

**IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
CIVIL DIVISION**

DISTRICT OF COLUMBIA,
a municipal corporation,
400 6th Street, N.W., Suite 10010
Washington, DC 20001,

Plaintiff,

v.

Civil Action No. _____

DELTA PHI EPSILON, INC.;
Serve: Terrence Boyle
Registered Agent
1245 34th Street, N.W.
Washington, DC 20007

**DELTA PHI EPSILON
FOUNDATION FOR
FOREIGN SERVICE EDUCATION;**
Serve: Terrence Boyle
Registered Agent
1245 34th Street, N.W.
Washington, DC 20007

and

TERRENCE BOYLE
1245 34th Street, NW
Washington, D.C. 20007

Defendants.

COMPLAINT FOR EQUITABLE RELIEF

The District of Columbia (the “District”), by its Office of the Attorney General, brings this action against Delta Phi Epsilon Foundation for Foreign Service Education (the “Foundation”), Delta Phi Epsilon, Inc. (the “Fraternity”) (collectively, the “DPE Entities”), and Terrence Boyle (collectively “Defendants”), for violations of the District’s Nonprofit Corporation Act (“NCA”), D.C. Code §§ 29-401.01, *et seq.*, and the common law. In support of its claims, the District alleges as follows:

INTRODUCTION

1. The Fraternity is a District nonprofit originally incorporated in 1920. The Fraternity was organized for educational purposes to foster and promote foreign trade in the United States. The Fraternity is home to the Georgetown University-affiliated Alpha Chapter of the national Delta Phi Epsilon society of fraternities and sororities. The Fraternity’s members consist of those who have served as Alpha Chapter officers and paid lifetime membership fees, as well as initiates of the Alpha Chapter, and the organization is governed by a board of directors. This entity is also referred to as the “House Corporation.”

2. The Foundation is a separate D.C. nonprofit organization founded in 1960 by nine Alpha Chapter members. Its purpose is to promote the calling of foreign service and the various related sciences by, *inter alia*, raising money for scholarship awards to individuals pursuing studies in foreign service or related areas. The Foundation’s founders were also the organization’s original trustees. Under its organizational documents, the Foundation’s trustees are elected by a majority vote of trustees then seated. The Foundation has no members.

3. Defendant Boyle has been an officer or director of both the Fraternity and the Foundation (collectively, the “DPE Entities”) since at least 1980. In those positions, he has gained

and maintained control over the DPE Entities' corporate governance and management and use of their nonprofit assets, and directed substantial amounts of those assets to his personal benefit.

4. As an officer of the Foundation, Defendant Boyle has engaged in, and caused the Foundation to engage in, interested party transactions that subsidized his purchase of a home in the District's desirable Georgetown neighborhood. These transactions benefited Boyle personally but provided no benefit to the Foundation.

5. While under Boyle's control, the Foundation has ceased functioning. The Foundation's board of trustees has failed to conduct any business in furtherance of the Foundation's stated purposes since at least 1984. The Foundation has failed to award educational scholarships as required by the Foundation's governing documents.

6. In addition, as a director and officer of the DPE Entities, Defendant Boyle caused the Fraternity to donate its ownership interest in a different Georgetown house to the Foundation, without the required board or Fraternity members' affirmative authorization. The Fraternity's by-laws require the organization to seat five directors on its board. At the time of the donation, the Fraternity had only three directors, including Boyle.

7. Upon receiving title to the donated house in June 2020, the Foundation sold the house for a purchase price of approximately \$2.6 million. The effect of this improper scheme was to strip the Fraternity of its only sizable asset, without its members' authorization, and provide a windfall to the Foundation, a non-member organization that Boyle is able to control without any oversight or accountability.

