than a sheer possibility that a defendant has acted unlawfully." Id. "Where a complaint pleads facts that are merely consistent with a defendant's liability, it stops short of the line between possibility and plausibility of entitlement to relief." Id. (citing Twombly, 550 U.S. at 557) (internal quotations omitted). In other words, a complaint must do more than allege the plaintiff's entitlement to relief, but, rather, it must show such an entitlement with its facts. Fowler v. UPMC Shadyside, 578 F.3d 203, 210-211 (3d Cir. 2009).

The United States Supreme Court's holdings in Twombly and Iqbal make clear that a motion to dismiss pursuant to Rule 12(b)(6) should be granted unless a complaint contains sufficient factual matter "to state a claim for relief that is plausible on its face." Iqbal, 556 U.S. at 678 (citing Twombly, 550 U.S. at 570). The Supreme Court set forth a two-pronged approach to assess the adequacy, and plausibility, of a complaint under Rule 8(a)(2). Id. First, a court must accept as true all of the allegations contained in the complaint; and threadbare recitals of the

elements of a cause of action, supported by mere conclusory statements, will not suffice. Id. Second, only a complaint that states a plausible claim for relief survives a motion to dismiss. Id. at 679. Determining whether a complaint states a plausible claim for relief is a context-specific task that requires the reviewing court to draw on its judicial experience and common sense. Id. "Where the well-pleaded facts do not permit the court to confer mere than the possibility of misconduct, the complaint has alleged – but it has not shown – that the pleader is entitled to relief." Id. (citing F.R.C.P. (a)(2)) (internal quotations omitted).

ARGUMENTS AND AUTHORITIES

A. Count I of Plaintiff's Complaint (Negligence) must be dismissed as to Defendant, SDT National, because Plaintiff has not, and cannot, establish a prima facie case of negligence against SDT National based on a theory of premises liability as a matter of law.

Although not specifically titled as such, Count I of Plaintiff's Complaint alleges a claim of negligence against all Defendants, including SDT National, based on a theory of premises liability, specifically, with respect to an allegedly "dangerous condition" at the apartment complex where she was injured. Such claim against SDT National fails as a matter of law because SDT National did not own, possess, control, or have any involvement with the property where Plaintiff alleges she was injured.

"Premises liability is a theory of negligence, where the basis of the duty of care is the possession or control of the premises where injury occurred. . . . The elements are the same - a plaintiff must prove: (1) duty, (2) breach, (3) causation, and (4) damages." Burdyn v. Old Forge Borough, 2016 U.S. Dist. LEXIS 137142, *44 (M.D. Pa. Oct. 3, 2016) (internal citations and quotations omitted). Pennsylvania law makes clear that "a party may be held liable for any injuries that occur on a premises only if that party **possesses the premises in question**." Maghakian v. Cabot Oil & Gas Corp., 171 F. Supp. 3d 353, 359 (M.D. Pa. Mar, 18, 2016) (emphasis in original)

(citing Blackman v. Fed. Realty Inv. Trust., 664 A.2d 139, 142 (Pa. Super. Ct. 1995)); *see also* Estate of Zimmerman v. SEPTA, 168 F.3D 680, 684 (3d Cir. 1999) ("[t]he duty to protect against known dangerous conditions falls upon the possessor of the land"). In order for a party to be a "possessor" of land, that party "must be in occupation of the land with the intent to control it." Id. "A party is considered . . . in control of [a] premises if it "has authority to manage the land and regulate its use." Id. (citing Stanton v. Lackawanna Energy Ltd., 886 A.2d 667, 676 (Pa. 2005)) (internal quotations omitted).

Count I of Plaintiff's Complaint alleges 36 acts of purported negligence relating entirely to the condition of the subject premises where Plaintiff's injury allegedly occurred, including, but not limited to, allegations relating to "dangerous, defective and/or hazardous conditions" of the premises generally, and specifically with respect to balcony, walkway, lighting, and walking surface(s) at or near the area where Plaintiff was injured. (Doc. 1 at ¶¶ 61(a) – 61(j)(j).) Based on the allegations advanced in Count I, Plaintiff seeks to recover against all Defendants, including SDT National, on a theory of premises liability.

