

VIRGINIA:

IN THE CIRCUIT COURT FOR THE COUNTY OF HENRICO

HOWARD KIRK MARDIS, Administrator and
Personal Representative of the ESTATE OF
JOSHUA DANIEL MARDIS, Deceased

Plaintiff,

v.

CASE NO. *CL25-128*

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

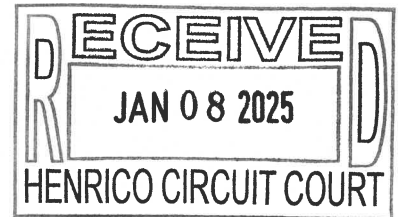
PBX FRATERNITY

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,
individually, and as an agent and alter ego of and for



Pi Beta Chi, Inc., Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

TYLER FOSTER,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

JOHN LIVINGOOD,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

MAX OLSON,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

WILEY LEVINE,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

HARRISON WOODLEY,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

JACK MCGHEE,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

BARRETT BARKER,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

RYAN CATALDO,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

ZACH RUSINAK,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

NATHAN HENLEY,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

MICHAEL CAMINITI,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

JACOB BYRD,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

BRYSON RAQUET,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,

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

LUKE MICHAELS,
individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

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

and

CHASE ROBINSON,

individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

JOHN HESS,

individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

KYLE SAWYER,

individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

BENNETT MILLER,

individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

ZACH NEAL,

individually, and as an agent of Pi Beta Chi, Inc.,
Cross Keys Society, Inc.,
and PBX Property Management, LLC

and

GRAYSON GADAMS,

individually, and as an agent of Pi Beta Chi, Inc.,)
Cross Keys Society, Inc.,)
and PBX Property Management, LLC)
)
and)
)
JACK FARREN,)
individually, and as an agent of Pi Beta Chi, Inc.,)
Cross Keys Society, Inc.,)
and PBX Property Management, LLC)
)
and)
)
QUINN GAGNE,)
individually, and as an agent of Pi Beta Chi, Inc.,)
Cross Keys Society, Inc.,)
and PBX Property Management, LLC)
)
and)
)
GARRETT STEPHANKO,)
individually, and as an agent of Pi Beta Chi, Inc.,)
Cross Keys Society, Inc.,)
and PBX Property Management, LLC)
)
Defendants.)

COMPLAINT AND JURY DEMAND

NOW COMES Plaintiff, Howard Kirk Mardis, Administrator and Personal Representative of the Estate of Joshua Daniel Mardis, deceased, 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

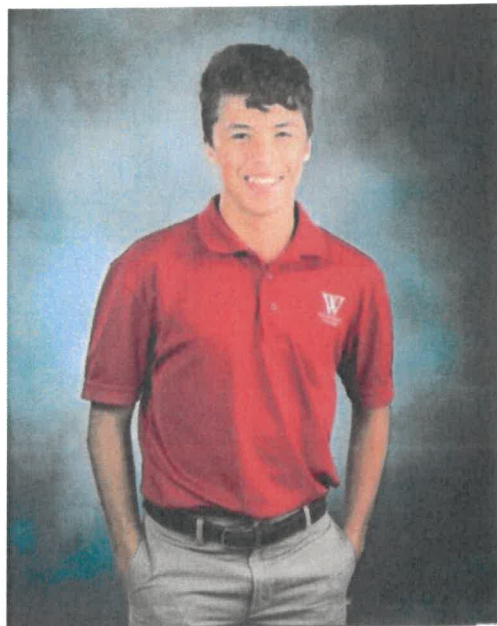
1. This case arises from the tragic death of Joshua Daniel Mardis (“Josh”) on the night of February 2, 2023, when the automobile he was carried to and dumped in – having been

rendered unconscious from a hazing- and alcohol-fueled rush event held by a fraternity and its members at a remote West Virginia strip club – crossed the center line, left the road, and slammed into a tree head-on at an estimated 95 miles per hour, trapping Josh in the decimated vehicle where he would die.

2. Josh, a sophomore at James Madison University (“JMU”), was a loved, beloved and devoted son, brother, grandson, cousin, nephew, and friend.

3. Josh was known for his humor, sensitivity, gentle manner, and kindness.

4. One of his most joyous days was when he received his acceptance letter to begin a new phase of his life majoring in Communications Studies at JMU.



5. Josh’s night on February 2, 2023, began as part of his effort to obtain a bid for membership in Defendant Pi Beta Chi, Inc. (“PBX”) through its chapter at JMU, the Cross Keys Society, Inc. (the “JMU Chapter”), and multiple legally related entities identified further below.

6. PBX had lost its recognition at JMU years earlier as a result of dangerous hazing and related misconduct, after which, under the direction of Defendant John C. Marshall, it continued operating at JMU “underground” and deliberately free from oversight. Its 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 PBX’s values against subjugating itself, its members and their traditions to outside review, including the legal and university regulations enacted to keep JMU students safe from fraternity misconduct that has hurt and killed countless students and others in Virginia and across the country for decades.

7. 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 Josh and two PBX members.

8. 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 (which the members had named "PENIS FLYTRAP") 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.

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

10. 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."

11. 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.”

12. 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.”

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

14. On the evening of the crash, Josh and other prospective PBX members, or “rushees,” reported to the fraternity house in sports coats and ties.

15. Josh was excited about the prospect of joining a brotherhood of students, who PBX publicly touted as consisting of “men of strong Character who embody honesty, accountability, confidence, and discipline,” and he called his father before arriving at the fraternity house to share his sentiments and good fortune at having received an invitation to the event.

16. Per the fraternity’s secret tradition, the fraternity planned a February 2, 2023 rush



event that involved hazing prospective members with alcohol while transporting them and fraternity members to a remote strip club named Paradise City Gentlemen’s Club, which they affectionally called “titty city,” in Mathias, West Virginia (“Paradise City” or “the Club”).

17. The rush event took place on the last night of rush and was an invitation-only event.

18. Josh arrived at the fraternity house, as directed, and was ushered into one of the dozen or so cars organized to transport the rushees and members to and from Paradise City.

19. The cars were driven by fraternity members, who, though labeled as “designated drivers,” helped load kegs and other alcohol purchased with fraternity funds into the cars.

20. Some fraternity members brought drugs, including marijuana and 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.

21. Fraternity members also purchased a handle (1.75 liters) of alcohol for each rushee, which the rushees would be compelled, forced, and pressured to consume throughout the night as part of February 2, 2023 rush event tradition to demonstrate their commitment to becoming a brother.

22. After arriving at Paradise City, fraternity members ushered Josh and the other rushees inside the Club, where, as throughout the night, the rushees were hazed.

23. Others at the February 2, 2023 rush event – including those identified as designated drivers – partied in Paradise City’s parking lot by drinking alcohol, smoking marijuana, and doing whippets and other drugs.

24. Despite his obviously degrading physical condition, Fraternity members plied Josh with so much alcohol that he was rendered unconscious and had to be carried out of the Club by fraternity members who mocked him and his condition with demeaning and racist slurs in their GroupMe chat:

Defendant Trent Smith: *alli'm saying is mexican zach neal gets no bid*

Defendant Cole Diers: *Whose the little Mexican rush that got carried out? That beaner is a no b[i]d[.]*

Defendant Jack McGhee: *That's sad I like him too[.]*

Defendant John Livingood: *Good kid but won[']t survive a lineup.*

25. Josh was dumped into a car without a seat belt and driven towards JMU's campus by a fraternity member – seen by members smoking marijuana and doing whippets in the Paradise City parking lot – who was impaired, incapable of safely transporting Josh back to Harrisonburg, and would later be charged with three counts of negligent homicide.