8. Shortly before the sale, Defendants agreed to maintain the proceeds of the sale in an escrow account pending completion of the District's investigation of Defendants' compliance with the nonprofit laws. However, shortly after the sale, Defendants also entered into a seller-

takeback loan with the purchaser, effectively mortgaging \$1.83 million of the sales proceeds. Defendants did not disclose this to the District at the time of the transaction, and they also did not disclose at the time that the Foundation was receiving interest and payments from the buyer or that Boyle was obtaining disbursements from escrow funds. These actions provided no benefit to either DPE Entity and constitute another mechanism by which Defendants have ceded control over nonprofit assets to Boyle with no accountability and contrary to the DPE Entities' nonprofit purposes.

9. By engaging in these transactions, Defendants have violated the NCA and common law and contravened the DPE Entities' organizational documents. Defendant Boyle has also failed in his fiduciary duty to act in the best interests of both DPE Entities.

10. The District institutes this proceeding to remedy Defendants' violations of the NCA and common law. Specifically, the District seeks a receiver or other Court-supervised official to take equitable steps to reform the governance and management of the DPE Entities, implement and oversee a special election for an entirely new slate of directors, and remedy Defendants' impermissible use of nonprofit assets for private benefit. The District further seeks equitable and injunctive relief preventing further abuses of authority by Defendants, including barring Defendant Boyle from serving as an officer or director of the DPE Entities.

11. The District also seeks a constructive trust over nonprofit funds, assets, and gains improperly paid to or obtained by Boyle, the Foundation, the Fraternity, or any other individuals or entities that in equity should be returned to a DPE Entity, and any other relief the Court deems to be just and proper.

PARTIES

12. Plaintiff District of Columbia is a municipal corporation empowered to sue and be sued and is the local government for the territory constituting the permanent seat of the government of the United States. The District is represented by and through its chief legal officer, the Attorney General for the District of Columbia. The Attorney General has general charge and conduct of all legal business of the District and all suits initiated by and against the District and is responsible for upholding the public interest. D.C. Code § 1-301.81(a)(1). The District is specifically authorized to enforce the NCA by D.C. Code § 29-412.20 and has broad powers under the common law to police the activities of nonprofit entities within the District to ensure that their use of nonprofit assets and governance meet their public nonprofit purposes.

13. Defendant Delta Phi Epsilon, Inc. (the “Fraternity” or “House Corporation”) is a District membership organization exempt from taxes under 26 U.S.C. § 501(c)(7). The Fraternity is home to the Alpha Chapter of the national Delta Phi Epsilon society of fraternities and sororities and is affiliated with Georgetown University. The Fraternity was organized for educational purposes with the goal to foster and promote foreign trade of the United States. Until mid-2020, the Fraternity was headquartered at 3401 Prospect Street NW, Washington D.C. 20007.

14. Defendant Delta Phi Epsilon Foundation for Foreign Service Education (the “Foundation”) is a District nonprofit corporation exempt from taxes under 26 U.S.C. § 501(c)(3). The Foundation’s nonprofit purpose is to promote the calling of foreign service and the various related sciences through, without limitation: the education and mutual improvement of members; promoting better understanding by assisting centers for the study and appreciation of international relations; diffusing knowledge concerning law, languages, and other related fields; and serving as

a repository for foreign service literature. The Foundation's principal office is located at 3401 Prospect Street NW, Washington, D.C. 20007.

15. Defendant Boyle is a District of Columbia resident who has continuously acted as a director or officer of the DPE Entities since at least 1980.

JURISDICTION

16. This Court has subject matter jurisdiction over this case pursuant to D.C. Code § 11-921, as this action is brought by the District, and D.C. Code § 29--412.20(a)(1), as the District asserts claims arising under the NCA.

17. This Court has personal jurisdiction over Defendants pursuant to D.C. Code § 13-423(a).

LEGAL BACKGROUND

18. At their most basic level, nonprofit organizations are established to benefit the public. Their assets are a form of public trust. Attorneys General, including the District's Attorney General, are by common law and statute charged with policing the nonprofit activities in their jurisdictions to ensure that nonprofits operate and use their assets in a manner consistent with the public purposes for which the nonprofits were created.

19. The NCA broadly empowers the Attorney General to police nonprofits incorporated under District law. This includes the ability to secure broad injunctive relief whenever a District nonprofit "has exceeded or abused and is continuing to exceed or abuse the authority conferred on it by law" or "has continued to act contrary to its nonprofit purposes." D.C. Code § 29-412.20(a)(1)(B)–(C).

