SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION

Ms. Joy Elaine Daley, et al. Plaintiffs, v. Alpha Kappa Alpha Sorority, Inc., et al. Defendants.	)	CASE NO. 2009 CA 004456 B Judge: Natalia M. Combs Greene Next Court Date: December 10, 2009 Next Event: Hearing on Motions

PLAINTIFFS' REPLY TO DEFENDANTS' OPPOSITION TO PLAINTIFFS' COMBINED RULE 12 AND 56(f) MOTION REQUESTING DISCOVERY PRIOR TO OPPOSING DEFENDANTS' MOTION TO DISMISS OR, IN THE ALTERNATIVE FOR SUMMARY JUDGMENT

INTRODUCTION

This is a District of Columbia case. It is focused on misconduct that occurred in the District of Columbia by a District of Columbia corporation and its officers and directors then present in the District of Columbia. These Defendants regularly claim the benefits and protections of District of Columbia law. Defendants incorrectly assert that this Court has no jurisdiction over Defendants and that Plaintiffs lack standing to be heard. As this Reply reaffirms, jurisdiction and standing are proper in the District of Columbia.

At the 2008 Centennial Boule in the District of Columbia, Defendant McKinzie is reported to state:

> Sorors, I understand that there are unauthorized petitions being circulated out there about **me**. And when you get it [sic], just turn it into me and tell me who gave it to you. **Yes, we're going to deal with the second 100 years in a way it was not dealt with in the first 100 years**.

2008 Boule Minutes p. 23 (emphasis added).[1]

Defendant McKinzie's own words are thus an admission that she conducted the 2008 Boule meeting in a manner different than how the Sorority meetings had previously been run. A manner that used threats and intimidation to deny AKA members their right to challenge her decisions. Specifically, the transformation of the Sorority from a membership-led organization into a vehicle for Defendant McKinzie and the Directorates' personal enrichment – without membership input – is the central issue in this case.

Defendants paint Plaintiffs as power grabbing dissidents out for personal gain to divert the Court from Defendants' power grab for unilateral control over the Sorority and its resources. To the contrary, Plaintiffs seek only to avoid further injury to their membership rights by restoring volunteer control of the Sorority and reaffirming that the Boule, not the Directrorate, is the proper body for allocating the Sorority's considerable financial resources.

Defendants boast that they are responsible for transforming this venerable membership organization lead by committed volunteers into a business.[2] Yet, all Defendants really have accomplished is replaceing AKA's volunteer leadership structure with a highly compensated individual and a financially interested board. In fact, there is considerable dispute over whether

[1] Attached as Exhibit A hereto. The 2008 Boule minutes were just received by the Plaintiffs and not available when Plaintiffs filed their opening brief. Had Defendants allowed inspection of their books and records as requested on June 17, 2009, Plaintiffs would have had the 2008 Boule minutes prior to their motion. Defendants are improperly seeking to escape jurisdiction by withholding facts regarding their contacts with the District of Columbia.

[2] Defendants Opposition p. 3, ("They also fail to acknowledge how, under the current leadership, AKA has gone from a small organization with a negative budget to a large organization with a large budget that now can support its mission").

Defendants' claims to this Court of financial success or prior poor performance are even true.[3] Now, Defendants seek to stop any court inquiry into their financial misconduct.[4]

Why the 2008 Boule Meeting in the District of Columbia Matters

As alleged in the Amended Complaint, in 2008, Defendants took a key step in their power grab at the Washington Convention Center.[5] There, Defendants refused to permit the Boule to discuss Defendant McKinzie's compensation and denied Plaintiff Daley access to the meeting. See Amended Compl. ¶¶ 94-97. Defendants' failure to permit discussions of Defendant McKinzie's pay violated the AKA Constitution and Bylaws and other governance documents.

The factual context of the 2008 Centennial Boule meeting is important as to why jurisdiction and standing are proper here. The 2008 Centennial Boule meeting is integral to this case because it was the official (and only) 2008 meeting of the Boule, the policy making body of the Sorority. AKA Const. Art. III Sec. I. Prior to 2007, no AKA officer had ever been paid more than a modest stipend. The Directorate's unprecedented 2007 decision to pay two hundred fifty thousand dollar ($250,000.00) to Defendant McKinizie warranted Sorority member discussion and approval at the 2008 Boule meeting.[6] Indeed, AKA's Constitution and Bylaws

[3] According to the 2006 Report of Berna Greer AKA treasurer, "[a]s of March 31, 2006, the cash balance in the general fund is in excess of $3.5 million dollars." See p. 120 of minutes of the 2006 Boule meeting attached as Exhibit B.

