

SUPREME COURT
STATE OF NEW YORK

COUNTY OF NEW YORK

JANE DOE,

Petitioner,

-against-

Index No. 161704/2026

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.

MEMORANDUM OF LAW

IN SUPPORT OF MOTION TO DISMISS
BY DEFENDANT DIEGO SARABIA

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PRELIMINARY STATEMENT

Defendant Diego Sarabia (hereinafter “defendant”) brings this motion to dismiss plaintiff’s complaint pursuant to [CPLR 3211](#)(a)(5) and (a)(7). Plaintiff alleges defendant committed the common law torts of negligence, assault, battery, and intentional infliction of emotional distress ([Dkt. 71](#)). Defendant categorically denies those allegations. However, even accepting the complaint’s factual allegations as true for purposes of this motion, plaintiff’s claims against defendant are either time-barred, fail to state a legitimate cause of action, or both.

As far as defendant goes, this is essentially a lawsuit about an allegedly forced kiss. Throughout a sprawling complaint approaching 600 paragraphs, plaintiff repeatedly, collectively and without differentiation accuses seven student defendants of “sexual assault and rape.” Those legally conclusory statements do not substitute for pleaded facts. Actually, plaintiff alleges only two specific actions by defendant:

1. That he “grabbed her face and started kissing her” ([Dkt. 71 at ¶ 165](#)); and
2. That, with others, he “began pouring lines of Ketamine all over her body and snorting them.” ([Dkt. 71, at ¶ 169](#)).

Plaintiff does not allege that defendant penetrated her in any manner, touched her vagina, breasts, or anus, supplied her with drugs or alcohol, participated in any of the alleged sexual encounters described elsewhere in the complaint, or was even present for most of the conduct that forms the basis of plaintiff’s broader allegations. Thus, plaintiff’s repeated allegation that the seven student defendants “sexually assaulted and raped” her are nothing more than baldly asserted legal conclusions, directly contradicted by her own detailed factual pleadings, which make plain that defendant did not rape plaintiff. Plaintiff’s conclusory characterizations must yield to the specific facts she has alleged.

In actuality, plaintiff's claims that defendant kissed her without her consent and snorted ketamine off her body are straightforward. Any intentional tort arising out of that alleged conduct is foreclosed by a strict one-year statute of limitations because plaintiff commenced this action nearly two years after the alleged events. Faced with that obvious timeliness problem, plaintiff invokes [CPLR 213-c](#) ([Dkt. 71](#) ¶ 6) and [CPLR 208\(b\)](#) ([Dkt. 71](#) ¶¶ 516 and 522), but neither statute applies.

[CPLR 213-c](#) extends the statute of limitations only where the alleged conduct constitutes one of a list of specified, serious sexual offenses. An unconsented-to kiss does not constitute any of the listed offenses, and plaintiff cannot simply circumvent the statute of limitations by relying on generalized, collective accusations of "rape and sexual assault" that are otherwise unsupported by, and inconsistent with, her own factual allegations. [CPLR 208\(b\)](#) is simply inapplicable. It expressly applies only to alleged conduct committed against a person under eighteen years of age, and plaintiff alleges she was twenty years old at all relevant times.

The complaint suffers from numerous additional fatal defects. Plaintiff attempts to recast intentional conduct as negligence in the absence of any duty owed by defendant to supervise, protect, or control either plaintiff or other adult students. She also fails to plead the necessary elements of assault against defendant and improperly repackages her already deficient tort claims as a duplicative cause of action for intentional infliction of emotional distress.

In short, plaintiff has filed a sensational complaint that repeatedly concludes defendant is a rapist, but her alleged facts, even if accepted as true, describe something entirely different. Because plaintiff's actual claims against defendant are time-barred, inadequately pleaded, or both, the complaint must be dismissed in its entirety.

FACTS

Plaintiff commenced this action on September 16, 2026, and alleges that she was a twenty-year-old Cornell University undergraduate at the time of the alleged incident ([Dkt. 71](#) at ¶ 8). On the night of October 19, 2024, plaintiff had “binged” vodka at her sorority house ([Dkt. 71](#) ¶ 227), attended an event at Moonies Bar & Nightclub, and been served alcohol, despite markings indicating that she was under twenty-one ([Dkt. 71](#) ¶¶ 135-39).