20. A District nonprofit exceeds or abuses the authority conferred on it by law by taking actions contrary to their organizational documents and the NCA. A nonprofit abandons its public

purpose when it allows any portion of its nonprofit assets to be used in ways that are designed to benefit private persons or companies.

21. Private inurement is prohibited by the NCA and the common law. Under the Act, “[a] nonprofit corporation shall not pay dividends or make distributions of any part of its assets, income, or profits to its members, directors, delegates, members of a designated body, or officers.” D.C. Code § 29-404.40. Further, a contract or transaction between a nonprofit and one of its directors or officers is void or voidable unless certain specific conditions are met, including that the transaction is fair to the nonprofit corporation at the time it is authorized.

22. The NCA requires that the members of a nonprofit corporation approve the sale or transfer of a corporate asset unless: (1) such sale or transfer is made in the regular course of the nonprofit’s business; (2) after the sale or transfer, the corporation retains at least 33% of the total assets it held at the end of the most recently completed fiscal year; or (3) the assets are transferred to an entity whose members and interests are fully owned by the nonprofit corporation. *See* D.C. Code §§ 29-410.01, 29-410.02(a). Where member authorization of a transaction is required, it must be provided before the transaction occurs. *See generally id.* § 29-410.02. Prior to any meeting approving such a disposition, the corporation’s members must be provided notice containing “a description of the disposition, including the terms and conditions thereof and the consideration to be received by the corporation.” *Id.* § 29-410.02(d).

23. Under the NCA, directors and officers of a nonprofit must act in the best interests of the nonprofit they govern or control. Controlling persons violate the NCA’s fiduciary requirements by failing to ensure that nonprofit assets are used in furtherance of the nonprofit’s public purpose.

24. Under the common law, corporate directors and officers violate their fiduciary obligations by engaging in interested-party transactions without proper authorization, and by failing to act in the best interests of the corporation or its members. A director or officer unjustly enriched by such misconduct must return all of the resulting benefits to the affected nonprofit.

DEFENDANTS' CONDUCT GIVING RISE TO THE DISTRICT'S CLAIMS

Defendant Boyle Has Controlled Both DPE Entities Since 1980

25. Defendant Boyle has been an officer and member of the board of trustees of the Foundation since at least 1980. During all times relevant to this Complaint, Boyle was the treasurer of the Foundation.

26. Defendant Boyle has been the secretary and/or treasurer of the Fraternity since at least 1985. During all times relevant to this Complaint, Boyle was a member of the Fraternity's board of directors.

27. Defendant Boyle has concentrated, and continues to concentrate, decision-making power for both DPE Entities in himself.

28. The Fraternity's bylaws require a five-member board of directors to govern the organization. Two of the five directors must be active initiates, and once elected, their titles are president and house manager. The three remaining board seats are filled by three inactive initiates. During an annual or special meeting, the Fraternity's members may elect from the pool of active initiates to serve as president or house manager. Any vacancy on the three remaining seats is filled by the incumbent inactive-initiate directors.

29. By the mid-1980s, Boyle served on the Fraternity's board in the capacity of house manager, later becoming an inactive-initiate member of the board.

30. The Fraternity has not had the full complement of five board members since at least November 2018. As an inactive-initiate member of the Board, Boyle can only be replaced by the two other inactive-initiate directors; under the existing bylaws, the Fraternity's members have no authority to remove Boyle.

31. Boyle has ensured that he remains on the Fraternity's board of directors, which has otherwise comprised undergraduate students or other individuals who do not question Boyle's actions. The Fraternity's bylaws currently require a super-majority vote of seventy-five percent of the Fraternity's membership to amend the bylaws. Several members of the Fraternity have attempted to change the bylaws to allow the membership to remove Boyle; however, by restricting these members' access to the Fraternity's full membership list and controlling what motions are circulated among the membership before annual meetings, Boyle has stymied the dissenting members' efforts to contact their fellow members and garner the votes required to amend the bylaws.