[4] To conceal there misdeeds, Defendants still refuse to disclose the total amount Defendant McKinzie has or will be paid by the Sorority. Defendants have even denied their own members and past leaders their right to inspect the Sorority's books and records – a right created by the common law and statute - to prevent discovery of compensation facts. See Fleisher Dev. Corp. v. Home Owners Warranty Corp., 647 F. Supp. 661, 667 (D.D.C. 1986).

[5] The Washington Convention Center is located at 801 Mount Vernon Place, in Northwest Washington, D.C.

[6] Defendants, even now, refuse to disclose the amount the Supreme Basileus has or will be paid, how these amounts were determined and by whom. In addition, the Amended Complaint specifically alleges that Ms. McKinzie committed fraud in receiving compensation in excess of the $250,000 approved by the Directorate.

compel such discussion and approval. Section 5 of AKA's Bylaws states that "**[t]he Directorate shall present its recommendations to the Boule for action.**" (emphasis added).[7]

However, as the 2008 Boule Minutes show, no discussion of McKinzie's compensation ever occurred at the 2008 Boule meeting. Given the members' concern about the Directorate's decision to pay Defendant McKinzie two hundred fifty thousand dollars ($250,000.00), the Directorate had a clear obligation to bring the pay decision before the 2008 Boule meeting for approval. Instead, to avoid the possibility that the members attending the 2008 Boule meeting would disapprove the pay decision, Defendants manipulated the Boule process to prevent discussion. The Amended Complaint alleges these facts under the heading "Denial of Budget Debate at 2008 Boule." See Amended Compl. ¶¶ 94-97.

Events leading to the 2008 Boule Meeting

On July 14, 2007, the Directorate voted to pay Barbara McKinzie two hundred fifty thousand dollars ($250,000.00). The next day, the AKA Human Resource Committee voted to pay an additional four thousand dollars ($4,000.00) per month to Defendant McKinzie retroactive to July, 2006.[8] Shortly thereafter, Plaintiffs and other members wrote AKA's leadership regarding Defendant McKinzie's compensation.[9] These member concerns were met with threats, lawsuits, and suspension of membership privileges. And in a few cases, the complaining members were effectively removed from the governance of the Sorority.[10] In fact, the Sorority's counsel, Lester Barclay, wrote several thousand Sorority members instructing them

[7] Defendants contend that their authority to make decisions when the Boule is not in session gives them the right to ignore this mandatory obligation to confer with the membership "for action" on key decisions. AKA Bylaws Art. 1 Sec. 5.

[8] It is thus unclear whether the voters then considered the $250,000 to be considered a "stipend." AKA Constitution and Bylaws, Article VII ,Finances, Section 9, Page 48.

[9] See letters from Carol Ray, Kezirah Vaughters, and Mary LaMar attached hereto as Exhibit C.

[10] Plaintiff Joy Daley was suspended and warned not to attend the 2008 Boule meeting. Soror Pamela Redden, M.D., plaintiff in her own lawsuit against the Sorority was similarly denied admission. When Soror Redden attempted to attend the public session of the 2008 Boule meeting, she was denied admission and given an additional three year-long suspension for her temerity.

not to discuss the compensation decision which was asserted to be private. See Exhibit G to Amended Compl. ("It is established practice not to publicize amounts paid to active members...") This Barclay letter is noteworthy in that it blatantly seeks to muzzle member criticism or investigation into Defendant McKinzie's pay.

Attorney Barclay's letter writing efforts did not stop all complaints. In late October, 2007, Defendant AKA filed a Nebraska lawsuit against an imprecisely identified critic, "Michelle Ross, real name unknown" in a further effort to chill criticism of Defendant McKinzie's unprecedented pay.[11] The Michelle Ross litigation continued until December 15, 2008. Throughout the Michelle Ross litigation, the Sorority contended that the Michelle Ross' statements concerning the payments to Defendant McKinzie injured the Sorority.

Blocking of Debate at the 2008 Boule Meeting

Continuing their efforts to stop all discussion of the payments in Washington, DC, the 2008 Boule meeting agenda contained no mention of payments to Barbara McKinzie. There is also no apparent reference to the payments in the 2008 financial reports given to the Boule body. Further, Defendants took elaborate procedural steps to deny all discussion about Defendant McKinzie's pay.