Plaintiff later walked alone to the Chi Phi fraternity house, where she met defendant Matthew Ingalls ([Dkt. 71](#) ¶ 143, 146). Defendant Ingalls then propositioned plaintiff to engage in a threesome with himself and one other fraternity member ([Dkt. 71](#) ¶ 148). Thereafter, defendant Ingalls led plaintiff to a room where only defendant Jonathan Newell waited inside ([Dkt. 71](#) ¶ 151). Defendants Ingalls and Newell then “plied” plaintiff with ketamine, marijuana, and Jamacian liquor ([Dkt. 71](#) ¶ 152-154). Defendants Ingalls and Newell engaged in a threesome with plaintiff until defendant Ingalls stopped participating, went to a different bed located in the same room, and fell asleep ([Dkt. 71](#) ¶ 155-156, 158). Defendant Newell began reaching for plaintiff’s vagina with his hands, and plaintiff pushed his hand away at every attempt ([Dkt. 71](#) ¶ 159). Soon after end of the plaintiff-Newell-Ingalls threesome, defendant Gillio Lopes entered the room ([Dkt. 71](#) ¶ 160). Defendant Lopes then grabbed plaintiff from defendant Newell and began kissing her, while defendant Newell groped her from behind, specifically reaching for her vagina ([Dkt. 71](#) ¶ 160). Defendants Lopes and Newell then placed plaintiff on the bed and began engaging in a second threesome ([Dkt. 71](#) ¶ 161). Defendant is not alleged to have been present for, to have knowledge of, or to have been a witness to, any of these activities.

Plaintiff offers a screenshot of a Snapchat group chat labeled “Chi Phi Actives” with a time stamp of 1:42 am on October 20, 2024, wherein defendant Newell wrote “free pussy in alum pu”

([Dkt. 71](#) ¶ 162). At some point thereafter, defendant entered the room along with other fraternity members ([Dkt. 71](#) ¶ 165). Plaintiff does not allege that, at the time defendant entered the room, she was engaged in any sexual activity or had consumed any drugs or alcohol in defendant's presence. Rather, plaintiff alleges that she was under the covers when defendant "approached [her], grabbed her face, and started kissing her" ([Dkt. 71](#) ¶¶ 164-65).

Thereafter, defendant Newell poured a line of ketamine onto his penis, and plaintiff snorted it off of his penis ([Dkt. 71](#) ¶ 167). Defendant is not alleged to have provided the ketamine or instructed plaintiff to snort it. Rather, defendant's conduct is limited to thereafter snorting ketamine off an unspecified area of plaintiff's body, along with defendants Winston Lee, Scott Norris, Scott Kretzschmar, Newell, and Lopes, before exiting the room ([Dkt. 71](#) ¶ 169-170). Plaintiff does not explicitly allege that she did not consent to defendants snorting ketamine off unspecified areas of her body. Defendant is not alleged to have attempted to engage in any type of sexual activity with plaintiff after the allegedly forced kiss.

Plaintiff was then removed by defendants Ingalls and Lee to another, smaller room ([Dkt. 71](#) ¶ 170). In this smaller room, defendants Ingalls and Lee consumed more ketamine and instructed plaintiff to snort another line of ketamine, which she did ([Dkt. 71](#) ¶ 171). Plaintiff then engaged in a third threesome with defendant Ingalls and Lee ([Dkt. 71](#) ¶ 173). Plaintiff alleges she lost consciousness once, after the end of the third and final threesome ([Dkt. 71](#) ¶ 174). Defendant is not accused of having been present for, or to have had contemporaneous knowledge of, this third threesome.

In sum, the specific factual allegations concerning defendant are set forth in paragraphs 133-174 of the complaint, wherein plaintiff states only two specific facts: that he "grabbed her face

and started kissing her” ([Dkt. 71 at ¶ 165](#)), and that, with others, he “began pouring lines of Ketamine all over her body and snorting them.” ([Dkt. 71, at ¶ 169](#)).

Plaintiff does not allege that defendant penetrated her at any point or was even present for any of the alleged penetrative acts that occurred. Plaintiff does not allege that defendant made any contact whatsoever with her vagina, breasts, or anus. Notwithstanding, the complaint is riddled with generalized claims that, together with six other student defendants, defendant “raped” plaintiff ([Dkt. 71 ¶¶ 6, 190, 191, 192, 194, 198, 199, 200, 202](#)).

