

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

**JOHN DILLARD FERGUSON**, Administrator and  
Personal Representative of the ESTATE OF  
**JOHN LUCAS FERGUSON**, Deceased

Plaintiff,

v.

**CROSS KEYS SOCIETY, INC.**, a Virginia nonstock  
corporation, individually, and as an agent and alter ego of  
and for Pi Beta Chi, Inc., PBX  
Property Management, LLC, and John C. Marshall  
a/k/a

**THE JAMES MADISON UNIVERSITY CHAPTER  
OF PI BETA CHI FRATERNITY**

a/k/a

**PI BETA CHI AT JMU**

a/k/a

**PBX AT JMU**

a/k/a

**DELTA CHI AT JMU**

and

**PI BETA CHI, INC.**, a Virginia nonstock  
corporation, individually, and as an agent and alter ego of  
and for John C. Marshall, Cross Keys Society, Inc.,  
and PBX Property Management, LLC

a/k/a

**PBX FRATERNITY**

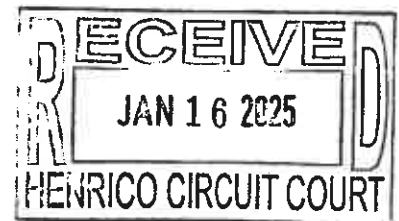
and

**PBX PROPERTY MANAGEMENT, LLC**, a Virginia  
limited liability company, individually, and as an agent  
and alter ego of and for Pi Beta Chi, Inc., Cross Keys  
Society, Inc., and John C. Marshall

and

**JOHN C. MARSHALL**,

CASE NO. *CL25-368*



*1/16/25*  
RECEIVED & FILED IN OFFICE  
*[Signature]*  
Deputy Clerk, Henrico Circuit Court

individually, and as an agent and alter ego of and for )  
Pi Beta Chi, Inc., Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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and )  
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**TYLER FOSTER,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**JOHN LIVINGOOD,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**MAX OLSON,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**WILEY LEVINE,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**HARRISON WOODLEY,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**JACK MCGHEE,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )

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**BARRETT BARKER,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**RYAN CATALDO,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**ZACH RUSINAK,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**NATHAN HENLEY,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**MICHAEL CAMINITI,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**JACOB BYRD,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**BRYSON RAQUET,** )  
individually, and as an agent of Pi Beta Chi, Inc., )

Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**PARKER SHEPHERD,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**JACKSON WHITESCARVER,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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and )  
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**VINCENT CORIATY,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**LOGAN LEIGH-MANUEL,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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**MATTHEW FAIRCLOTH,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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and )  
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**LUKE MICHAELS,** )  
individually, and as an agent of Pi Beta Chi, Inc., )  
Cross Keys Society, Inc., )  
and PBX Property Management, LLC )  
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and )

**XAVIER JANKOWSKI,**  
individually, and as an agent of Pi Beta Chi, Inc.,  
Cross Keys Society, Inc.,  
and PBX Property Management, LLC  
  
and  
  
**BRADY JOHNSON,**  
individually, and as an agent of Pi Beta Chi, Inc.,  
Cross Keys Society, Inc.,  
and PBX Property Management, LLC  
  
and  
  
**PATRICK BURHOP,**  
individually, and as an agent of Pi Beta Chi, Inc.,  
Cross Keys Society, Inc.,  
and PBX Property Management, LLC  
  
and  
  
**JACOB MAUST,**  
individually, and as an agent of Pi Beta Chi, Inc.,  
Cross Keys Society, Inc.,  
and PBX Property Management, LLC  
  
and  
  
**TRENT SMITH,**  
individually, and as an agent of Pi Beta Chi, Inc.,  
Cross Keys Society, Inc.,  
and PBX Property Management, LLC  
  
and  
  
**MARC MACOMSON,**  
individually, and as an agent of Pi Beta Chi, Inc.,  
Cross Keys Society, Inc.,  
and PBX Property Management, LLC  
  
and  
  
**COLE FARMER,**  
individually, and as an agent of Pi Beta Chi, Inc.,

Cross Keys Society, Inc.,	)
and PBX Property Management, LLC	)
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and	)
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<b>CHASE ROBINSON,</b>	)
individually, and as an agent of Pi Beta Chi, Inc.,	)
Cross Keys Society, Inc.,	)
and PBX Property Management, LLC	)
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and	)
	)
<b>JOHN HESS,</b>	)
individually, and as an agent of Pi Beta Chi, Inc.,	)
Cross Keys Society, Inc.,	)
and PBX Property Management, LLC	)
	)
Defendants.	)

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**COMPLAINT AND JURY DEMAND**

NOW COMES Plaintiff, John Dillard Fergusson, Administrator and Personal Representative of the Estate of John Lucas Fergusson, and through his attorneys, The Fierberg National Law Group, PLLC, and Cantor, Grana, Buckner, Bucci, P.C., and respectfully moves this Court for judgment, jointly and severally, against the herein identified and named Defendants and alleges as follows:

**INTRODUCTION**

1. This case arises from the tragic death of John Lucas “Luke” Fergusson (“Luke”).
2. Luke died on the night of February 2, 2023, when, while returning from a rush event organized, planned, conducted, and managed by his fraternity, the automobile he rode in – which was driven by a fraternity-assigned “designated driver” – crossed the center line, left the road, and slammed into a tree head-on at an estimated 95 miles per hour.

3. Luke, a sophomore at James Madison University ("JMU"), was a loved, beloved and devoted son, brother, grandson, cousin, nephew, and friend.

4. Luke, an AP Scholar and Eagle Scout, made friends easily, loved sports, building computers, and boating, and he lit up every room he entered with his smile.

5. Luke was a member of Defendant Pi Beta Chi, Inc. ("PBX") and its chapter at JMU, the Cross Keys Society, Inc. (the "JMU Chapter").



6. Each semester, the fraternity organized, planned, and administered an event involving a road trip to a gentlemen's club in Mathias, West Virginia as the fraternity's final event of that semester's rush process – the process by which the JMU Chapter and other fraternities recruit new members, known as "rushees."

7. Per the fraternity's tradition, in Spring 2023, the fraternity planned a rush event at the gentlemen's club in Mathias, West Virginia for February 2, 2023.

8. The fraternity assigned individuals who had become members of the fraternity at the end of the previous semester to serve as designated drivers to transport members and rushees to and from the event.

9. Luke, like the other fraternity members and rushees who attended the event, rode in a vehicle driven by a fraternity-assigned designated driver, and he was wholly dependent upon fraternity-provided transportation to get from the remote club in Mathias, West Virginia, back to Harrisonburg, Virginia, after the fraternity activities at the club concluded.

10. The previous year, when Luke was a newly initiated member of the fraternity, he served as a designated driver for similar fraternity events.

11. In carrying out that important responsibility, Luke had remained sober during his designated driver shifts and took his responsibility very seriously.

12. As he gained more senior status in the fraternity, Luke relied on the fraternity's designated-driver program as a benefit of his fraternity membership, and he expected to be provided the same safe and sober transportation from fraternity-assigned designated drivers to and from fraternity events – including the February 2, 2023 rush event – that he had himself provided to members in the past.

13. As common sense dictated and because he himself had done so, Luke reasonably believed that, by agreeing to be a designated driver, each fraternity-member driver would remain sober during the event and ensure the other designated drivers also remained sober during their designated driver shifts and otherwise refrained from activities that could impair their ability to safely drive.

14. However, unbeknownst to Luke, while he was inside the club on February 2, 2023, his designated driver and the other so-called designated drivers were partying in the club's parking lot.

15. Multiple fraternity members saw Luke's driver smoking marijuana and using whippets – a slang term for nitrous oxide, an inhalant that deprives the brain of oxygen and causes its users to experience effects similar to those from alcohol, including sedation, reduced coordination, and passing out.

16. Despite knowing that the fraternity-member driver assigned to transport Luke to and from the club had become or planned to become intoxicated or impaired through drug use or



was otherwise incapable of safely transport Luke and the other passengers in the car safely back to Harrisonburg, those fraternity members allowed Luke's driver to begin the return trip to JMU.

17. Within minutes, the car, traveling at 83 miles per hour, crossed the center line, accelerated to 95 miles per hour, plowed through a fence, and slammed into a tree.

18. Luke and two other passengers died in the wreckage.

19. Two others, including the driver, were airlifted to the hospital and survived with serious injuries.



20. Emergency responders and law enforcement found a punctured and empty whippet charger in a whippet dispenser on the driver's seat floorboard, another whippet charger next to it, and a whippet charger in an otherwise empty box of 50 chargers on the driver's side of the dashboard.

21. Approximately 15 cannisters of whippets were also later recovered from in and around the club's parking lot.

22. PBX had lost its recognition at JMU years earlier as a result of dangerous misconduct, after which, under the direction of Defendant John C. Marshall, it continued operating at JMU "underground" and deliberately free from oversight.

23. The fraternity's credo, "[the] relentless and unwavering pursuit of Freedom – the right to act, speak, think, and organize as one wants without hindrance or restraint from tyranny," reflected Marshall's and PBX's values against subjugating the fraternity, its members and their

traditions to outside review, including the legal and university regulations enacted to keep JMU students safe from foreseeable fraternity misconduct that has hurt and killed countless students and others in Virginia and across the country for decades.

24. PBX, its members, and Defendant Marshall acted on that credo on the morning of February 3, 2023, less than 12 hours after the crash killed Luke and two other passengers.

25. To prevent law enforcement personnel, investigators, and grieving families from discovering the facts and events preceding and causing the crash, Defendant Tyler Foster (then-President of PBX's chapter at JMU), advised all members in a GroupMe chat of the following:

***Been on the phone with John Marshall, he's contacting insurance and our attorney for us. I know this is going to come across as shitty but we have to keep our whits about us in terms of outsiders trying to see what happened. The message we need to convey is that it was a car accident and not a rush event. We don't own or control the roads.***

26. After a prosecutor sought to interview PBX members about the crash, PBX, its members, and John Marshall conspired to interfere with that effort.