SDT National, however, cannot be held liable on a theory of premises liability because it did not "possess" the premises where Plaintiff was allegedly injured. Maghakian, supra. Indeed, Plaintiff's Complaint contains **no** allegations that SDT National possessed the subject premises. Rather, Plaintiff's Complaint affirmatively asserts that Defendants, York College of Pennsylvania and York College of Pennsylvania d/b/a Spring Garden Apartments, possessed the premises where Plaintiff was alleges she was injured.[1] Moreover, Plaintiff's Complaint is completely devoid of any facts establishing that the property where Plaintiff alleges she was injured was in any way

[1] In Paragraphs 30 and 53 of the Complaint, Plaintiff alleges that York College of Pennsylvania "owned, possessed, operated and/or controlled Spring Garden Apartments located at 325 Colonial Ave., York, PA 17403" and that "[i]n the early morning hours of September 23, 2017, plaintiff was found on the ground below the balcony of the Spring Garden Apartments." (Doc. 1 at ¶¶ 30, 53.)

connected to SDT National, let alone any facts establishing that SDT National possessed the premises.

In sum, Plaintiff does not, and cannot, allege that SDT National possessed the premises where Plaintiff alleges she was injured because, as the Complaint makes clear, SDT National did not own, possess, operate, or control the Spring Garden Apartments. Accordingly, SDT National cannot be liable for Plaintiff's negligence claims set forth in Count I of the Complaint as a matter of law, and Count I must be dismissed, with prejudice, as to SDT National for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).

B. Count II of Plaintiff's Complaint (Dram Shop / Social Host) must be dismissed as to Defendant, SDT National, because Plaintiff has not, and cannot, establish that SDT National may be liable under Pennsylvania's Dram Shop Act, and because SDT National owed no social host duty to Plaintiff as a matter of law.

Although not specifically titled as such, Count II of Plaintiff's Complaint alleges a claim based upon Pennsylvania's Dram Shop Act and/or social host liability against all Defendants, including SDT National. With respect to Plaintiff's Dram Shop claim, Count II must be dismissed as to SDT National as a matter of law because Plaintiff does not, and cannot, allege that SDT National was licensed to serve alcohol or that, as a licensee, SDT National served alcohol to an overly intoxicated Plaintiff. To the extent the Court determines that Count II includes an alternative claim for social host liability, such claim still must be dismissed as to SDT National because SDT National owed no duty to protect Plaintiff from harm arising out of the service of alcohol, or for the activities of the Gamma Phi chapter of SDT, as a matter of law.

1. Count II must be dismissed as to SDT National because Plaintiff's Dram Shop Act claim fails as a matter of law.

In Count II of the Complaint, Plaintiff alleges that all Defendants, including SDT National, "served alcoholic beverages and/or illicit drugs to persons, including plaintiff, Savannah Ruiz-

Rivera, while visibly intoxicated, which proximately caused injuries to plaintiff in violation of the Pennsylvania Dram Shop Act, 47 P.S. Section 4-493(1) and 47 P.S. Section 4-497." (Doc. 1 at ¶ 74.) Plaintiff, however, fails to allege sufficient facts to establish that the Pennsylvania Dram Shop Act applies to SDT National.

Plaintiff alleges that SDT National violated Sections 4-493(1) and 4-497 of the Pennsylvania Dram Shop Act. Section 493(1) imposes criminal liability for certain unlawful conduct – not present in the instant action – and states as follows:

> It shall be unlawful . . . [f]or any licensee or the board, or any employe, servant or agent of such licensee or of the board, or any other person, to sell, furnish or give any liquor . . . to any person visibly intoxicated, or to any minor[.]

