

COMMONWEALTH OF KENTUCKY
WARREN CIRCUIT COURT
DIVISION _____
CIVIL ACTION NO. _____

ELECTRONICALLY FILED

██

PLAINTIFF

v.

COMPLAINT

WESTERN KENTUCKY UNIVERSITY

DEFENDANTS

SERVE: Attorney General pursuant to CR 4.04(6)

Daniel Cameron, Attorney General
100 Capital Avenue, Suite 118
Frankfort, KY 40601

and

TIMOTHY CABONI, in his individual capacity

SERVE: Timothy Caboni, President
c/o Western Kentucky University
Office of the President
1906 College Heights Blvd.
Bowling Green, KY 42101

and

RANDALL BOGARD, in his individual capacity

SERVE: Randall Bogard
c/o Western Kentucky University
Downing Student Union 2071
1906 College Heights Blvd.
Bowling Green, KY 42101

and

MINNETTE ELLIS, in her individual capacity

SERVE: Minnette Ellis
c/o Western Kentucky University
Southwest Hall
1906 College Heights Blvd., # 11093
Bowling Green, KY 42101

and

CHARLEY PRIDE, in his individual capacity

SERVE:

Charley Pride
c/o Western Kentucky University
Downing Student Union 2059
1906 College Heights Blvd.
Bowling Green, KY 42101

and

ANDREW RASH, in his individual capacity

SERVE:

Andrew Rash
c/o Western Kentucky University
Department of Greek Affairs
1906 College Heights Blvd.
Bowling Green, KY 42101

and

WKU INTERFRATERNITY COUNCIL

SERVE: [REDACTED] pursuant to CR 4.04(4)

[REDACTED]
c/o Western Kentucky University
Department of Student Activities
1906 College Heights Blvd.
Bowling Green, KY 42101

and

[REDACTED] in his individual capacity

SERVE:

[REDACTED]
c/o Western Kentucky University
Department of Student Activities
1906 College Heights Blvd.
Bowling Green, KY 42101

and

Presiding Judge: HON. JOHN R. GRISE (608217)

COM : 000002 of 000055

SIGMA PHI EPSILON FRATERNITY INCORPORATED

SERVE: [REDACTED] Registered Agent pursuant to CR 4.04(5)

[REDACTED] Registered Agent

[REDACTED]

[REDACTED]

and

SIGMA PHI EPSILON FRATERNITY

SERVE: Secretary of State pursuant to KRS 454.210

Office of the Secretary of State
Summons Branch
700 Capital Avenue, Suite 86
Frankfort, KY 40601

MAIL TO: Brian Warren, Registered Agent
310 S. Arthur Ashe Blvd.
Richmond, VA 23220

and

Billy Dal Maddalon, Grand President
2301 Belvedere Ave.
Charlotte, NC, 28205

and

KENTUCKY DELTA ALUMNI AND VOLUNTEER CORPORATION
OF SIGMA PHI EPSILON FRATERNITY, INC.

SERVE: Andrew Cusick, Registered Agent pursuant to CR 4.04(5)

Andrew Cusick, Registered Agent
343 Kempton Ln.
Bowling Green, KY 42104

and

Presiding Judge: HON. JOHN R. GRISE (608217)

COM : 000003 of 000055

[REDACTED] in his individual capacity

SERVE:

[REDACTED]
c/o Sigma Phi Epsilon Fraternity Incorporated
[REDACTED]
[REDACTED]

and

[REDACTED] in his individual capacity

SERVE:

[REDACTED]
c/o Sigma Phi Epsilon Fraternity Incorporated
[REDACTED]
[REDACTED]

and

TRIDENT PROPERTIES OF BOWLING GREEN, LLC

SERVE: Brett A. Reynolds, Registered Agent pursuant to CR 4.04(5)

Brett A. Reynolds, Registered Agent
1101 College St.
Bowling Green, KY 42101

and

KEVIN WILLIAMS, in his individual capacity

SERVE:

Kevin Williams
2112 Center Point Rd.
Tompkinsville, KY 42167

and

EMILY WILLIAMS, in her individual capacity

SERVE:

Emily Williams
2112 Center Point Rd.
Tompkinsville, KY 42167

and

[REDACTED] in his individual capacity

SERVE:

[REDACTED]
[REDACTED]
[REDACTED]

and

[REDACTED] in his individual capacity

SERVE:

[REDACTED]
[REDACTED]
[REDACTED]

and

DELTA GAMMA CHAPTER HOUSE CORPORATION OF KAPPA
DELTA SORORITY, INC.

SERVE: Laura Shonk, Registered Agent pursuant to CR 4.04(5)

Laura Shonk, Registered Agent
336 Farmer Ln.
Bowling Green, KY 42104

and

KAPPA DELTA SORORITY, INCORPORATED

SERVE: Secretary of State pursuant to KRS 454.210

Office of the Secretary of State
Summons Branch
700 Capital Avenue, Suite 86
Frankfort, KY 40601

MAIL TO: Cogency Global Inc., Registered Agent
250 Browns Hill Ct.
Midlothian, VA 23114

and

Patricia Spence, President
2013 Park Ave.
St. Louis, MO 63104

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TABLE OF CONTENTS

INTRODUCTION 8

THE PARTIES and PERSONAL JURISDICTION 9

VENUE..... 15

SUBJECT MATTER JURISDICTION 16

FACTS APPLICABLE TO ALL COUNTS..... 17

 A. Forced Consumption of Alcohol and the Ensuing Rape and Sodomy. 17

 B. ██████ Fell Victim to the Routine and Accepted Fraternity Practice of Using Alcohol to Facilitate Sexual Conquests. 20

 (1) The SigEp Parties Promote Getting Women Drunk for the Benefit of Its Members..... 20

 (2) Defendant KD Supported and Shared Defendant SigEp’s Mission to Be Able to Get Women Drunk at Events. 22

 (3) WKU Turns a Blind Eye to Excessive Alcohol Consumption at Its Fraternity Parties..... 26

 C. None of Defendants Supervised or Controlled the Activities That Resulted in ██████ Rape and Sodomy..... 28

 (1) The WKU Parties Had a Duty to Supervise WKU Fraternities But Failed to Fulfill that Duty. 29

 (2) The SigEp Parties Had a Duty to Supervise the Fraternity and Its Members But Failed to Fulfill that Duty. 32

 (3) The KD Parties Had a Duty to Protect and Educate and to Warn the KD members, including ██████ But Failed to Fulfill that Duty. 34

 (4) Defendant Kevin Williams, Defendant Emily Williams and Defendant Trident Properties Had a Duty to Protect the Safety of Invitees Upon Their Property But Failed to Fulfill that Duty. 36

 D. Defendant WKU’s Desk Assistant Permitted Defendant ██████ to Escort a Visibly Incapacitated ██████ to His Dormitory Room. 37

 E. The Acts and Omissions of Defendants have Severely Harmed ██████ 38

 F. The WKU Parties, the SigEp Parties and the KD Parties Are Engaged in a Joint Venture..... 39

G. None of the WKU Parties are Entitled to Immunity 40

COUNT I – NEGLIGENCE AND GROSS NEGLIGENCE CLAIMS AGAINST WKU PARTIES AND SIGEP PARTIES 41

COUNT II – NEGLIGENCE AND GROSS NEGLIGENCE CLAIMS FOR DUTY TO WARN AGAINST WKU PARTIES, DEFENDANT ELLIS, AND KD PARTIES 42

COUNT III – NEGLIGENCE AND GROSS NEGLIGENCE CLAIMS FOR DUTY TO PROVIDE SECURITY AGAINST DEFENDANT WKU, DEFENDANT CABONI, AND DEFENDANT ELLIS 43

COUNT IV – NEGLIGENCE AND GROSS NEGLIGENCE CLAIMS FOR DUTY TO PROTECT THE PHYSICALLY HELPLESS AGAINST DEFENDANT WKU, DEFENDANT CABONI, AND DEFENDANT ELLIS 44

COUNT V – PREMISES LIABILITY CLAIM AGAINST DEFENDANT KEVIN WILLIAMS, DEFENDANT EMILY WILLIAMS, AND DEFENDANT TRIDENT PROPERTIES 44

COUNT VI – BATTERY, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AND *PER SE* NEGLIGENCE OF STATUTORY VIOLATIONS AGAINST DEFENDANT [REDACTED] 45

COUNT VII – NEGLIGENT FAILURE TO COMPLY WITH STATUTORY LAWS AND *PER SE* NEGLIGENCE OF STATUTORY VIOLATIONS AGAINST SIGEP PARTIES AND DEFENDANT [REDACTED] 48

COUNT VIII – JOINT LIABILITY BASED ON JOINT VENTURE, AIDING AND ABETTING, COMPLICIT *PER SE* LIABILITY UNDER PRIVATE RIGHT OF ACTION, AND CIVIL CONSPIRACY CLAIMS AGAINST THE WKU PARTIES, THE SIGEP PARTIES, THE KD PARTIES, DEFENDANT TRIDENT PROPERTIES, DEFENDANT KEVIN WILLIAMS, DEFENDANT EMILY WILLIAMS, DEFENDANT [REDACTED] AND DEFENDANT [REDACTED] 50

COUNT IX – BREACH OF CONTRACT CLAIM AGAINST THE WKU PARTIES AND DEFENDANT KD 52

COUNT X – PUNITIVE DAMAGES CLAIM AGAINST ALL DEFENDANTS 53

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Plaintiff, [REDACTED] [REDACTED] by counsel, for her Complaint against the above-named Defendants, states as follows:

INTRODUCTION

1. This matter arises from the Defendants' collective actions and failures to act, and in some cases promotion and facilitation of, the (1) excess use of alcohol, and (2) the consumption of alcohol by persons below the legal age at Western Kentucky University ("WKU"). One purpose of these activities, as illustrated by the events related in this Complaint and as was often the case on other occasions, was to promote the party and event culture of WKU's Greek Life organizations with the result that young women were made mentally and physically incapacitated and served as targets for sexual gratification of fraternity members. On this occasion, [REDACTED] a WKU sophomore below the age of twenty-one (21), was forced to consume alcohol, causing her to become intoxicated and mentally and physically helpless, resulting in sexual assault and subjection to non-consensual sexual activities and deviant sexual activities by Defendant [REDACTED]. The actions and failures to act of the Defendants either increased the risk of this harm to [REDACTED] or failed to prevent the harm to [REDACTED]. Each of the Defendants owed a duty to exercise reasonable care to prevent the increase in the risk of harm of this sort, to prevent this harm, to warn against this harm, to train and educate persons in [REDACTED] position in how to protect themselves from these harms and/or to provide security and protection against these harms.

