

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF NEW YORK

DELTA KAPPA EPSILON (DKE) ALUMNI CORP., MU OF
DKE FOUNDATION, and SAM HIGGINS AS PRESIDENT
LOCAL CHAPTER MU OF DELTA KAPPA EPSILON,

Plaintiffs,

v.

COLGATE UNIVERSITY, REBECCA CHOPP, PRESIDENT
OF COLGATE UNIVERSITY, and JOHN A. GOLDEN,
CHAIR, COLGATE TRUSTEES,

Defendants.

**ANSWER TO SECOND
AMENDED COMPLAINT**

Civil Action No. 05-CV-245
(GLS/GJD)

Defendants Colgate University, Rebecca Chopp, and John A. Golden (collectively
“Colgate”) respond to the allegations of plaintiffs’ Second Amended Complaint as follows:

A. The statements contained in eight unnumbered paragraphs of the Introduction
section of the Second Amended Complaint do not comply with Rule 10(b) of the Federal Rules of
Civil Procedure and are otherwise comprised of plaintiffs’ characterization of their claims to
which a responsive pleading is not required. If, and to the extent that, the statements contained in
the introduction section may be construed to contain an averment of fact requiring a responsive
pleading, Colgate DENIES every such allegation.

1. The allegations of paragraph 1 are comprised of plaintiffs’ characterization of
their claims and do not require a responsive pleading. If, and to the extent that, the allegations of
paragraph 1 may be construed to contain an averment of fact requiring a responsive pleading,
Colgate DENIES that any violation of Section 2 has occurred and DENIES plaintiffs’ entitlement
to the relief they seek.

2. The allegations of paragraph 2 are comprised of legal conclusions to which no responsive pleading is required.
3. ADMITS the allegations of paragraph 3.
4. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 4.
5. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 5.
6. ADMITS that Plaintiff Sam Higgins is an undergraduate student at Colgate, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the remaining allegations of the first sentence of paragraph 6, and DENIES the allegations of the second sentence of paragraph 6.
7. DENIES the allegations of paragraph 7 as stated, and refers the Court to Colgate's Charter and Mission Statement for a statement of its attributes and purposes.
8. ADMITS the allegations of paragraph 8.
9. ADMITS the allegations of paragraph 9.
10. The allegations of paragraph 10 are comprised of plaintiffs' characterization of their claims and conclusions of law and do not require a responsive pleading. If, and to the extent that, the allegations of paragraph 10 may be construed to contain an averment of fact requiring a responsive pleading, Colgate DENIES the occurrence of any actionable violation of the Sherman Antitrust Act.
11. The allegations of paragraph 11 are comprised of conclusions of law and do not require a responsive pleading.

12. The allegations of paragraph 12 are comprised of conclusions of law and do not require a responsive pleading.

13. The allegations of paragraph 13 are comprised of conclusions of law and do not require a responsive pleading.

14. The allegations of paragraph 14 are comprised of conclusions of law and do not require a responsive pleading.

15. ADMITS the allegations of paragraph 15.

16. ADMITS the allegations of paragraph 16.

17. ADMITS the allegations of paragraph 17.

18. ADMITS the allegations of paragraph 18.

19. ADMITS the allegations of paragraph 19.

20. ADMITS the allegations of paragraph 20.

21. ADMITS the allegations of paragraph 21.

22. The allegations of paragraph 22 are comprised of conclusions of law to which no responsive pleading is required.

23. DENIES the allegations of paragraph 23. If and to the extent the allegations of paragraph 23 are construed to contain an averment of fact requiring a responsive pleading, Colgate denies that paragraph 23 accurately describes the relevant market under the Sherman Act.

24. DENIES the allegations of paragraph 24, except ADMITS that Colgate provides residential services, including housing, meals and social meeting facilities to students attending and matriculating at Colgate, and that Colgate provides at least 70% of the students' residential services.

25. ADMITS the allegations of paragraph 25.

26. ADMITS the allegations of paragraph 26.

27. DENIES the allegations of paragraph 27.

28. ADMITS the allegations of paragraph 28.

29. ADMITS the allegations of paragraph 29.

30. ADMITS the allegations of paragraph 30.

31. ADMITS the allegations of paragraph 31, and states by way of further answer that 118 Broad Street is also a Colgate-owned residence.

32. ADMITS the allegations of the first sentence of paragraph 32, except DENIES that Colgate recognizes the undergraduate Chapter of Kappa Delta Rho. DENIES the allegations of the second sentence of paragraph 32.

33. ADMITS the allegations of paragraph 33.

34. ADMITS the allegations of the first sentence of paragraph 34, but DENIES the allegations of the second sentence of paragraph 34.

