

SUPREME COURT
STATE OF NEW YORK COUNTY OF NEW YORK

JANE DOE,

Petitioner,

-against-

CORNELL UNIVERSITY, INC., CHI PHI CHAPTER
HOUSE ASSOCIATION, CHI PHI FRATERNITY, INC.,
CHI PHI EDUCATIONAL TRUST, ALPHA BETA HOUSE
CORPORATION OF DELTA DELTA DELTA, DELTA
DELTA DELTA SORORITY, ZAREEN ENTERPRISE LLC
d/b/a MOONIES BAR & NIGHTCLUB, MATTHEW
INGALLS, JOHNATHAN NEWELL, WINSTON LEE,
GILLIO LOPES, DIEGO SARABIA, SCOTT NORRIS,
SCOTT KRETZSCHMAR, JOHN DOE (FACULTY), JOHN
DOE (ALUMNI), JOHN DOES (EXECUTIVE BOARD), and
ORAZIO PETITO,

Defendants.

ATTORNEY
AFFIRMATION OF
JAMES C. KNOX IN
SUPPORT OF MOTION
TO DISMISS

Index No. 161704/2026

JAMES C. KNOX, an attorney admitted to practice in the State of New York, affirms
under penalty of perjury the following:

1. I am an attorney with Hacker Murphy LLP, attorneys for Defendant Diego Sarabia.
I respectfully submit this Affirmation in Support of his motion to dismiss pursuant to CPLR
3211(a)(5) and (a)(7).

2. Annexed hereto as Exhibit 1 is a true and accurate copy of the Plaintiff's complaint,
previously filed as NYSCEF Dkt. No. [71](#).

3. This motion is supported by the *Memorandum of Law in Support of Motion to
Dismiss by Defendant Diego Sarabia*, dated October 23, 2026, which has been electronically filed
and served contemporaneously with this Affirmation and the Notice of Motion (the "Memo of
Law").

4. In the interest of brevity and avoiding repetition, I will not repeat the arguments in the Memo of Law in this Affirmation. Instead, I respectfully refer the Court to the Memo of Law and incorporate it by reference.

5. However, for record purposes, I will briefly note the arguments that are preserved and set forth in full in the Memo of Law.

6. As argued in Point I of the Memo of Law, plaintiff's Fifth, Sixth and Eight Causes of Action, alleging respectively the intentional torts of assault, battery and intentional infliction of emotional distress, are all barred by the applicable one-year statute of limitations set forth in CPLR 215 (3). As plaintiff has brought her complaint almost two (2) years after the incident she complains of, those intentional tort claims are subject to dismissal pursuant to CPLR 3211(a)(5).

7. As further argued in Point I of the Memo of Law, plaintiff has only alleged that defendant kissed her without her consent and snorted ketamine off her body. Although plaintiff makes reference to CPLR 213-c and CPLR 208, neither statute operates here to extend the ordinary one-year statute of limitations. As to the former, none of the conduct defendant Sarabia is alleged to have committed constitutes the conduct described in any of the serious criminal offenses listed in CPLR 213-c, as required thereunder to extend the statute of limitations, and thus it is no remedy to plaintiff's tardy claims. The latter statute, CPLR 208, although specifically cited by plaintiff in reference to her assault and battery claims, only applies to plaintiffs who were under eighteen (18) years of age at the time of the complained of incident, and plaintiff pleads that she was twenty (20) years of age at that time. Lastly, there is no rationale under which plaintiff's claim for intentional infliction of emotional distress is not subject to a one-year statute of limitations and, as such, it too must be dismissed.

8. As argued in Point II of the Memo of Law, plaintiff's First, Sixth and Eighth Causes of action also must be dismissed because plaintiff has failed to plead facts sufficient to set forth the claims she asserts in those causes of action.

- a. Plaintiff's First Cause of Action sounding in negligence fails because plaintiff has not properly pled any valid legal duty owed to her by defendant, instead arguing essentially that plaintiff had a duty of care to stop himself and others from assaulting, battering or intentionally inflicting emotional distress upon plaintiff, a fellow student, in the absence of any special duty or legal relationship. There is no such legal duty under New York law.
- b. Plaintiff's Sixth Cause of Action alleging Assault fails because plaintiff pleads only completed contact by defendant Sarabia and pleads no conduct placing plaintiff in imminent apprehension of harmful contact sufficient to support a cause of action for assault.
- c. Plaintiff's Eighth Cause of Action alleging intentional infliction of emotional distress must be dismissed because it fails to allege any conduct falling outside of the other, traditional tort claims asserted by plaintiff in her complaint, and as such it is impermissibly duplicative of those claims.

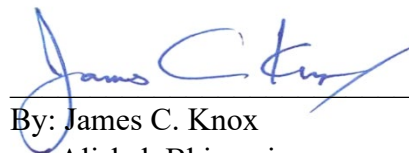
WHEREFORE, for the reasons summarized above and argued in full in the Memo of Law, the motion should be granted, and the Complaint should be dismissed in its entirety, with prejudice.

I affirm this 23rd day of October, 2026, under penalties of perjury under the law of New York, which may include a fine or imprisonment, that the foregoing is true, except as to matters alleged on information and belief and as to those matters I believe it to be true, and I understand that this document may be filed in an action or proceeding in a court of law.

DATED: Albany, New York
October 23, 2026

Respectfully submitted,

HACKER MURPHY, LLP

A handwritten signature in blue ink, appearing to read "James C. Knox", is written over a horizontal line.

By: James C. Knox

Alishah Bhimani

Attorneys for Defendant Diego Sarabia

Office & P.O. Address

22 Corporate Woods Boulevard, Suite 404

Albany, NY 12211

Telephone: 518-274-5820

jknox@hackermurphy.com

abhimani@hackermurphy.com