In fact, the 2008 Boule meeting minutes reflect that, at the first plenary session, Delegate Bonnie Murdah objected to limiting discussion to only those items on the agenda prepared by the Directorate. See 2008 Boule meeting minutes at p. 11. Defendant McKinzie replied to Ms. Murdah that there would be an opportunity during the last plenary session to discuss any unfinished or new business. At the last plenary session, however, Defendant McKinzie did not

[11] A certified copy of the Complaint filed on October 22, 2007 captioned Alpha Kappa Alpha Sorority, Inc. and Barbara A. McKinzie, an individual v. Michelle Ross, real name unknown, filed as Case No. 1076-579 in the District Court of Douglas County, Nebraska is attached hereto as Exhibit D. A certified copy of the Second Amended Complaint, filed on April 1, 2008, Alpha Kappa Alpha Sorority, Inc. and Barbara A. McKinzie v. LaVon Stennis Williams Case No. 1076-579 is also attached.

open the floor to new or unfinished business before gaveling closed the 2008 Boule meeting. The blocking of such debate was alleged generally in the Amended Complaint. Amend. Comp. ¶¶ 94-97.

The refusal to permit discussion at the 2008 Boule meeting was a key step in transforming the Sorority and silencing criticism. Had the 2007 decision and subsequent compensation to Defendant McKinzie been openly debated and approved by the members at the 2008 Boule meeting, this lawsuit may never have been brought. However, fearing a member reversal of the 2007 decision, Defendant McKinzie and her directors hijacked the 2008 Boule meeting to prevent any discussion of this decision or Defendant McKinzie's pay. Had such discussion occurred then, the Directorate might have learned that the two hundred fifty thousand dollar ($250,000.00) payment they approved for Defendant McKinzie's 2007 compensation had in actuality ballooned to three hundred seventy five thousand dollars ($375, 000.00).

With discovery from Defendants, Plaintiffs shall show that the Directorate did not know or approve the actual amount of Defendant McKinzie's 2007 compensation. Only later, possibly after the filing of the Complaint in this case, did the Directorate learn of this one hundred twenty-five thousand dollar ($125,000.00) raise for Defendant McKinzie in her 2007 compensation. The Directorate was unaware because it had no proper oversight of the payments to Defendant McKinzie or the preparation of the AKA 2007 tax return. These facts are set forth in the Complaint and Plaintiffs' Declarations. See Amend. Compl. at ¶¶ 113, 114. Defendants have had proper notice of Plaintiffs' concerns about these payments and the poor oversight since long before filing the initial Complaint. The Defendants have refused all efforts to discuss the pay issue or Defendants' retaliation against critics and other misconduct. Plaintiffs have no avenue for redress other than this Court.

Jurisdiction

Defendants confuse and misstate the facts and law in an attempt to evade the jurisdiction of this Court. There is ample basis for finding general jurisdiction as to the Defendant entities and specific jurisdiction as to the Defendant individuals in this case.[12] In fact, this Court may also have general jurisdiction over certain of the individual Defendants.

Specific Jurisdiction

This Court has specific jurisdiction over all of the individual Defendants via the District of Columbia's long arm statute. DC Code § 13-423. Defendants incorrectly state that the District's Long Arm Statute is restricted to claims *arising from* the particular transaction of business carried out in the District. See Defs. Opp. p. 10. In fact, the nexus required by the District of Columbia Court of Appeals is much broader. Sitting *en banc* the Court of Appeals stated after a comprehensive review of federal and state jurisdictional law:

> Based upon our review of nexus tests used in other jurisdictions, the criticisms leveled at some of them, and the Supreme Court's admonition that there are no 'mechanical tests' or 'talismanic formulas' for the determination of personal jurisdiction, we see no reason to deviate from - and thus we reaffirm - our past decisions which have interpreted the 'arise from' language of § 13-423 (b) flexibly and synonymously with 'relate to' or having a 'substantial connection with,' in the same way that the Supreme Court's due process analysis has used these terms interchangeably… [T]hat is, as we said in Trerotola, [the claim] had to have some 'discernible relationship' to [Defendant's activity in the District of Columbia].

Shoppers Food Warehouse v. Moreno, 746 A.2d 320 (D.C. 2000) (internal citations omitted).[13] Thus, if Plaintiffs' claim has a "discernible relationship" to the 2008 Boule, the requirement of the long arm statute is met." Id.[14]

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[12] Indeed, even the Sorority's own insurance carrier believes jurisdiction is appropriate in D.C. as it recently filed suit in this court against all of the Defendants. See RSUI Indemnity Company vs. Alpha Kappa Alpha Sorority, Inc. 2009 CA 007637 B (filed October 14, 2009).