2. WKU benefits from the presence and actions of multiple fraternities

and sororities, including Sigma Phi Epsilon. WKU has voluntarily assumed the duty to supervise and control the activities of the local chapter of Sigma Phi Epsilon. WKU has these duties as a result of special relationships with its students and with the fraternities and their members. WKU enjoys no sovereign immunity for its actions and inactions in failing to effectively exercise that supervision and control, which failures exposed [REDACTED] to significant harm and injuries. Further WKU employees are not immune from their failure to exercise reasonable care in the exercise of ministerial acts. None of the acts alleged herein are within the scope of sovereign immunity or qualified immunity.

THE PARTIES and PERSONAL JURISDICTION

3. Plaintiff, [REDACTED] is and was at all relevant times a resident of [REDACTED]

4. Defendant, Western Kentucky University (hereinafter "WKU"), is and was at all relevant times a public university and an agency of the Commonwealth of Kentucky that exists and operates pursuant to the applicable provisions of KRS 164.100 *et seq.* with a primary office located at 1906 College Heights Blvd., Bowling Green, KY 42101. Personal service is obtained pursuant to CR 4.04(6) by serving the Attorney General, Daniel Cameron.

5. Upon information and belief, Defendant Timothy Caboni was at all relevant times a citizen and resident of the Commonwealth of Kentucky, and was employed as President of WKU. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant Caboni at his address at his place of employment.

6. Upon information and belief, Defendant Randall Bogard was at all relevant times a citizen and resident of the Commonwealth of Kentucky, and was employed as WKU's Assistant Director of Department of Student Activities. WKU's Department of Student Activities provides co-curricular activities to students through its registered student organizations which include WKU's fraternities and sororities. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant Bogard at his address at his place of employment.

7. Upon information and belief, Defendant Minnette Ellis was at all relevant times a citizen and resident of the Commonwealth of Kentucky and was employed as WKU's Assistant Director of Housing and Residence Life. WKU's Housing and Residence Life provides and manages housing for students, including McCormack Hall where [REDACTED] was subjected to violent sexual abuse. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant Ellis at her address at her place of employment.

8. Upon information and belief, Defendant Charley Pride was at all relevant times a citizen and resident of the Commonwealth of Kentucky and was employed as the Director of WKU's Student Activities. WKU's Department of Student Activities provides co-curricular activities to students through its registered student organizations which include WKU's fraternities and sororities. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant Pride at his address at his place of employment.

9. Upon information and belief, Defendant Andrew Rash was at all

relevant times a citizen and resident of the Commonwealth of Kentucky and was employed as WKU's Director and/or Assistant Director of Greek Life. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant Rash at his address at his place of employment.

10. Upon information and belief, Defendant WKU Interfraternity Council (hereinafter the "IFC") was at all relevant times an unincorporated association serving as the governing body for WKU's thirteen social fraternities on campus including Sigma Phi Epsilon Fraternity Incorporated. Personal service is obtained pursuant to CR 4.04(4) by serving IFC's [REDACTED], an officer of the association, [REDACTED] at his place of employment.

11. Upon information and belief, Defendant [REDACTED] was at all relevant times a citizen and resident of the Commonwealth of Kentucky and was elected as [REDACTED]. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant [REDACTED] at his address at IFC.

12. Defendant WKU, Defendant Caboni, Defendant Bogard, Defendant Pride, Defendant Rash, Defendant IFC, and Defendant [REDACTED] are at times collectively referred to as "WKU Parties."

13. Defendant, Sigma Phi Epsilon Fraternity Incorporated ("SigEp") is and at all relevant times was a fraternity doing business in the Commonwealth of Kentucky with a principal office located at 1415 College Street, Bowling Green, KY 42101. SigEp is the fraternity that hosted the party giving rise to the events described in this Complaint. Personal service is obtained on Defendant SigEp

pursuant to CR 4.04(5) by serving its [REDACTED], [REDACTED]
[REDACTED]

14. Defendant, Sigma Phi Epsilon Fraternity (hereinafter “SigEp National”) is and at all relevant times was a national fraternity incorporated under the laws of the Commonwealth of Virginia with its principal place of business located at 310 S. Arthur Ashe Blvd., Richmond, VA 23220. Defendant SigEp National has the power, as stated in its Bylaws, to consider and decide upon complaints made at its undergraduate chapters. Personal service is obtained on Defendant SigEp National by serving the Secretary of State of this Commonwealth pursuant to KRS 454.210 and providing both the mailing addresses of SigEp National’s Grand President, Billy Dal Maddalon at 2301 Belvedere Ave., Charlotte, NC 28205 and SigEp’s Registered Agent at its Registered Office, Brian Warren, 310 S. Arthur Ashe Blvd., Richmond, VA 23220.

15. Defendant, Kentucky Delta Alumni and Volunteer Corporation of Sigma Phi Epsilon Fraternity, Inc. (hereinafter “SigEp Alumni”) is and at all relevant times was a non-profit corporation doing business in the Commonwealth of Kentucky with a primary office located at 343 Kempton Ln, Bowling Green, KY 42104. Personal service is obtained on Defendant SigEp Alumni pursuant to CR 4.04(5) by serving its Registered Agent and at its Registered Office, Andrew Cusick, President, at 343 Kempton Ln., Bowling Green, KY 42104.

16. Upon information and belief, Defendant [REDACTED] was at all relevant times a citizen and resident of the Commonwealth of Kentucky and was

██████████ Sigma Phi Epsilon Fraternity Incorporated. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant ██████████ at his address at SigEp.

17. Upon information and belief, Defendant ██████████ was at all relevant times a citizen and resident of the Commonwealth of Kentucky, and was ██████████ of Sigma Phi Epsilon Fraternity Incorporated. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant ██████████ at his address at SigEp.

18. Defendant SigEp, Defendant SigEp National, Defendant SigEp Alumni, Defendant ██████████ and Defendant ██████████ are at times collectively referred to as “SigEp Parties.”

19. Defendant, Trident Properties of Bowling Green, LLC (hereinafter “Trident Properties”) is a limited liability company owning property and doing business in the Commonwealth of Kentucky with a primary office located at 1101 College St., Bowling Green, KY 42101. Trident Properties was the owner of the Compound House which hosted the Crush Dance. Personal service is obtained pursuant to CR 4.04(5) by serving its Registered Agent at its Registered Office, Brett Reynolds, Organizer, at 1101 College St., Bowling Green, KY 42101.

20. Upon information and belief, Defendant Kevin Williams was at all relevant times a citizen and resident of the Commonwealth of Kentucky and co-owned property referred to by SigEp as “Yosemite” which hosted a “pre-party” as alleged herein. Personal service is obtained pursuant to CR 4.04(2) by serving

Defendant Kevin Williams at 2112 Center Point Rd., Tompkinsville, KY 42167.

21. Upon information and belief, Defendant Emily Williams was at all relevant times a citizen and resident of the Commonwealth of Kentucky and co-owned the Yosemite property. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant Emily Williams at 2112 Center Point Rd., Tompkinsville, KY 42167.

22. Upon information and belief, Defendant [REDACTED] was at all relevant times a citizen and resident of the Commonwealth of Kentucky. Defendant [REDACTED] was a SigEp member. Defendant [REDACTED] took Plaintiff to both SigEp parties alleged herein where, with the assistance of other SigEp members he forced her to consume large quantities of alcohol and then proceeded to rape and sodomize her. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant [REDACTED] at [REDACTED]

23. Upon information and belief, Defendant [REDACTED] was at all relevant times a citizen and resident of the Commonwealth of Kentucky. Defendant [REDACTED] was a SigEp member who actively participated in the events that occurred at Yosemite and the Compound House. Personal service is obtained pursuant to CR 4.04(2) by serving Defendant [REDACTED] at [REDACTED].