35. ADMITS the allegations of paragraph 35.

36. ADMITS the allegations of paragraph 36.

37. DENIES the allegations of paragraph 37, except ADMITS that the Cushman House is located at 102 Broad Street.

38. ADMITS the allegations of paragraph 38.

39. ADMITS the allegations of paragraph 39.

40. ADMITS the allegations of paragraph 40.

41. DENIES the allegations of paragraph 41.

42. DENIES the allegations of paragraph 42, except ADMITS that Colgate is the sole member of Hamilton Initiative, LLC.

43. In response to the allegations of paragraph 43, ADMITS that Colgate Inn, LLC, Palace Theater, LLC, and Hamilton Theater, LLC are listed on the Fiscal 2003 Form 990 as subsidiaries of Colgate and are located in Hamilton, New York, and otherwise refers the Court to the Form 990 for a true and complete statement of its contents.

44. ADMITS the allegations of the first and third sentences of paragraph 44. DENIES the allegations of the second sentence as stated, and states by way of further answer that the referenced amount constitutes gross income.

45. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 45.

46. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 46.

47. DENIES the allegations of paragraph 47.

48. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 48.

49. DENIES the allegations of paragraph 49 as stated, and refers the Court to Colgate's website (<http://www.colgate.edu>) for a full and complete statement of its contents.

50. DENIES the allegations of paragraph 50.

51. DENIES the allegations of paragraph 51.

52. ADMITS the allegations of paragraph 52.

53. DENIES the allegations of paragraph 53.

54. DENIES the allegations of the first and third sentences of paragraph 54, and LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 54.

55. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 55.

56. ADMITS the allegations of paragraph 56.

57. DENIES the allegations of the first sentence of paragraph 57, and ADMITS the allegations of the second sentence of paragraph 57.

58. DENIES the allegations of paragraph 58 as stated, and refers the Court to the Residential Education Program for a full and complete statement of its contents.

59. DENIES the allegations of paragraph 59.

60. DENIES the allegations of the first sentence of paragraph 60, and LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 60.

61. DENIES the allegations of paragraph 61.

62. DENIES the allegations of paragraph 62.

63. DENIES the allegations of the first and second sentences of paragraph 63, DENIES the allegations of the third sentence as stated, and refers the Court to the referenced letter for a complete statement of its contents.

64. ADMITS the allegations of the first sentence, DENIES the allegations of the second and third sentences of paragraph 64 as stated and incorporates by reference the response to paragraph 65 below.

65. DENIES the allegations of paragraph 65 as stated, and states by way of further answer that Colgate will only recognize Greek letter organizations that are residential organizations and will not countenance the maintenance of or participation in underground fraternities or sororities.

66. DENIES the allegations of paragraph 66 as stated, and repeats its foregoing response to paragraph 65.

67. DENIES the allegations of paragraph 67 as stated and repeats its foregoing response to paragraph 65.

68. DENIES the allegations of paragraph 68 as stated, and repeats its foregoing response to paragraph 65.

69. DENIES the allegations of paragraph 69 as stated, and repeats its foregoing response to paragraph 65.

70. DENIES the allegations of paragraph 70.

71. DENIES the allegations of paragraph 71.

72. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 72.

73. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 73.

74. DENIES the allegations of paragraph 74, and states by way of further answer that the apartment style townhouses now under construction will house a maximum of approximately 278 students.

75. DENIES the allegations of paragraph 75.

76. DENIES the allegations of paragraph 76.

77. DENIES the allegations of paragraph 77.

78. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the first sentence of paragraph 78, and DENIES the allegations of the second sentence of paragraph 78.

79. DENIES the allegations of paragraph 79.

80. DENIES the allegations of the first sentence of paragraph 80, except ADMITS that Colgate recognizes Phi Kappa Tau, Delta Delta Delta, and Kappa Kappa Gamma and intends to provide residential services for these organizations. ADMITS the allegations of the second sentence of paragraph 80.

81. DENIES the allegations of paragraph 81.

82. DENIES the allegations of paragraph 82 as stated, DENIES that James Leach made the statement that is attributed to him, and refers the Court to the *Post Standard* article referenced for a full and complete statement of its contents.

83. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 83.

84. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 84.

85. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 85.

86. ADMITS the allegations of paragraph 86.

87. ADMITS the allegations of paragraph 87.

88. DENIES the allegations of paragraph 88.

89. DENIES the allegations of paragraph 89 as stated, and refers the Court to Defendants' Memorandum of Law referenced for a full and complete statement of its contents.