27. Over an 18-month period following the filing of criminal charges against Luke's driver, the victims' parents repeatedly reached out to the Fraternity Member Defendants, urging them to share information about the events surrounding Luke's death and to provide statements to law enforcement regarding the driver's actions leading up to the crash. In defiance of these urgent requests, and in furtherance of their conspiracy with Defendant Marshall to cover up their and the Fraternity's roles in the crash, all the Fraternity Member Defendants contacted declined to cooperate or provide any statement to law enforcement.

28. Defendant Marshall sent the following warning to the current President of PBX's chapter at JMU, Defendant Wiley Levine, who distributed Marshall's warning to PBX's members via GroupMe:

- a. “If a PBX member saw [the driver] doing whippets and smoking weed, and the PBX member still allowed them to ‘sober drive’ afterward, then that means PBX had knowledge that [the driver] was not actually a sober driver, and so PBX was complicit in his non-sober driving and therefore partly responsible for the accident. This would lead to a civil suit against PBX and its members.”
- b. “[I]f a PBX member saw [the driver] doing whippets and smoking weed, and the PBX member still allowed them to ‘sober drive’ afterward, then that PBX member could be criminally charged as well.”
- c. “Everything that comes out in any of the criminal cases could be used against PBX in a civil case because everything in a criminal case is public record.”
- d. The driver “can testify against PBX just as much as PBX can testify against him.”

29. Defendant Marshall also advised members to “seek an agreement with [the PBX member who drove the car and survived the crash] where you won’t testify against him if he won’t testify against you.”

30. In the same message thread, Defendant Levine directed PBX members “not to talk about any of the events that took place that night to anyone.”

31. What PBX, its members, officers, and John Marshall sought to cover up from officials and Luke’s grieving family was their involvement in causing the death of Luke.

32. While PBX and its members have been conspiring to bury the truth about the causes, circumstances, and their roles in the crash and Luke’s death, they have continued to operate, recruit, and grow their fraternity with students from JMU, apparently undeterred by the death of Luke and the deaths of two other passengers, and the permanent harm, grief, and damage they caused.

33. Plaintiff brings this action against Defendants, pursuant to Va. Code Ann. § 8.01-50 *et seq.*, to hold them accountable for their role in Luke’s wrongful death and to seek all damages recoverable under the law.

## PARTIES

34. Plaintiff John Dillard Fergusson is an adult resident of the Commonwealth of Virginia, and he brings this action as Administrator and Personal Representative of his deceased son, Luke.

35. Defendant Pi Beta Chi, Inc. (“PBX”), individually and as an agent and alter ego of and for John C. Marshall, is a Virginia nonstock corporation with its primary office located in Virginia. PBX was formed and incorporated in January 2016 by Defendant Marshall, who continues to serve as its sole and controlling director. At all relevant times, the Fraternity Member Defendants, in negligently, recklessly, and willfully and wantonly planning, carrying out, and supervising the Fraternity’s events, including its February 2, 2023 rush event, were doing so with the express purpose of recruiting new members into PBX. Each PBX Chapter, such as the JMU Chapter is, according to PBX’s website, “a Chapter of Pi Beta Chi,” and PBX purports to provide “several layers of legal protection for its Chapters,” including the JMU Chapter. At all relevant times, PBX has been an agent of, an alter ego of, and acting for, under the direction of, and on behalf of Defendant Marshall, which Defendant Marshall has used as a façade to profit from PBX’s activities and members while trying to shield his own assets from the reach of potential creditors, like Plaintiff, who suffer injuries or damages as a result of negligence and other misconduct by PBX and its members. PBX is directly liable for its own negligence and misconduct, and it is also liable for the negligence and wrongdoing of the fraternity-member who was driving the car that crashed on February 2, 2023, resulting in Luke’s death, and of the other Defendants under principles of negligence, negligence *per se*, assumption of duty, and agency and *respondeat superior* because, *inter alia*, PBX’s officers and agents acted in concert, materially assisted, knew of and consented to, ratified, organized, ran and otherwise

participated in negligent, wrongful, reckless, and willful and wanton acts and omissions that caused the death of Luke.

36. Defendant Cross Keys Society, Inc. (the “Cross Keys Society” or the “JMU Chapter”), individually and as an alter ego of and for John C. Marshall, PBX, and PBX Property Management, LLC, is a Virginia nonstock corporation with its principal office located in Virginia. Defendant Cross Keys Society was formed and incorporated by Defendant Marshall in 2015, shortly after the JMU chapter of the Delta Chi Fraternity that Marshall had been the president of was expelled from JMU following years of out-of-control and dangerous misconduct. Defendant Cross Keys Society’s principal address is the same address as the Fraternity’s house in Harrisonburg, Virginia. At all relevant times, the Fraternity Member Defendants, in negligently, recklessly, and willfully and wantonly planning, carrying out, and supervising the Fraternity’s events, including its February 2, 2023 rush event, were doing so with the express purpose of recruiting new members into the Cross Keys Society. At all relevant times, the Cross Keys Society has been an agent of, an alter ego of, and acting for, under the direction of, and on behalf of Defendants PBX, Marshall and PBX Property Management, which those Defendants have used as a façade to profit from the Cross Keys Society’s activities and members while trying to shield their own assets from the reach of potential creditors, like Plaintiff, who suffer injuries or damages as a result of negligence and other misconduct by the Cross Keys Society and its members. Defendant Cross Keys Society is directly liable for its negligence and misconduct, and it is also liable for the negligence and wrongdoing of the fraternity-member who was driving the car that crashed on February 2, 2023, resulting in Luke’s death, and of the other Defendants under principles of negligence, negligence *per se*, assumption of duty, and agency and *respondeat superior* because, *inter alia*, its officers and agents, acted in

concert, materially assisted, knew of and consented to, ratified, organized, ran and otherwise participated in negligent, wrongful, reckless, and willful and wanton acts and omissions that caused the death of Luke.

37. Defendant PBX Property Management, LLC (“PBX Property Management”), individually and as an alter ego of and for John C. Marshall, PBX, and the Cross Keys Society, is a Virginia limited liability company with its principal office located in Virginia. PBX Property Management was formed in September 2016 by Defendant Marshall, who continues to serve as its controlling member or manager and its registered agent. At all relevant times, including in Spring 2023, members of the JMU Chapter living in the Fraternity’s fraternity house have paid rent to PBX Property Management. Since its formation, Defendants Marshall, Cross Keys Society, and PBX have used PBX Property Management, their alter ego, as a vehicle to promote and perpetuate the Fraternity and to generate revenue from the JMU Chapter and its members, while attempting to insulate themselves from liability for the foreseeable and known risks of misconduct by the JMU Chapter and its members, including during the February 2, 2023 rush event, and their assets from the reach of potential creditors, like Plaintiff, who suffer injuries or damages as a result of negligence and other misconduct by the Fraternity and its members. PBX Property Management is named as a Defendant because at all relevant times it has served as a mere instrumentality and alter ego of Defendants Marshall, Cross Keys Society, and PBX, who have abused PBX Property Management’s limited liability company veil for their personal profit, and PBX Property Management is therefore liable for the negligence, recklessness and willful and wanton actions of those Defendants under the principles of alter ego liability. At all relevant times, the Fraternity Member Defendants, in negligently, recklessly, and willfully and wantonly planning, carrying out, and supervising the Fraternity’s events, including its February 2, 2023

rush event, were doing so with the express purpose of recruiting new members into their Fraternity who, in turn, would become tenants of the Fraternity's fraternity house in Harrisonburg, Virginia and pay rent directly to PBX Property Management. PBX Property Management is vicariously liable for the negligence, recklessness, willful and wanton acts, and wrongdoing of Defendant Marshall, the other Corporate Fraternity Defendants, and the Fraternity Member Defendants, including under principles of agency and *respondeat superior* because, *inter alia*, Defendant Marshall, the other Corporate Fraternity Defendants, and the Fraternity Member Defendants were, at all relevant times, acting as PBX Property Management's agents with whom PBX Property Management acted in concert, and whose acts PBX Property Management materially assisted, knew of and consented to, ratified, organized, ran and otherwise participated in, including the negligent, wrongful, reckless, and willful and wanton acts and omissions that caused the death of Luke.

38. Defendant John C. Marshall is an adult resident of the Commonwealth of Virginia. Defendant Marshall founded PBX, the Cross Keys Society, PBX Property Management, and their respective affiliates, predecessors, successors, and assigns, as well as other chapters of PBX, including one at Coastal Carolina University, and, on information and belief, a now defunct chapter at Radford University. At all relevant times, Defendant Marshall has managed, supervised, overseen, controlled, and profited from PBX, the Cross Keys Society, PBX Property Management, and their related entities, affiliates, predecessors, successors, and assigns, while using those entities to try to shield himself from personal liability for the foreseeable consequences of their dangerous operations, and his assets from creditors, like Plaintiff, who suffer injuries or damages as a result of negligence and other misconduct by those entities and their members.

39. Defendant Tyler Foster is an adult resident of the Commonwealth of Virginia. Defendant Foster was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Foster was the President of the JMU Chapter. As President, Defendant Foster agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events.

40. Defendant Harrison Woodley is an adult resident of the Commonwealth of Virginia, residing in Henrico County. Defendant Woodley was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Woodley was the Alumni Relations Chair of the JMU Chapter. As Alumni Relations Chair, Defendant Woodley agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events.

41. Defendant John Livingood is an adult resident of the Commonwealth of Virginia. Defendant Livingood was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Livingood was the Vice President of the JMU Chapter. As Vice President, Defendant Livingood agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events.

42. Defendant Max Olson is an adult resident of the Commonwealth of Virginia. Defendant Olson was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Olson was the Secretary of the JMU Chapter. As Secretary, Defendant Olson agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events.



43. Defendant Wiley Levine is an adult resident of the Commonwealth of Virginia. Defendant Levine was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Levine was the Treasurer of the JMU Chapter. As Treasurer, Defendant Levine agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events.