26. 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.

27. Josh and two other passengers died in the wreckage.

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

29. Emergency responders and law enforcement found open containers of alcohol at the crash site, 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. Nearly 30 cannisters of whippets were also later recovered from Paradise City and its parking lot.

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

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

PARTIES

32. Plaintiff Howard Kirk Mardis is an adult resident of the Commonwealth of Virginia, and he brings this action as Administrator and Personal Representative of his deceased son, Josh.

33. 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. 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, conducting, administering, and supervising the Fraternity's rush process, 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 hazing, 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 driver who drove the car Josh was dumped in at the Club on February 2, 2023, 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 Josh.

34. 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. 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, managing, conducting, administering, carrying out, and supervising the Fraternity's rush process, 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 hazing, 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 driver who drove the car Josh was dumped in at the Club on February 2, 2023, 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 Josh.

35. 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. 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 hazing and related misconduct by the JMU Chapter and its members, including during the February 2, 2023 rush even, and their assets from the reach of potential creditors, like Plaintiff, who suffer injuries or damages as a

result of hazing, 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, managing, conducting, administering, carrying out, and supervising the Fraternity's rush process, 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 Josh.

36. 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 hazing, negligence, and other misconduct by those entities and their members.

37. 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 the JMU Chapter, including its rush process and events.

38. 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 the JMU Chapter, including its rush process and events.

39. 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 the JMU Chapter, including its rush process and events.

40. 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 the JMU Chapter, including its rush process and events.

41. 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 the JMU Chapter, including its rush process and events.

42. 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 the JMU Chapter, including its rush process and events.

43. 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 the JMU Chapter, including its rush process and events.

44. 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 the JMU Chapter, including its rush process and 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 alcohol, 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.

45. Defendant Ryan Cataldo is an adult resident of the Commonwealth of Virginia, residing in Henrico County, Virginia. 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 the JMU Chapter, including its rush process and 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 alcohol, hazing, sexual misconduct, and general safety.

46. 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.

47. 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.

48. 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.

49. 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 Club in Mathias, West Virginia.

50. 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.

51. 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 Club in Mathias, West Virginia.

52. Defendant Cole Diers is an adult resident of the Commonwealth of Virginia. Defendant Diers was at all relevant times a member of PBX and the JMU Chapter.

53. 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.

54. 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 designated drivers to transport them safely to and from the event.

55. 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 designated drivers to transport them safely to and from the event.

56. 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 designated drivers to transport them safely to and from the event.

57. 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.

58. 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.

59. 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.

60. 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.

61. 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 the JMU Chapter, including its rush process and events.

62. 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.

63. 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.

64. 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.

65. 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.

66. Defendant Kyle Sawyer is an adult resident of the Commonwealth of Virginia. Defendant Sawyer was at all relevant times a member of PBX and the JMU Chapter.

67. Defendant Bennett Miller is an adult resident of the Commonwealth of Virginia. Defendant Miller was at all relevant times a member of PBX and the JMU Chapter.

68. Defendant Zach Neal is an adult resident of the Commonwealth of Virginia. Defendant Neal was at all relevant times a member of PBX and the JMU Chapter.

69. Defendant Grayson Gadams is an adult resident of the Commonwealth of Virginia. Defendant Gadams was at all relevant times a member of PBX and the JMU Chapter.

70. Defendant Jack Farren is an adult resident of the Commonwealth of Virginia. Defendant Farren was at all relevant times a member of PBX. Defendant Farren was at all relevant times a member of PBX and the JMU Chapter.

71. Defendant Quinn Gagne is an adult resident of the Commonwealth of Virginia. Defendant Gagne was at all relevant times a member of PBX and the JMU Chapter.

72. Defendant Garrett Stephanko is an adult resident of the Commonwealth of Virginia. Defendant Stephanko was at all relevant times a member of PBX and the JMU Chapter.

73. 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.”

74. 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.”

75. Each Fraternity Member Defendant affirmatively agreed and took an oath to, *inter alia*: refrain from participating in hazing; protect the health and safety of all fellow Fraternity members, pledges, and rushees 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.

76. 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 hazing, underage drinking, drug use, and reckless and unsafe driving, that caused and contributed to Josh's death.

77. 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

78. 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

79. 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").

80. 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.

81. 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.

82. 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.

83. As JMU staff struggled to shut down the party, a fight erupted among attendees.
84. Following the incident, JMU's interfraternity council board held a hearing, found the Delta Chi chapter responsible for the incident, and sanctioned the fraternity.
85. Defendant Marshall and his chapter were undeterred.
86. 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.
87. 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.
88. JMU's Interfraternity Council board again found the Delta Chi chapter responsible for the incident.
89. 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.
90. 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.
91. 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.
92. 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."
93. 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.

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

95. 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.

96. 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.”

97. 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.”

98. 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.”

99. 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

100. 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.

101. 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.

102. 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.

103. 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.

104. 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."

105. 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.

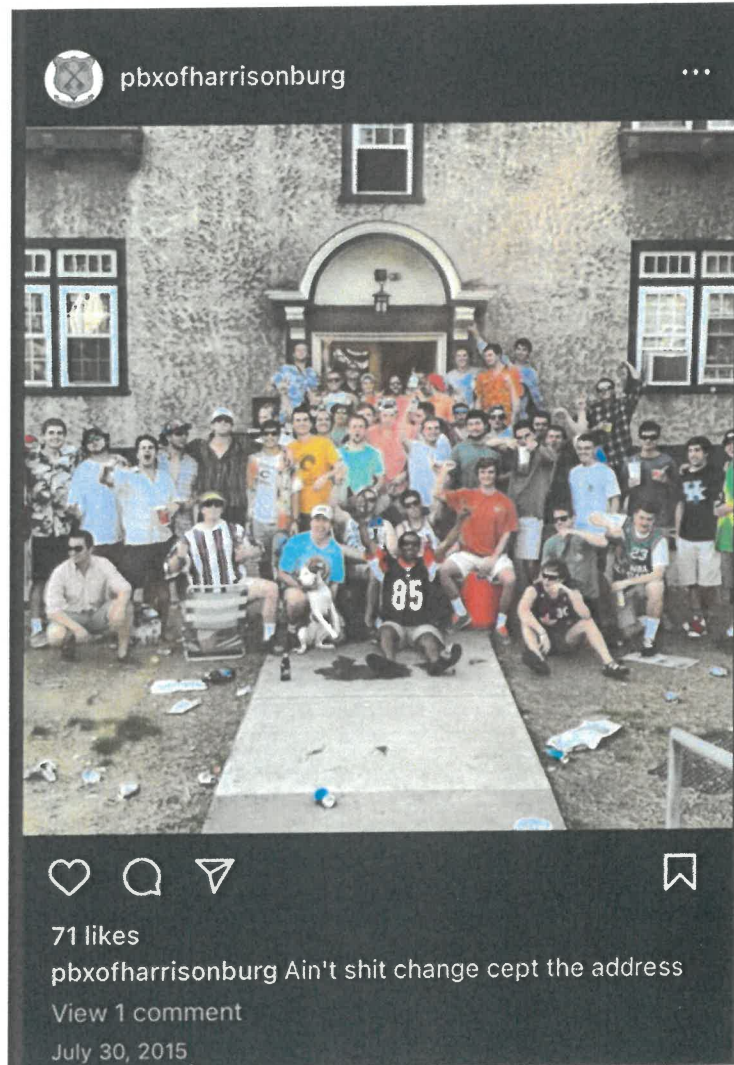
106. Unrestrained by university rules or oversight, and without competent, trained, or earnest supervision from non-college students, PBX and the Cross Keys Society quickly returned to the dangerous traditions and activities in and around Harrisonburg that resulted in the Delta Chi chapter at JMU being banned.