ARGUMENT

I. Plaintiff’s Intentional Tort Claims Against Defendant Are Barred by the Applicable Statute of Limitations.

On a motion brought pursuant to [CPLR 3211\(a\)\(5\)](#), a defendant initially must establish that the time to sue has expired. Once such showing is made, the burden shifts to the plaintiff to raise a factual question concerning a toll or other reason the limitations period does not apply, or to demonstrate timely commencement. *See Randolph v. Fox*, 230 A.D.3d 1173, 1174 (2d Dep’t 2024). So that the Court may properly analyze whether a claim is timely, plaintiff’s complaint must provide sufficient detail to give the Court and the parties notice of the transactions or occurrences to be proved and the material elements of each cause of action. *See Robin BB. v. Kotzen*, 62 A.D.3d 1187, 1188 (3d Dep’t 2009). Even on a [CPLR 3211](#) motion to dismiss, conclusory allegations of collective wrongdoing need not be accepted, especially where the complaint supplies no supporting facts connecting a particular defendant to the asserted legal obligation or wrong. *See IntegrateNYC, Inc., v. State of New York*, 45 N.Y.3d 176, 184 (2025) quoting *Godfrey v. Spano*, 13 N.Y.3d 358, 373 (2009) (“Although on a motion to dismiss plaintiffs’ allegations are presumed to be true and accorded every favorable inference, conclusory

allegations – claims consisting of bare legal conclusions with no factual specificity – are insufficient to survive a motion to dismiss”).

Plaintiff alleges that defendant committed the following intentional torts: Sexual Assault (Sixth Cause of Action)¹, Sexual Battery (Seventh Cause of Action), and Intentional Infliction of Emotional Distress (“IIED”) (Eighth Cause of Action). Each of these intentional torts is subject to a one-year statute of limitations. See CPLR 215 (3). Plaintiff alleges that the relevant events forming the basis of her claims occurred over the night of October 19, 2024, through the following morning. Plaintiff did not file her action on or before October 20, 2025, and instead waited to file her complaint until September 16, 2026. Thus, all three said causes of action are untimely and must be dismissed.

In anticipation of plaintiff’s potential argument that CPLR 213-c extends the limitations period of these intentional torts to twenty years (see Dkt. 71 ¶ 6), that extension applies only when the conduct alleged constitutes one of the sex crimes specified in that statute. See Gianna T.D. v. 64 W. Chippewa Assoc. LLC, 251 A.D.3d 1458, 1461 (4th Dep’t 2026). As relevant here, the specific enumerated sex crimes are as follows:

- (1) Rape in the First Degree as defined in Penal Law § 130.35 (requiring vaginal, oral², or anal sexual contact);
- (2) Rape in the Second Degree as defined in Penal Law § 130.30(4), (5), or (6) (requiring vaginal, oral, or anal sexual contact);
- (3) Rape in the Second Degree as defined in former Penal Law § 130.30(2) (requiring vaginal penetration, oral, or anal sexual contact);

¹ Plaintiff’s complaint proceeds directly from a “Fourth” cause of action to a “Sixth” cause of action. Despite the absence of a “Fifth” cause of action in plaintiff’s complaint, for consistency purposes, defendant will refer to the specific causes of action by the number denominated in the complaint.

² “Oral sexual contact” is defined as conduct between persons consisting of contact between mouth and the penis, the mouth and the anus, or the mouth and the vulva or vagina. See NY Penal Law § 130.00(2)(a).

- (4) Rape in the Third Degree as defined in Penal Law § 130.25(1), (2), (3), (7), (8), or (9);
- (5) A crime formerly defined in Penal Law § 130.50 (relating to oral sexual conduct or anal sexual conduct);
- (6) A crime formerly defined in Penal Law § 130.45 (2) (relating to oral sexual conduct or anal sexual conduct);
- (7) A crime formerly defined in Penal Law § 130.40 (1) or (3) (relating to oral sexual conduct or anal sexual conduct); and
- (8) Aggravated Sexual Abuse in the First Degree as defined in Penal Law § 130.70 (requiring insertion of a foreign object in the vagina, urethra, penis, rectum, or anus of another person). See [CPLR 213-c](#).