44. Defendant Jack McGhee is an adult resident of the Commonwealth of Virginia. Defendant McGhee was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant McGhee was a Social Chair of the JMU Chapter. As a Social Chair, Defendant McGhee agreed and undertook to safely and responsibly manage JMU Chapter social events, including rush events.

45. Defendant Barrett Barker is an adult resident of the Commonwealth of Virginia, residing in Henrico County. Defendant Barker was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Barker was a Social Chair of the JMU Chapter. As a Social Chair, Defendant Barker agreed and undertook to safely and responsibly manage JMU Chapter social events, including rush events.

46. Defendant Zach Rusinak is an adult resident of the Commonwealth of Virginia. Defendant Rusinak was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Rusinak was a Risk Manager of the JMU Chapter. As a Risk Manager, Defendant Rusinak agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events, and, on information and belief, to oversee all aspects of risk management within the JMU chapter, ensure members adhere to the Fraternity's policies, identify potential hazards in events and activities,

and take proactive measures to prevent incidents related to hazing, sexual misconduct, and general safety. Defendant Rusinak also served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Rusinak agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

47. Defendant Ryan Cataldo is an adult resident of the Commonwealth of Virginia, residing in Henrico County. Defendant Cataldo was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Cataldo was a Risk Manager of the JMU Chapter. As a Risk Manager, Defendant Cataldo agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events, and, on information and belief, to oversee all aspects of risk management within the JMU chapter, ensure members adhere to the Fraternity's policies, identify potential hazards in events and activities, and take proactive measures to prevent incidents related to hazing, sexual misconduct, and general safety.

48. Defendant Nathan Henley is an adult resident of the Commonwealth of Virginia. Defendant Henley was at all relevant times a member of PBX and the JMU Chapter. Defendant Henley was one of the Fraternity Member Defendants in charge of planning and coordinating the February 2, 2023 rush event and the designated drivers for the event, and agreed and undertook to safely and responsibly oversee, conduct, and manage the February 2, 2023 rush event and the designated drivers assigned to transport members and rushees to and from the Club in Mathias, West Virginia.

49. Defendant Michael Caminiti is an adult resident of the Commonwealth of Virginia. Defendant Caminiti was at all relevant times a member of PBX and the JMU Chapter.

50. Defendant Jacob Byrd is an adult resident of the Commonwealth of Virginia. Defendant Byrd was at all relevant times a member of PBX and the JMU Chapter.

51. Defendant Bryson Raquet is an adult resident of the State of North Carolina. Defendant Raquet was at all relevant times a member of PBX and a member and executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Raquet served as a Rush Chair of the JMU Chapter, was one of the Fraternity Member Defendants in charge of planning and coordinating the February 2, 2023 rush event and the designated drivers for the event, and agreed and undertook to safely and responsibly oversee, conduct, and manage the February 2, 2023 rush event and the designated drivers assigned to transport members and rushees to and from the event in Mathias, West Virginia.

52. Defendant Parker Shepherd is an adult resident of the Commonwealth of Virginia, residing in Henrico County. Defendant Shepherd was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Shepherd was shadowing the existing Rush Chairs as he would be a Rush Chair in the next school year.

53. Defendant Jackson Whitescarver is an adult resident of the Commonwealth of Virginia. Defendant Whitescarver was at all relevant times a member of PBX and a member and an executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Whitescarver served as a Rush Chair of the JMU Chapter, was one of the Fraternity Member Defendants in charge of planning and coordinating the February 2, 2023 rush event and the designated drivers for the event, and agreed and undertook to safely and responsibly oversee,

conduct, and manage the February 2, 2023 rush event and the designated drivers assigned to transport members and rushees to and from the event in Mathias, West Virginia.

54. Defendant Vincent Coriaty is an adult resident of the Commonwealth of Virginia, residing in Henrico County. Defendant Coriaty was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Coriaty was shadowing the existing Rush Chairs as he would be a Rush Chair in the next school year.

55. Defendant Logan Leigh-Manuel is an adult resident of the Commonwealth of Virginia. Defendant Leigh-Manuel was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Leigh-Manuel served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Leigh-Manuel agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

56. Defendant Matthew Faircloth is an adult resident of the Commonwealth of Virginia. Defendant Faircloth was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Faircloth served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Faircloth agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

57. Defendant Luke Michaels is an adult resident of the Commonwealth of Virginia. Defendant Michaels was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Michaels served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Michaels agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

58. Defendant Xavier Jankowski is an adult resident of the Commonwealth of Virginia. Defendant Jankowski was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Jankowski served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Jankowski agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

59. Defendant Brady Johnson is an adult resident of the Commonwealth of Virginia. Defendant Johnson was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Johnson served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Johnson agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have

known would be relying on him and the other designed drivers to transport them safely to and from the event.

60. Defendant Patrick Burhop is an adult resident of the Commonwealth of Virginia. Defendant Burhop was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Burhop served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Burhop agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

61. Defendant Jacob Maust is an adult resident of the Commonwealth of Virginia. Defendant Maust was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Maust served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Maust agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

62. Defendant Trent Smith is an adult resident of the Commonwealth of Virginia. Defendant Smith was at all relevant times a member of PBX and a member and an executive officer of the JMU Chapter. In Spring 2023, including on February 2, 2023, Defendant Smith served as the Associate Member Coordinator of the JMU Chapter. As Associate Member Coordinator, Defendant Smith agreed and undertook to safely and responsibly manage JMU Chapter events, including rush events.

63. Defendant Marc Macomson is an adult resident of the Commonwealth of Virginia. Defendant Macomson was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Macomson served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Macomson agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

64. Defendant Cole Farmer is an adult resident of the Commonwealth of Virginia. Defendant Farmer was at all relevant times a member of PBX. Defendant Farmer was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Farmer served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Farmer agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

65. Defendant Chase Robinson is an adult resident of the Commonwealth of Virginia. Defendant Robinson was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Robinson served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Robinson agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have

known would be relying on him and the other designed drivers to transport them safely to and from the event.

66. Defendant John Hess is an adult resident of the Commonwealth of Virginia. Defendant Hess was at all relevant times a member of PBX and the JMU Chapter. On February 2, 2023, Defendant Hess served as a designated driver for the February 2, 2023 rush event. As a designated driver, Defendant Hess agreed and undertook to safely and responsibly provide transportation for other Fraternity members and rushees to and from the February 2, 2023 rush event, who he knew or in the exercise of reasonable care should have known would be relying on him and the other designed drivers to transport them safely to and from the event.

67. PBX, the JMU Chapter, and their corporate predecessors, affiliates, alter egos, successors, and assigns, are collectively referred to herein as the “Fraternity” and, together with Defendant PBX Property Management, LLC, are collectively referred to herein as the “Corporate Fraternity Defendants.”

68. The individual Defendants, other than Defendant John C. Marshall, were, at all relevant times, members of PBX and members or officers of the JMU Chapter and are collectively referred to herein as the “Fraternity Member Defendants.”

69. Each Fraternity Member Defendant affirmatively agreed and took an oath to, *inter alia*: protect the health and safety of all fellow Fraternity members involved or participating in Fraternity activities; neither use nor support the use of illegal drugs or alcohol; and confront any Fraternity members who are violating the Fraternity’s rules and obligations.

70. Despite those agreements, oaths, and undertakings, each Fraternity Member Defendant authorized, requested, commanded, participated in, aided, provided substantial assistance to, failed to prohibit or stop, or ratified the February 2, 2023 rush event activities and



traditions, including underage drinking, drug use, and reckless and unsafe driving, that caused and contributed to Luke's death.

71. Each Fraternity Member Defendant was at all relevant times acting as an agent of and within the scope of his agency for PBX, the JMU Chapter, and PBX Property Management.

### **VENUE**

72. Venue is proper in Henrico County pursuant to Va. Code Ann. §§ 8.01-260, 8.01-262, and 8.01-263 because multiple Defendants are residents of Henrico County.

### **FACTUAL ALLEGATIONS**

#### **DEFENDANT MARSHALL FORMS PBX AFTER HIS PREVIOUS FRATERNITY IS EXPELLED FROM JMU FOLLOWING A LONG HISTORY OF DANGEROUS, OUT-OF-CONTROL CONDUCT AND RULES VIOLATIONS**

73. In Fall 2012 and Spring 2013, Defendant Marshall was a student at JMU and served as the president of the JMU chapter of the Delta Chi Fraternity ("Delta Chi").

74. During Defendant Marshall's time as an officer and member of Delta Chi, the chapter was the subject of multiple complaints, run-ins with campus police, and the site and source of multiple incidents resulting in serious personal injuries.

75. For example, on September 29, 2012, after JMU staff were summoned to an out-of-control party at Delta Chi's fraternity house, they observed at least twenty-five underage individuals consuming alcohol, in violation of JMU rules and Virginia law.

76. Shortly after they arrived, the JMU staff members were confronted at the house by Defendant Marshall, who was visibly intoxicated, uncooperative, and "incredibly rude" and hostile to the staff.

77. As JMU staff struggled to shut down the party, a fight erupted among attendees.

78. Following the incident, JMU's interfraternity council board held a hearing, found the Delta Chi chapter responsible for the incident, and sanctioned the fraternity.

79. Defendant Marshall and his chapter were undeterred.

80. Two weeks later, on October 13, 2012, a female student fell off the roof of the Delta Chi chapter house during a party and fractured her spine, pelvis, and elbow.

81. While investigating the incident, JMU obtained video showing Delta Chi chapter members sneaking three kegs from their chapter house immediately after the incident and before law enforcement could arrive.

82. JMU's Interfraternity Council board again found the Delta Chi chapter responsible for the incident.

83. The next month, in November 2012, Delta Chi's national headquarters conducted a membership review of the JMU chapter and expelled thirteen members from the fraternity.

84. The following semester, on February 10, 2013, law enforcement was summoned to the Delta Chi chapter house, where they found a male subject unconscious on a basement sofa due to alcohol consumption.