32. The Foundation has no members and is governed by its board of trustees and officers. Under its bylaws, the Foundation board of trustees comprises nine individuals: three Alpha Chapter members, three Alpha Chapter alumni, and three members of the DPE national fraternity. Under the bylaws, the Foundation's treasurer is also a member of its board of trustees.

33. Since the 1980s, the trustees of the Foundation have appointed Defendant Boyle to serve as the Foundation's treasurer. Because the Foundation lacks any members to exercise oversight and accountability of the trustees, Boyle has surrounded himself with loyal, distant, or disengaged trustees whose proxies he utilized to cement his control over the Foundation's finances for the last three decades.

34. In his unfettered control of the DPE Entities, Defendant Boyle also has funneled assets and revenues generated by the Fraternity and its members away from the Fraternity and into the Foundation or other entities that Boyle can control without member oversight or accountability.

35. Since the Foundation received its 501(c)(3) tax exempt status in 1985, Boyle has touted that Fraternity members can make tax-deductible donations to the Foundation, that these donations are invested, and that all earnings are utilized to further the Foundation's nonprofit purpose of promoting foreign service as a field of study, including by providing scholarships, educational opportunities, and housing to individuals pursuing this field.

36. However, since its inception, the Foundation has failed to engage in any activity that furthers its nonprofit purpose. The Foundation's board of trustees has never awarded educational scholarships as required by its articles of incorporation, and since at least 2015, has failed to conduct any business at all such as holding regular board meetings required by the NCA and the Foundation's bylaws. Under Defendant Boyle's control, the Foundation operates merely as a repository for donations from Fraternity members.

**The Foundation Engaged in an Interested-Party
Transaction Inuring to Defendant Boyle's Private Benefit**

37. The NCA, common law, and the Foundation's articles of incorporation prohibit any director or officer from deriving private benefit from the Foundation's nonprofit assets.

38. In 1990, the Foundation and Boyle purchased a single-family house at 1245 34th Street NW, Washington, DC 20007, (the "34th Street Property") as tenants-in-common. The purchase included a non-attached garage located on nearby R Street NW. The total contract price was \$345,000.

39. The Foundation paid \$150,000 toward a \$200,000 down-payment on the 34th Street Property, with Boyle paying the other \$50,000. In addition, the Foundation agreed to pay 20% of

the monthly mortgage payments, with Boyle paying the remainder. Boyle and the Foundation each paid 50% of the real estate taxes and insurance premiums on the Property.

40. The Foundation allowed Boyle to use the 34th Street Property as his personal residence without paying any rent to the Foundation. The Foundation also authorized Boyle to lease rooms in the 34th Street Property to other individuals to help defray Boyle's portion of the costs.

41. In 1998, eight years after the original purchase of the 34th Street Property, the Foundation sold its 50% ownership interest to Boyle for \$150,000, a dollar amount equal to the Foundation's original down-payment. The Foundation did not recover any of its mortgage, tax, or insurance payments. Additionally, it did not receive any consideration for appreciation of the property over this time period.

42. As a result of this transaction, Boyle received the private benefit of the Foundation-subsidized purchase and maintenance of the 34th Street Property, as well as eight years of equity and appreciation in the property.

43. In 1990, when the Foundation assisted Boyle in purchasing the 34th Street Property, its tax-assessed value was \$294,557. The property's 2021 tax-assessed value is over \$2 million. Boyle is currently the sole owner of the property and continues to use it as his private residence.

44. Boyle has received, and continues to receive, the private benefit of the 34th Street Property, the purchase and maintenance of which was subsidized by Foundation funds with no apparent benefit to the Foundation. Conversely, during this same time period, no Foundation funds have served the organization's nonprofit purpose of awarding educational scholarships.