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

108. 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."

109. 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 hazing-, alcohol-, and drug- fueled traditions and misconduct of its predecessor.



110. For example, in August 2020, the mother of a PBX pledge submitted an anonymous hazing report that her son had been branded with a butterknife, “forced to drink shots and do calisthenics,” and “stand in a basement for hours with his nose pressed to the wall,” among other misconduct:

Where did the event happen?

My son will not inform me of any details he is not allowed,
I saw the obvious brand mark and so after months he gave me the true story.

Description of Concerns

My son will not inform me of any details as he is not allowed,
He was forced to drink shots and do calisthenics, wear unacceptable attire to parties, stand in a basement for hours with his nose pressed to the wall, sleep in a basement, wear nothing while running naked across a football field, He charged thousands of dollars on our credit cards to uber other Frat boys home.
His grades and health really suffered as he lost 20 lb's do to this, unnecessary extracurricular torture . We know he was branded with a butterknife that had been held to a flame, the only medical treatment given at the time was peroxide which he stated was like fire again! Now that he is a member of this fraternity I do not wish to spend the next 3 years worried he will brand someone else's child one day. 4-5 inches and one inch wide blister whelp.

111. The branding reported by the pledge’s mother has become an engrained tradition of the JMU Chapter.

112. Since its founding in 2015, the JMU Chapter has branded at least a cohort of each of its pledge classes, including as recently as November 7, 2024, a ritual that was captured and celebrated by Chapter members on video.



113. Faced with the August 2020 hazing report and others concerning the JMU Chapter, JMU officials have regularly lamented the obstacles impeding JMU’s ability and options to hold the unrecognized, underground, and off-campus JMU chapter accountable for its “very risky and dangerous behavior with our students.”

114. Although some members of the JMU Chapter have occasionally proposed reaffiliating with Delta Chi and seeking university recognition from JMU because of the

additional status and cachet it would bring, those proposals have gained little traction because the majority of the Fraternity's members, consistent with Defendant Marshall's and the Fraternity's overriding ethos, have rejected the idea of having to abide by the rules and oversight attendant to such reaffiliation and recognition.

115. On February 2, 2023, just hours before Josh's death, Defendant Michael Caminiti warned the members about the downsides of such reaffiliation in the Fraternity's GroupMe message group: "Rush event attendance even lower because U can't have alcohol. Rules from Jmu, rules from dchi, academic requirements half your pledge class wouldn't meet."

116. 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

117. The Fraternity's unwavering pursuit of "Freedom" from competent and responsible oversight and rules has, foreseeably and predictably, resulted in an organization rife with substance misuse, hazing, and other unchecked and dangerous traditions.

118. One of those traditions includes the Fraternity's final rush event each semester at Paradise City.

119. Although unrecognized by JMU, like most fraternities across the country, the Fraternity engages in rush, the process of recruiting the new members that serve as the Fraternity's principal revenue source and lifeblood, twice a year, once in the fall semester and once in the spring semester.

120. Before receiving a bid, in Spring 2023, and before and since, to become a member of the Fraternity, prospective members, known as "rushees," including Josh, must participate in

the Fraternity's rush process.

121. At all relevant times, including in Spring 2023, the Fraternity's rush process has consisted of hosting various social events for prospective new members, primarily at the Fraternity's house in Harrisonburg, Virginia.

122. At all relevant times, including in Spring 2023, the Fraternity's rush process has concluded with a final rush event after which the Fraternity traditionally extends invitations – known as “bids” – to new members to pledge the Fraternity.

123. The final rush event has, at all relevant times, been an invite-only event and has involved a Fraternity-planned and organized road trip to Paradise City Gentlemen's Club in Mathias, West Virginia, an approximately 45-minute drive from the Fraternity's house in Harrisonburg, Virginia.

124. 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.

125. JMU's Standards of Conduct & Policies prohibit “[h]azing activities,” which “shall include, but not be limited to, forcing, compelling, requiring, encouraging, or expecting, whether direct or implied, any individual to participate in any of the following actions or activities: paddling; kidnapping; all forms of physical activity which are used to harass, punish, or harm an individual; **excursions or road trips.**”

126. At all relevant times, Josh had reason to believe that the JMU Standards of Conduct & Policies would be adhered to by Defendants.

127. At all relevant times, including in Spring 2023, rushees were not told where they were going, only that they must report to the Fraternity's house, located at 512 South Main Street in Harrisonburg, Virginia, at a specific time in a sports coat and tie and with identification.

128. Josh understood this order and invitation to mean he would be receiving a bid to pledge the Fraternity.

129. He immediately called his father to confirm that he had enough money in his bank account to buy a pair of dress shoes and the sports coat required for the event.

130. During their brief conversation, Josh expressed his excitement about having received the invitation, which he perceived as confirmation that he would be getting a bid to pledge and join the Fraternity.

131. Josh then went to different stores in Harrisonburg, where he purchased a pair of dress shoes and a sports coat.

132. At all relevant times, including in Spring 2023, as part of the rush event tradition, Fraternity members have brought drugs, including marijuana and whippets, on the road trip, which are passed out and consumed by members.

133. In addition, at all relevant times, including in Spring 2023, as part of the rush event tradition, Fraternity members have used JMU Chapter funds, which are generated by Fraternity members paying social and chapter dues, to buy kegs of beer and handles of liquor that, per tradition, rushees are forced, coerced, and pressured to drink throughout the night.

134. At final rush events prior to Spring 2023, rushees routinely became grossly and dangerously intoxicated as a result of those traditions.

135. In Spring 2022, for example, one year before Josh's death, after the Fraternity's rush event road trip to Paradise City, one Fraternity member ordered the other members in their

GroupMe chat to “[k]eep the kids in the apartments if possible tonight,” because “[m]ost of them are hammered so don’t let them walk home.”

136. 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.

137. By tradition, the Fraternity also required all the rushees to travel to and from the Club in a car driven by one of the designated drivers.

138. 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.

139. 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.”

140. On February 1, 2023, Defendant Farren 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.”

141. 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.”

142. 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 Spring 2023 rushees, including Josh, who would each be wholly dependent on the Fraternity

and its designated drivers for safe – and, indeed, any conceivable – transport to and from the Club 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 the 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.

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

144. 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."

145. 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]."

146. Amid the chaotic circumstances of rounding up cars and designated drivers, the Fraternity Member Defendants deliberately and dramatically increased the foreseeable danger and risk of that haphazard arrangement by, per Fraternity tradition, stocking the cars with drugs and alcohol.

147. On the evening of February 2, 2023, Defendant Woodley checked with the other executive officers of the JMU Chapter – including Defendants Foster, Livingood, Olson, Levine, McGhee, Barker, Cataldo, and Rusinak – to confirm that the JMU Chapter had secured kegs for the night.