85. Despite "several attempts," responding officers and emergency medical personnel were unable to get the subject "to wake up" and transported him to Rockingham Memorial Hospital for emergency medical care.

86. The responding officers noted in their report that the male "never woke up during this entire process" and that the "area around" him in the basement "smelled of an alcoholic beverage."

87. Despite the incident, which could have resulted in the death of the male subject from acute alcohol intoxication had emergency assistance not been summoned when it was, the

chapter continued its dangerous and illegal activities into the next school year.

88. On September 6, 2013, roughly thirty members of Delta Chi broke into another fraternity house and stole a statue.

89. The next month, on October 21, 2013, the parent of a Delta Chi pledge contacted JMU to report that her son “had experienced severe hazing” at the hands of members of the JMU chapter of Delta Chi.

90. According to the parent, the hazing included being “yelled and screamed at,” “forced” to “do wall-sits and pushups,” and, when her son “became upset and began to cry,” included “further mental abuse from the brothers and alumni.”

91. JMU suspended the Delta Chi chapter and initiated an investigation, which “yielded evidence of hazing in the form of forced calisthenics and underage consumption of alcohol.”

92. Following the investigation, JMU revoked the Delta Chi chapter’s university recognition and informed the chapter and its members that the recognition “may not be restored until all current undergraduate members of the chapter have either graduated or left James Madison University.”

93. JMU expressly prohibited the chapter from participating in or sponsoring any fraternity activities or any other “activities that might be identified by others as being representative of the fraternity,” including but not limited to, “meetings, new member education, social events, philanthropic events, intramural sports, and recruitment.”

**JOHN MARSHALL SEEKS TO SKIRT JMU’S BAN BY CREATING PBX, A FRATERNITY FREE FROM OVERSIGHT AND OUTSIDE SCRUTINY**

94. Recently graduated from JMU, and apparently still bitter that his out-of-control college fraternity had been shut down by JMU, Defendant Marshall set out to create a new

fraternity from the Delta Chi chapter's smoldering ashes that would operate outside of university purview and free from the rules and regulations that Defendant Marshall, when he was a member and the president of Delta Chi's JMU chapter, was unable or unwilling to abide by or enforce.

95. Defendant Marshall knew, or in the exercise of reasonable care should have known, of the dangers of creating, conducting, promoting, and perpetuating a fraternity enterprise that operated without university oversight and approval or the oversight of a national headquarters equipped with professional staff members to provide risk-management training, guidance, and supervision to the local chapter and its members.

96. Defendant Marshall negligently, recklessly, and willfully and wantonly disregarded those risks and, starting in 2014, undertook to form a series of related, intertwined fraternal entities that he would, in the years that followed to the present, use as a personal revenue source.

97. After creating and discontinuing several entities – including Pi Beta Chi LC, which Marshall later cancelled, Sixth Pillar Society, Inc., and Old Kimball LLC – in January 2016, Defendant Marshall formally incorporated or reinstated the articles of incorporation for PBX and the Cross Keys Society. He anointed himself the President and Secretary of the Cross Keys Society.

98. Defendant Marshall made one of PBX's founding pillars "the right to act, speak, think, or organize as one wants without hindrance or restraint from tyranny."

99. Since their founding by Defendant Marshall, by Marshall's deliberate design, PBX and the Cross Keys Society have operated "underground" at JMU, without approval or official recognized student organization status from JMU.

100. Unrestrained by university rules or oversight, and without competent, trained, or

earnest supervision from non-college students, PBX and the Cross Keys Society quickly returned to the dangerous traditions and activities in and around Harrisonburg that resulted in the Delta Chi chapter at JMU being banned.

101. And, by Defendant Marshall's design, the Fraternity has, at all relevant times, been able to engage in those dangerous traditions and activities without university oversight, reasonable restraint, or consequence.

102. In a July 30, 2015 Instagram post, Cross Keys Society members celebrated the rebirth of their Fraternity by proclaiming: "Ain't shit change cept the address."



103. Although publicly available records are limited because the Cross Keys Society is not a JMU-recognized student organization, and therefore not subject to the direct oversight of JMU, the limited publicly available information shows that since its formation the JMU Chapter has continued – and escalated – the dangerous, alcohol-, and drug- fueled traditions and misconduct of its predecessor.

104. As a result, when the Fraternity and its members set the February 2, 2023 rush event in motion, by Defendants' design and mutual consent, they did so unbridled by university rules or any competent or responsible oversight or supervision.

**PBX CONTINUES ITS DANGEROUS TRADITION: A CROSS-STATE ROAD TRIP TO AN 18+, BRING-YOUR-OWN-ALCOHOL STRIP CLUB**

105. At all relevant times, one of the Fraternity's traditions has included a Fraternity-planned and organized road trip to Paradise City Gentlemen's Club in Mathias, West Virginia (the "Club"), an approximately 45-minute drive from the Fraternity's house in Harrisonburg, Virginia.

106. Such road trips are categorically prohibited by JMU's Standards of Conduct & Policies within its Student Handbook, and those prohibitions would apply to the JMU Chapter, in addition to the Fraternity Member Defendants, if the Chapter were a JMU-recognized student organization instead of operating dangerously outside of the university's purview and jurisdiction.

107. Upon information and belief, by tradition, the Fraternity required "nibs" – i.e., the "newly initiated brothers" who had become members of the Fraternity at the end of the previous semester – to serve as designated drivers to transport members and rushees to and from the February 2, 2023 rush event.

108. At all relevant times, Fraternity members have relied on Fraternity-assigned designated drivers to get to and from the rush event, and the members, including Luke, have reasonably expected both that the designated drivers will remain sober during their shifts, and that the Fraternity will supervise the designated drivers to ensure they remain sober and otherwise capable of transporting members and rushees to and from the event.

109. In Spring 2023, consistent with tradition, the "nibs" – Fraternity members who were initiated in Fall 2022 – were assigned to serve as designated drivers for the rush event.

110. On January 31, 2023, Defendant McGhee, one of the JMU Chapter's Social Chairs, confirmed the plan in the Fraternity's GroupMe: "Thursday – Titty City. Make sure you

pay chapter dues and nibs will need to drive.”

111. On February 1, 2023, one of the Fraternity members emphasized in the Fraternity’s GroupMe that “nibs” were expected to accept their designated driver assignments without protest or complaint, warning them: “Don’t be a Dick and try to get out of driving.”

112. On the afternoon of February 2, 2023, Defendant Raquet, one of the Fraternity’s Rush Chairs, informed the members via the Fraternity’s GroupMe that he “[t]old the dude [at Paradise City] we’ll be there around 8:45-9 so nibs be ready with cars outside main at 8.”

113. Despite considerable effort to get as many members as possible to attend the rush event, which led to the need for 12 or more cars to transport all the attendees, the JMU Chapter’s and the Fraternity Member Defendants’ planning to recruit and secure enough designated drivers and cars to transport everyone was haphazard to non-existent.

114. Further, despite the fact that the Fraternity members knew, or in the exercise or reasonable care should have known, that safely administering, conducting, managing, supervising, and overseeing the designated driver program was necessary to protect the safety and well-being of the other fraternity members, including Luke, who would each be dependent on the Fraternity and its designated drivers for safe – and, indeed, any conceivable – transport to and from the event on February 2, 2023, the Defendants who undertook to organize, administer, conduct, manage, and supervise the program in Spring 2023, including Defendants Foster, Henley, Raquet, and Whitescarver, along with those Fraternity Member Defendants who were executive officers of the JMU Chapter in Spring 2023, did so recklessly, willfully and wantonly, or without the due care required under the circumstances.

115. Left without clear direction, but understanding their assignments were mandatory, the designated drivers scrambled to find cars to drive.

116. Just hours before the February 2, 2023 rush event, Defendant Farmer, an assigned designated driver, messaged the Fraternity's GroupMe: "Can I borrow someone's car for tn? The persons car I was going to originally drive isn't going anymore."

117. Even around fifteen minutes before the caravan was scheduled to leave, the arrangement was still uncertain, and Defendant Tyler Foster messaged the brothers: "[A] lot of these kids" – the newly initiated brothers serving as designated drivers – "still don't have cars. Let them drive [your cars]."

118. Amid the chaotic circumstances of rounding up cars and designated drivers, and before departing the fraternity house for the Club, the Fraternity Member Defendants deliberately and dramatically increased the foreseeable danger and risk by stocking the cars with drugs and alcohol.

119. As a result of the negligent, reckless, and willful-and-wanton planning, management, conduct, oversight, and supervision of the designated driver "program" on February 2, 2023, many of the designated drivers, including the driver of the car Luke rode in, were driving cars that they did not own, were unfamiliar with, and had no experience driving on dark, remote, country roads.

#### **THE FEBRUARY 2, 2023 RUSH EVENT ENDS IN FORESEEABLE TRAGEDY**

120. After the Fraternity's dangerous caravan arrived at the Club, the designated drivers waited outside and partied in the Club's small, gravel parking lot.

121. Some of the designated drivers smoked marijuana and inhaled whippets, including the designated driver who drove Luke to the event.

122. Various Fraternity Member Defendants knew that Luke's designated driver was doing drugs in the parking lot.



123. By way of example only, based on the limited information available to Plaintiff at the initial pleading stage:

a. Defendants Rusinak and Leigh-Manuel, both designated drivers, smoked marijuana with Luke's driver in the driver's car. Defendant Rusinak also later admitted to another Fraternity member that he had also been drinking alcohol in the Club's parking lot that night.

b. Defendants Hess and Faircloth, both designated drivers, spent time standing next to and in the driver's car speaking to its occupants, including, on information and belief, while the driver and Defendant Rusinak were in the car smoking marijuana.

c. Defendant Robinson, another designated driver, was standing next to the driver's car while the driver was in the car smoking marijuana.

d. Defendant Macomson, another designated driver, admitted after the incident that Luke's designated driver offered him a hit of marijuana from a "geeb" – or "gravity bong" – while they were in the parking lot, which Defendant Macomson declined.

e. Defendant Sheperd, who was shadowing the Fraternity's Rush Chairs that night, left the Club early and hung out in the Club's parking lot with the driver, who he saw smoking marijuana.

f. Defendant Coriaty, who also was shadowing the Fraternity's Rush Chairs, also saw what the driver was doing in the Club's parking lot.

g. Defendants Levine and Cataldo left the Club early together and saw the driving smoking marijuana with a "gravity bong" in the car and doing whippets.