47 P.S. § 4-493(1) Section 4-497 is a liming provision designed to specifically shield licensees from liability to third parties except in those instances where the patron served was visibly intoxicated. Detweiler v. Brumbaugh, 656 A.2d 944, 946 (Pa. Super. Ct. 1995). Section 4-493 defines the term "licensee" as those to whom a liquor license has been issued under the provisions of Article IV of Title 47 (i.e., hotels, restaurants, clubs), unless the context clearly indicates otherwise. 47 P.S. § 4-493. Despite the language of § 4-493(1) of the Liquor Code that it is unlawful for "any . . . person" to provide intoxicating beverages to a visibly intoxicated person, the Pennsylvania Supreme Court has refused to impose civil liability for violation of this provision on persons who are not licensed and engaged in the sale of intoxicants. Couts v. Ghion, 421 A.2d 1184, 1187 (Pa. Super. Ct. 1980) (citing Manning v. Andy, 310 A.2d 1184, 1187 (Pa. 1973)).

Aside from the legal conclusion in Paragraph 74 suggesting that SDT National, as well as all other Defendants, are liable under the Pennsylvania Dram Shop Act, Plaintiff's Complaint does not, and cannot, plead not any facts establishing SDT National's status as a licensee. As stated above, although a Complaint need not contain detailed factual allegations, it must include "more

than labels and conclusions, and a formulaic recitation of the elements of a cause of action[.]" Twombly, 550 U.S. at 553. Plaintiff's Complaint alleges no facts demonstrating that SDT National was a licensee under Article IV of Title 47 for purposes of imposing liability on SDT National under the Dram Shop Act. Accordingly, Plaintiff has failed to plead facts sufficient to state a claim against SDT National for liability under the Dram Shop Act, and Count II of Plaintiff's Complaint must be dismissed, with prejudice, as to SDT National for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6).

2. Count II must be dismissed as to SDT National because Plaintiff's social host claim fails as a matter of law.

To the extent Count II of Plaintiff's Complaint is found to include an alternative claim for social host liability, such claim must be dismissed as to SDT National because Plaintiff has also failed to state a claim for relief under that theory of liability as SDT National owed no duty to protect Plaintiff from harm arising out of the service of alcohol and/or for the activities of the Gamma Phi chapter of SDT as a matter of law.

Under Pennsylvania law, "[t]he social host doctrine is a general phrase used to designate a claim in negligence against a person (the host) who provides alcoholic beverages to another person (the guest), without remuneration, where the guest then sustains injuries, or causes injury to a third person as a result of his intoxicated condition." Kapres v. Heller, 640 A.2d 888, 889 n.1 (Pa. 1994). Generally, a social host in Pennsylvania who serves alcohol to an intoxicated person is not liable for any damages that intoxication causes, whether to the intoxicated person herself or to a third party, unless the intoxicated person is a minor. *See* Klein v. Raysinger, 470 A.2d 507, 510-511 (Pa. 1983); Congini by Congini v. Portersville Valve Co., 470 A.2d 515, 518 (Pa. 1983). Notably, however, the Pennsylvania Supreme Court has unequivocally held that **a national fraternity – such as SDT National – is not liable under the social host doctrine for the acts of**

its local chapters. *See* Hall v. Millersville Univ., 2019 U.S. Dist. LEXIS 151701 (E.D. Pa. 2019); Alumni Assoc. v. Sullivan ("Sullivan"), 572 A.2d 1209 (Pa. 1990).