[13] In Shoppers, the court held that a Maryland corporation's advertising in the District of Columbia was sufficiently related to a slip and fall case to confer jurisdiction in a District of Columbia court even where the slip and fall occurred in Maryland. Shoppers Food Warehouse v. Moreno, 746 A.2d 320 (D.C. 2000).

In the instant case, the week long meeting in the District of Columbia has a "discernable relationship" to Plaintiffs' claims. Washington, D.C. is where Defendants held multiple plenary sessions of their Boule to discuss matters of all types and variety, yet failed to seek or gain approval of their 2007 compensation decisions. Also, Defendants blocked Plaintiffs and others from questioning these decisions in the District of Columbia, thus giving rise to jurisdiction. See Amended Complaint ¶¶ 70, 94-97. This conduct is actionable because the Directorate was required by AKA's Constitution and Bylaws to get the 2008 Boule to approve or ratify the 2007 Directorate's Executive Session vote to dramatically increase Defendant McKinzie's pay.[15]

Defendants argue that a single meeting cannot be the basis for personal jurisdiction. This is a misstatement of the law and the facts. First, it is disingenuous to describe a week long Boule meeting, consisting of seven plenary sessions and listed in the Guiness Book of Records for its size, as a single meeting. Second, Defendants misstate the case they cite for this proposition. In NAWA USA, Inc. v. Bottler, 533 F.Supp.2d 52, 57 (D.D.C. 2008) the court held that a single meeting in the District of Columbia unrelated to the cause of action is insufficient to establish jurisdiction over citizens of Germany and Switzerland who were former directors of a Delaware corporation. However, a single act can establish sufficient minimum contacts to constitute transacting business under the long-arm statute as long as it is related to the cause of action. Jackson v. Loews Wash. Cinemas, Inc., 944 A.2d 1088, 1093-1094 (D.C. 2008); Richter v. Analex Corp., 940 F. Supp 353, 360 (D.D.C. 1996). The week long Boule meeting was no one time meeting and it clearly had a relationship to the compensation dispute. The meeting was a

[14] "Once, however, the claim is related to acts in the District, § 13-423 does not require that the scope of the claim be limited to activity within this jurisdiction." Id.

[15] See AKA Bylaws Sec. 5; Code of Conduct for Members of the Directorate (Board) ¶¶ 5, 6, 8 attached as Exhibit 2 to Defendants Motion to Dismiss.

major production carefully and deliberately orchestrated to deny Plaintiffs' participation and the Boule's consideration of Defendant McKinzie's compensation.

General Jurisdiction

In their opposition, Defendants, for the first time, seem to argue that this Court does not have jurisdiction over AKA. However, it is undisputed that AKA is a nonprofit corporation organized under the laws of the District of Columbia. D.C. Code § 13-422 explicitly provides for general jurisdiction over a corporation organized under the laws of the District of Columbia. Therefore, this Court has general jurisdiction over the Sorority.

Defendants inexplicably cite Jolevare v. Alpha Kappa Alpha Sorority, Inc., 521 F.Supp.2d 1 (D.D.C., 2007) to support their jurisdiction argument. In Jolevare, the court incorrectly found there was diversity jurisdiction based on a incorrect representation by AKA.[16] Defendants cite Jolevare in an apparent effort to confuse this Court. Any attempt to obviate the fact that AKA is a District of Columbia corporation for jurisdiction purposes is disingenuous

Moreover, there may be proper general jurisdiction over at least three of the individual Defendants.[17] For general jurisdiction and due process purposes, these contacts do not have to be related to the instant cause of action. Helicopteros Nacionales De Colombia v. Hall, 466 U.S. 408, 114 n.9 (1984). Plaintiffs should be allowed discovery to determine whether the above Defendants – or any others - are domiciled in, maintain a principal place of business or regularly conduct business in the District of Columbia. Discovery should be permitted to ascertain the

[16]"[A] corporation shall be deemed to be a citizen of any State by which it has been incorporated and of the State where it has its principal place of business." 28 U.S.C. § 1332(c). AKA is headquartered Illinois and incorporated the District of Columbia. Thus, there would have been no diversity jurisdiction in Jolevare had Judge Walton been correctly apprised of these facts in AKA's answer to the complaint.