Defendant Boyle Improperly Transferred the Fraternity's Property to the Foundation, Sold it, and Has Been Using Those Nonprofit Funds In Spite of Defendants' Agreement with the District

45. In 1940, the Fraternity purchased real estate in Georgetown located at 3401 Prospect Street NW (the "Alpha House") for \$27,500. Until its sale in mid-2020, the Alpha House served as the headquarters of the Georgetown-affiliated Alpha Chapter of Delta Phi Epsilon. The house contained several bedrooms, a small library, and additional rooms that served as a venue for Fraternity meetings and social events.

46. In addition to serving as the Alpha Chapter's headquarters, the Alpha House originally provided residences for Alpha Chapter members attending Georgetown University; however, in the 1990s, Boyle began renting out Alpha House rooms to Alpha Chapter members and the general public.

47. As of August 2019, the Fraternity had less than \$390,000 in non-real estate assets. In its Form 990 filing covering the year ending August 31, 2019, and internal financial statements through August 2020, the Fraternity reported annual rental income from the Alpha House of over \$100,000. With a tax-assessed value of over \$2 million, and an appraisal value exceeding \$4 million as of November 2019, the Alpha House represented substantially more than two-thirds of the assets of the Fraternity during 2019 and the first half of 2020.

48. Through written communications with the Fraternity's members in 2019, Boyle advocated for the sale of the Alpha House in favor of the Fraternity purchasing a smaller property that would not also serve as a boarding house. In December 2019, the Fraternity's board—then consisting only of Boyle and two other inactive-initiate members—voted to authorize Boyle to list the Alpha House for sale and begin searching for a new house for purchase by the Fraternity.

49. In February 2020, at an annual meeting to discuss the disposition of the Alpha House, members debated and voted in favor of a motion to approve the board's December 2019 resolution authorizing Boyle to list the Alpha House for sale. The approved motion declared that the sale should occur as soon as possible and for the best possible price, and that the Fraternity's board should seek to minimize or escape any capital gains taxes. At that 2020 annual meeting, no one (including Boyle) raised the possibility of *donating* the Alpha House to the Foundation.

50. In early June 2020, Boyle caused the Fraternity to transfer the Alpha House to the Foundation for \$1 with no restrictions or conditions on the donation. On June 22, 2020, the Foundation entered into a contract of sale to transfer the Alpha House to a private buyer, an entity named 3401 Prospect Street LLC, in exchange for approximately \$2.6 million. 3401 Prospect Street LLC is owned by an individual named Nashville Peart. Boyle and the DPE Entities represented to District investigators that the Alpha House sale was an arm's length transaction, *i.e.*, that Boyle had no pecuniary interest in the sale and that he had no prior relationship with the buyer.

51. At the time of these transactions, the Fraternity's members had not provided the requisite approval for: the Fraternity's donation of the Alpha House to the Foundation; the Foundation—not the Fraternity—entering into a contract for the sale of the house; or the Foundation having no obligation whatsoever to purchase a new house for the Fraternity's benefit.

52. Boyle was the treasurer of both DPE Entities at the time of the donation and subsequent transfer of the Alpha House, with sole control over the financial accounts of both entities.

53. District investigators learned of the sale shortly before it was to close. In a June 19, 2020 letter of agreement, the Foundation represented to District investigators that the total proceeds to the Foundation from the sale would be approximately \$2.4 million dollars and that

those proceeds would be held in escrow pending any investigation by the District. The Foundation also represented to the District that it originally intended to engage in a bridge transaction, *i.e.*, use the proceeds of the sale of Alpha House to immediately purchase another property, but it cancelled its plans to purchase a new house following the escrow arrangement.

54. After the sale settled on June 22, 2020, the District learned that the Alpha House sale was achieved via a seller-takeback loan, in which the Foundation agreed to transfer ownership of the property in exchange for the buyer making a down-payment of approximately \$800,000 in June 2020, a balloon payment of \$1.83 million in July 2022, and interim monthly interest payments of approximately \$11,000. The seller-takeback loan and staggered payment terms were not disclosed to District investigators at the time of the sale.