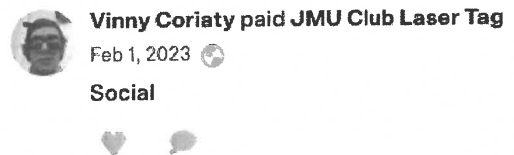
148. Defendant Levine confirmed that they had.

149. Those kegs, along with the liquor Josh and the other rushees would be forced, coerced, and pressured to consume that night, had been purchased by the Fraternity with social dues the Fraternity Member Defendants paid, with full knowledge that those dues would be used for that purpose.

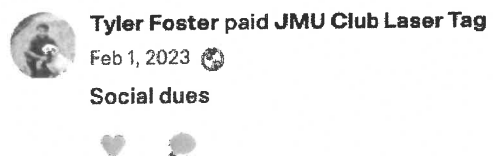
150. Just hours before the February 2, 2023 rush event, Defendant Levine informed the Fraternity members that “[i]f you want to know how much you owe to be able to go tonight text me,” and stressed that the payment of social dues was not optional.

151. Many of the Fraternity Member Defendants, including Defendants Cataldo, Farren, Foster, Coriaty, Michaels and Rusinak, paid their social dues in Spring 2023 through one of the JMU Chapter’s Venmo accounts, JMU Club Laser Tag.

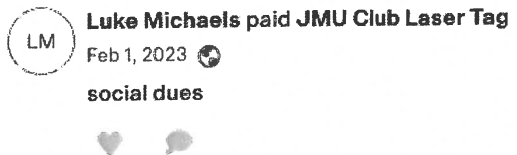
152. At approximately 7:34 p.m., Defendant Caminiti wrote in the Fraternity’s GroupMe to ask, “Where are the rushes?”



153. Defendant also Caminiti bragged that “Whippits are for sale at main” – the location of the Fraternity’s house – “get at me.”



154. At 7:46 p.m., Defendant Byrd asked, “[W]hen r they drinking handles”?



155. Defendant Byrd’s question was in reference to the Fraternity tradition of furnishing each car transporting a rushee with a handle – i.e., a 1.75-liter bottle – of liquor which, per final rush event tradition, each rushee would be compelled, coerced, forced, and pressured to drink by Fraternity members that night.

156. Shortly after Byrd sent his message, the JMU Chapter's executive officers and other rush event planners began issuing orders.

157. Defendant Foster ordered the "Nibs" to "start lining cars up at 7:50."

158. Defendant Henley ordered the "Nibs" to "get kids here."

159. Defendant Caminiti ordered the designated drivers to "[d]elay departure til 8:15."

160. Defendant Byrd ordered members to "[m]ake some calls ... [o]r go pick [the rushees] up."

161. Around this time, Josh, along with the other rushees, arrived at the Fraternity house – on the orders of Fraternity members – and were each put into a car assigned to a designated driver.

162. Defendant Caminiti instructed the members that he "[w]ouldn't even waste time on a hype speech," and ordered the members to "[j]ust get them [the rushees] hype in the car."

163. The car to which Josh was assigned did not belong to the driver who was tasked with driving it but instead to another Fraternity member's father.

164. Consistent with Fraternity tradition, the Fraternity furnished the car Josh was put in with a handle of liquor.

165. At 8:16 p.m., Defendant Raquet ordered the "Nibs" to line cars up."

166. At 8:19 p.m., Defendant Foster ordered that "[s]omeone send the address" to Paradise City.

167. At approximately 8:20 p.m. on February 2, 2023, the Fraternity's reckless caravan of cars set out for Paradise City.

168. 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 to which Josh was assigned – with the full knowledge of all the Fraternity Member Defendants – were driving cars that they did not own, were unfamiliar with, had no experience driving, were stocked with drugs and alcohol, and were filled with intoxicated Fraternity members and rushees on dark, remote, country roads.

169. At approximately 8:25 p.m. on February 2, 2023, Defendant Caminiti instructed all of the members to “drive safe and ma[k]e sure the rushes don’t get too drunk so they can’t go in” the Club, emphasizing the control the Fraternity Member Defendants had and would have over Josh and the other rushees, their physical conditions, and well-being that night.

170. Throughout the night, the Fraternity Members Defendants exercised that control to compel, coerce, force, and pressure Josh and the other rushees to consume dangerous amounts of alcohol.

THE FEBRUARY 2, 2023 RUSH EVENT ENDS IN FORESEEABLE TRAGEDY

171. Once at the Club, Josh was ushered inside with the other rushees, where Fraternity members continued to compel, coerce, force, or pressure Josh and the other rushees to drink alcohol.

172. Right outside, the designated drivers waited and partied in the Club’s small, gravel parking lot.

173. Some of the designated drivers smoked marijuana and inhaled whippets, including the designated driver who drove Josh to the Club.

174. Various Fraternity Member Defendants knew – and all the Fraternity Member Defendants at the Club in the exercise of reasonable care should have known – that Josh’s designated driver was doing drugs in the Club’s parking lot.

175. 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 Josh'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 Josh'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.

176. During the event, Josh became so intoxicated due to the continued and coerced, compelled, and pressured alcohol consumption that he had to be carried out of the Club.

177. Fraternity members dumped Josh in the back seat of his designated driver's car, unconscious and without a seat belt.

178. Despite knowing that Josh was unconscious and unable to make decisions about his own safety or well-being, none of the Fraternity Member Defendants confirmed that the driver of Josh's car was sober or otherwise capable of safely transporting Josh back to Harrisonburg.

179. Despite knowing that Josh's designated driver had been smoking marijuana and doing whippets in the Club's parking lot, the Fraternity members allowed him to leave the Club and start the drive back to Harrisonburg with Josh unconscious and unbuckled in the back seat.

180. 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.

181. Josh and two other occupants of the vehicle died at the scene.

182. Josh's blood alcohol content, when later measured at autopsy, was 278 mg/dL.

COUNT I – NEGLIGENCE

Wrongful Death

(Negligence, Willful-and-Wanton Negligence, Negligence Per Se, Negligent Breach of Assumed Duties, and Negligent Breach of Duty by Virtue of Special Relationship)
(Defendants PBX, Cross Keys Society, and PBX Property Management)

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

184. At all relevant times, Defendants PBX, Cross Keys Society, and PBX Property Management (the "Corporate Fraternity Defendants"), individually and through their officers,

members, agents and alter egos, 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.

185. At all relevant times, the Corporate Fraternity Defendants, individually and through their officers, members, agents and alter egos, 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 prospective members of the Fraternity, including Josh.

186. At all relevant times, the Corporate Fraternity Defendants, individually and through their officers, members, agents and alter egos, each also had a general duty to all prospective members of the Fraternity, including Josh, 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.