[17] For example, it is to be determined whether Defendants Glenda Glover, Melanie C. Jones and Shayla M. Johnson meet the requirements of D.C. Code § 13-422. It is believed that Defendant Glover maintains a residence, owns real property, pays taxes and runs a business in the District of Columbia and Defendants Jones and Johnson are or were students at Howard University.

nature of the Defendants' contacts with the District of Columbia rather than rely on the unsupported assertions of the Defendants.[18]

Jurisdiction is Fair

Defendants further claim that jurisdiction is not fair under due process. However, Defendants voluntarily accepted directorships in a District of Columbia corporation.[19] Under the due process analysis, a plaintiff may make a *prima facie* showing that a defendant has sufficient "minimum contacts" with a forum by showing that the defendant has purposefully availed herself of the benefits and protections of the forum state. *Burger King Corp. v. Rudzewicz,* 471 U.S. 462, 475-76 (1985). "The law imposes substantial responsibilities, and substantial liability, upon corporate directors. Therefore, it seems perfectly reasonable to require defendants [corporate directors] to defend this action, concerning their conduct as directors, in [the incorporating state's] court." Pittsburgh Terminal Corp. v. Mid Allegheny Corp., 831 F.2d 522, 530 (4th Cir. 1987). Defendants fail to even respond to the Fourth Circuit's important discussion of these issues set forth in Plaintiffs' opening brief in support of their Rule 56(f) motion. Moreover, it is entirely foreseeable that holding important week long meetings in the District of Columbia would expose Defendants to personal jurisdiction for acts taken in the District of Columbia.

Incredibly, Defendants continue to argue that the fiduciary shield doctrine protects Defendants, but cite no case in which this Court shielded the directors and officers of a District of Columbia corporation from jurisdiction in the District of Columbia. Defendants do offer a

[18] "A plaintiff faced with a motion to dismiss for lack of personal jurisdiction is entitled to reasonable discovery, lest the defendant defeat the jurisdiction of [the trial court] by withholding information on its contacts with the forum." Eric T. v. Nat'l Med. Enters., 700 A.2d 749, 759 n.21 (D.C. 1997).

[19] Many of the Defendants assumed or reaffirmed their official duties at the 2008 Boule meeting in Washington D.C. Moreover, the AKA Constitution states that the Sorority, through the Boule, has "all powers conferred under subsection 3 of Chapter XVII of the incorporation laws of the District of Columbia. AKA Const. Art. IV Sec. 2.

quote from Bible Way Church of Our Lord Jesus Christ World Wide, Inc. v. Showell, 578 F. Supp. 2d 164, 169-170 (D.D.C. 2008) to support their argument. However, the quoted language appears nowhere in the reported case. Defendants apparently manufactured the quote to support their argument when, in fact, Bible Way declined to apply the fiduciary shield doctrine to insulate the defendants from jurisdiction. The application of the fiduciary shield doctrine would not advance notions of fairness in this case. If officers and directors of a District of Colombia corporation are shielded from the Court's jurisdiction, the District of Columbia loses an important way to regulate the behavior of its corporations.

Although interstate travel is not considered as burdensome in the modern context, an element of fairness is the burden that defending this suit in the District of Columbia would put on the Defendants. Also relevant is whether Defendants knew that their DC conduct would expose them to claims by Plaintiffs. It is thus fair to permit Plaintiffs to discover what the individual Defendants knew about the McKinzie compensation controversy, how and when they knew it as well as how burdensome participating in a District of Columbia forum would be for the individual Defendants. As already conceded, a few of the Defendants regularly travel into the District of Columbia for a variety of reasons. They also regularly attend AKA events at locations far from their domiciles. Defendants' knowledge of the compensation dispute, their ability to travel and their contacts with the District of Columbia are relevant to the issue of fairness and the Plaintiffs should be allowed reasonable discovery to establish these facts.

Standing

Defendants rely on cases concerning inapposite corporations and organizations – completely unrelated to Defendant AKA's member-controlled structure - in arguing that Plaintiffs lack standing. AKA is fundamentally different from a stock corporation whose

shareholders invest in a business enterprise or members of a charity who donate to support a public beneficiary. These distinctions are important.

In a charitable organization, the members pool resources to help some third party beneficiary not part of the membership. Moreover, donations to such charities are frequently tax deductible. However, members' dues are never deductible as members cannot get a federal tax deduction for contributions made for their own benefit. A membership organization is run for the benefit of an established membership and is primarily supported by funds paid by the members. Because members are using their own funds, IRS rules allow individuals to join together for pleasure, recreation, and other nonprofitable purposes on a mutual basis. See IRC 501(c)(7).