124. Despite knowing that Luke's designated driver had been smoking marijuana and doing whippets in the Club's parking lot, the Fraternity Member Defendants allowed him to leave the Club and drive his passengers back to Harrisonburg. Additionally, all the other cars left the event prior to the car Luke was riding in, leaving Luke and the other passengers with an impaired driver in a remote area with no cell service or access to a safe ride back to Harrisonburg when they exited the Club.

125. Foreseeably, minutes into the drive, the car, traveling at 83 miles per hour, crossed the center line, accelerated to 95 miles per hour, plowed through a fence, and slammed into a tree less than a half mile from the Virginia border.

126. Luke and two other occupants of the vehicle died at the scene.

#### **COUNT I – NEGLIGENCE**

##### **Wrongful Death**

***(Negligence, Willful-and-Wanton Negligence, Negligence Per Se, and Negligent Breach of Assumed Duties)***

**(Defendants PBX, Cross Keys Society, and PBX Property Management)**

127. Plaintiff incorporates all preceding paragraphs into this Count by reference as though fully restated herein.

128. At all relevant times, Defendants PBX, Cross Keys Society, and PBX Property Management (the "Corporate Fraternity Defendants") knew or in the exercise of reasonable care should have known that promoting, operating, conducting, administering, managing, and failing to exercise reasonable care in the supervision and control of a fraternal enterprise that they knew would engage in dangerous activities and traditions and, by design, would not have university oversight or the oversight or support of a national headquarters equipped with professional staff members to provide risk-management training, guidance, and supervision to local members, created an unreasonable and reasonably foreseeable risk or danger of harm, damage, and injury

to the public and members of the Fraternity, including Luke.

129. At all relevant times, PBX, individually and through its agents, officers and members, and Cross Keys Society, individually and through its agents, officers and members, accordingly each owed duties to Luke to exercise reasonable care in managing, regulating, conducting, and overseeing the JMU Chapter's operations, the activities of the JMU Chapter's members, and the JMU's designated driver program. Alternatively, PBX and Cross Keys Society each assumed such duties.

130. At all relevant times, Defendants PBX and Cross Keys Society knew or in the exercise of reasonable care should have known that the rush event and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program created unreasonable and reasonably foreseeable risks and dangers of harm, damage, and injury to the public and members of the Fraternity, including Luke.

131. At all relevant times, the Corporate Fraternity Defendants had a general common-law duty to exercise due care and to govern their actions in all of their undertakings so as not to subject another person to peril.

132. At all relevant times, Defendants PBX and Cross Keys Society, through actions tantamount to an express communication (which Luke relied upon) or otherwise through their actions or the actions of their officers, members, and agents, assumed duties of care to Luke by providing him transportation to and from the Fraternity event in Mathias, West Virginia, in cars operated by Fraternity-assigned and supervised designated drivers, while knowing that because of the remote location of the event Luke would be dependent on, and without alternative options to, the Fraternity-assigned and supervised designated drivers to make it home safely.

133. At all relevant times, the fraternity-member driver who drove the car transporting Luke back to Harrisonburg, Virginia, was acting as an agent of and within the scope of his agency for Defendants PBX and Cross Keys Society.

134. At all relevant times, Defendants PBX and Cross Keys Society had the power to control the means and methods of the work of the fraternity-member driver who drove the car transporting Luke back to Harrisonburg, Virginia, and the power to dismiss the driver from his designated driver role.

135. Defendants PBX and Cross Keys Society knew or should have known that exercising reasonable care in the provision, organization, administration, management, and supervision of designated drivers for the rush event, including the fraternity-member who drove the car transporting Luke back to Harrisonburg, Virginia, was therefore necessary to protect Fraternity members who attended the event, including Luke.

136. Defendants PBX's and Cross Keys Society's failed to exercise reasonable care in the provision, organization, administration, management, and supervision of designated drivers for the rush event, including the fraternity-member who drove the car transporting Luke back to Harrisonburg, Virginia, and that failure dramatically increased the risk of harm, injury, and death to Luke, and ultimately caused and contributed to the crash and Luke's wrongful death.

137. Further, the Corporate Fraternity Defendants' failure to exercise reasonable care and their affirmative actions to promote, perpetuate, and operate a dangerous fraternal enterprise also dramatically increased the risk of harm, injury, and death to Luke, and ultimately caused and contributed to the crash and Luke's wrongful death.

138. The Corporate Fraternity Defendants each also had a general duty to all members of the Fraternity, including Luke, to exercise reasonable care in the hiring, acceptance, or

retention of employees, agents, members, officers, and other representatives of the Fraternity and their respective corporate entities to avoid hiring such persons who those Defendants knew or should have known were dangerous and likely to harm others.

139. Defendants PBX and Cross Keys Society, individually and through their agents and alter egos, including Defendant Marshall, owed duties of care to Luke to exercise reasonable care in planning, organizing, conducting, managing, administering, overseeing, and supervising the rush event, which included exercising reasonable care to ensure that the fraternity-member who drove the car transporting Luke back to Harrisonburg, Virginia, was sober and otherwise capable of safely fulfilling a designated driver assignment, and that their officers, members, and agents refrained from furnishing or facilitating the provision of drugs and alcohol to event attendees, including to designated drivers, and Defendants PBX and Cross Keys Society further assumed such duties through their affirmative conduct tantamount to express communications and representations.

140. Having engaged in the affirmative conduct of planning, organizing, conducting, managing, administering, overseeing, supervising, and providing fraternity-member designated drivers for the rush event, Defendants PBX and Cross Keys realized or should have realized that failing to ensure that the fraternity-member driver assigned to transport Luke to and from the Club on February 2, 2023, was sober and otherwise capable of safely fulfilling his designed driver assignment, or that their officers, members, and agents refrained from furnishing or facilitating the provision of drugs and alcohol to event attendees, including to designated drivers, created an unreasonable risk of harm to Luke, and therefore Defendants PBX and Cross Keys Society had a duty to exercise reasonable care to prevent this threatened harm.

141. Given the circumstances, an ordinary person in Defendants PBX's and Cross Keys Society's positions, knowing what they, through their officers, members, and agents, in fact knew at the time, would have anticipated the general type of harm that Luke suffered.

142. The Corporate Fraternity Defendants breached those duties, and were negligent, by *inter alia*:

a. Promoting, profiting from, operating, and continuing to operate a dangerous fraternity enterprise without adequate or appropriate oversight and supervision, despite the foreseeable risks of injury and death attendant to such an enterprise, thereby affirmatively creating serious risks of physical harm to members of the Fraternity, including Luke;

b. Failing to create risk-management policies or affirmatively authorizing, delegating to, and relying upon underage, incompetent, untrained members – who had themselves participated in rush and initiation activities and events involving the use and misuse of drugs and alcohol – to operate and manage the JMU Chapter, to conduct, administer, and manage the JMU Chapter's rush events and activities, and to enforce the JMU Chapter's and PBX's risk management policies;

c. Improperly training, or failing to train, the JMU Chapter, members, and officers on risk management, alcohol policies, drug policies, and other management policies and procedures;

d. Providing ineffective and improper direction, supervision, administration, management, and control over the JMU Chapter officers and members and the JMU Chapter's rush activities and events;

e. Directing conducting, administering, managing, authorizing, allowing, failing to exercise reasonable supervision or control over, and failing to prohibit or stop the rush event that caused and resulted in Luke's death;

f. Failing to implement reasonable measures or otherwise enforce risk-management policies prohibiting the use of alcohol and drugs during all of the Fraternity's rush and recruitment activities;

g. Failing to exercise reasonable care, acting recklessly, or acting willfully and wantonly in overseeing, administering, conducting, managing, and supervising the designated drivers assigned to transport members and rushees to and from the February 2, 2023 rush event;

h. Failing to dismiss the fraternity-member driver assigned to transport Luke to and from the Club on February 2, 2023, from his designated driver role, even though they had to the power and authority to do so, and even though they knew, or in the exercise of reasonable care should have known, that the driver had become or planned to become intoxicated or impaired or was otherwise incapable of safely transporting Luke and the other passengers back to Harrisonburg, Virginia;

i. Failing to provide reasonable safeguards and restrictions and to implement controls to prevent the designated drivers from becoming intoxicated;

j. Failing to stop or prohibit intoxicated Fraternity members from transporting members to and from the Fraternity's events, including the February 2, 2023 rush event;

k. Failing to implement reasonable and effective measures to prevent violations of state laws and the Fraternity's purported policies prohibiting underage drinking, drug use, road trips, and the provision and use of alcohol during and as part of rush events;

l. Deliberately declining, following Luke's death, to discipline members of the JMU Chapter for their misconduct that caused his death, and instead conspiring with the Fraternity Member Defendants and Defendant Marshall to conceal and impede law enforcement, Luke's family, and the public from learning the truth about the negligent, wrongful, reckless, and willful and wanton acts and omissions that caused Luke's death, as well their roles and involvement in causing his death, thus constituting ratification of such misconduct;

m. Failing to discipline JMU Chapter members for engaging in previous misconduct and illegal activities;

n. Failing to exercise reasonable care in the hiring and retention of their employees, agents, and other representatives in placing a person with known propensities, or propensities that would have been discovered by reasonable investigation, in a position in which, because of the circumstances of the employment or agency, it was foreseeable that the individual posed a threat of injury to others, including Luke;

o. Engaging in other negligent acts as discovery may reveal; or

p. Were otherwise negligent.