24. Defendant, Delta Gamma Chapter House Corporation of Kappa Delta Sorority, Inc. (hereinafter, "KD") is and at all relevant times was a sorority doing business in the Commonwealth of Kentucky with a primary office located at 1600 Chestnut Street, Bowling Green, KY 42101. Plaintiff was a member of KD prior to

and immediately following the events alleged herein. Personal service is obtained pursuant to CR 4.04(5) by serving its Registered Agent at its Registered Officer, Laura Shonk, President, at 336 Farmer Lane, Bowling Green, KY 42104.

25. Defendant, Kappa Delta Sorority, Inc. (hereinafter “KD National”) is and at all relevant times was a national sorority incorporated under the laws of the Commonwealth of Virginia with its primary office located at 3205 Players Ln., Memphis, TN 38125. The KD chapter in Bowling Green, KY is required to comply with KD National’s Bylaws and all policies and procedures. Personal service is obtained on Defendant KD National by serving the Secretary of State of this Commonwealth pursuant to KRS 454.210 and providing both the mailing addresses of KD National’s President, Patricia Spence at 2013 Park Ave. St. Louis, MO 63104 and KD’s Registered Agent at its Registered Office, Cogency Global Inc., 250 Browns Hill Ct., Midlothian, VA 23114.

26. Laura Shonk as KD’s WKU Chapter President and Krissy Taylor as KD’s WKU Chapter Treasurer acted as agents of KD. Both fueled a permissive culture that promoted misuse and abuse of excessive alcohol consumption and actively and purposefully ignored such abuses, allowing it to continue and effectively ratifying the behavior.

27. Defendant KD and Defendant KD National are at times collectively referred to as “KD Parties.”

VENUE

28. Venue is proper in this Court in that this is an action for injury to the

Plaintiff and the injury was done in Warren County. KRS 452.460.

SUBJECT MATTER JURISDICTION

29. This Court is a court of general jurisdiction with original jurisdiction of all justiciable causes not exclusively vested in some other court. KRS 23A.010.

30. The claims made herein arise solely under Kentucky common law and statutory law, including the common law of negligence, gross negligence, premises liability, battery, intentional infliction of emotional distress, civil conspiracy, negligent supervision, private rights of action for violations of statutes, and punitive damages. None of the claims made herein are based on federal claims.

31. This action is not removable to federal court for many reasons, including:

- a. There are no federal claims asserted. The claims arise exclusively under Kentucky law. Plaintiff does not assert any claim under federal law or regulation, and to the extent any claim or factual assertion herein may be construed as stating a federal claim, Plaintiff disavows that claim.
- b. There is not complete diversity of citizenship;
- c. This is not a class action; and
- d. This suit involves a local controversy vital to the well-being of Kentucky's citizens and the safety and security of their citizens at state-owned educational institutions.

32. Defendants are directly liable for their own actions and failures to act, and vicariously liable for the actions and failures to act of their servants, employees, agents and apparent or ostensible agents. Certain Defendants are also liable with other Defendants for acting in a joint enterprise, and/or civil conspiracy, and/or aiding and abetting the other.

33. As a direct and proximate result of the individual, joint and several

acts and omissions of Defendants, individually and through their own and other Defendant(s)' employees, agents, ostensible agents, and/or servants, ██████ endured, and will in the future endure, physical and mental pain and suffering, severe mental anguish, embarrassment, humiliation, depression, and loss of enjoyment of life. Further, it is reasonably anticipated that ██████ will incur medical expenses, lost wages, and a loss of her earning capacity.

34. The actions alleged in the preceding paragraphs were substantial factors, individually and together, in causing the damages alleged herein.

35. The amounts claimed herein are in excess of the minimum jurisdictional limits of this Court.

FACTS APPLICABLE TO ALL COUNTS

A. Forced Consumption of Alcohol and the Ensuing Rape and Sodomy.

36. ██████ attends WKU on a full academic scholarship. In the spring of 2021 when the subject events occurred she was ██████ years of age, a member of KD, living in the KD house and held several positions including ██████ ██████ for WKU's Panhellenic Council.

37. SigEp, a WKU fraternity, hosted a "Crush Dance" on February 6, 2021. SigEp members were required to have a date to attend the Crush Dance. Defendant ██████ set ██████ up with Defendant ██████ Defendant ██████ was a SigEp member. ██████ had no intentions of becoming intoxicated that evening.

38. ██████ and Defendant ██████ conversed through social media a few times before the dance and had not known one another previously. He began pressuring ██████ to drink before the Crush Dance.

39. On February 6, 2021, [REDACTED] her friend [REDACTED] Defendant [REDACTED] and Defendant [REDACTED] first went to a local Mexican restaurant where many SigEp members met for dinner ahead of the Crush Dance. Defendant [REDACTED] who was under the age of 21 ordered a drink. [REDACTED] did not order a drink and expressed a reluctance to drink much that evening after Defendant [REDACTED] poured part of his drink for her and [REDACTED].

40. The foursome went next to a SigEp house called Yosemite for a “pre-party.” Trays of alcohol were made available to attendees. [REDACTED] brought nonalcoholic sparkling ice with her. Defendant [REDACTED] poured shots of alcohol and insisted she drink them instead. [REDACTED] expressed resistance but felt forced to take several shots with him.

41. On February 6, 2021, Defendant [REDACTED] Defendant [REDACTED] and [REDACTED] were under twenty-one years old and, therefore, minors with respect to the consumption of alcohol (KRS 2.015 and KRS 530.070(1)(a)).

42. Defendant [REDACTED] then took [REDACTED] to SigEp’s Compound House in an effort to separate [REDACTED] and [REDACTED] and leave Defendant [REDACTED] alone with [REDACTED] at Yosemite.

43. Later, Defendant [REDACTED] took [REDACTED] to the Compound House for the Crush Dance. In agreeing to attend the Crush Dance, [REDACTED] had believed that it was an official fraternity event and that it would have the required sober monitors and security and other appropriate supervision. Neither monitors nor security nor supervision were present. None of the attendees were required to check in through a

guest list.

44. At the Compound House, Defendant [REDACTED] continued to insist that [REDACTED] take more shots of alcohol. Defendant [REDACTED] forced [REDACTED] by physical pressure to consume alcohol, literally pouring it down her throat.

45. Defendant [REDACTED] was present at the Crush Dance and, upon information and belief, promoted and encouraged the overconsumption of alcohol by [REDACTED] and the forced consumption of alcohol on [REDACTED]

46. Defendant [REDACTED] aggressively and persistently kissed [REDACTED] throughout the night. [REDACTED] was not known for exhibiting this type of behavior, and it indicates her level of increasing incapacity and lack of self-defense. Defendant [REDACTED] stated, "let me just slip one in" on multiple occasions.

47. As a result of her forced consumption of alcohol, [REDACTED] was mentally and physically [REDACTED] and could not appreciate potential dangers to herself.

48. [REDACTED] concerned by Defendant [REDACTED] behavior and [REDACTED] incapacitation, called a SigEp designated driver to take her and [REDACTED] back to [REDACTED] dormitory. [REDACTED] was too intoxicated to walk to the car without assistance.

49. Once in the car, Defendant [REDACTED] convinced [REDACTED] she was in the wrong car and took her out of the SigEp designated drivers' car while [REDACTED] was distracted collecting her belongings from inside the SigEp house.

50. These manipulative activities were available for public observation.

51. Defendant [REDACTED] took [REDACTED] to McCormack Hall, a WKU dormitory where Defendant [REDACTED] resided. [REDACTED] was visibly intoxicated (as shown by

McCormack Hall's video surveillance footage) and unsteady on her feet. The WKU Desk Assistant at McCormack Hall checked her in and allowed Defendant [REDACTED] to take [REDACTED] to his room.

52. [REDACTED] has flashes of memory of checking into McCormack Hall and of being Defendant [REDACTED] room thereafter. [REDACTED] remembers declining Defendant [REDACTED] sexual advances numerous times. Defendant [REDACTED] proceeded to rape [REDACTED] [REDACTED] remembers Defendant [REDACTED] degrading her. [REDACTED] remembers telling him he was hurting her, but he did not stop but instead went faster. [REDACTED] remembers the pain. [REDACTED] remembers being forced to perform oral sex on Defendant [REDACTED]

53. The following morning, [REDACTED] awoke naked and had urinated the bed. Defendant [REDACTED] again sexually assaulted [REDACTED] holding her head down and forcing her to perform oral sex and swallow his semen.

54. On February 8, 2021, [REDACTED] went to Medical Center in Bowling Green at 3:12 a.m. She had a full sexual assault assessment which established redness and a mild abrasion along with reports of soreness. As a result of Defendant [REDACTED] assault, [REDACTED] had to take Plan B and was tested for numerous STIs, which were reported ultimately as negative.

B. [REDACTED] Fell Victim to the Routine and Accepted Fraternity Practice of Using Alcohol to Facilitate Sexual Conquests.

(1) The SigEp Parties Promote Getting Women Drunk for the Benefit of Its Members.

55. Pursuant to SigEp National's Risk Management Policy, no chapter or member "can permit, encourage, coerce, glorify or participate in activities involving

rapid consumption of alcohol[.]” *Id.* at 2. Upon information and belief, this was the primary function and purpose of the Crush Dance.