As concerns defendant, plaintiff alleges only that defendant grabbed plaintiff's face and kissed her, and snorted ketamine off of her body ([Dkt. 71](#) ¶¶ 165, 169). These specific actions – even if unconsented to – do not constitute any of the serious sex offenses enumerated in [CPLR 213-c](#). Plaintiff cannot solve her timeliness problem simply by peppering her complaint with generalized, collective, conclusory allegations that defendant, together with defendants Ingalls, Newell, Lee, Lopes, Norris, and Kretzschmar, “sexually abused and raped” plaintiff ([Dkt. 71](#) ¶¶ 6, 190, 191, 192, 194, 198, 199, 200, 202). While it is axiomatic that the Court must assume the truth of the complaint's allegations at this juncture, such assumption should not include conclusory and undifferentiated group-pleadings of sexual abuse and rape, expressly refuted by the specific acts pleaded. The twenty-year extension afforded by [CPLR 213-c](#) is thus inapplicable to plaintiff's allegation of an unconsented-to kiss, rendering her assault and battery claims untimely by nearly one year.

It must also be noted that plaintiff expressly endeavors to rely on [CPLR 208\(b\)](#), in an apparent alternative, but misguided, attempt to preemptively foreclose a statute of limitations attack on her Sexual Assault and Battery claims. See [Dkt. 71](#) at ¶¶ 516 and 522 (“The alleged

conduct constituted a violation of N.Y. Penal Law §130.52[,] §130.55, §130.60 and §130.65, and this action to recover damages from such conduct is protected under CPLR §208[b].”) That statute is inapplicable here, as plaintiff alleges she was a 20-year-old student at the relevant time ([Dkt. 71](#) at ¶ 8) and, by its own terms, the statute of limitations extension provided in [CPLR 208](#) applies only when certain enumerated offenses were “committed against [a] person who was less than eighteen years of age.” [CPLR 208 \(b\)](#).

Accordingly, plaintiff’s Sixth Cause of Action for assault, Seventh Cause of Action for battery, and Eighth Cause of Action for intentional infliction of emotional distress are time-barred as asserted against defendant, and they must be dismissed.

II. Plaintiff Has Failed to Sufficiently Plead Her First, Sixth and Eighth Causes of Action.

On a motion under [CPLR 3211\(a\)\(7\)](#), the Court must accept properly pleaded facts as true and, giving the plaintiff every favorable inference, determine whether those facts fit within a cognizable legal theory. See [Leon v. Martinez](#), 84 N.Y.2d 83, 87-88 (1994); [Barrack v. Village of Piermont](#), 245 A.D.3d 779, 779 (2d Dep’t 2026). That favorable treatment does not extend to bare legal conclusions or allegations lacking factual specificity. See [Epstein v. Cantor](#), 244 A.D.3d 937, 940 (2d Dep’t 2025). Conclusory factual allegations are insufficient even under the liberal pleading standard accorded on a motion to dismiss pursuant to [CPLR 3211](#). See [IntegrateNYC, Inc., v. State of New York](#), 45 N.Y.3d at 184, quoting [Godfrey v. Spano](#), 13 N.Y.3d at 373. Dismissal is warranted when, after discounting conclusory allegations, a plaintiff fails to allege facts supporting an element of the claim or when the alleged facts and reasonable inferences do not permit an enforceable right of recovery. See [Kefalas v. Pappas](#), 226 A.D.3d 757, 759 (2d Dep’t 2024).

- a. ***Defendant Had No Duty to Plaintiff. Plaintiff’s First Cause of Action, Sounding in Negligence, Must Be Dismissed.***

A negligence claim requires a duty of reasonable care owed by the defendant to the plaintiff, a breach, and an injury proximately caused by that breach. [Elmaliach v Bank of China Ltd.](#), 110 A.D.3d 192, 200 (1st Dep’t 2013). The existence of a duty running directly to the injured person is the threshold question, and “the injured party must show not only that the defendant owed a duty to society but a specific duty to the plaintiff; without a duty running to the injured person there is no liability in damages, however foreseeable the harm.” [Elmaliach v Bank of China Ltd.](#), 110 A.D.3d at 200, citing [Lauer v. City of New York](#), 95 N.Y.2d 95, 100 (2000).

Here, plaintiff alleges only that defendant was an adult undergraduate student and a fraternity member. She does not allege that he owned, operated, or controlled the fraternity house, employed or supervised any other defendant, held an institutional office, or possessed authority to control another student’s conduct. Nevertheless, the First Cause of Action alleges that defendant had duties to protect plaintiff, prevent other defendants from harming her, investigate concerns about those defendants, supervise their activities, and warn plaintiff about them.