90. DENIES the allegations of the first sentence of paragraph 90 as stated, and ADMITS the allegations of the second sentence of paragraph 90.

91. DENIES the allegations of paragraph 91.

92. ADMITS the allegations of the first sentence of paragraph 92 and states by way of further answer that DKE's lawsuit was dismissed by the New York State Supreme Court, Madison County, and the dismissal was affirmed on appeal. DENIES the allegations of the second sentence of paragraph 92.

93. DENIES the allegations of paragraph 93 as stated, and refers the Court to the *Post Standard* article referenced for a full and complete statement of its contents.

94. DENIES the allegations of paragraph 94 as stated, and refers the Court to the Post-Closing Agreement referenced for a full and complete statement of its contents.

95. DENIES the allegations of paragraph 95 as stated, and refers the Court to the *Post Standard* article referenced for a full and complete statement of its contents.

96. DENIES the allegations of paragraph 96 as stated, and refers the Court to the Option to Purchase referenced for a full and complete statement of its contents.

97. DENIES the allegations of paragraph 97 as stated, and refers the Court to the Post-Closing Agreement referenced for a full and complete statement of its contents.

98. ADMITS the allegations of paragraph 98.

99. DENIES the allegations of paragraph 99 as stated, and refers the Court to the Post-Closing Agreement referenced for a full and complete statement of its contents.

100. DENIES the allegations of paragraph 100 as stated, and refers the Court to the Post-Closing Agreement and Residential Education Program referenced for a full and complete statement of their contents.

101. DENIES the allegations of paragraph 101 as stated, and refers the Court to the *Post Standard* article referenced for a full and complete statement of its contents.

102. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 102.

103. ADMITS the allegations of paragraph 103, and refers the Court to the Relationship statement referenced for a full and complete statement of its contents.

104. DENIES the allegations of paragraph 104.

105. DENIES the allegations of paragraph 105.

106. LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of paragraph 106.

107. DENIES the allegations of the first sentence of paragraph 107 as stated, and ADMITS the allegations of the second sentence of paragraph 107.

108. DENIES the allegations of paragraph 108 as stated, and refers the Court to the Residential Education Program referenced for a full and complete statement of its contents.

109. ADMITS the allegations in the first and second sentences of paragraph 109, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the third sentence of paragraph 109, and otherwise refers the Court to the website referenced for a full and complete statement of its contents.

110. DENIES the allegations of the first sentence of paragraph 110 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the second sentence of paragraph 110, and refers the Court to the draft Operating Principles and Standards referenced for a full and complete statement of its contents.

111. DENIES the allegations of paragraph 111 as stated, and refers the Court to the draft Operating Principles and Standards referenced for a full and complete statement of its contents.

112. DENIES the allegations of paragraph 112 as stated, and otherwise refers the Court to the Relationship Statement for a full and complete statement of its contents.

113. ADMITS the allegations of paragraph 113.

114. DENIES the allegations of the first sentence of paragraph 114 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 114, and refers the Court to the Student Handbook, Forward section referenced for a full and complete statement of its contents.

115. DENIES the allegations of the first sentence of paragraph 115 as stated, and refers the Court to the Student Handbook referenced for a full and complete statement of its contents.

116. DENIES the allegations of the first sentence of paragraph 116 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 116, and refers the Court to the Student Handbook referenced for a full and complete statement of its contents.

117. DENIES the allegations of the first sentence of paragraph 117 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 117, and refers the Court to the Student Handbook referenced for a full and complete statement of its contents.

118. DENIES the allegations of the first sentence of paragraph 118 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 118, and refers the Court to the Student Handbook referenced for a full and complete statement of its contents.

119. DENIES the allegations of the first sentence of paragraph 119 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the

allegations of the second sentence of paragraph 119, and refers the Court to the Student Code referenced for a full and complete statement of its contents.

120. DENIES the allegations of the first sentence of paragraph 120 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 120, and refers the Court to the Student Code referenced for a full and complete statement of its contents.

121. DENIES the allegations of the first sentence of paragraph 121 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 121, and refers the Court to the Student Code referenced for a full and complete statement of its contents.

122. DENIES the allegations of the first sentence of paragraph 122 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 122, and refers the Court to the Student Code referenced for a full and complete statement of its contents.

123. DENIES the allegations of the first sentence of paragraph 123 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 123, and refers the Court to the Student Code referenced for a full and complete statement of its contents.

124. DENIES the allegations of the first sentence of paragraph 124 as stated, LACKS KNOWLEDGE OR INFORMATION sufficient to form a belief as to the truth or falsity of the allegations of the second sentence of paragraph 124, and refers the Court to the Student Code referenced for a full and complete statement of its contents.