55. In a June 25, 2020 newsletter, Boyle informed Fraternity members that the Alpha House was transferred to the Foundation before being sold, purportedly in order to limit the capital gains taxes that otherwise would have been incurred by the Fraternity if the Fraternity sold the Alpha House itself. That newsletter did not disclose that the Fraternity, as a 501(c)(7) entity, could have sold the Alpha House itself without incurring such taxes, so long as it purchased another property to be used for nonprofit purposes (such as a future Fraternity house) within three years of the sale. *See* 26 U.S.C. § 512(a)(3)(D). Fraternity members were not given any opportunity to weigh in on the costs and benefits of, or give their approval to, structuring the transaction in this manner.

56. In the same newsletter, Boyle revealed that the Foundation had effectively underwritten a seller-held mortgage to facilitate the purchase of the property, and that the buyer agreed to make monthly interest payments on that mortgage of approximately \$11,000.

57. At the February 2021 annual meeting of the Fraternity's members, Boyle provided Fraternity members with inaccurate information or refused to provide material information regarding the transfer and sale of Alpha House. Despite members' requests, Boyle refused to identify to the members certain details about the buyer of the property and terms of the transaction, allegedly due to a non-disclosure agreement requested by the buyer. Boyle also continued to represent that the donation of the Alpha House to the Foundation was necessary to avoid capital gains taxes.

58. During that February 2021 meeting, Boyle admitted that he did not seek the Fraternity members' approval for the transfer of the Alpha House to the Foundation, claiming that the members had no right to participate in the decision to transfer their primary asset. Nevertheless, Boyle introduced a motion asking Fraternity members retroactively to approve the Alpha House donation. Over the objection of several members, the motion passed largely due to proxy votes held by Boyle. The annual meeting notice did not include any reference to this motion, and most of the Fraternity members who gave Boyle their proxies to vote in the February 2021 meeting did not attend the meeting and therefore lacked knowledge of Boyle's representations regarding the Alpha House transaction during the meeting. Boyle further admitted that he had requested and received disbursements from the buyer's interest payments into the escrow.

59. According to escrow records relating to the Alpha House transaction that were recently provided to the District, an entity named Carpenters of Georgetown LLC—which is affiliated with Nashville Peart—made a down-payment and deposit totaling approximately \$800,000 in June 2020. The escrow records further show that 3401 Prospect Street LLC is also remitting monthly interest payments of about \$11,000, apparently relating to the seller-takeback transaction.

60. As of May 4, 2021, approximately \$987,000 has been paid into the escrow account and approximately \$338,000 has been disbursed from the account, leaving a balance of approximately \$649,000. Of that balance, according to the escrow records, recent communications from the escrow agent, and recent statements by Boyle, Boyle is treating only \$515,000 as “sale proceeds” subject to the Foundation’s agreement with the District not to disburse funds. Boyle does not consider, for example, the incoming \$11,000 interest payments related to the seller-takeback loan to be covered by that agreement, notwithstanding that those payments are direct proceeds from the Alpha House transaction. For example, the minutes of the February 2021 meeting—which Boyle drafted—falsely state that the buyer’s interest payments are not “the [District’s] express concern.” Accordingly, Boyle has requested and received disbursements from the escrow funds in contravention of the Foundation’s agreement with the District to maintain all proceeds of the sale while the District completes its investigation.

61. The remaining \$1.83 million due on the purchase price of the Alpha House is scheduled to be paid on or by July 1, 2022. However, the buyer’s monthly interest payments on the seller-takeback loan will continue to be paid through June 2022.

62. The Foundation, through Boyle, stated its intent to use the proceeds from the sale of the Alpha House to purchase a new house that could serve as a headquarters for the Alpha Chapter. However, the Fraternity’s members have no control over how the Foundation uses the sale proceeds; that decision will be made by the board of trustees of the Foundation, which includes Boyle.

63. As a result of these transactions, Boyle and the Foundation divested the Fraternity of its most valuable asset and caused the Foundation to underwrite a seven-figure mortgage under terms that Boyle refuses to identify to the Fraternity’s members. By orchestrating these

transactions, Boyle also caused the Fraternity to undertake the unauthorized transfer of its principal asset.