56. Defendant SigEp National has a Risk Management Policy which applies to all SigEp “entities and all levels of SigEp Fraternity Membership.” *Id.* at 1. Defendant SigEp, including Defendant [REDACTED] and Defendant [REDACTED] through their actions and omissions, violated SigEp’s Risk Management Policy in the following ways:

- a. SigEp hosted the “Crush Dance” at its Compound House, where alcohol was present on the premises. *Id.* at Sec. 1.
- b. SigEp members and guests under 21 consumed alcohol at a SigEp event. *Id.* at Sec. 3.
- c. Bulk quantities of hard alcohol were available and not served by a licensed vendor at a SigEp event. *Id.* at Sec. 6.
- d. SigEp members permitted, encouraged, coerced, glorified, and participated in the rapid consumption of alcohol (*id.* at Sec. 12) as exemplified by Defendant [REDACTED] drinking to excess himself and serving [REDACTED] numerous shots of alcohol in a short timeframe.

57. Defendant SigEp, with the assistance of Defendant SigEp Alumni, Defendant [REDACTED] and Defendant [REDACTED] regularly threw parties that promoted the excessive consumption of alcohol. For instance, that same semester, Defendant SigEp hosted a “White Lies” party, attended by sorority members, including KD members, where individuals wear a white t-shirt that states a “white lie” applying to that night; one example is the white lie that “I will remember this.”

58. Defendant SigEp’s recruitment video, posted on social media, promotes carrying weapons, sexualizing women, smoking cigars, gambling, and partying with women in bikinis. This is all in direct contradiction to its claimed mission statement

that its purpose is to strengthen members' character.

59. Defendant SigEp National, Defendant SigEp Alumni and Defendant SigEp have primary goals of recruiting new members and raising money. Upon information and belief, Defendant SigEp National, Defendant SigEp Alumni and Defendant SigEp promote and encourage getting women drunk for sexual exploitation through word of mouth, social media promotion and in concert with sororities and the WKU Parties in the belief that such activities will promote that recruitment and fund raising.

(2) Defendant KD Supported and Shared Defendant SigEp's Mission to Be Able to Get Women Drunk at Events.

60. Defendant KD's Vision Statement claims it "provides experiences that build confidence in women [.]" Defendant KD "expects its members and chapters to 'strive for that which is honorable, beautiful and highest' at all times." KD National Handbook at 5. Defendant KD National expects its chapters to strive for "social responsibility and safety." *Id.* at 7.

61. Defendant KD purports to discourage "[b]ehavior that is incongruent with our values," stating that such behavior "may result in disciplinary action." *Id.* at 6.

62. Defendant KD National subjects chapters to penalties of any sort "it deems necessary." *Id.* at 29. Examples include forfeit of voting rights at the National Convention, placing the chapter on restricted status or levying sanctions. *Id.*

63. Defendant KD National has established requirements that chapter

officers should be role models who enforce KD policies.

64. Defendant KD, through both its 2020-2021 Housing Contract and its Membership Agreement, requires members to abide by all federal, state, and local laws, university regulations, and sorority policies, noting particularly the use of drugs and alcohol as potential violations: “The use or misuse of drugs or alcohol by any member in violation of this section will result in immediate disciplinary action.”

65. Since at least 1989, Defendant KD National and Defendant KD have been aware of the concerns surrounding “irresponsible use of beverage alcohol at Greek sponsored activities.” These Defendants “resolved” to educate their members on “inappropriate and dangerous behavior” as a result of the irresponsible use of alcohol, yet they failed to do so in practice. *See* KD Member Handbook at 77.

66. As part of its Risk Management Policy, Defendant KD purports to manage risk through proactive education. What is explicitly missing from this policy is any education on sexual assault.

67. Further, as part of KD’s Risk Management Policy, each chapter shall have a Risk Management Committee “is responsible for overseeing and monitoring all risk management activities and practices within the chapter.” *Id.* At 33. [REDACTED] was not aware of any such committee while she was a KD member. If such a committee did exist, it was not active with KD’s members.

68. Defendant KD has a Vice President of Standards. Part of that individual’s role is to “educate the chapter on risk management policies at the beginning of every term.” VP-S Manual at 5. This education was not provided to

members, including [REDACTED] at the start of each term.

69. KD Standards addressing excessive and underage drinking were not enforced as required by written materials promulgated by the KD Parties.

70. Defendant KD rarely implemented required policies and instead Defendant KD promoted and encouraged its members to regularly attend fraternity events with knowledge that those events revolved around excessive and illegal drinking of alcohol and sexualization of its members.

71. Shortly after moving into the KD house, [REDACTED] learned that KD members regularly brought alcohol into the House. It was common knowledge that excessive alcohol consumption was permitted by Defendant KD to occur in the KD house, despite the contractual prohibitions against it in the KD Member Agreement and Housing Contract. By allowing this behavior, Defendant KD undercut and minimized its so-called standards and exhibited tolerance and acceptance of excessive and illegal alcohol consumption.

72. KD President, Laura Shonk complained at an emergency KD Zoom meeting that she couldn't continue to turn a blind eye to illegal use of alcohol by KD members ("someone who is not in our circle has brought it to our attention that this is happening so now our hands are tied. I can't pretend I don't know about it because I do. I can't pretend it didn't happen because it did."). KD residents stated their intention to continue their use of alcohol in the KD House.

73. KD Treasurer, Krissy Taylor, disavowed any intention to enforce the articulated policies and standards of the KD Parties surrounding the known use

and abuse of alcohol in the KD House, stating with frustration that someone “apparently felt like someone was supposed to be over here watching you all. I’m a volunteer. I’m not a babysitter.”

74. KD House Director, Michael Ann Burris, was a paid employee of Defendant KD. Ms. Burris was in charge of making sure there was no alcohol or drugs in the house. Despite this charge, it was known by KD members that Ms. Burris used marijuana in her rooms in the KD House.

75. KD members were immediately immersed in KD’s culture of promoting excessive drinking of alcohol. For example, ██████ pledge class was invited to a KD-hosted party for someone turning 21. Older members were instructed to be sober and drive the new members. ██████ was told by the new member educator, the member who created and oversaw the program, that the party served the purpose of attracting new members to a drinking scene where they could “safely” determine who could handle their alcohol and who could not. One new member went to the emergency room due to drinking an excessive amount of alcohol, a not uncommon occurrence at KD parties.

76. Defendant KD was aware that KD members ostracized other KD members who refused to drink rather than supporting their decision.

77. When ██████ reported her sexual assault, a fellow KD member and KD officer referred to ██████ rape as a “lowkey” rape, and most members expressed agreement with that comment.

78. The lack of oversight and leadership by Defendant KD fueled a

permissive culture that recklessly ignored the illegal activity, misuse and abuse of alcohol and drugs by KD members.

79. Defendant KD National and Defendant KD make clear that recruitment and raising money are their primary goals despite the policies they write on paper. Upon information and belief, Defendant KD National and Defendant KD promote and encourage young women to be popular, attend fraternity parties and are part and parcel of the sexual exploitation of young women on the WKU campus.

(3) WKU Turns a Blind Eye to Excessive Alcohol Consumption at Its Fraternity Parties.

80. As part of its Common Data Set initiative, WKU reported 17,517 undergraduate and graduate students in Fall 2020.

81. Pursuant to a study of a midsized public university similar to WKU, a total of 29% of sorority women reported having been sexually assaulted while in college, four times the rate (7%) among non-sorority members. The WKU Police Department's Annual Campus Safety and Security Report for the calendar year 2020 acknowledges this by recognizing that "Sexual Assault Awareness" has become a "major topic" for the New Member Greek Symposium. *Id* at 26-27.

82. Despite the well-known statistics on sexual assaults on college campuses, particularly associated with Greek Life, WKU failed and continues to fail at taking steps to prevent sexual misconduct from occurring at its campus.

83. As stated in WKU's Greek Affairs 2020-2021 Annual Report, Greek Life had "faced negative PR and scrutiny from risk management incidents" and

sought to educate Greek undergraduates the following year on various topics, including “Consent/Title IX[.]”

84. The WKU Parties did not enforce training on sexual assault awareness or prevention before the sexual assault on ██████. Per WKU’s Title IX Coordinator, Deborah Wilkins, it was only after ██████ was sexually assaulted and spoke out that WKU implemented face-to-face training with its Greek Life “as punishment.”

85. WKU’s official policy prohibits the unlawful use of alcohol by its students on its property or as part of any of its activities. *See* WKU HRL Drug & Alcohol Policy. WKU official policy states that persons who violate this policy are subject to disciplinary action and referral to law enforcement agencies. *Id.* By these policies, WKU has established that it recognizes and assumes the duty to regulate and prevent such behavior for the safety of its students.

86. Upon information and belief, Defendant WKU, Defendant Caboni, Defendant Bogard, Defendant Pride, and Defendant Rash have not imposed any disciplinary action on Defendant SigEp for its actions related to ██████ rape or its official events at which illegal and excessive alcohol consumption occur.

87. Upon information and belief, Defendant WKU, Defendant Caboni, Defendant Bogard, Defendant Pride, and Defendant Rash have not imposed any disciplinary action on Defendant KD for its actions and inactions in protecting its members from sexual predation, sexual exploitation and the illegal use of alcohol.