187. At all relevant times, Defendants PBX and Cross Keys Society, individually and through their officers, members, agents and alter egos, each:

- a. undertook – albeit negligently and recklessly – to regulate, protect against, and prevent hazing, including hazing involving compelled alcohol consumption and illegal drug use, at the JMU Chapter;

b. owed or assumed duties to Josh 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 manner in which they generate their principal revenue (rush and recruitment), and to regulate, protect against, and prevent hazing, including hazing involving compelled alcohol consumption and illegal drug use, by the JMU Chapter and the members of the JMU chapter;

c. owed or assumed duties to Josh to exercise reasonable care in managing, regulating, overseeing, and conducting the Fraternity's activities and events, and the provision and use of alcohol and illegal drugs in connection with recruitment, rush, and other Fraternity events and activities, to protect against and prevent hazing and related misconduct in those events and activities. Alternatively, PBX and Cross Keys Society assumed such duties;

d. owed and undertook duties of care to Josh and the other rushees to direct, plan, manage, regulate, supervise, conduct, and oversee the Corporate Fraternity Defendants' operations, recruitment, rush, and initiation activities and events in a reasonably prudent and safe manner;

e. owed and undertook duties of care to Josh and the other rushees to avoid affirmative acts on February 2, 2023, that placed Josh in a position of peril or worsened his already perilous state following the alcohol-fueled hazing he was subjected to;

f. owed and undertook duties of care to Josh and the other rushees to exercise reasonable care in supervising, managing, overseeing, and regulating the actions of their officers, members, and agents during the rush event on February 2, 2023, so as to not unreasonably endanger Josh's person or property;

g. owed and undertook duties of care to Josh and the other rushees to exercise reasonable care in planning, administering, conducting, managing, overseeing, and supervising the rush event;

h. owed and undertook duties of care to Josh and the other rushees to exercise reasonable care to ensure that their officers, members, and agents refrained from furnishing or facilitating the provision of drugs and alcohol to event attendees, including to designated drivers;

i. owed and undertook duties of care to Josh and the other rushees to exercise reasonable care to ensure that their officers, members, and agents refrained from hazing rushees;

j. owed and undertook duties of care to Josh and the other rushees to exercise reasonable care to protect Josh from the foreseeable acts of hazing and related misconduct by their officers, members, and agents to which all of the Defendants knew Josh was going to be subjected to during the rush event;

k. owed and undertook duties of care to Josh and the other rushees to exercise reasonable care to protect Josh once that hazing and related misconduct, foreseeably, rendered him helpless and unable to care for, protect, and make decisions for himself; and

l. owed and assumed duties of care to Josh by requiring Josh to travel to and from the Paradise City Gentlemen's Club in Mathias, West Virginia, in cars operated by Fraternity-assigned and supervised designated drivers.

188. Defendants PBX and Cross Keys further assumed such duties through their affirmative conduct tantamount to express communications and representations, which Josh

relied upon.

189. At all relevant times, Defendants PBX and Cross Keys Society, individually and through their officers, members, agents and alter egos, each knew and should have recognized that exercising reasonable care in fulfilling such duties were necessary to protect rushees of the Fraternity, including Josh.

190. At all relevant times, Defendants PBX and Cross Keys Society, individually and through their officers, members, agents and alter egos, each knew or in the exercise of reasonable care should have known that the February 2, 2023 rush event – and the hazing, related misconduct, and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event – created unreasonable and reasonably foreseeable risks and dangers of harm, damage, and injury to the public and prospective members of the Fraternity, including Josh.

191. At all relevant times, Defendants PBX and Cross Keys Society, individually and through their officers, members, agents and alter egos, each 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 driver who drove the car Josh was dumped in at the Club, was necessary to protect the rushees, including Josh.

192. At all relevant times, Defendants PBX and Cross Keys Society, individually and through their officers, members, agents and alter egos, 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 – or the hazing, related

misconduct, and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event – created the reasonably foreseeable risk that, because of the remote location of the rush event, Josh and the other rushees would:

- a. be grossly intoxicated at the end of the evening;
- b. be unable to make decisions about their own safety, including whether or how to arrange for alternative transportation home;
- c. be unable to care for or protect themselves;
- d. be under the control of Defendants and their officers, members, agents, and alter egos;
- e. be wholly dependent upon, and without alternative options to, the Fraternity-assigned and supervised designated drivers to make it home safely;
- f. be wholly dependent upon Defendants and their officers, members, agents, and alter egos for safe transportation back to Harrisonburg, Virginia on February 2, 2023; and
- g. be wholly dependent Defendants and their officers, members, agents, and alter egos to ensure that the fraternity members assigned to transport them back to Harrisonburg, Virginia on February 2, 2023, were sober and otherwise capable of safely fulfilling their designated driver assignments.

193. At all relevant times, the fraternity-member driver who drove the car Josh was dumped in at the Club, was acting as an agent of and within the scope of his agency for Defendants PBX and Cross Keys Society.

194. At all relevant times, Defendants PBX and Cross Keys Society, individually and

through their officers, members, agents and alter egos, had the power to control the means and methods of the work of the fraternity-member driver who drove the car Josh was dumped in at the Club, and the power to dismiss the driver from his designated driver role.

195. 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 driver who drove the car Josh was dumped in at the Club, and that failure dramatically increased the risk of harm, injury, and death to Josh, and ultimately caused and contributed to the crash and Josh's wrongful death.

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

197. 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 Josh suffered.

198. Defendants PBX's and Cross Keys Society's affirmative acts and omissions exposed Josh to a foreseeable high risk of physical harm and being rendered helpless from the hazing and related misconduct associated with the rush event.

199. As a result, those undertakings by Defendants PBX and Cross Keys Society gave rise to a special relationship between them and Josh and his fellow rushees, and an attendant duty on the part of those Defendants to exercise reasonable care to protect Josh and his fellow rushees from an unreasonable risk of harm and injury during the rush event, during their transportation to and from Paradise City, and from the hazing and related misconduct during the rush event.

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

a. Promoting, profiting from, operating, administering, conducting, managing 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 prospective members of the Fraternity, including Josh;

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 activities and events involving hazing and 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, anti-hazing policies, and other management policies and procedures, and allowing them to continue recruiting male students, including Josh, after repeated misconduct involving hazing, compelled alcohol consumption, and other related misconduct in the years preceding Josh’s hazing and death;

d. Providing ineffective and improper direction, supervision, administration, management, and control over the JMU Chapter officers and members and the rush activities and events authorized, directed, or participated in by those officers, members and rushees;

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 Josh'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 provide reasonable safeguards and restrictions and to implement controls to prevent underage drinking, excessive drinking, the service of alcohol to underage rushees, and drug use during rush events, including the February 2, 2023 rush event, and to prevent their officers, members, or agents from pressuring, coercing, forcing, and compelling rushees, as a condition of their prospective membership in the Fraternity, to consume alcohol during the February 2, 2023 rush event;

h. 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;

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 rushees to and from the Fraternity's rush events, including the February 2, 2023 rush event;

k. Failing to dismiss the fraternity-member driver assigned to transport Josh to and from Paradise City 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 Josh and the other passengers back to Harrisonburg, Virginia;

l. Failing to provide or arrange for alternative and safe means or methods of transportation for Josh, who, as a result of hazing and the related misconduct to which he was subjected during the February 2, 2023 rush event, was unconscious, unable to care for or protect himself, unable to arrange for such alternative transportation, and wholly dependent on Defendants PBX and Cross Keys Society, and their officers, members and agents, for safe transportation back to Harrisonburg, Virginia;

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

n. Deliberately declining, following Josh'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, Josh's family, and the public from learning the truth about the negligent, wrongful, reckless, and willful and wanton acts and omissions that caused Josh's death, as well their roles and involvement in causing his death, thus constituting ratification of such misconduct;

o. Failing to discipline JMU Chapter members for engaging in underage drinking, hazing, and other previous misconduct and illegal activities;

p. 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 Josh;

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

r. Were otherwise negligent.