COUNT I
Against All Defendants for Exceeding or Abusing Authority Conferred by Law in
Violation of D.C. Code § 29-412.20(a)(1)(B)

64. The District re-alleges paragraphs 1 through 63 as if set forth fully in this paragraph.

65. The Foundation and Defendant Boyle exceeded and abused, and continue to exceed and abuse, the authority conferred upon them by law by diverting nonprofit funds that should have been used to further the Foundation's nonprofit purposes, including the award of educational scholarships, toward the purchase and Defendant Boyle's sole ownership of the 34th Street Property for Defendant Boyle's personal use. Since 1990 Boyle has retained, and continues to receive and retain, private financial and other benefits from these transactions.

66. The Fraternity and Defendant Boyle exceeded and abused, and continue to exceed and abuse, the authority conferred upon them by law by failing to ensure that the Fraternity has seated a full complement of five board members as required by the Fraternity's bylaws and by refusing to provide members with access to corporate records to which they are entitled.

67. The Fraternity and Defendant Boyle exceeded and abused, and continue to exceed and abuse, the authority conferred upon them by law by divesting the Fraternity of its principle asset and base of its operations—the Alpha House—without proper authorization. The Fraternity's members have been and continue to be harmed by this divestment and their inability to direct the multi-million-dollar proceeds gained from the sale of the Alpha House, which now belong to the Foundation and are controlled by Boyle.

68. These transactions violated the NCA's prohibitions against private inurement, self-dealing, and unauthorized transactions by the officers or directors of nonprofit corporations and Defendants' fiduciary duties to act in the best interests of the Foundation.

69. The District seeks equitable relief pursuant to D.C. Code § 29-412.20(a)(1)(B) to remedy these violations.

70. Defendants' conduct in violation of the NCA is continuing and likely to re-occur.

COUNT II
Against All Defendants for Acting and Continuing to Act Contrary to Nonprofit Purposes in violation of D.C. Code § 29-412.20(a)(1)(C)

71. The allegations of paragraphs 1 through 63 are re-alleged as if fully set forth herein.

72. The Foundation and Defendant Boyle acted and continue to act contrary to the Foundation's nonprofit purpose by diverting nonprofit funds that should have been used to further the Foundation's nonprofit purposes, including the award of educational scholarships, toward the purchase and Defendant Boyle's sole ownership of the 34th Street Property for Defendant Boyle's personal use. Since 1990 Boyle has retained, and continues to receive and retain, private financial and other benefits from these transactions

73. The Fraternity and Defendant Boyle acted and continue to act contrary to the Fraternity's nonprofit purpose by divesting the Fraternity of its principle asset and base of operations—the Alpha House—without proper authorization. The Fraternity's members have been and continue to be harmed by this divestment and their inability to direct the multi-million-dollar proceeds gained from the sale of the Alpha House, which now belong to the Foundation and are controlled by Boyle.

74. The Foundation and Defendant Boyle have acted, and continue to act, contrary to the nonprofit's purposes by engaging in an ultra vires transaction with the Fraternity, obtaining the

Fraternity's most valuable asset, the Alpha House, and using nonprofit assets to underwrite a multi-million dollar mortgage for the sale of Alpha House. The diversion of assets away from the Foundation has impacted, and will continue to impact, the Foundation's ability to meet its nonprofit purpose.

75. Furthermore, by accessing and using proceeds from the Foundation's sale of the Alpha House—in direct contravention of his representation that all proceeds from the sale would be held in escrow pending the District's investigation—Defendant Boyle has diverted the Foundation's assets away from their nonprofit purpose.

76. The Foundation and Defendant Boyle have acted and continue to act contrary to the Foundation's nonprofit purposes by failing to engage in any activity that furthers the Foundation's nonprofit purposes, including awarding educational scholarships. This failure to conduct the Foundation's business has impacted, and will continue to impact, the Foundation's ability to meet its nonprofit purpose.

