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By: *[Signature]*  
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6 IN THE SECOND JUDICIAL DISTRICT COURT OF THE STATE OF NEVADA  
7 IN AND FOR THE COUNTY OF WASHOE

9 EDITHA DAY, as heir and on behalf  
10 of THE ESTATE OF ALBERT  
11 JEROME REFUERZO SANTOS,

12 Plaintiff,

13 vs.

Case No. CV03-02485

Dept. No. 1

14 THE PI KAPPA ALPHA FRATERNITY,  
15 a Tennessee corporation; et al.,

16 Defendants.

17 \_\_\_\_\_  
18 ORDER

19 Defendant, PI KAPPA ALPHA FRATERNITY; PI KAPPA ALPHA HOUSE  
20 CORPORATION; and PI KAPPA ALPHA SIERRA ALUMNI ASSOCIATION (collectively,  
21 hereinafter, "PKA") by and through their attorney, Charles W. Spann, Esq., filed a *Motion for*  
22 *Summary Judgment and Motion for NRC P 54(b) Certification.*<sup>1</sup> Plaintiff, EDITHA DAY  
23 (hereinafter, "Day"), by and through her attorney, Dale A. Hayes, Esq., filed an *Opposition*, to which  
24 PKA *Replied*.

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28 <sup>1</sup> This action was commenced, on April 17, 2003 and has been pending for more than three years. On June 28, 2006, PKA submitted the instant *Motion for Summary Judgment*, approximately nineteen (19) days before trial and in violation of DCR 12(7) and the Court's *Pre-Trial Order* of August 22, 2003. The Court, however, will consider the merits of PKA's *Motion*.

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The Court finds no controlling Nevada law with respect to the issues raised by PKA's *Motion* and notes both Plaintiff and Defendants have cited numerous extra-jurisdictional cases in support of their respective positions. Defendants rely upon *Walker v. Phi Beta Sigma Fraternity (RHO Chapter)*, 706 So.2d 525 (La. App. 1997), which held: "local chapters are responsible for functioning at the local level, planning chapter functions and running chapter organizations... the national level is a separate corporation..." Plaintiff cites *Estate of Hernandez by Hernandes-Walker v. Flavio*, 186 Ariz. 517 (Ariz.App., 1995) which stated:

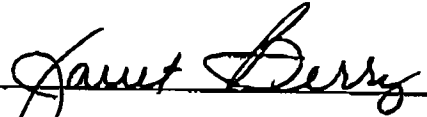
The national fraternity... cannot disclaim responsibility for the risks of what it has sponsored. The national fraternity exercises control over many aspects of the activities of its local chapters. That a duty exists in this circumstance was implicitly admitted by the act of the national fraternity in sending to local chapters instructions to abide by local laws and university regulations... Whether such an admonitory letter is sufficient to discharge any duty to exercise reasonable care is, of course, for the jury to decide.

The Court has considered the arguments of counsel, the pleadings and the record. The Court finds genuine issues of material fact remain in dispute regarding PKA's alleged involvement with and governance over its local chapters. These factual disputes preclude summary judgment.

The Court finds PKA's request for certification under NRCP 54(b) without merit.

Accordingly and good cause appearing, PKA's *Motion for Summary Judgment* and NRCP 54(b) Certification is DENIED.

DATED: This 5<sup>th</sup> day of July, 2006.

  
DISTRICT JUDGE

1 This action arose from the drowning of Albert Jerome Refuerzo Santos ("Santos") on  
2 December 10, 2002. Santos was allegedly participating in a fraternity initiation ritual when he  
3 drowned in Manzanita Lake at the University of Nevada, Reno.

4 "Summary judgment is appropriate under NRCP 56 when the pleadings, depositions, answers  
5 to interrogatories, admissions, and affidavits, if any, that are properly before the court demonstrate  
6 that no genuine issue of material fact exists, and the moving party is entitled to judgment as a matter  
7 of law." *Wood v. Safeway, Inc.*, 121 P.3d 1026 (Nev. 2005).

8 "A factual dispute is genuine when the evidence is such that a rational trier of fact could  
9 return a verdict for the nonmoving party." *Id.*

10 "While the pleadings and other proof must be construed in a light most favorable to the  
11 nonmoving party, that party bears the burden to do more than simply show that there is some  
12 metaphysical doubt as to the operative facts... The nonmoving party must, by affidavit or otherwise,  
13 set forth specific facts demonstrating the existence of a genuine issue for trial or have summary  
14 judgment entered against him." *Id.* [internal citations omitted].

15 A party opposing a summary judgment motion is not entitled to "guild a case on the  
16 gossamer threads of whimsy, speculation and conjecture." *Posadas v. City of Reno*, 109 Nev. 448  
17 (1993).

18 PKA asserts it cannot be held vicariously liable for actions of the local chapter as they have  
19 no right of control over and do not direct, monitor, participate in or supervise the daily activities of  
20 the local chapters of the national fraternity. It further contends it is unrealistic to impose a duty on  
21 them to prevent torts occurring at distant local chapters because the officers are not employees of the  
22 Fraternity and there was no contract between PKA and Santos.

23 Day contends the various PKA Defendants are part of a single organization.<sup>2</sup> Day further  
24 argues PKA owed fiduciary, contractual and common-law duties to Santos.

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27 <sup>2</sup> To support her contention Day notes: (1) PKA's publications indicate "there is only one Pi Kappa Alpha Fraternity"  
28 (See: See: *Garnet and Gold*, pp. 163, 164, 173a); (2) PKA is funded by the local chapters (See: *Deposition of Raymond Orians*, pp. 122-123); and (3) PKA exercised control over the local chapters, including membership standards, codes of conduct and risk management. (See: *Garnet and Gold*, pp. 199, 200; *Risk Awareness Handbook*, pp. PKA 143, PKA 144, PKA 150, PKA 171; *Orians Deposition*, pp. 19, 110).

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CERTIFICATE OF SERVICE BY FACSIMILE

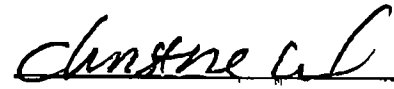
Pursuant to NRCP 5(b), I certify that I am an employee of the Second Judicial District Court of the State of Nevada, County of Washoe; that on this 5<sup>th</sup> day of July, 2006,

I transmitted the attached document via facsimile to:

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Christine Kuhl