143. As a direct and proximate result of the Corporate Fraternity Defendants' breaches of all their duties described and alleged herein, Luke was involved in a catastrophic automobile crash, suffered, and died.

144. The Corporate Fraternity Defendants' conduct and breaches of their duties described and alleged herein were carried out with and constitute conscious, reckless and outrageous indifference to the health, safety, rights, and welfare of Luke and others and to the consequences that their conduct would cause injury to Luke.



145. As a direct and proximate result of the negligence, recklessness, and willful-and-wanton negligence, and negligence of the Corporate Fraternity Defendants, Luke died, and his beneficiaries suffered, and will suffer in the future, damages, including but not limited to grief, complicated grief, sorrow, mental anguish, depression, insomnia, severe distress over the manner in which Luke was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Luke, and have incurred reasonable funeral expenses to bury their son.

146. The Corporate Fraternity Defendants are jointly and severally liable with each other and the other Defendants for their negligence, recklessness, and willful-and-wanton negligence, and the damages proximately resulting from Luke's death; vicariously liable for the negligence of Defendant Marshall and the Fraternity Member Defendants; and each Corporate Fraternity Defendant (Defendants PBX, Cross Keys Society, and PBX Property Management) is jointly liable for the negligence of the others, as all entities serve as alter egos of each other entity.

147. Defendants PBX and Cross Keys Society are also vicariously liable for the negligence of the fraternity-member driver operating the car that crashed on February 2, 2023, resulting in Luke's wrongful death, because:

- a. the fraternity-member driver was, at all relevant times, acting as an agent of and within the scope of his agency for those Defendants;
- b. the fraternity-member driver was subject to the control of those Defendants in performing his duties and tasks as a designated driver for the February 2, 2023 rush event, and those Defendants had the power to control the means and methods of the work of the driver while he was serving as a designated driver;

c. those Defendants, through their officers, members, and agents, knew, or in the exercise of reasonable care should have known, that the fraternity-member driver had become or planned to become intoxicated or impaired or was otherwise incapable of safely transporting Luke and the other passengers back to Harrisonburg, Virginia;

d. those Defendants, at all relevant times, had the power and authority to dismiss the fraternity-member driver from his designated driver role;

e. those Defendants failed to dismiss the fraternity-member driver from his designated driver role; and

f. those Defendants ratified the fraternity-member driver's negligent acts and omissions, including by directing their members, officers, and agents to impede law enforcement from learning the truth about the accident and not to testify or provide evidence or information that could be used against the fraternity-member driver in criminal proceedings arising from the accident.

WHEREFORE, Plaintiff demands judgment against the Corporate Fraternity Defendants, as well as the other Defendants, jointly and severally, as follows: (a) for compensatory damages in the amount of Thirty Million Dollars (\$30,000,000); (b) for punitive damages in the amount of One Hundred Twenty Million Dollars (\$120,000,000); (c) for costs incurred in connection with this suit; (d) for pre- and post-judgment interest as permitted by law, including prejudgment interest from February 2, 2023, pursuant to Va. Code § 8.01-382; and (e) for such other and further relief as this Court deems appropriate.

## **COUNT II – NEGLIGENCE**

### **Wrongful Death**

***(Negligence, Willful-and-Wanton Negligence, and Negligent Breach of Assumed Duties)***  
**(Defendant John C. Marshall)**

148. Plaintiff incorporates all preceding paragraphs into this Count by reference as

though fully restated herein.

149. At all relevant times, Defendant Marshall knew or in the exercise of reasonable care should have known that creating, promoting, operating, conducting, and failing to exercise reasonable care in the supervision, management, administration, promotion, and control of a fraternal enterprise that he knew would engage in dangerous activities and traditions and, by design, would not have university oversight or the oversight or support of a national headquarters equipped with professional staff members to provide risk-management training, guidance, and supervision to the Fraternity's local chapter and its members, created an unreasonable and reasonably foreseeable risk or danger of harm, damage, and injury to the public and members of the Fraternity, including Luke.

150. At all relevant times, Defendant Marshall knew or in the exercise of reasonable care should have known that the rush event – and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program – created an unreasonable and reasonably foreseeable risk or danger of harm, damage, and injury to the public and members of the Fraternity who attended the event, including Luke.

151. At all relevant times, Defendant Marshall had a general common-law duty, to exercise due care and to govern his actions in all of his undertakings so as not to subject another person to peril.

152. At all relevant times, Defendant Marshall, as the person who founded, formed and at all times ultimately controlled the Fraternity, also had a general duty to all members of the Fraternity, including Luke, to exercise reasonable care in the hiring, acceptance, or retention of

employees, agents, members, officers, and other representatives of the Fraternity to avoid hiring such persons who he knew or should have known were dangerous and likely to harm others.

153. In addition, at all relevant times, Defendant Marshall owed a duty of care to all members of the Fraternity, including Luke, to exercise reasonable care in managing and overseeing the Fraternity and its operations, including the February 2, 2023 event, and further assumed such duties through his affirmative conduct tantamount to express communications and representations, which Luke relied upon.

154. Having engaged in the affirmative conduct of overseeing the Fraternity and its operations, including the February 2, 2023 event, Defendant Marshall realized or should have realized that under the circumstances such conduct had created an unreasonable risk of harm to members, like Luke, and therefore Defendant Marshall had a duty to exercise reasonable care to prevent this threatened harm.

155. Given the circumstances, an ordinary person in Defendant Marshall's position, knowing what he in fact knew at the time, would have anticipated the general type of harm that Luke suffered.

156. Defendant Marshall's affirmative acts and omissions exposed Luke to a foreseeable high risk of physical harm from the February 2, 2023 event.

157. Moreover, Defendant Marshall knew or in the exercise of reasonable care should have known that promoting, facilitating, approving, or failing to prohibit, stop or exercise reasonable supervision or control over the rush event on February 2, 2023 – and the willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program – created the reasonably foreseeable risk that Luke would be dependent upon

Defendants and their officers, members, and agents for safe transportation back to Harrisonburg, Virginia on February 2, 2023.

158. Defendant Marshall breached those duties, and was negligent, by *inter alia*:

a. Founding, furthering, promoting, operating, conducting, administering, providing support for, and failing to exercise reasonable care in overseeing, managing, and supervising a fraternal enterprise rife with dangerous drug- and alcohol- fueled traditions;

b. With his knowledge of the dangerous circumstances surrounding the February 2, 2023 event, acquiescing to and ratifying the event and its traditions through his acts and inaction;

c. Providing ineffective and improper direction, supervision, and control over the JMU Chapter officers and members and the rush activities authorized, directed, or participated in by those officers and members, including the February 2, 2023 rush event;

d. Directing, authorizing, allowing, failing to exercise reasonable supervision or control over, or failing to prohibit or stop the February 2, 2023 rush event that caused and resulted in Luke's death;

e. Failing to implement reasonable measures or otherwise enforce risk-management policies prohibiting the use of alcohol and drugs during all of the Fraternity's rush and recruitment activities;

f. Failing to provide reasonable safeguards and restrictions and to implement controls to prevent the designated drivers from becoming intoxicated;

g. Failing to prevent or prohibit intoxicated Fraternity members from transporting rushees to and from the Fraternity's events, including the February 2, 2023 rush event;

h. Failing to implement reasonable and effective measures to prevent violations of state laws and the Fraternity's purported policies prohibiting underage drinking, drug use, road trips, and the provision and use of alcohol during and as part of rush events;

i. Deliberately declining, following Luke's death, to discipline members of the JMU Chapter for their misconduct that caused his death, and instead conspiring with the Fraternity Member Defendants and the Corporate Fraternity Defendants to conceal and impede law enforcement, Luke's family, and the public from learning the truth about the negligent, wrongful, reckless, and willful and wanton acts and omissions that caused Luke's death, as well their roles and involvement in causing his death, thus constituting ratification of such misconduct;

j. Failing to discipline JMU Chapter members for engaging in previous misconduct and illegal activities;

k. Failing to act reasonably under the circumstances;

l. Engaging in other negligent acts as discovery may reveal; or

m. Was otherwise negligent.

159. Defendant Marshall's failure to exercise reasonable care and his affirmative actions in negligently, recklessly, and willfully and wantonly creating, promoting, operating, conducting, administering, and failing to supervise and control a fraternal enterprise that he knew would, by design, not have university oversight or the oversight or support of a national headquarters equipped with professional staff members to provide risk-management training,

guidance, and supervision to the Fraternity's local chapter and its members created and increased the risk of harm to the public and to Luke, as a member of the Fraternity.

160. Defendant Marshall's conduct and breaches of all his duties described and alleged herein were carried out with and constitute conscious, reckless and outrageous indifference to the health, safety, rights, and welfare of Luke and others and to the consequences that his conduct would cause injury to Luke.

161. As a direct and proximate result of Defendant Marshall's breach of all his duties described and alleged herein, Luke was involved in a catastrophic automobile crash, suffered, and died.

162. As a direct and proximate result of the negligence, recklessness, and willful-and-wanton negligence of Defendant Marshall, Luke died, and his beneficiaries suffered, and will suffer in the future, damages, including but not limited, to grief, complicated grief, sorrow, mental anguish, depression, insomnia, severe distress over the manner in which Luke was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Luke, and have incurred reasonable funeral expenses to bury their son.

163. Defendant Marshall is jointly and severally liable with the other Defendants for their negligence, recklessness, and willful-and-wanton negligence, and the damages proximately resulting from Luke's death, vicariously liable for the negligence of the other Defendants, and jointly liable for the negligence of Defendants PBX, Cross Keys Society, and PBX Property Management, LLC, which Defendant Marshall at all times used as his alter egos to personally profit from the operations of the Fraternity.

WHEREFORE, Plaintiff demands judgment against the Defendant Marshall, as well as the other Defendants, jointly and severally, as follows: (a) for compensatory damages in the amount of Thirty Million Dollars (\$30,000,000); (b) for punitive damages in the amount of One Hundred Twenty Million Dollars (\$120,000,000); (c) for costs incurred in connection with this suit; (d) for pre- and post-judgment interest as permitted by law, including prejudgment interest from February 2, 2023, pursuant to Va. Code § 8.01-382; and (e) for such other and further relief as this Court deems appropriate.