These distinctions are important to the standing issue in this case. In a charitable organization, it is the third party beneficiaries, not the members who feel the direct harm that results from board misconduct. Thus, in charities, it may be appropriate to argue that the boards owe a duty to the organization, not the members. However, in a membership organization, the harm from board misconduct is directly felt by the members. AKA is a membership organization. In such organizations, directors owe a duty to the members and not simply to the organization.

In addition to its status as a membership organization, AKA's own particular governance structure gives express powers to its members to control the AKA organization. See AKA Const. Art III, Sec. 1; AKA Const. Art. IV. AKA's governing documents require that members, including Plaintiffs, have a significant role through the Chapters and the Boule meeting in the governance of the organization. Moreover, AKA's directors are not independent of the Sorority

they manage – they also are members of the Sorority. All members in membership organizations have a direct contract interest in other member actions. Simply put, the Sorority is its members.

Defendants incredibly continue to cite Friends of Tilden Park, Inc. v. District of Columbia and Clark Realty Capital, LLC, 806,A.2d 1201, 1210 (D.C. 2002) for the proposition that '"[o]fficers and directors of a corporation owe a fiduciary duty to the corporation' and not to its members." Def. Opp. p. 24. However, there is no such quote or holding anywhere in the cited opinion. Friends of Tilden Park only reiterates that a director owes a duty to the corporation. Nowhere in the opinion does the court discuss the duties owed to members. This is because Friends of Tilden Park, Inc. was not a membership organization and thus had no members.

The Sorority is analogous to a condominium association where all members, including the board members, are beneficiaries of the association. It is established in District of Columbia law that, even if they are directors, members in such membership organizations owe a duty to the other members. See Wisconsin Ave. Assocs., Inc. v. 2720 Wisconsin Ave. Coop. Ass'n, 441 A.2d 956, 963 (D.C. 1982). District of Columbia law also does not permit board members to put their personal interests ahead of the interests of other organization members. Willens v. 2720 Wisconsin Ave. Coop. Ass'n, 844 A.2d 1126, 1136 (D.C. 2004). The Defendants' breach of these membership rights creates standing for the Plaintiffs. See Warth v. Seldin, 422 U.S. 490, 500 (1975) (explaining that standing often turns on the nature and source of the claim asserted and may exist solely by virtue of legal rights, the invasion of which creates standing.)

In addition, Plaintiffs have a direct and concrete interest in enforcing AKA's Constitution and Bylaws and other governing documents. "It is well established that the formal bylaws of an organization are to be construed as a contractual agreement between the organization and its members, Willens v. Wisconsin Ave. Coop. Ass'n, 844 A.2d 1126, 1135 (D.C.2004); Local 31,

Nat'l Ass'n of Broadcast Employees & Technicians (AFL-CIO) v. Timberlake, 409 A.2d 629, 632 (D.C.1979), since the continuing relationship between the organization and its members manifests an implicit agreement by all parties concerned to abide by the bylaws." Meshel v. Ohev Sholom Talmud Torah 869 A.2d 343, 361 (D.C.,2005) Fletcher, a leading corporation law treatise states,

> In regard to the general relation between the corporation and the stockholder or member, it is the general rule that the bylaws which are in existence at the inception of the relation enter into the contract between the corporation and its stockholders or members or, in the case of a mutual association or fraternal benefit society, the contract between the members, and become an integral part of the contract as a matter of law, or, at least, are in the nature and have the force and effect of a contract, regulating the rights among the members and between the corporation and the members....

8 Fletcher Cyclopedia Corporations § 4198 (1993). AKA's Constitution and Bylaws thus create the contract to which Defendants have failed to adhere. Section 5 of AKA's Bylaws states that the "Directorate shall present its recommendations to the Boule for action." This did not happen. AKA's Code of Conduct for Members of the Directorate states that the Directorate have a contractual duty akin to fiduciary duty to:

> "base personal decisions in all available facts in each situation… To resist every temptation and outside pressure to use my position as a Board member to benefit myself or any other individual or agency apart from the total interest of the organization… To welcome and encourage active communication by the membership with respect to established policy and proposed future developments."