88. The lack of oversight and leadership by the WKU Parties fueled a permissive culture that recklessly ignored the illegal activity and misuse and abuse

of alcohol and drugs as part of its Greek Life, creating a foreseeable risk of physical and emotional harm to students in the WKU community such as occurred to [REDACTED]

89. WKU is more interested in student recruitment and raising money than in enforcing its written policies to prevent illegal use of alcohol, preventing the sexual exploitation of women and the increased likelihood of sexual predation that accompanies the abuse of alcohol.

C. None of Defendants Supervised or Controlled the Activities That Resulted in [REDACTED] Rape and Sodomy.

90. The WKU Parties had the duty to exercise reasonable care to prevent harm to its students such as [REDACTED] by controlling the conduct of its fraternities and sororities such as SigEp and KD. This duty was voluntarily assumed and also arose out of the special relationship between the WKU Parties and WKU students such as [REDACTED]

91. The WKU Parties had the ability to control the conduct of the SigEp Parties, the KD Parties, and Defendant [REDACTED] in ways that would have restricted or prevented the ability of harm being caused to WKU students such as the harm [REDACTED] suffered at the hands of Defendant [REDACTED]

92. The SigEp Parties had the duty to exercise reasonable care to prevent harm to guests such as [REDACTED] at its events by controlling the conduct of its chapters and members. This duty was voluntarily assumed and also arose out of the special relationship between the SigEp Parties and WKU students such as [REDACTED]

93. The SigEp Parties had the ability to control the conduct of SigEp events and members, including Defendant [REDACTED] in ways that would have restricted

or prevented the ability of harm being caused to SigEp guests such as the harm [REDACTED] suffered at the hands of Defendant [REDACTED]

94. The KD Parties had the duty to exercise reasonable care to prevent harm to its members such as [REDACTED] arising out of the special relationship between the KD Parties and [REDACTED]. That duty includes the duty to warn its members of the dangers of excessive and illegal alcohol use, to model and encourage behaviors refraining from excessive and illegal use of alcohol and drugs, and to promote, support and encourage KD members to refrain from such activities.

95. The KD Parties instead, through their officers, employees and agents instead modeled tolerance and support of such behaviors both at the KD property, at KD events and in their personal behavior. The KD parties failed to meet their policies requiring training and warning to KD members about the risks associated with illegal and/or excessive use of alcohol and/or fraternity events. The KD parties had the ability to reduce the risk of events, and even eliminate the occurrence of those events such as happened to [REDACTED] had they met these duties, which they failed to do.

(1) The WKU Parties Had a Duty to Supervise WKU Fraternities But Failed to Fulfill that Duty.

96. Defendant WKU undertook to prevent harm to its students by controlling the conduct of its Greek life.

97. Defendant WKU undertook to protect its students as outlined and agreed to between students and Defendant WKU in its Code of Conduct because Defendant WKU recognizes it must regulate such behavior as addressed therein for

the safety of its students.

98. Defendant WKU, Defendant Caboni, Defendant Bogard, Defendant Pride, Defendant Rash, Defendant [REDACTED] and Defendant IFC undertook to protect WKU's students from abhorrent activities which occur at fraternity-led events.

99. Defendant WKU established, supervises and controls its IFC which is made up of fraternity members, elected by their peers, to govern WKU's fraternities, including SigEp.

100. Defendant WKU governs WKU Greek life organizations under its Policies and Guidelines Regarding Student Organization. "Registered student organizations may use campus facilities, provided the facilities are used for the purpose contracted, subject to regulations of the University." This document explicitly states that Defendant WKU has the duty to supervise Greek life: "The supervision of student organizations should rest with The Office of Student Activities and Organizations." It recognizes this duty in the following other ways:

- a. WKU Police Department's Annual Campus Safety and Security Report for calendar year 2020 identifies employees of Defendant WKU's HRL as "campus officials who have a significant responsibility for students and campus activities" in accordance with the Clery and Minger Acts. *Id.* at 49.
- b. Defendant WKU has formed and/or supported Defendant IFC which exists "to advance fraternity on campus and provide interfraternal leadership to the entire community." Defendant IFC website. Defendant IFC acts as a "governing body for WKU's 19 fraternities. The purpose of IFC is to foster cooperation among its members, provide services to the chapters, promote the fraternal system, enhance the relationship between its members and the University community, and to act as the judicial body for the actions of its members." *See* WKU Greek Book.

- c. Defendant WKU offers a New Member Greek Symposium in which attendees learn about campus resources to assist in their transition to Greek life. *See* WKU Campus Report at 26.
- d. Defendant WKU conducts a Greek Life Recruitment Orientation where WKU answers questions about its Greek Life.
- e. Defendant WKU recognizes that it handles fraternity recruitment, and “WKU prides itself for having a very organized Fraternity Recruitment.” *See* WKU Greek Affairs Website.
- f. Defendant WKU advertises and promotes its Greek life to prospective students. “One of the easiest ways to get involved at WKU is to explore our Greek community. WKU is an amazing campus and has so many academic and extracurricular opportunities. Our experience within the Greek community helps students adjust to university life, and we hope it will do the same for you.” *See* 2021 Greek Book at 1. “Your experience as a member of one of our fraternity or sorority chapters will provide a framework for achievement and strong personal development that may be applied to all aspects of your life.” *Id.*
- g. Defendant WKU regularly refers to sororities and fraternities as “our” men or women or “our” chapter.
- h. Defendant Andrew Rash coordinates fraternity recruitment in his capacity as a WKU employee. *See* Greek Book at 22.

101. Under its policy and Code of Conduct, Defendant WKU has the authority to find that Defendant Sig Ep violated several provisions of the policy and Code of Conduct including, but not limited to, underage drinking and misuse of alcohol, dishonesty, sexual misconduct/assault, violation of laws, and violation of general rules and regulations. Defendant WKU’s ability to control and supervise the activities of fraternities includes, but is not limited to, the following:

- a. Defendant WKU has the authority to revoke the fraternity’s status as a Registered Student Organization for a set number of months/semesters/years.
- b. Defendant WKU can require that all new members of all fraternities complete enhanced and expanded education before activities can be resumed; those activities include peer mentoring

and education, alcohol awareness education, and bystander intervention education and training.

- c. Defendant Charley Pride and Defendant Andrew Rash, as part of their WKU employee responsibilities, are charged with the patrol and supervision of the fraternity parties, and they regularly turn a blind eye to the excessive and underage drinking that occurs.
- d. Student organizations or individuals representing student organizations are subject to conduct outcome by Defendant WKU's Office of Student Conduct when found in violation of its provisions.
- e. Defendant WKU's official policy is that "[t]he university has a vested interest in student behavior as it pertains to alcohol use," and even violations of the alcohol code of conduct off-campus are "actionable by the university judicial process." HRL Wiki: Code of Student Conduct.

102. Greek life makes Defendant WKU appear attractive and safe to prospective students. The WKU Parties embrace and promote recruitment to Greek Life because it increases Defendant WKU's enrollment numbers. Greek housing also allows Defendant WKU the ability to admit more students and provides tremendous financial savings to WKU.

103. Defendant WKU, Defendant Caboni, Defendant Bogard, Defendant Pride, Defendant Rash, Defendant [REDACTED] and Defendant IFC failed to fulfill their duty to [REDACTED] to control the conduct of Defendant [REDACTED] to prevent harm coming to [REDACTED]. These failures by Defendant Caboni, Defendant Bogard, Defendant Pride, Defendant Rash, Defendant [REDACTED] and Defendant IFC were ministerial failures and not discretionary breaches of duty and were a substantial factor in the damages suffered by [REDACTED].

(2) The SigEp Parties Had a Duty to Supervise the Fraternity and Its Members But Failed to Fulfill that Duty.

104. Pursuant to Defendant SigEp National's Grand Chapter Bylaws, a

SigEp member is represented as man of good moral character. *See* Art. II Sec. 1.

105. Defendant SigEp National controlled its charters and charter members including Defendant SigEp in some of the following ways:

- a. Defendant SigEp National enrolled and accepted members and chapters and required them to act in conformity with SigEp National rules.
- b. Defendant SigEp and its fraternity members promoted the interests of SigEp National, which derived economic benefit from the acts of its fraternity members and SigEp.
- c. If a chapter member is alleged to have been involved in a sexual assault, he shall be suspended until a university, police, or legal investigation is completed. Grand Chapter Bylaws, Art. II Sec. 34.
- d. Defendant SigEp National may suspend a chapter. *Id.* at 41.
- e. Defendant SigEp may subject itself to charter action for many things, including “[d]isorderly conduct on the part of its members tending to bring the Fraternity into disrepute[.]” *Id.* at 39.

106. Effective August 1, 2020, Defendant SigEp National implemented a substance-free chapter facility policy. *See* SigEp Grand Chapter Bylaws at 73.

“Chapter facility” is widely “defined to include all facilities and grounds owned, operated, or leased by the chapter directly, by their host institution or their Alumni and Volunteer Corporation.” *Id.* at 73. This is because Defendant SigEp National recognizes it must regulate such behavior for the safety of its charters and members.

107. However, Defendant SigEp and Defendant SigEp National do not enforce these policies.

108. SigEp members are supposed to be required to utilize a guest list at any event where alcohol is present. Yet, [REDACTED] and [REDACTED] entered the Crush Dance without confirmation that they were on a guest list. *See* SigEp Risk Management

Policy at 2.