**COUNT III – NEGLIGENCE**

**Wrongful Death**

***(Negligence, Willful-and-Wanton Negligence, and Negligent Breach of Assumed Duties)***  
**(Fraternity Member Defendants)**

164. Plaintiff incorporates all preceding paragraphs into this Count by reference as though fully restated herein.

165. At all relevant times, the Fraternity Member Defendants had a general common-law duty to exercise due care and to govern their actions in all of their undertakings so as not to subject another person to peril.

166. At all relevant times, Defendants Byrd, Caminiti, Coriaty, Foster, Henley, Levine, McGhee, Raquet, Shepherd, Whitescarver, and Woodley, as Fraternity Member Defendants who undertook to plan, coordinate, administer, conduct, promote, supervise, or give directions or orders concerning the February 2, 2023 rush event and the designated drivers for the event, each had a duty to use due care in planning, coordinating, administering, conducting, promoting, supervising, and directing the event and the designated drivers for the event, so as to not to unreasonably endanger the event attendees, including Luke.

167. At all relevant times, Defendants Barker, Cataldo, Foster, Levine, Livingood, McGhee, Olson, Rusinak, and Woodley, as members of the JMU Chapter's executive board,



each agreed and undertook to supervise, conduct, and administer, and were responsible for supervising, conducting, and administering, all of the Fraternity's activities and events in Spring 2023 and, as a result, each assumed and had a duty to exercise due care in supervising the Fraternity's activities and events in Spring 2023, including the February 2, 2023 rush event.

168. Relatedly, Defendants Henley, Raquet, and Whitescarver each agreed and undertook to safely and responsibly oversee the February 2, 2023 rush event and the designated drivers assigned to transport members and rushees to and from the Club in Mathias, West Virginia, and Defendants Raquet and Whitescarver each also agreed and undertook to supervise, conduct, administer, oversee, and manage, and were responsible for supervising, conducting, administering, overseeing, and managing, the Fraternity's rush program and rush activities in Spring 2023. As a result, each of those Defendants assumed and had a duty to exercise due care in supervising, overseeing and managing the February 2, 2023 rush event and the designated drivers assigned to transport attendees to and from the event.

169. At all relevant times, Defendants Barker, Byrd, Caminiti, Cataldo, Coriaty, Foster, Henley, Levine, Livingood, McGhee, Olson, Raquet, Rusinak, Shepherd, Whitescarver, and Woodley owed duties of care to Luke to exercise reasonable care in planning, coordinating, promoting, conducting, directing, administering, and supervising the rush event, which included exercising reasonable care to ensure that the fraternity-member who drove the car transporting Luke back to Harrisonburg, Virginia, was sober and otherwise capable of safely fulfilling a designated driver assignment.

170. At all relevant times, Defendants Burhop, Faircloth, Farmer, Hess, Jankowski, Johnson, Leigh-Manuel, Macomson, Maust, Michaels, Robinson, and Rusinak all affirmatively undertook to serve as designated drivers for members and rushees of the Fraternity for the

February 2, 2023 rush event, and, therefore, each owed to duty to exercise due care to all of the members and rushees, including Luke, who relied and was dependent on that service for safe transportation to and from the event.

171. At all relevant times, all the Fraternity Member Defendants knew or in the exercise of reasonable care should have known that the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program for the February 2, 2023 rush event created an unreasonable and reasonably foreseeable risk or danger of harm, damage, and injury to the public and members of the Fraternity who attended the event, including Luke.

172. At all relevant times, all the Fraternity Member Defendants knew or should have known that exercising reasonable care in the provision, management, and supervision of designated drivers for the rush event, including the fraternity-member who drove the car transporting Luke back to Harrisonburg, Virginia, was therefore necessary to protect the Fraternity members who attended the event, including Luke.

173. Having engaged in the affirmative conduct of planning, organizing, conducting, supervising, providing fraternity-member designated drivers for the rush event, or serving as designated drivers for the event, all of the Fraternity Member Defendants realized or should have realized that failing to ensure that the fraternity-member driver assigned to transport Luke to and from the Club on February 2, 2023, was sober and otherwise capable of safely fulfilling his designed driver assignment created an unreasonable risk of harm to Luke, and therefore each Fraternity Member Defendant had a duty to exercise reasonable care to prevent this threatened harm.

174. Each Fraternity Member Defendant breached those duties, and was negligent, by, as applicable, *inter alia*:

- a. Planning and conducting the February 2, 2023 rush event;
- b. Failing to exercise reasonable care, acting recklessly, or acting willfully and wantonly in overseeing, administering, conducting, managing, and supervising the designated drivers assigned to transport members and rushees to and from the February 2, 2023 rush event;
- c. Failing to act reasonably in his role as designated driver by failing to intervene to prohibit or stop multiple fellow designated drivers, including Luke's designated driver, from consuming alcohol, marijuana, or whippets in the Club's parking lot during the February 2, 2023 rush event;
- d. Permitting and failing to stop or prohibit Luke's driver from serving as a designated driver for Luke and others for the return trip from the Club to Harrisonburg, Virginia on February 2, 2023, or otherwise failing to act reasonable to intervene to protect Luke and the other passengers, despite observing the driver using marijuana and whippets in Paradise City's parking lot, or otherwise knowing or having reason to know that Luke's designated driver had consumed drugs in the Club's parking lot during the rush event;
- e. Failing to act reasonably under the circumstances;
- f. Engaging in such other negligent acts as discovery may reveal; or
- g. Was otherwise negligent.

175. Given the circumstances, an ordinary person in Fraternity Member Defendants' positions, knowing what they in fact knew at the time, would have anticipated the general type of

harm that Luke suffered.

176. The Fraternity Member Defendants' individual and collective failure to exercise reasonable care in the provision, organization, administration, management, and supervision of designated drivers for the February 2, 2023 rush event dramatically increased the risk of harm and injury death to Luke and ultimately caused and contributed to the crash and his wrongful death.

177. The Fraternity Member Defendants' conduct and breaches of their duties described and alleged herein were carried out with and constitute conscious, reckless and outrageous indifference to the health, safety, rights, and welfare of Luke and others and to the consequences that their conduct would cause injury to Luke.

178. As a direct and proximate result of the Fraternity Member Defendants' breaches of the duties described and alleged herein, Luke was involved in a catastrophic automobile crash, suffered, and died.

179. As a direct and proximate result of the negligence, recklessness, willful-and-wanton negligence of the Fraternity Member Defendants, Luke died, and his beneficiaries suffered and will suffer in the future damages including but not limited to grief, complicated grief, sorrow, mental anguish, depression, insomnia, severe distress over the manner in which Luke was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Luke, and have incurred reasonable funeral expenses to bury their son.

180. Each Fraternity Member Defendant is jointly and severally liable with each other and the other Defendants for their negligence, recklessness, and willful-and-wanton negligence, and the damages proximately resulting from Luke's death.

WHEREFORE, Plaintiff demands judgment against the Fraternity Member Defendants, as well as the other Defendants, jointly and severally, as follows: (a) for compensatory damages in the amount of Thirty Million Dollars (\$30,000,000); (b) for punitive damages in the amount of One Hundred Twenty Million Dollars (\$120,000,000); (c) for costs incurred in connection with this suit; (d) for pre- and post-judgment interest as permitted by law, including prejudgment interest from February 2, 2023, pursuant to Va. Code § 8.01-382; and (e) for such other and further relief as this Court deems appropriate.

**COUNT IV – VIOLATION OF VIRGINIA CONSUMER PROTECTION ACT**  
**Wrongful Death**  
**(Defendants PBX and Cross Keys Society)**

181. Plaintiff incorporates all preceding paragraphs into this Count by reference as though fully restated herein.

182. The Fraternity has long known, or should have known, of the dangers of alcohol and drug misuse in the Fraternity, including the extreme risks associated with the rush event at Paradise City and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program for the event.

183. Despite such knowledge, the Fraternity misrepresents, and has misrepresented multiple times in the past, the standards and quality of the Fraternity and the services it provides.

184. The Fraternity also engages, and has so engaged multiple times in the past, in the use of deception, fraud, false pretense, false promise, and misrepresentations in recruiting new members, retaining members, and soliciting revenue from both JMU students and Fraternity members, which constitutes a consumer transaction under the Virginia Consumer Protection Act, Va. Code § 59.1-196, *et seq.*

185. Defendants PBX and Cross Keys Society were each a “supplier,” and Luke was a

“consumer” under the Act.

186. At all relevant times, including in Spring 2023, the Fraternity represented to its members, including Luke, that it would provide them with safe transportation to and from Fraternity events, including the rush event at Paradise City, with Fraternity-assigned designated drivers.

187. At all relevant times, the Fraternity has promised and represented to its members, including Luke, that if they served as designated drivers for Fraternity members and events while they were pledges and newly initiated members of the Fraternity, in exchange for that service and the dues and fees they paid to the Fraternity, they would be able rely on the Fraternity’s designated driver program for safe transport to and from Fraternity events, including the rush event at Paradise City, when they gained more senior status in the Fraternity.

188. At all relevant times, the Fraternity failed to warn Fraternity members, including Luke, that the Fraternity’s Spring 2023 designated driver program, including for the rush event at Paradise City, was willfully-and-wantonlly planned, organized, administered, conducted, managed, and supervised, and that members, including Luke, should not rely on fraternity-assigned designated drivers in Spring 2023 to remain sober or otherwise capable of safely transporting them to and from Fraternity events.

189. The misrepresentations, promises, and material omissions by the Fraternity described and alleged above consisted of fraudulent acts and practices committed by a supplier in connection with a consumer transaction under Va. Code § 59.1-200, including, but not limited to, violations of § 59.1-200.A.5, A.6, and A.14.