Code of Conduct for Members of the Directorate (Board) ¶¶ 5, 6, 8; Amend. Compl. at ¶¶ 57, 59, 60. Plaintiffs have standing to enforce such contractual obligations. For the purposes of this motion, this Court must deem as true the well plead allegations that Defendants have breached these contractual duties to the Plaintiffs. Amend Compl. ¶¶ 173-181. It is this breach of duty that gives Plaintiffs standing to pursue their claims.

Plaintiffs repeated attempts for voluntary redress by Defendants proved futile. Indeed, Plaintiffs have been suspended for seeking redress further denying them participation in AKA's governance through chapter meetings and votes. Plaintiffs had no alternative to litigation to challenge the Directorate's power grab of the unilateral right to compensate Defendant McKinzie and make other key decisions without Boule approval. It is nonsensical and fundamentally unfair to deny standing to those individuals who are harmed and are in the best position to pursue the claims.

Defendants state that members could bring their claims by derivative action. While this is the common method in stock corporations, it is impractical here. A stock corporation cannot unilaterally divest a shareholder of ownership, prohibit their voting rights or punish them for dissent, as the Defendants have done. The Defendants have used threats of expulsion, actual lawsuits and suspensions of privileges to prevent any meaningful discussion of the issues. Representative of their efforts is the Defendants' denial of all non-Directorate members' lawful requests to inspect the Sorority's book and records based on the spurious argument that the dues paying Sorors are not "voting members." Absent protections from the Court, Defendants have made it all but impossible to bring this action under Rule 23.1.

To deny Plaintiffs standing to bring suit would effectively deny any member oversight of the Sorority. As shown above, the District of Columbia has a substantial and compelling interest in holding its entities accountable under its laws. As members, Plaintiffs are in the best position to do just that. As alleged in the Amended Complaint, the Defendants have failed their fiduciary duties as officers and directors and run afoul of AKA's Constitution and Bylaws. If the members are denied standing to challenge the Directorate's actions, AKA's Constitution and Bylaws serve no meaningful purpose. Moreover, the "staffing problems and a relative lack of interest in

monitoring nonprofits make attorney general oversight more theoretical than deterrent." James J. Fishman, IMPROVING CHARITABLE ACCOUNTABILITY, 62 Md. L. Rev. 218, 262 (2003). Plaintiffs, as members, are in the best position to bring suit to ensure the organization and its directors are fulfilling their duties.

Judicial Intervention is Appropriate

The crux of the Defendants' argument is that judicial intervention is not appropriate because the payments to Defendant McKinzie are authorized by the AKA's Bylaws and the Directorate approved them.[20] This argument does not hold water. First, in unilaterally approving these payments, the Directorate has breached the AKA governing documents. District of Columbia law authorizes its courts to intervene when organizations do not follow their own rules. See Jolevare v. Alpha Kappa Alpha Sorority, Inc. 521 F. Supp. 2d 1, 24-25 (D.D.C.2007); Levant v. Whitley, 755 A.2d 1036, 1043-44 (D.C. 2000): Blodgett v. University Club, 930 A.2d 210, 230 (D.C. 2007). Defendants have not followed their own rules in failing to bring the compensation issues before the 2008 Boule meeting as required by Section 5 of the AKA's Bylaws. Moreover, AKA's Bylaws authorize a *stipend* when funds are *available*. The payments to Defendant McKinzie do not meet the definition of a stipend and there is no uncontested evidence that the funds were available.[21]

Second, it is proper for this Court to intervene when directors of a nonprofit entity are alleged to have breached their fiduciary duties or similar contract obligations to use independent judgment, pay attention and place the interests of the beneficiaries ahead of their own interests. In Stern v. Lucy Webb Hayes Nat. Train. Sch. for Deacon. & Missionaries, before the District Court for the District of Columbia, the directors of the nonprofit corporation which managed

[20] Conveniently ignored by Defendants is the fact the Amended complaint alleges that McKinzie was compensated more than the amounts approved by the Directorate.
[21] The Defendants assert the Sorority was recently operating with a large negative budget See Opp. Brf. p. 7

Sibley Memorial Hospital allegedly breached their fiduciary duties of care and loyalty in managing the corporation's funds. 381 F.Supp. 1003 (D.D.C., 1974). Specifically, the Sibley plaintiffs alleged that the directors wrongfully allowed two of the directors to make all decisions and run the corporation. The court found the directors breached their fiduciary duties in their failure to supervise the investment committee by periodically scrutinizing their work. The Sibley Hospital case is similar to the instant facts and shows that District of Columbia courts will intervene when appropriate.