109. ██████ relied upon SigEp's advertising of a formal Crush Dance with rules and regulations. ██████ would not have participated had she known it was simply a party with excessive drinking.

110. Defendant SigEp Alumni serves the alumni and volunteers of Defendant SigEp and serves as a landlord for the undergraduate chapter, and provides advice and counsel to Defendant SigEp.

111. Defendant ██████ is Defendant SigEp's ██████ ██████. He is responsible for Defendant SigEp's events and programming.

112. Defendant SigEp, Defendant SigEp Alumni, Defendant SigEp National, Defendant ██████ and Defendant ██████ failed to fulfill their duty to ██████ to control the conduct of Defendant ██████ to prevent harm coming to ██████. These failures were a substantial factor in the damages suffered by ██████.

(3) The KD Parties Had a Duty to Protect and Educate and to Warn the KD members, including ██████ But Failed to Fulfill that Duty.

113. Pursuant to Defendant KD National's Bylaws, "[t]he object of Kappa Delta Sorority is the formation and perpetuation of good fellowship, friendship, and sisterly love among its members; the encouragement of literature and education; the promotion of social interest; and the furtherance of charitable and benevolent purposes." Art. II.

114. Defendant KD National controlled its chapters and chapter members, including Defendant KD in some of the following ways:

- a. Defendant KD National creates a Chapter Housing Committee to oversee all aspects of chapter housing. *Id.* at Art. VIII.
- b. Defendant KD National “may take disciplinary action according to the policies and procedures for discipline of chapters as published in the Member Handbook.” *Id.* at Art. X.
- c. Defendant KD National may place a chapter on probation. *Id.*
- d. Defendant KD National may remove a chapters’ privilege of voice and vote at the National Convention. *Id.*

115. As part of its Risk Management Policy, the KD Parties purport to provide education on risks to their members, and to recognize and educate on the role that irresponsible use of alcohol plays in inappropriate and dangerous behavior. Defendant KD National recognizes it must warn and educate on such behavior for the safety of its charters and members.

116. However, the KD Parties do not enforce these policies.

117. Defendant KD promotes and encourages its members to regularly attend fraternity events that encourage excessive drinking.

118. Defendant KD glorified excessive drinking and promoted the sexualization of its members.

119. Defendant KD leaders did not hide the fact that they knew these behaviors occurred and overtly chose not to enforce known KD policies.

120. Defendant KD National and Defendant KD, including its officers and agents such as Laura Shonk, Krissy Taylor, and Michael Ann Burris failed to fulfill their duty to ██████ to protect and educate her to prevent harm coming to ██████. These failures were a substantial factor in increasing the risk of the harm that in fact occurred to ██████ in failing to prevent that harm, and in the damages suffered

by [REDACTED]

(4) Defendant Kevin Williams, Defendant Emily Williams and Defendant Trident Properties Had a Duty to Protect the Safety of Invitees Upon Their Property But Failed to Fulfill that Duty.

121. At all relevant times, Defendant Kevin Williams and Defendant Emily Williams allowed Defendant SigEp to use the Yosemite property as a social location for SigEp members, including to enable them to “pre-party” at the location.

122. At all relevant times, Defendant Trident Properties allowed Defendant SigEp to use the Compound property as a social location for SigEp members, including to host events such as the Crush Dance.

123. Defendant Kevin Williams, Defendant Emily Williams and Defendant Trident Properties owed [REDACTED] a duty to provide for the welfare and safety of individuals such as [REDACTED] while on their premises.

124. Defendant Kevin Williams, Defendant Emily Williams and Defendant Trident Properties knew that their properties were being used to hold parties that included excessive consumption of alcohol which will impair an invitee’s attention rendering the invitee unable to protect himself or herself against well-known dangerous situations arising out of alcohol fueled parties.

125. Had Defendant Kevin Williams, Defendant Emily Williams and Defendant Trident Properties adequately supervised SigEp events as each Defendant could do, Defendant [REDACTED] would not have been able to force [REDACTED] to drink to the point of incapacitation and physical helplessness and the harm done to [REDACTED] would not have occurred.

D. Defendant WKU's Desk Assistant Permitted Defendant ██████ to Escort a Visibly Incapacitated ██████ to His Dormitory Room.

126. Defendant WKU, Defendant Caboni and Defendant Ellis had the established duty to provide WKU students with a safe and secure campus. Defendant WKU recognizes that “[e]ach student has the right to a campus environment characterized by safety and order.” See WKU PD Report at 20. This included providing each residence hall with 24 hour a day security. *Id.* at 21.

127. Pursuant to WKU's Handbook for Residence Living (“HRL”) in the Influence-Drugs & Alcohol policy, a residence hall Desk Assistant *must* ask any individual who walks into the building under the influence of alcohol to wait in the lobby while the Desk Assistant contacts the Resident Assistant On-Duty. “Desk/Night Clerks should not check-in guests that are under the influences of drugs or alcohol.” *Id.*

128. Instead of asking ██████ who was visibly intoxicated (see KYIBR Report: Narrative for Incident No. 21-00043 at 4), to wait in the lobby pursuant to its policy, the Desk Assistant checked ██████ into the residence hall and allowed Defendant ██████ to take her to his room.

129. A primary responsibility of the Desk Assistant is to act as a security monitor. See WKU HRL Desk Manual at 2. Their tasks are to serve as security for the building and to enforce and uphold WKU policies. See WKU 2021-2022 Desk Manual at 3.

130. The appearance of a Desk Assistant and a check-in process creates an expectation among students that the dormitories are safe.

131. Defendant WKU, Defendant Caboni and Defendant Ellis are responsible for the breaches of duty by the Desk Assistant, a failure to adequately train on and enforce its Residence Hall policy and procedures. These breaches of duty were each substantial factors in the harm done to [REDACTED] by Defendant [REDACTED]

E. The Acts and Omissions of Defendants have Severely Harmed [REDACTED]

132. As a result of events alleged herein, [REDACTED] has suffered emotional distress and other injuries from her rape and sodomy.

133. [REDACTED] has seen a decline in her academic performance. [REDACTED] had numerous incompletes during the semester of her assault which is hard for her to accept because she has always excelled in school. She now has trouble focusing on her schoolwork because it takes her back to that day.

134. [REDACTED] faced a heavy burden in confronting SigEp and the authorities about the sexual assault. She was motivated to protect other women from enduring the same experience.

135. [REDACTED] continues to experience nightmares and moments of stress and anxiety surrounding the sexual assault and waking up in Defendant [REDACTED] dorm room.

136. [REDACTED] has been damaged by ridicule and ostracism after the rape. She was shunned by sorority sisters at KD and labeled a “buzz kill.” Her car has been keyed. Her tires have been vandalized.

137. [REDACTED] feels helpless and scared that others will endure what she endured because nothing is being done. This is exemplified in the following ways:

- a. The ER SANE exam forensics nurse at Medical Center in Bowling Green stated that she sees these kinds of attacks coming from WKU weekly.
- b. The WKU Police Department's investigation minimized [REDACTED] allegations.
- c. The Assistant Commonwealth Attorney said he believes [REDACTED] allegations and affirmed that "this happens every week" yet he has declined to pursue criminal charges. This feeds [REDACTED] perception that sexual violence is minimized, or subconsciously blamed on the victim.
- d. [REDACTED] is aware of at least three other instances where a SigEp member sexually assaulted someone.
- e. Within weeks of her assault, at least one other individual was placed in the nearly identical dangerous situation as [REDACTED]

138. On June 3, 2021, [REDACTED] resigned from KD. She also resigned from her position as [REDACTED], stating that she "could not recruit young women into a system that is currently perpetuating rape culture[.]"

F. The WKU Parties, the SigEp Parties and the KD Parties Are Engaged in a Joint Venture

139. The WKU Parties, the SigEp Parties and the KD Parties had an agreement, express or implied, to entice potential students to enroll at WKU and Greek Life by promoting a lifestyle of excessive alcohol consumption and promiscuity.

140. The recruitment of a maximized number of WKU students and Greek Life members was a common purpose shared by the WKU Parties, the SigEp Parties and the KD Parties.

141. The WKU Parties, the SigEp Parties and the KD Parties had a shared community of pecuniary interest of mutual benefit to all by enticing potential

students to enroll at WKU and in SigEp and KD.

142. The WKU Parties, the SigEp Parties and the KD Parties had the same ability to recruit potential WKU students and Greek Life members, and therefore had an equal right of control.

143. The WKU Parties, the SigEp Parties and the KD Parties were engaged in a common enterprise of recruitment for increased numbers, through which they all promoted a “party” lifestyle (well-known to WKU) using a combination of money, efforts, skill or knowledge, and subject to their joint control, so that all the parties could profit financially thereby.

G. None of the WKU Parties are Entitled to Immunity

144. The WKU Parties owed Plaintiff duties under the law as articulated herein, to supervise and control WKU fraternities and sororities.

145. The WKU Parties owed Plaintiff duties under the law as articulated herein, to provide WKU students with a safe and secure campus.

146. The ministerial acts negligently performed by the individual Defendants were clear and direct requirements of behavior established by policy, procedure and written standards or guidelines.

147. Defendant WKU, Defendant Caboni, Defendant Bogard, Defendant Pride, Defendant Rash, Defendant [REDACTED] and Defendant IFC performed the ministerial acts associated with supervising WKU fraternities in a negligent manner.