201. As a direct and proximate result of the Corporate Fraternity Defendants' breaches of all their duties described and alleged herein, Josh was hazed, rendered unconscious, deprived of the ability and opportunity to make decisions about his own safety, dumped without a seatbelt in a car operated by a fraternity-member driver who was impaired and incapable of safely transporting Josh back to Harrisonburg, involved in a catastrophic crash, suffered, and died.

202. 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 Josh and others and to the consequences that their conduct would cause injury to Josh

203. As a direct and proximate result of the negligence, recklessness, and willful-and-wanton negligence, and negligence of the Corporate Fraternity Defendants, Josh 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 Josh was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Josh, and have incurred reasonable funeral expenses to bury their son.

204. 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 Josh'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.

205. 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 Josh'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 Josh 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 or to take reasonable steps to provide or arrange for alternative and safe means or methods of transportation for Josh, who, as a result of hazing and the related misconduct to which he was subjected during the February 2, 2023 rush event, was unconscious, unable to care for or protect himself, and unable to arrange for such alternative transportation; 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)

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

207. 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 prospective members of the Fraternity, including Josh.

208. At all relevant times, Defendant Marshall knew or in the exercise of reasonable care should have known that the rush event – and the hazing, related misconduct, and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event – created an unreasonable and reasonably foreseeable risk or danger of harm, damage, and injury to the public and prospective members of the Fraternity, including Josh.

209. 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.

210. 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 prospective members of the Fraternity, including Josh, 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.

211. In addition, at all relevant times, Defendant Marshall owed a duty of care to all prospective members of the Fraternity, including Josh, to exercise reasonable care in managing and overseeing the Fraternity and its operations, including its rush process and events, and further assumed such duties through his affirmative conduct tantamount to express communications and representations, which Josh relied upon.

212. Having engaged in the affirmative conduct of overseeing the Fraternity and its operations, including its rush process and events, Defendant Marshall realized or should have realized that under the circumstances such conduct had created an unreasonable risk of harm to rushees, like Josh, and therefore Defendant Marshall had a duty to exercise reasonable care to prevent this threatened harm.

213. 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 Josh suffered.

214. Defendant Marshall's affirmative acts and omissions exposed Josh to a foreseeable high risk of physical harm from the hazing and related misconduct associated with the February 2, 2023 rush event.

215. 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 – or the hazing, related misconduct, and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event – created the reasonably foreseeable risk that Josh and the other rushees would become unconscious, be unable to care for or protect themselves, be

under the control of Defendants and their officers, members, and agents, and be wholly dependent upon Defendants and their officers, members, agents, and alter egos for safe transportation back to Harrisonburg, Virginia on February 2, 2023.

216. 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 hazing-, drug-, and alcohol-fueled traditions;
- b. Failing to exercise his position, status, and authority in the Fraternity and PBX Property Management to protect Josh from hazing and related misconduct during the February 2, 2023 rush event;
- c. Encouraging, facilitating, or allowing hazing and related misconduct by or on behalf of the Fraternity, regardless of intent or consent of the participants;
- d. With his knowledge of what activities the Fraternity engaged in and that underage rushees would be exhorted and expected to drink alcohol in dangerous amounts, as well as the other dangerous circumstances surrounding the February 2, 2023 rush event, acquiescing to and ratifying the rush event and its traditions through his acts and inaction;
- e. Providing ineffective and improper direction, supervision, and control over the JMU Chapter officers and members and the rush activities and events authorized, directed, or participated in by those officers and members, including the February 2, 2023 rush event;
- f. Directing, authorizing, allowing, failing to exercise reasonable supervision or

control over, and failing to prohibit or stop the February 2, 2023 rush event that caused and resulted in Josh's death;

g. 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;

h. Failing to provide reasonable safeguards and restrictions and to implement controls to prevent underage drinking, excessive drinking, the service of alcohol to underage rushees, and drug use during rush events, including the February 2, 2023 rush event, and to prevent the Fraternity's officers, members, or agents from pressuring, coercing, forcing, and compelling rushees, as a condition of their prospective membership in the Fraternity, to consume alcohol during the February 2, 2023 rush event and other rush events;

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

j. Failing to prevent or prohibit intoxicated Fraternity members from transporting rushees to and from the Fraternity's rush 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, hazing, road trips, and the provision and use of alcohol during and as part of rush events;

l. Deliberately declining, following Josh'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, Josh's family, and the public from learning the truth about the negligent, wrongful, reckless, and willful and wanton acts and omissions that caused Josh'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 underage drinking, hazing, and other previous misconduct and illegal activities

n. Failing to act reasonably under the circumstances;

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

p. Was otherwise negligent.

217. 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 Josh, as a rushee of the Fraternity.

218. 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 Josh and others and to the consequences that his conduct would cause injury to Josh.

219. As a direct and proximate result of Defendant Marshall's breach of all his duties described and alleged herein, Josh was hazed, rendered unconscious, deprived of the ability and

opportunity to make decisions about his own safety, dumped without a seatbelt in a car operated by a driver who was impaired and incapable of safely transporting Josh back to Harrisonburg, involved in a catastrophic crash, suffered, and died.

220. As a direct and proximate result of the negligence, recklessness, and willful-and-wanton negligence of Defendant Marshall, Josh 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 Josh was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Josh, and have incurred reasonable funeral expenses to bury their son.

221. 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 Josh'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, Negligent Breach of Assumed Duties, and
Negligent Breach of Duty by Virtue of Special Relationship)
(Fraternity Member Defendants)***

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

223. At all relevant times, the Fraternity Member Defendants knew or in the exercise of reasonable care should have known that the February 2, 2023 rush event – and the hazing, related misconduct, and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event – created an unreasonable and reasonably foreseeable risk or danger of harm, damage, and injury to the public and prospective members of the Fraternity, including Josh.

224. 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.

225. At all relevant times, the Fraternity Member Defendants had a duty to avoid affirmative acts on February 2, 2023, that placed Josh in a position of peril or worsened his already perilous state following the alcohol-fueled hazing he was subjected to.

226. At all relevant times, the Fraternity Member Defendants had a special relationship with Josh, over who, as a rush of their Fraternity, they had authority and a superior social status, and who as a condition of his prospective membership in the Fraternity, had to follow the instructions and directions the Fraternity Member Defendants gave him. Instructing and directing Josh to consume vast quantities of alcohol on February 2, 2023, predictably rendered

Josh grossly intoxicated and helpless, forming a custodial relationship between him and the Fraternity Member Defendants. As a result, at all relevant times, the Fraternity Member Defendants had a special relationship with Josh.

227. The Fraternity Member Defendants therefore each owed Josh a specific duty to use due care and govern their actions during the rush event on February 2, 2023, so as to not unreasonably endanger Josh's person or property, including a duty to protect Josh from the foreseeable acts of hazing and related misconduct to which Fraternity Member Defendants knew Josh was going to be subjected to during the rush event, and a duty to protect him once that related and related misconduct, foreseeably, rendered him helpless and unable to care for, protect, and make decisions for himself.