Although the AKA Constitution and Bylaws authorize a stipend for Defendant McKinzie they do not allow the Directorate to approve any amount under the sun. The great pay increase for Defendant McKinzie was a major policy change for AKA. Previously, no sorority member had ever been paid such amounts. It was clearly wrong to vote such a major pay increase without getting the approval of the Boule meeting. The Defendants have a contractual and a fiduciary duty of care to act in a reasonable and informed manner. This includes the duty to form an independent and qualified compensation committee to determine compensation based upon appropriate data regarding comparability. Moreover, Defendants have a duty of loyalty to place the best interests of the Sorority, and thus its members, before their own interests. Amend. Compl. at ¶¶ 57, 59, 60. As prescribed by AKA's Bylaws, the Directorate should have brought the issues before the Boule at the 2008 meeting, but failed to do so in order to protect their own positions. Defendants have been more interested in maintaining their own leadership positions and reaping the considerable perks they receive than the wellbeing of AKA members.[22] The Amended Complaint's assertions that these obligations were not met here must be taken as true.

[22] Despite this litigation, the Directorate recently held all-expense paid leadership meetings in Alaska and the Bahamas. After the 2008 Boule meeting in Washington, some Directorate members and their spouses enjoyed an all expense paid trip to Africa. The members of the Directorate are slated to take a first class trip to Australia following the 2010 Boule meeting.

These acts are a breach of their duties as officers and directors. As the next in line to succeed the Supreme Basileus, the Directorate members have ample incentive to assert the unilateral right of the Directorate to make compensation and other key decisions without Boule approval. The self interest of the Directorate is well plead in the Amended Complaint and further supported by the Declarations of the Plaintiffs. When a non-profit corporation fails to follow its own rules and fails its obligations to its members, judicial intervention is appropriate. Based on 2008 experience, it will take a court order to get the financial issues on the 2010 Boule meeting's agenda for debate and approval. It seems fair that Plaintiffs should have standing to hold directors responsible for a huge pay hike the Plaintiffs did not approve.

Applicable Standard

Defendants continue to argue that Plaintiffs have not plead the necessary facts. However, the District of Columbia is a notice pleading jurisdiction and under Super. Ct. Civ. R. 8(a) and (e), a complaint is sufficient so long as it fairly puts Defendants on notice of the claim against them Sarete, Inc. v. 1344 U Street Ltd. P'ship, 871 A.2d 480, 497 (D.C.2005); see also Diamond v. Davis, 680 A.2d 364, 371 n. 8 (D.C.1996). "Such a statement must simply 'give the defendant fair notice of what the plaintiff's claim is and the grounds upon which it rests.'" Swierkiewicz v. Sorema N.A., 534 U.S. 506, 512, (2002) (quoting Conley v. Gibson, 355 U.S. 41, 47, 78 S.Ct. 99 (1957)). "This simplified notice pleading standard relies on liberal discovery rules and summary judgment motions to define disputed facts and issues and to dispose of unmeritorious claims." Id. (citations omitted). "'The provisions for discovery are so flexible and the provisions for pretrial procedure and summary judgment so effective, that attempted surprise in [District of Columbia] practice is aborted very easily, synthetic issues detected, and the gravamen of the dispute brought frankly into the open for the inspection of the court.'" Id. at 512-13 (quoting 5 C. WRIGHT &

MILLER, FEDERAL PRACTICE AND PROCEDURE § 1202, p. 76 (2d ed.1990)). Plaintiffs have plead ample facts to state a claim even under a heightened pleading standard.

To further confuse the issue, Defendants argue that "Plaintiffs seek the extraordinary relief of injunctive relief from the court without any showing of irreparable injury." Def. Opp. Brf. at p. 17. However, Plaintiffs are not required to make any such showing. "Irreparable injury" is an element when seeking a preliminary injunction – Plaintiffs have yet to seek a preliminary injunction and thus are not required to make any such showing. Moreover, Defendants continue to assert that Plaintiffs' claims are barred under District of Columbia Code Section 29-971.06. This provision is inapplicable. Section 29-971.06 applies to unincorporated organizations. See D.C. Code §29-971.01.

Amendment Pursuant to Rule 17(a)

If this Court finds that Plaintiffs lack standing to pursue some of their claims, Plaintiffs request the Court allow the real party in interest to be substituted pursuant to Rule 17(a) of the Rules of Civil Procedure. Allowing the real party in interest to be substituted would not prejudice the Defendants as the claims would be the same.

Respectfully Submitted,

/s/

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