148. Defendant WKU, Defendant Caboni, and Defendant Ellis, performed

the ministerial acts associated with providing students a safe and secure campus in a negligent manner.

149. Defendant WKU, Defendant Caboni, Defendant Bogard, Defendant Pride, Defendant Rash, Defendant [REDACTED] and Defendant IFC are afforded no immunity from tort liability for their negligent performance of ministerial acts.

COUNT I – NEGLIGENCE AND GROSS NEGLIGENCE CLAIMS
AGAINST WKU PARTIES AND SIGEP PARTIES

150. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

151. The WKU Parties and the SigEp Parties owed [REDACTED] a duty to exercise reasonable care to prevent harm by controlling Defendant [REDACTED] conduct. WKU Parties and the SigEp Parties further owed [REDACTED] a duty to exercise reasonable care not to increase a risk of harm.

152. [REDACTED] relied upon the WKU Parties and the SigEp parties to exercise reasonable care to supervise and control fraternity events such as the Crush Dance.

153. The duty to control SigEp activities and Defendant [REDACTED] activities including unsupervised use of alcohol and actions such as those exhibited by Defendant [REDACTED] arise from the inextricably intertwined relationship between WKU, including its IFC, and its fraternities and the relationship between the SigEp Parties.

154. The duty also arises from the special relationship between WKU and [REDACTED] its student, and an attendant promise to take steps to keep her safe when she was attending events hosted by WKU-endorsed organizations.

155. Defendants breached that duty.

156. Defendants' negligence and gross negligence were a substantial factor in causing damages and injuries to Plaintiff.

157. Defendants are liable to Plaintiff for all damages alleged herein.

COUNT II – NEGLIGENCE AND GROSS NEGLIGENCE
CLAIMS FOR DUTY TO WARN AGAINST WKU PARTIES,
DEFENDANT ELLIS, AND KD PARTIES

158. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

159. The WKU Parties, Defendant Ellis and the KD Parties had the duty to warn WKU students, including ██████ of the dangers of sexual predators, sexual exploitation, forced alcohol consumption and other security risks well-known to Defendants.

160. Defendant KD National and Defendant KD owed ██████ a duty of reasonable care to ensure her and other KD members' safety and to protect them from risk of harm from known dangers.

161. Defendants promulgated rules and policies to protect the safety and welfare of its students and members, and with which it required compliance.

162. The WKU Parties breached their duty, failed to warn, failed to provide training, and failed to enforce WKU's own policies and procedures and allowed Defendant ██████ to take ██████ to his dormitory room despite her obvious incapacitation and helplessness.

163. The KD Parties, through its officers, servants, employees and agents,

breached this duty, failed to warn, failed to provide training, and instead at times encouraged members to engage in dangerous activities, such as attending fraternity events with known overconsumption of alcohol, and also promoting sexual exploitation.

164. The breaches of duty set forth herein were each substantial factors in causing damages and injuries to Plaintiff.

165. Defendants are liable to Plaintiff for all damages alleged herein.

COUNT III – NEGLIGENCE AND GROSS NEGLIGENCE
CLAIMS FOR DUTY TO PROVIDE SECURITY AGAINST
DEFENDANT WKU, DEFENDANT CABONI, AND DEFENDANT
ELLIS

166. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

167. Defendants had the duty to properly supervise and train employees in WKU Residence Halls to provide WKU students with a safe and secure environment and to ensure compliance with all applicable statutes, laws, regulations, and institutional policies.

168. Defendants breached their duty by actions and failures to act to enforce WKU's own policies and procedures and allowing Defendant ██████ to take ██████ to his dormitory room despite her obvious incapacitation and helplessness.

169. This breach of duty by Defendants was a substantial factor in causing damages and injuries to Plaintiff.

170. Defendants are liable to Plaintiff for all damages alleged herein.

**COUNT IV – NEGLIGENCE AND GROSS NEGLIGENCE
CLAIMS FOR DUTY TO PROTECT THE PHYSICALLY
HELPLESS AGAINST DEFENDANT WKU, DEFENDANT
CABONI, AND DEFENDANT ELLIS**

171. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

172. Defendant WKU, Defendant Caboni and Defendant Ellis had the duty to exercise reasonable care to secure the safety of invitees and of their students in accordance with WKU's established safety policies and procedures to protect WKU students and invitees who enter their premises. These Defendants owe the additional duty to protect persons on WKU premises who are physically or mentally incapacitated and unable to protect themselves.

173. Defendants breached their duty by actions and failures to act to enforce WKU's own policies and procedures and allowing Defendant [REDACTED] to take [REDACTED] to his dormitory room despite her obvious incapacitation and helplessness.

174. As set forth herein, this breach of duty by Defendants was a substantial factor in causing damages and injuries to Plaintiff.

175. Defendants are liable to Plaintiff for all damages alleged herein.

**COUNT V – PREMISES LIABILITY CLAIM AGAINST
DEFENDANT KEVIN WILLIAMS, DEFENDANT EMILY
WILLIAMS, AND DEFENDANT TRIDENT PROPERTIES**

176. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

177. Defendant Kevin Williams and Defendant Emily Williams owned Yosemite and were in control of its premises.

178. Defendant Trident Properties owned the Compound and were in control of its premises.

179. [REDACTED] was an invitee at each property, as a result of which Defendants owed her a duty to warn against or eliminate all unreasonable risks of danger.

180. Defendants knew or should have known of the activities that took place on the premises owned and controlled by them, where alcohol was routinely used illegally and to excess, resulting in the likelihood of sexual exploitation and sexual abuse.

181. This breach of duty by Defendants was a substantial factor in causing damages and injuries to Plaintiff.

182. Defendants are liable to Plaintiff for all damages alleged herein.

COUNT VI – BATTERY, INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS, AND *PER SE* NEGLIGENCE OF STATUTORY VIOLATIONS AGAINST DEFENDANT [REDACTED]

183. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

184. Defendant [REDACTED] subjected [REDACTED] to unwanted, violent and harmful physical contact to which she did not consent.

185. Defendant [REDACTED] subjected [REDACTED] to sexual intercourse by forcible compulsion when she was physically helpless.

186. Defendant [REDACTED] subjected [REDACTED] to deviant sexual activities by forcible compulsion when she was physically helpless.

187. At all times that [REDACTED] was subjected to these activities, she was

incapable of consent.

188. These actions constitute a battery.

189. Defendant [REDACTED] is liable for all consequences reasonably flowing from a battery as suffered by [REDACTED] and alleged herein.

190. Defendant [REDACTED] forced [REDACTED] to consume excessive amounts of alcohol against her will.

191. Defendant [REDACTED] actions were outrageous, intentional, and intolerable and offend the generally accepted standards of decency and morality and were intentional, and caused and would have been expected to cause severe emotional distress.

192. Defendant [REDACTED] is liable for the intentional infliction of emotional distress.

193. KRS 446.070 creates a private right of action in [REDACTED] for damages she sustained due to Defendant [REDACTED] violation of any statute that is penal in nature and provides no civil remedy when she is within the class of persons the statute is intended protect.

194. [REDACTED] has a private right of action against Defendant [REDACTED] for his violation of the penal statute KRS 510.040, punishing rape in the first degree, for which there is no civil remedy and for which [REDACTED] is in the class of persons the statute is designed to protect. Defendant [REDACTED] violation of that statute is negligence *per se*.

195. [REDACTED] has a private right of action against Defendant [REDACTED] for his

violation of the penal statute KRS 510.070, punishing sodomy in the first degree, for which there is no civil remedy and for which [REDACTED] is in the class of persons the statute is designed to protect. Defendant [REDACTED] violation of that statute is negligence *per se*.

196. [REDACTED] has a private right of action against Defendant [REDACTED] for his violation of the penal statute KRS 510.110, punishing sexual abuse in the first degree, for which there is no civil remedy and for which [REDACTED] is in the class of persons the statute is designed to protect. Defendant [REDACTED] violation of that statute is negligence *per se*.

197. Defendant [REDACTED] knowingly procured and forced [REDACTED] to drink multiple alcoholic beverages, knowing she was under the legal drinking age of twenty-one.

198. [REDACTED] has a private right of action against Defendant [REDACTED] for his violation of the penal statute KRS 530.070(1)(a), punishing unlawful transactions with a minor in the third degree, for which there is no civil remedy and for which [REDACTED] is in the class of persons the statute is designed to protect. Defendant [REDACTED] violation of that statute is negligence *per se*.

199. The actions and failures to act alleged in this COUNT VI were each a substantial factor in causing damages and injuries to Plaintiff.

200. Defendant [REDACTED] is liable to Plaintiff for all damages alleged herein.

**COUNT VII – NEGLIGENT FAILURE TO COMPLY WITH
STATUTORY LAWS AND *PER SE* NEGLIGENCE OF
STATUTORY VIOLATIONS AGAINST SIGEP PARTIES AND
DEFENDANT ██████████**

201. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

202. Defendant SigEp National chartered, established, aided, assisted, directed, controlled, sponsored, sanctioned, promoted, advised, trained, and insured the activities of Defendant SigEp.

203. Defendant SigEp Alumni serves the undergraduate chapters by ensuring the long-term growth and success of the chapter. Its duties include to mentor undergraduates, shape recruitment, manage assets and maintain corporate health.