190. Each of these statements and representations was false and misleading, as set forth above. The misrepresentations were made innocently, negligently, recklessly, willfully-

and-wantonly, or intentionally with the intent that Luke rely upon them.

191. In reliance upon the misrepresentations made by the Fraternity, to his detriment, Luke continued membership in the Fraternity, complied with the demands of the Fraternity, continued to pay dues to the Fraternity, and participated in the February 2, 2023 rush event with the reasonable belief he would receive safe transportation to and from the rush event from a Fraternity-assigned designated driver.

192. As a direct and proximate result of the Fraternity's violations of the Virginia Consumer Protection Act, and Luke's reliance thereon, Luke suffered and died, and his beneficiaries suffered, and will suffer in the future, damages including but not limited to grief, complicated grief, sorrow, mental anguish, depression, insomnia, anhedonia, and loss of solace including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Luke, and have incurred reasonable funeral expenses to bury their son.

193. Defendants PBX and Cross Keys Society are jointly liable, individually and as alter egos of each other, for their violations of the Virginia Consumer Protection Act that proximately caused Luke's death.

WHEREFORE, Plaintiff demands judgment against the Defendants PBX and Cross Keys Society, jointly and severally, as follows: (a) for compensatory damages of Thirty Million Dollars (\$30,000,000) under the Virginia Consumer Protection Act; (b) treble damages to the extent that the trier of fact finds that violations of the Virginia Consumer Protection Act were willful, pursuant to §59.1-204.A; (c) reasonable attorneys' fees and for costs under §59.1-204.B incurred in connection with this suit; (d) pre- and post-judgment interest as permitted by law, including prejudgment interest from February 2, 2023, pursuant to Va. Code § 8.01-382; and (e) for such other and further relief as this Court deems appropriate.

**JURY TRIAL DEMAND**

Plaintiff hereby demands a trial by jury with respect to each of the claims alleged herein,  
to the fullest extent permitted by law.

Dated: January \_\_, 2025

Respectfully submitted,

**JOHN DILLARD FERGUSON**, Administrator  
and Personal Representative of the ESTATE OF  
JOHN LUCAS FERGUSON, Deceased



By Counsel

THE FIERBERG NATIONAL LAW GROUP,  
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*Counsel for Plaintiff John Dillard Fergusson,  
Administrator and Personal Representative of the  
Estate of John Lucas Fergusson, Deceased*



**COVER SHEET FOR FILING CIVIL ACTIONS**  
COMMONWEALTH OF VIRGINIA

Case No. \_\_\_\_\_  
(CLERK'S OFFICE USE ONLY)

Henrico County

Circuit Court

John Dillard Fergusson, Administrator & Personal Rep

v./In re:

Cross Keys Society, Inc., et al.

PLAINTIFF(S)

DEFENDANT(S)

of the Estate of John Lucas Fergusson, Deceased

I, the undersigned ☐ plaintiff ☐ defendant ☐ attorney for ☐ plaintiff ☐ defendant hereby notify the Clerk of Court that I am filing the following civil action. (Please indicate by checking box that most closely identifies the claim being asserted or relief sought.)

**GENERAL CIVIL**

**Subsequent Actions**

- ☐ Claim Impleading Third Party Defendant
  - ☐ Monetary Damages
  - ☐ No Monetary Damages
- ☐ Counterclaim
  - ☐ Monetary Damages
  - ☐ No Monetary Damages
- ☐ Cross Claim
- ☐ Interpleader
- ☐ Reinstatement (other than divorce or driving privileges)
- ☐ Removal of Case to Federal Court

**Business & Contract**

- ☐ Attachment
- ☐ Confessed Judgment
- ☐ Contract Action
- ☐ Contract Specific Performance
- ☐ Detinue
- ☐ Garnishment

**Property**

- ☐ Annexation
- ☐ Condemnation
- ☐ Ejectment
- ☐ Encumber/Sell Real Estate
- ☐ Enforce Vendor's Lien
- ☐ Escheatment
- ☐ Establish Boundaries
- ☐ Landlord/Tenant
  - ☐ Unlawful Detainer
- ☐ Mechanics Lien
- ☐ Partition
- ☐ Quiet Title
- ☐ Termination of Mineral Rights

**Tort**

- ☐ Asbestos Litigation
- ☐ Compromise Settlement
- ☐ Intentional Tort
- ☐ Medical Malpractice
- ☐ Motor Vehicle Tort
- ☐ Product Liability
- ☒ Wrongful Death
- ☐ Other General Tort Liability

**ADMINISTRATIVE LAW**

- ☐ Appeal/Judicial Review of Decision of (select one)
  - ☐ ABC Board
  - ☐ Board of Zoning
  - ☐ Compensation Board
  - ☐ DMV License Suspension
  - ☐ Employee Grievance Decision
  - ☐ Employment Commission
  - ☐ Local Government
  - ☐ Marine Resources Commission
  - ☐ School Board
  - ☐ Voter Registration
  - ☐ Other Administrative Appeal

**DOMESTIC/FAMILY**

- ☐ Adoption
  - ☐ Adoption - Foreign
- ☐ Adult Protection
- ☐ Annulment
  - ☐ Annulment - Counterclaim/Responsive Pleading
- ☐ Child Abuse and Neglect - Unfounded Complaint
- ☐ Civil Contempt
- ☐ Divorce (select one)
  - ☐ Complaint - Contested\*
  - ☐ Complaint - Uncontested\*
  - ☐ Counterclaim/Responsive Pleading
  - ☐ Reinstatement - Custody/Visitation/Support/Equitable Distribution
- ☐ Separate Maintenance
  - ☐ Separate Maintenance Counterclaim

**WRITS**

- ☐ Certiorari
- ☐ Habeas Corpus
- ☐ Mandamus
- ☐ Prohibition
- ☐ Quo Warranto

**PROBATE/WILLS AND TRUSTS**

- ☐ Accounting
- ☐ Aid and Guidance
- ☐ Appointment (select one)
  - ☐ Guardian/Conservator
  - ☐ Standby Guardian/Conservator
  - ☐ Custodian/Successor Custodian (UTMA)
- ☐ Trust (select one)
  - ☐ Impress/Declare/Create
  - ☐ Reformation
- ☐ Will (select one)
  - ☐ Construe
  - ☐ Contested

**MISCELLANEOUS**

- ☐ Amend Birth/Death Certificate
- ☐ Appointment (select one)
  - ☐ Church Trustee
  - ☐ Conservator of Peace
  - ☐ Marriage Celebrant
- ☐ Approval of Transfer of Structured Settlement
- ☐ Bond Forfeiture Appeal
- ☐ Declaratory Judgment
- ☐ Declare Death
- ☐ Driving Privileges (select one)
  - ☐ Reinstatement pursuant to § 46.2-427
  - ☐ Restoration - Habitual Offender or 3<sup>rd</sup> Offense
- ☐ Expungement
- ☐ Firearms Rights - Restoration
- ☐ Forfeiture of Property or Money
- ☐ Freedom of Information
- ☐ Injunction
- ☐ Interdiction
- ☐ Interrogatory
- ☐ Judgment Lien-Bill to Enforce
- ☐ Law Enforcement/Public Official Petition
- ☐ Name Change
- ☐ Referendum Elections
- ☐ Sever Order
- ☐ Taxes (select one)
  - ☐ Correct Erroneous State/Local
  - ☐ Delinquent
- ☐ Vehicle Confiscation
- ☐ Voting Rights - Restoration
- ☐ Other (please specify)

☒ Damages in the amount of \$ 30,000,000.00 are claimed.

1/16/25  
DATE

Elliott M. Buckner

PRINT NAME

Cantor Grana Buckner Bucci, PC

ADDRESS/TELEPHONE NUMBER OF SIGNATOR

7130 Glen Forest Dr., Suite 400, Richmond, VA 23226

ebuckner@virginiatrialfirm.com

EMAIL ADDRESS OF SIGNATOR (OPTIONAL)

☐ PLAINTIFF

☐ DEFENDANT

☒ ATTORNEY FOR

☒ PLAINTIFF

☐ DEFENDANT

\*"Contested" divorce means any of the following matters are in dispute: grounds of divorce, spousal support and maintenance, child custody and/or visitation, child support, property distribution or debt allocation. An "Uncontested" divorce is filed on no fault grounds and none of the above issues are in dispute.



CANTOR GRANA  
BUCKNER BUCCI  
THE VIRGINIA TRIAL FIRM

Elliott M. Buckner • ebuckner@virginiatrialfirm.com • Direct Dial (804)343-4386 • Fax (804)644-9205

January 16, 2025

**VIA HAND DELIVERY**

Hon. Heidi S. Barshinger, Clerk  
Henrico County Circuit Court  
4309 East Parham Road  
Henrico, Virginia 23273-0775

RECEIVED

JAN 16 2025

CLERK'S OFFICE  
HENRICO CIRCUIT COURT

Re: John Dillard Fergusson, Administrator and Personal Representative of the Estate of John Lucas Fergusson, Deceased v. Cross Keys Society, Inc., et al.

Dear Ms. Barshinger:

#4679

I enclose a Complaint, which I ask that you file, but not serve, at this time. A Civil Cover Sheet and a check for the filing fee of \$346.00 is included. Also enclosed is a copy of the first page of the Complaint, which I ask you to please return to me after stamping "filed" and filling in the case number, along with a receipt for the filing fee. *No copy & no envelope*

Thank you for your assistance in this matter. Please contact me if you have any questions or require any additional information from me.

Sincerely,

Elliott M. Buckner

Enclosures

c.c. (via e-mail):

Mr. John Fergusson  
Jeffrey N. Stedman, Esq.  
Joseph L. Cantor, Esq.  
Douglas E. Fierberg, Esq.  
Jonathon N. Fazzola, Esq.  
Jacob R. Goodman, Esq.



RECEIVED

JAN 16 2025

CLERK'S OFFICE  
HENRICO CIRCUIT COURT

\*\*\*SCANNED\*\*\*  
JBC