In Sullivan, supra, the Pennsylvania Supreme Court specifically addressed social host liability in the context of a national fraternal organization. In that case, an intoxicated minor set fire to the plaintiff's property after being served alcohol at the fraternity's local chapter house. The plaintiff sought to extend the social host doctrine in Congini to hold that the national fraternity had a duty to monitor the activities of its affiliated local chapter and, thus, was responsible for the damage caused by the intoxicated minor. The Court declined to impose social host liability on the national fraternity, holding that it owed no duty to the plaintiff because there were "no allegations that the national fraternity had actual knowledge of the activities allegedly occurring at the local chapter or of the ability of the national body to control said activities," nor were there any allegations that the national fraternity "was involved in the planning of the [social event] or in the serving, supplying, or purchasing of liquor." Id. at 1211, 1213. The Court further held that the national fraternity was an "inappropriate body" on which to impose a duty of care because the national fraternity does not possess the resources to monitor the activities of a chapter contemporaneously with the event. Id. at 1213. In addition, the Court noted that the relationship between a national fraternity and its local chapters is **not** one where one group is superior to the other and may be held responsible for the conduct of the other and, thus, declined to find that the national fraternity owed a duty under a social host theory of liability. Id.

In Milliard v. Osborne, 611 A.2d 715 (Pa. 1992), the Pennsylvania Superior Court applied Sullivan to reach a similar conclusion In that case, a minor was killed in a motorcycle accident after consuming alcohol at the local chapter's fraternity house. The Court relied on its holding in Sullivan in declining to impose social host liability on the national fraternity, noting that, contrary

to the plaintiff's claims, the national fraternity had not encouraged – but, rather, affirmatively discouraged – underage drinking on its property, and that the national chapter was not in a position to control the actions of its chapters. Id. at 719. The Court further held: "[i]n addition to the lack of geographic proximity which would defeat any attempt at day-to-day control, we note our supreme court [in Sullivan] has unequivocally stated that a National Fraternity Organization is not under a duty to control its members." Id. at 719-720. Thus, the holdings of the Pennsylvania Supreme Court in Sullivan and Milliard make clear that a national fraternity is **not** liable for the acts of its local chapters under the social host doctrine.

Like Sullivan and Milliard, Plaintiff's Complaint in the instant action fails to allege any facts establishing that SDT National was involved in the planning of any of the referenced social events, or in serving, supplying, or purchasing any liquor provided to and/or consumed by Plaintiff on the night of the incident. The factual allegations regarding the events allegedly preceding Plaintiff's injury are contained in Paragraphs 43 through 53 of the Complaint, none of which allege any specific conduct on behalf of SDT National. Indeed, other than the assertion that SDT National is a an entity organized under the laws of the State of Indiana with a principal place of business in Carmel, Indiana, Plaintiff's Complaint is devoid of any separate factual allegations relating to SDT National. (*See* Doc. 1 at ¶ 23.) Instead, Plaintiff's Complaint refers to SDT National collectively with a legally distinct and separate entity – "Sigma Delta Tau – Gamma Phi Chapter."

Moreover, the other allegations of Plaintiff's Complaint make clear that any alleged service of alcohol to Plaintiff by SDT National is completely implausible. For instance, in Paragraphs 43 through 45 of the Complaint, Plaintiff alleges that she attended a mixer between "Sigma Delta Tau" and Defendant, "Phi Kappa Psi," (two other, separate legal entities), the latter of which hosted the event at which she alleges she was served alcohol and illicit drugs. Despite the collective

reference to "Sigma Delta Tau," Plaintiff's allegations regarding the location of the Gamma Phi Chapter (and other Defendants) and the social events in York, Pennsylvania make clear that Plaintiff's allegations regarding the service of alcohol to Plaintiff do not plausibly pertain to SDT National, which is located in Carmel, Indiana, more than 500 miles from where Plaintiff alleges she was injured. There are no allegations that any employee of SDT National was present at any of the social events Plaintiff attended on the night of the incident, or that SDT National had any knowledge of the activities of the local chapter on the night of the incident. Plaintiff's Complaint is also devoid of any facts establishing that any employee or representative of SDT National was involved in planning the mixer attended by Plaintiff, or had any involvement in serving, supplying, or purchasing the alcohol allegedly provided to by Plaintiff. Absent facts showing **actual knowledge** on the part of SDT National of the events occurring at the mixer in York, Pennsylvania, Plaintiff has failed to state a cause of action against SDT National under a social host theory of liability. *See* Sullivan, supra; Milliard, supra.