204. The SigEp Parties had an independent duty to comply with the law regarding underage drinking and sexual abuse and to supervise its chapter and members.

205. The SigEp Parties were aware of the need to manage, oversee, and prohibit the use of excessive alcohol and the use of any alcohol by minors at SigEp events.

206. The SigEp Parties negligently managed and/or failed to manage the service and consumption of alcohol at SigEp sponsored events.

207. Defendant SigEp and SigEp Alumni, by and through their actual or apparent agents, servants, members, and/or employees, including Defendant ██████████ and Defendant ██████████ planned, supervised, organized, orchestrated, facilitated, and

otherwise participated in the Crush Dance of February 6, 2021.

208. Defendant SigEp, by and through its actual or apparent agents, servants, members, and/or employees, including Defendant [REDACTED] Defendant [REDACTED] Defendant [REDACTED] and Defendant [REDACTED] acted to get women, including [REDACTED] intoxicated to the point of incapacitation despite having actual or constructive knowledge that she and others were under the age of 21 years.

209. Defendant SigEp National, Defendant SigEp Alumni and Defendant SigEp and their agents, servants, members, and/or employees violated KRS 530.070(1)(a).

210. KRS 446.070 creates a private right of action in [REDACTED] for damages she sustained due to violation of any statute that is penal in nature and provides no civil remedy when she is within the class of persons the statute is intended protect.

211. [REDACTED] has a private right of action against the SigEp Parties and Defendant [REDACTED] for violation of the penal statute KRS 530.070(1)(a), punishing unlawful transactions with a minor in the third degree, for which there is no civil remedy and for which [REDACTED] is in the class of persons the statute is designed to protect. Defendants' violation of this statute is negligence *per se*.

212. The actions and failures to act alleged in this COUNT VII were each a substantial factor in causing damages and injuries to Plaintiff.

213. Defendants are liable to Plaintiff for all damages alleged herein.

**COUNT VIII – JOINT LIABILITY BASED ON JOINT VENTURE,
AIDING AND ABETTING, COMPLICIT *PER SE* LIABILITY
UNDER PRIVATE RIGHT OF ACTION, AND CIVIL
CONSPIRACY CLAIMS AGAINST THE WKU PARTIES, THE
SIGEP PARTIES, THE KD PARTIES, DEFENDANT TRIDENT
PROPERTIES, DEFENDANT KEVIN WILLIAMS, DEFENDANT
EMILY WILLIAMS, DEFENDANT [REDACTED] AND DEFENDANT
[REDACTED]**

214. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

215. The WKU Parties, the SigEp Parties and the KD Parties were engaged in a joint venture and hence are vicariously liable for the negligence of each other and of their servants, employees, agents and apparent or ostensible agents.

216. Defendants named in this COUNT VIII had a duty of reasonable care not to place individuals in a harmful situation.

217. Defendants permitted, assisted, caused, induced, aided, abetted, promoted, and encouraged the overconsumption of alcohol by women and minors.

218. Defendants permitted, assisted, caused, induced, aided, abetted, promoted, and encouraged events that brought women to fraternities for the purpose of rendering them incapacitated for sexual predation.

219. Defendant SigEp and Defendant [REDACTED] and Defendant [REDACTED] with the common purpose to excessively serve alcohol to women for sexual predation, committed one or more of the following overt acts:

- a. Planning the Crush Dance;
- b. Purchasing or otherwise acquiring alcohol;
- c. Approving, ratifying or voting to host the Crush Dance;

- d. Instructing, directing, or otherwise requiring SigEp members to have a female “date” to gain entrance to the Crush Dance; and
- e. Causing or forcing or facilitating persons under the age of 21 to drink alcohol.

220. By facilitating underage alcohol consumption and sexual assault, the SigEp Parties, Defendant [REDACTED] and Defendant [REDACTED] violated KRS 530.070(1)(a) and are complicit with one another under the principles of KRS 502.020. Further, [REDACTED] has a private right of action against Defendants for the violation of this penal statute for which there is no civil remedy and for which [REDACTED] is in the class of persons the statute is designed to protect. Defendants’ complicity in the violation of that statute is negligence *per se*.

221. Defendants’ complicity with Defendant [REDACTED] is a basis for joint liability with Defendant [REDACTED] for the claims against him in COUNT VI.

222. Defendants’ complicity with Defendant SigEp, Defendant [REDACTED] and Defendant [REDACTED] is a basis for joint liability with said Defendants for the claims against them in COUNT VII.

223. Defendants’ actions as alleged herein constitute aider and abettor liability for the negligence of each other and of their servants, employees, agents and apparent or ostensible agents.

224. Defendants’ actions as alleged herein constitute civil conspiracy liability for actions and failures to act of each other and of their servants, employees, agents and apparent or ostensible agents.

225. The actions and failures to act alleged in this COUNT VIII were each a substantial factor in causing damages and injuries to Plaintiff.

226. Defendants are liable to Plaintiff for all damages alleged herein.

**COUNT IX – BREACH OF CONTRACT CLAIM AGAINST THE
WKU PARTIES AND DEFENDANT KD**

227. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

228. At all relevant times, the WKU Parties promulgated multiple contractual commitments regarding the required conduct of students at WKU, on and off campus, and regarding the required conduct of Greek Life organizations, both on and off campus, and WKU's corresponding obligations.

229. At all relevant times, [REDACTED] was a member of KD and paid membership dues. Defendant KD promulgated multiple contractual commitments regarding the required conduct of Defendant KD and members of KD.

230. An express contract or, alternatively, a contract implied in law or in fact was formed between the WKU Parties on the one hand and [REDACTED] and also between Defendant KD and [REDACTED]

231. The WKU Parties and Defendant KD had contractual duties and obligations to [REDACTED]

232. The acts and omissions of Defendant KD set forth herein, including, but not limited to, the failure to enforce represented codes of conduct, standards, policies and procedures and the like, constitute breaches of contract by these Defendants.

233. Defendants are liable to Plaintiff for all damages, direct and consequential, arising from said breaches.

**COUNT X – PUNITIVE DAMAGES CLAIM AGAINST ALL
DEFENDANTS**

234. Plaintiff adopts, reiterates, and incorporates by reference all of the allegations contained elsewhere in this Complaint.

235. All Defendants are liable to [REDACTED] for punitive damages as a result of their individual and joint willful and wanton conduct and gross negligence, including, but not limited to, the actions and omissions set forth herein, all of which evidence oppression, malice, and the reckless disregard for the safety of persons such as [REDACTED]

236. All Defendants are liable for punitive damages attributable to their direct liability as well as their liability based on the acts and omissions of their respective employees, servants, agents, and/or ostensible agents.

237. The heightened standard of proof for punitive damages as required by KRS 411.184(2) is unconstitutional and should be determined to be null and void.

238. The restrictions on recovery of punitive damages against a principal or employee for the conduct of an employee, servant, agent, and/or ostensible agent as set forth in KRS 411.184(3) are unconstitutional and should be determined to be null and void.

239. In the alternative, all Defendants authorized, ratified, and/or should have anticipated the acts and omissions of their respective employees, servants, agents, and/or ostensible agents as set forth herein.

WHEREFORE, Plaintiff, [REDACTED] demands judgment against Defendants, Western Kentucky University, Timothy Caboni, Randall

Bogard, Minnette Ellis, Charley Pride, Andrew Rash, WKU Interfraternity Council, [REDACTED] Sigma Phi Epsilon Fraternity Incorporated, Sigma Phi Epsilon Fraternity, Kentucky Delta Alumni and Volunteer Corporation of Sigma Phi Epsilon Fraternity, Inc., [REDACTED] [REDACTED] Trident Properties of Bowling Green, LLC, Kevin Williams, Emily Williams, [REDACTED] [REDACTED] Delta Gamma Chapter House Corporation of Kappa Delta Sorority, Inc., and Kappa Delta Sorority, Incorporated, jointly and severally, in her favor in such sums as will fairly and fully compensate her for the physical, emotional, and mental pain and suffering, emotional distress, and mental anguish that she suffered and for her loss of enjoyment of life; for her future lost wages and the destruction of her power to labor and earn money and to perform household services; for punitive damages; for Plaintiff's attorney fees, expenses, and costs herein expended; for a trial by jury on all issues so triable; for pre-judgment interest from February 7, 2021, until the date of any judgments rendered herein and thereafter for post-judgment interest until the date any judgments rendered herein are fully paid, all at the statutory rate and compounded annually; and for all other relief to which Plaintiff may be entitled.

/s/ Ann B. Oldfather

Ann B. Oldfather (KBA 52553)

Nicole A. Bush (KBA 97866)

OLDFATHER LAW FIRM

1330 South Third Street

Louisville, Kentucky 40208

Voice: 502.637.7200 / Fax: 502.636.0066

aoldfather@oldfather.com

nbush@oldfather.com

Counsel for Plaintiff, [REDACTED] [REDACTED]

SERVICE ON ATTORNEY GENERAL

The above signature certifies that, in accordance with Civil Rule 24.03, service has been made as follows due to the challenge herein to the constitutionality of KRS 411.184, 411.184(2) and 411.184(3):

TO: Hon. Daniel Cameron
Office of the Attorney General
700 Capitol Avenue, Suite 118
Frankfort, Kentucky 40601-3449