Those supposed legal duties are, in fact, legal conclusions asserted by plaintiff, unsupported by any facts showing that defendant had custody of plaintiff, control over the other adult students, or any relationship giving rise to the asserted obligations. Plaintiff cannot create a legal duty merely by repeatedly alleging one existed. Because she has failed to plead facts showing a duty running from defendant to her to supervise or control the conduct of other students, the negligence claim against him must be dismissed under [CPLR 3211\(a\)\(7\)](#).

b. The Sixth Cause of Action Fails to Plead a Particularized Assault Claim Against Defendant.

The Sixth Cause of Action alleges collectively that all seven student defendants possessed the ability to cause harmful or offensive contact, committed an unspecified “menacing act,” and caused plaintiff apprehension of contact. It does not identify any threat, gesture, or other menacing

act by defendant individually. The only particularized physical-contact allegation against defendant is that he grabbed Plaintiff's face and kissed her without consent ([Dkt. 71](#) ¶ 165). That allegation concerns completed contact, not a separately pleaded threat that caused apprehension of imminent contact. The Sixth Cause of Action instead relies on undifferentiated conclusions directed at all seven student defendants. As noted above, conclusory allegations lacking factual specificity do not survive a motion to dismiss.

Here, the complaint does not allege that defendant threatened plaintiff, raised a hand, made a threatening gesture, moved toward her in a menacing manner, or engaged in any other conduct that caused plaintiff to anticipate any imminent harmful or offensive contact. A properly pleaded assault claim requires physical conduct placing plaintiff in imminent apprehension of harmful contact, and an intent to either inflict physical injury or to arouse apprehension of harmful bodily contact. See [Cotter v. Summit Sec. Servs.](#), 14 A.D.3d 475 (2d Dep't 2005); [Charkhy v. Altman](#), 252 A.D.2d 413 (1st Dep't 1998). Because the complaint does not allege facts identifying a threatening act by defendant or plaintiff's resulting apprehension before contact, the Sixth Cause of Action should also be dismissed under [CPLR 3211\(a\)\(7\)](#). See [Shaw v. City of Rochester](#), 200 A.D.3d 1551, 1556 (4th Dep't 2021).

c. Plaintiff's Intentional-Infliction Claim Impermissibly Duplicates Her Traditional Tort Claims.

Liability for intentional infliction of emotional distress requires extreme and outrageous conduct intentionally or recklessly causing severe emotional distress. See [Fischer v. Maloney](#), 43 N.Y.2d 553, 558 (1978). The claim should not be applied where the complained-of conduct falls within the scope of another traditional tort. See [Fischer v. Maloney](#), 43 N.Y.2d at 558. Plaintiff's Eighth Cause of Action rests on the same alleged sexual contact underlying her assault and battery

claims. It is purely duplicative of them, and alleges no distinct conduct by defendant and no separate injury attributable to conduct outside those traditional tort theories.

New York courts dismiss intentional-infliction claims when the conduct alleged falls squarely within another traditional tort claim. See [Fleishcer v NYP Holdings, Inc.](#), 104 AD.3d 536, 538-539 (1st Dep't 2013); [Demas v. Levitsky](#), 291 A.D.2d 653, 660 (3d Dep't 2002). Because plaintiff's intentional-infliction claim merely repackages the same alleged contact underlying the assault and battery claims, it should be dismissed under [CPLR 3211\(a\)\(7\)](#).

CONCLUSION

For the above stated reasons, defendant Diego Sarabia respectfully requests that this Court DISMISS the complaint against him, with prejudice, along with such other and further relief as the Court deems just and proper.

DATED: October 23, 2026

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CERTIFICATION PURSUANT TO RULE 202.8-B

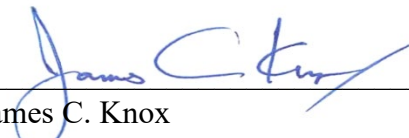
I, James C. Knox, hereby certify pursuant to Rule 202.8-b of the Uniform Rules of the Supreme Courts, that the length of this Memorandum of Law, exclusive of the cover page, the tables of contents and authorities, the signature block, and exclusive of this certification itself, is **3,349 words**. In making this certification, I have relied on the word count tool in the word processing program that I used to compose this document, Microsoft Word.

Dated: Albany, New York
October 23, 2026

Respectfully submitted,

HACKER MURPHY LLP

By: _____


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