228. At all relevant times, the Fraternity Member Defendants through actions tantamount to an express communication (which Josh relied upon) or otherwise through their actions assumed duties of care to Josh by requiring him to travel to and from the Paradise City Gentlemen's Club in Mathias, West Virginia, in cars operated by Fraternity-assigned and supervised designated drivers, while knowing that because of the remote location of the Club and that, by design, plan, and tradition, Josh would be grossly intoxicated at the end of the evening, and therefore unable to make decisions about his own safety, including whether or how to arrange for alternative transportation home, he would be wholly dependent on, and without alternative options to, the Fraternity-assigned and supervised designated drivers to make it home safely.

229. Having engaged in the affirmative conduct of planning, organizing, conducting, managing, administering, overseeing, and supervising the February 2, 2023 rush event, the Fraternity Member Defendants realized or should have realized that such conduct had created an

unreasonable risk of harm to Josh, and therefore the Fraternity Member Defendants had a duty to exercise reasonable care to prevent this threatened harm.

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

231. The Fraternity Member Defendants' affirmative acts and omissions exposed Josh to a foreseeable high risk of physical harm from the hazing and related misconduct associated with the February 2, 2023 rush event.

232. The Fraternity Member Defendants knew or should have known that exercising reasonable care in the provisions, organization, administration, management, and supervision of designated drivers for the February 2, 2023 rush event was therefore necessary to protect the rushees, including Josh.

233. 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 Josh and ultimately caused and contributed to the crash and his wrongful death.

234. In addition 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 rushees, including Josh.

235. 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, conducting, and administering the Fraternity's activities and events in Spring 2023, including the February 2, 2023 rush event.

236. 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, conducting, administering, overseeing, and managing the February 2, 2023 rush event and the designated drivers assigned to transport attendees to and from the event.

237. 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 of those Defendants owed duties to all of the

members and rushees, including Josh, who relied and was dependent on that service for safe transportation to and from the event.

238. 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 Josh 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 Josh back to Harrisonburg, Virginia, was sober and otherwise capable of safely fulfilling a designated driver assignment.

239. Further, at all relevant times, all the Fraternity Member Defendants knew or in the exercise of reasonable care should have known that their actions in undertaking to plan, promote, and participate in the February 2, 2023 rush event – and the hazing, related misconduct, and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event – created the reasonably foreseeable risk that Josh and the other rushees would become unconscious, be unable to care for or protect themselves, be under the control of Defendants and their officers, members, and agents, and be wholly dependent upon Defendants and their officers, members, and agents for safe transportation back to Harrisonburg, Virginia on February 2, 2023.

240. As a result, those undertakings by the Fraternity Member Defendants gave rise to a special relationship between them and Josh and his fellow rushees, and an attendant duty on the part of those Defendants to exercise reasonable care to protect Josh and his fellow rushees from an unreasonable risk of harm and injury at and during the February 2, 2023 rush event, during

their transportation to and from Paradise City, and from hazing and related misconduct during the February 2, 2023 rush event.

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

a. Planning, promoting, and participating in the February 2, 2023 rush event, including the hazing and related misconduct that harmed and imperiled Josh;

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 Josh's designated driver, from consuming alcohol, marijuana, or whippets in Paradise City's parking lot during the February 2, 2023 rush event;

d. Permitting and failing to stop or prohibit Josh's driver from serving as a designated driver for Josh and others for the return trip from Paradise City to Harrisonburg, Virginia on February 2, 2023, or otherwise failing to act reasonable to intervene to protect Josh, who was unconscious and unable to make decisions about his own safety, despite observing the driver using marijuana and whippets in Paradise City's parking lot, or otherwise knowing or having reason to know that Josh's designated driver had consumed drugs in Paradise City's parking lot;

e. Failing to exercise his position, status, and authority in the Fraternity to protect Josh from hazing and related misconduct during the February 2, 2023 rush event;

- f. Aiding or acting with complicity in violations of the JMU Student Handbook;
- g. Subjecting Josh to acts that imperiled or jeopardized his health or safety in violation of the JMU Student Handbook;
- h. Planning, organizing, encouraging, facilitating, participating in or allowing or failing to prohibit or stop the hazing of Josh in connection with the process of rushing the Fraternity;
- i. Failing to act reasonably under the circumstances;
- j. Engaging in such other negligent acts as discovery may reveal; or
- k. Was otherwise negligent.

242. These willful-and-wanton, reckless and negligent actions and omissions were directed at rushees who the Fraternity Member Defendants ostensibly cared for and wanted as members of their Fraternity, and as such did not constitute criminally assaultive behavior.

243. 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 Josh and others and to the consequences that their conduct would cause injury to Josh.

244. As a direct and proximate result of the Fraternity Member Defendants' breaches of the duties described and alleged herein, Josh was hazed, rendered unconscious, deprived of the ability and opportunity to make decisions about his own safety, dumped without a seatbelt in a car operated by a driver who was impaired and incapable of safely transporting Josh back to Harrisonburg, involved in a catastrophic crash, suffered, and died.

245. As a direct and proximate result of the negligence, recklessness, willful-and-wanton negligence of the Fraternity Member Defendants, Josh 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 Josh was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Josh, and have incurred reasonable funeral expenses to bury their son.

246. 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 Josh'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 – NEGLIGENCE, NEGLIGENCE PER SE, CIVIL CLAIM FOR HAZING
Wrongful Death
(Negligence and Negligence Per Se / Civil Claim for Hazing / Violation of Va. Code Ann. § 18.2-56 and W.V. Code Ann. § 18-16-1, et seq.)
(Fraternity Member Defendants, PBX, and Cross Keys Society)

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

248. Hazing is prohibited by Va. Code Ann. § 18.2-56.

249. Under Section 18.2-56, “‘hazing’ means to recklessly or intentionally endanger the health or safety of a student or students or to inflict bodily injury on a student or students in connection with or for the purpose of initiation, admission into or affiliation with or as a condition for continued membership in a club, organization, association, fraternity, sorority, or student body regardless of whether the student or students so endangered or injured participated voluntarily in the relevant activity.”

250. The Virginia Legislature adopted that prohibition on hazing as a public safety measure to protect rushees like Josh, who was within the class of persons the anti-hazing statute was designed to benefit.

251. Hazing is also prohibited W.V. Code Ann. § 18-16-1, *et seq.*

252. Section 18-16-2 of the West Virginia Code provides, in pertinent part, that:

“Hazing” means to cause any action or situation which recklessly or intentionally endangers the mental or physical health or safety of another person or persons or causes another person or persons to destroy or remove public or private property for the purpose of initiation or admission into or affiliation with, or as a condition for continued membership in, any organization the members of which are primarily students or alumni of an institution of higher education. The term includes, but is not limited to, acts of a physical nature, such as whipping, beating, branding, required consumption of any food, liquor, drug, or other substance, or any other required physical activity which could reasonably be deemed to adversely affect the physical health and safety of the person or persons so treated, and includes any activity which would subject the person or persons so treated to extreme mental stress, such as sleep deprivation, forced exclusion from social contact, required conduct which could result in extreme embarrassment, or any other required activity which could reasonably be deemed to adversely affect the mental health or dignity of the person or persons so treated, or any willful destruction or removal of public or private property: Provided, That the implied or expressed consent or willingness of a person or persons to hazing may not be a defense under this section.

253. The West Virginia laws prohibiting hazing, like Virginia’s laws, are intended to protect a class of persons – students seeking membership in a fraternity or organization whose

members are primarily students or alumni of an institution of higher education – of which Josh was a part.

254. The harm to Josh was precisely the kind of harm against which the Virginia and West Virginia statutes were designed to protect.