Accordingly, Plaintiff has not, and cannot, state a claim for social host liability against SDT National so as to impose a duty on SDT National to monitor the activities of its local chapter and/or to protect Plaintiff from harm resulting from the service of alcohol. As stated in Sullivan, SDT National is an "inappropriate body" upon which to impose a duty of care. As such, Count II of Plaintiff's Complaint fails to state a claim against SDT National upon which relief can be granted and must be dismissed under Federal Rule of Civil Procedure 12(b)(6).

C. To the extent Plaintiff's claims against SDT National are based upon the existence of an agency relationship, they must be dismissed for failure to state a claim upon which relief can be granted.

Plaintiff's claims against SDT National in the Complaint are collectively asserted against all Defendants (and Plaintiff improperly refers to SDT National and Sigma Delta Tau – Gamma Phi Chapter as one single entity: "Sigma Delta Tau" throughout the Complaint). Plaintiff's

Complaint alleges no specific conduct engaged in by SDT National, but, rather, concludes that SDT National acted individually and/or by and through its agents and that each Defendant acted as an agent for SDT National. Specifically, Paragraph 42 of Plaintiff's Complaint consists of the following conclusory statement:

> 42. Upon information and belief, defendants, York College of Pennsylvania, Phi Kappa Psi, Kappa Delta Phi, Zeta Beta Tau, Sigma Delta Tau, Bryan Soto, and John Doe 1-10 at all relevant times, were acting as employees, agents, servants and/or representatives of defendants, York College of Pennsylvania, Phi Kappa Psi, Kappa Delta Phi, Zeta Beta Tau, Sigma Delta Tau, Bryan Soto, and John Doe 1-10.

Other than pleading legal conclusions regarding the existence of an agency relationship between all Defendants, Plaintiff has failed to set forth any facts to support her allegation that each of the Defendants acted as the agent of SDT National. Under Pennsylvania law, the elements of an agency relationship are: (1) the manifestation by the principal that the agent shall act for him; (2) the agent's acceptance of the undertaking; and (3) the understanding of the parties that the principal is to be in control of the undertaking. Basile v. H & R Block, Inc., 761 A.2d 1115, 1120 (Pa. 2000) (quoting Scott v. Purcell, 415 A.2d 56, 60 (Pa. 1980)). Here, Plaintiff fails to allege any facts establishing the prima facie elements for agency. Specifically, Plaintiff pleads no facts to establish: (1) the manifestation by SDT National that any of the Defendants shall act on its behalf; (2) that any of the purported agents accepted an undertaking of acting on behalf of SDT National; or (3) that SDT National and any of the other purported agents understood that SDT National had a right to control each of the purported agents.

By failing to plead any facts to support the prima facie elements of an agency relationship, Plaintiff's agency allegations fail as a matter of law. *See* Twombly, 550 U.S. at 553. Plaintiff's assertion that each of the Defendants are agents of SDT National, and/or that SDT National is an agent of each of the Defendants, is nothing more than a factually unsupported legal conclusion.

Thus, to the extent Counts I and II against SDT National are based upon allegations of an agency relationship between SDT National and any of the Defendants, Plaintiff's Complaint against SDT National must be dismissed for failure to state a claim upon which relief can be granted under Rule 12(b)(6).

III. CONCLUSION

For the reasons set forth herein, Defendant, Sigma Delta Tau Society i/i/a Sigma Delta Tau National Sorority, respectfully requests that this Honorable Court grant its Motion to Dismiss and enter the attached Order dismissing, with prejudice, Plaintiff's Complaint against it pursuant to Federal Rule of Civil Procedure 12(b)(6).

Respectfully submitted,

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COLEMAN & GOGGIN

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