77. The District seeks equitable relief pursuant to D.C. Code § 29-412.20(a)(1)(C) to remedy these violations.

78. Defendants' conduct in violation of the NCA is continuing and likely to re-occur.

COUNT III
Against All Defendants Pursuant to the Common Law

79. The allegations of paragraphs 1 through 63 are re-alleged as if fully set forth herein.

80. The Attorney General has broad common law authority to ensure that the governance and funds of a District charitable corporation are exercised and used in ways that benefit the public and that charitable funds are not wasted, used for private inurement, or otherwise used in a manner incompatible with a nonprofit purpose or the directors' fiduciary duties.

81. By redirecting the Foundation's funds away from their nonprofit purpose, including directing such funds in favor of Boyle's personal benefit, in both the Property and the Alpha House transactions, the Foundation and Boyle have violated well-established common law principles of equity, fairness, and fiduciary duty.

82. By engaging in private inurement transactions for Defendant Boyle's benefit, failing to ensure appropriate oversight of Defendant Boyle in his role as an officer of the Foundation, and failing to act in the best interests of the DPE Entities, Defendants have failed to safeguard nonprofit assets and observe basic governance and accountability standards.

83. Defendants' failure to meet their fiduciary obligations in ensuring that nonprofit funds and assets are used in ways that benefit the public and in accordance with the Foundation's nonprofit purposes violates the responsibilities of a nonprofit corporation and its directors and officers under the common law.

84. Defendant Boyle has been unjustly enriched by obtaining and retaining the benefits of the Foundation-subsidized purchase of, and nearly two decades' worth of appreciation in, the 34th Street Property. Boyle's unjust enrichment—at the expense of the Foundation's nonprofit purposes—violates common law principles of fairness and justice.

85. The Foundation has been unjustly enriched by obtaining and retaining the benefit of the sale of the Alpha House for over \$2 million dollars based upon Boyle's and the Fraternity's unauthorized transfer of the Alpha House to the Foundation. The Foundation's unjust enrichment—at the expense of the Fraternity's operations and in contravention of the Fraternity members' oversight and governance—violates common law principles of fairness and justice.

PRAYER FOR RELIEF

WHEREFORE, the District, pursuant to the Nonprofit Corporation Act, D.C. Code § 29-412.20(a), requests that this Court:

- A. Implement appropriate injunctive or equitable relief to safeguard all funds relating to the sale of Alpha House and preserve such funds for their authorized purposes and in accordance with the Fraternity's nonprofit purposes;
- B. Impose a constructive trust over nonprofit funds, assets, or gains wherever located that were improperly paid or obtained by any Defendant and any other individuals or entities as a result of a violation of District law;
- C. Appoint a receiver or other court-appointed official on a provisional or permanent basis to effectuate equitable steps to stabilize and reform the management and governance of the DPE Entities, including but not limited to:
 - a. Assuming control or authority over the DPE Entities' bank accounts, finances, and financial records, including funds held in escrow;
 - b. Obtaining an equitable accounting of the DPE Entities' books and records;
 - c. Implement elections for a new slate of independent directors for each of the DPE Entities;
 - d. Reform the DPE Entities' corporate governance and management policies and procedures to provide for appropriate, lawful corporate governance and management and to remedy the impermissible use of nonprofit funds for private benefit;
 - e. Undertake any further actions necessary to address the violations alleged in this Complaint; and

- f. Oversee and implement this Court's orders.

- D. Order any of the equitable and injunctive relief described above absent the appointment of a Receiver or Court supervision of Defendants;

- E. Remove Defendant Boyle from his official role in any Delta Phi Epsilon entity organized in the District and enjoin him from renewing such roles as appropriate;

- F. Enjoin the DPE Entities from acting in a manner that exceeds or abuses the authority conferred upon them by law or that is contrary to their nonprofit purposes;

- G. Order such other equitable and injunctive relief as the Court determines to be just and proper.

Dated: June 3, 2021

Respectfully submitted,

KARL A. RACINE
Attorney General for the District of Columbia

KATHLEEN KONOPKA
Deputy Attorney General
Public Advocacy Division

/s/ Catherine A. Jackson
CATHERINE A. JACKSON (#1005415)
Chief, Public Integrity Section
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