255. The Virginia statute expressly authorizes and preserves a private, civil cause of action for hazing, and the voluntariness or lack thereof of the individual hazed and injured is not a defense to such action.

256. Virginia Code § 18.2-56 provides, in pertinent part, that: “Any person receiving bodily injury by hazing shall have a right to sue, civilly, the person or persons guilty thereof, whether adults or infants.”

257. The Fraternity Member Defendants, PBX, and the Cross Key Society violated the Virginia and West Virginia laws prohibiting hazing by, *inter alia*, willfully and wantonly, recklessly and negligently:

- a. Condoning, participating in, aiding and abetting, or facilitating a February 2, 2023 rush event and rush activities that included hazing;
- b. Providing alcohol to persons, including Josh, under the age of 21, and exhorting, pressuring, forcing, and coercing him, as a condition of his membership in the Fraternity, to drink dangerous amounts of alcohol;
- c. Subjecting Josh to acts that imperiled or jeopardized his health and safety; and
- d. Hazing, encouraging, facilitating, or allowing hazing, by the Fraternity or by an individual on behalf of the Fraternity, regardless of intent or consent of the participants.

258. Those Defendants' violations of the Virginia and West Virginia anti-hazing statutes rendered Josh unconscious, unable to protect himself and make decisions about his well-being, including a decision about whether or not to get into the car with a designated driver who was intoxicated or under the influence of drugs, and were a proximate cause of Josh's pain, suffering, and death.

259. As a direct and proximate result of those Defendants' violations of the Virginia and West Virginia anti-hazing statutes, Josh was hazed, rendered unconscious, deprived of the ability and opportunity to make decisions about his own safety, dumped without a seatbelt in a car operated by a driver who was impaired and incapable of safely transporting Josh back to Harrisonburg, involved in a catastrophic crash, suffered, and died.

260. As a direct and proximate result of those Defendants' violations of the Virginia and West Virginia anti-hazing statutes, Josh 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 Josh was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Josh, and have incurred reasonable funeral expenses to bury their son.

261. Those Defendants' violations of the Virginia and West Virginia anti-hazing statutes make them civilly liable for that hazing under Virginia law and negligent per se under both Virginia and West Virginia common law for their respective roles in proximately causing Josh's death.

262. Those Defendants' violations of violations of the Virginia and West Virginia anti-hazing statutes were carried out with and constitute conscious, reckless and outrageous

indifference to the health, safety, rights, and welfare of Josh and others and to the consequences that their conduct would cause injury to Josh.

263. Each of those Defendants 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 Josh's death.

WHEREFORE, Plaintiff demands judgment against the Fraternity Member Defendants, PBX, and Cross Keys Society, 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 V – VIOLATION OF VIRGINIA CONSUMER PROTECTION ACT
Wrongful Death
(Defendants PBX and Cross Keys Society)

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

265. The Fraternity has long known, or should have known, of the dangers of hazing and alcohol and drug misuse in the Fraternity, including the extreme risks associated with the rush event at Paradise City and the hazing, related misconduct, and the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event.

266. Despite such knowledge, the Fraternity misrepresents, and has so misrepresented

multiple times in the past, the standards and quality of the Fraternity and the services it provides.

267. 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 and soliciting revenue from JMU students, which constitutes a consumer transaction under the Virginia Consumer Protection Act, Va. Code § 59.1-196, *et seq.*

268. Defendants PBX and Cross Keys Society were each a “supplier” and Josh was a “consumer” under the Act.

269. At all relevant times, including in Spring 2023, the Fraternity has represented on its website that participating in “Rush” is a necessary prerequisite to obtaining a “bid” or “invitation” to join the Fraternity, and that “[a]t the end of Rush we extend bids (invitations for the rushes to begin our Pledge Process).”

270. At all relevant times, including in Spring 2023, the Fraternity has represented on its website that “Rush” simply “consists of several Chapter-hosted events for rushees to attend and meet the Brothers,” which the Fraternity has falsely and misleadingly characterized as innocuous events “like” “pick-up basketball on campus, pizza and sports watching at the house, cookouts and yard games, bowling, social events, etc.”

271. During that same time period, including in Spring 2023, the Fraternity’s website has made no mention of, or provided any warning about, the rush event at Paradise City or the hazing, related misconduct, or the negligently, recklessly, and willfully-and-wantonly planned, organized, administered, conducted, managed, and supervised designated driver program that, by tradition and design, were integral features of the event.

272. To the contrary, at all relevant times, including in Spring 2023, the Fraternity falsely and misleadingly represented on its website that “Pi Beta Chi is a NON hazing

organization has zero tolerance for any acts or threats of hazing.”

273. The misrepresentations made 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.

274. 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 Josh rely upon them.

275. In reliance upon the misrepresentations made by the Fraternity, to his detriment, Josh pursued membership in the Fraternity and complied with the demands of the Fraternity and participated in the February 2, 2023 rush event that was a direct and proximate cause of his suffering and death.

276. As a further direct and proximate result of the Fraternity’s violations of the Virginia Consumer Protection Act, and Josh’s reliance thereon, Josh 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, Josh, and have incurred reasonable funeral expenses to bury their son.

277. 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 Josh’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.

COUNT VI – CIVIL CONSPIRACY

Wrongful Death (Fraternity Member Defendants)

278. Plaintiff incorporates all preceding allegations in this Count by reference as though fully restated herein.

279. The Fraternity Member Defendants conspired, developed a common plan, and acted in concerted fashion to plan, facilitate, further, or carry out the February 2, 2023 rush event which, by deliberate design, was rife with hazing and the unlawful use and provision of drugs and alcohol.

280. The Fraternity Member Defendants undertook such concerted action to accomplish the lawful purpose of increasing the Fraternity's membership by recruiting rushees into the Fraternity through unlawful means, including hazing and the unlawful use and provision of drugs and alcohol.

281. Alternatively, the Fraternity Member Defendants undertook such concerted action to accomplish the unlawful purpose of hazing the rushees, including Josh.

282. Each of the Fraternity Member Defendants acted to further or facilitate the civil conspiracy, as detailed above.

283. The hazing, unlawful use and provision of alcohol and drugs, and negligence or

recklessness, or willful-and-wanton act in planning, administering, conducting, and failing to exercise reasonable care in overseeing, managing, and supervising the event and the designated drivers who provided the exclusive means for rushees, including Josh, to travel to and from the event all constitute separate, actionable torts in furtherance of the civil conspiracy.

284. The civil conspiracy and concerted action in which the Fraternity Member Defendants engaged, and their acts, conduct, and torts in furtherance of the conspiracy, were carried out with and constitute conscious, reckless and outrageous indifference to the health, safety, rights, and welfare of Josh and others and to the consequences that their conduct would cause injury to Josh.

285. As a direct and proximate result of Fraternity Member Defendants' civil conspiracy, Josh 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 Josh was treated and died, anhedonia, and loss of solace, including loss of society, companionship, comfort, guidance, kindly offices and advice of their decedent, Josh, and have incurred reasonable funeral expenses to bury their son.

WHEREFORE, Plaintiff demands judgment against the Fraternity Member 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.

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 8, 2025

Respectfully submitted,

HOWARD KIRK MARDIS, Administrator and
Personal Representative of the ESTATE OF
JOSHUA DANIEL MARDIS, Deceased


By Counsel

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