

MICHAEL K. JEANES
Clerk of the Superior Court
By Kristy Kee, Deputy
Date 01/29/2010 Time 16:44:36

Description	Amount
CASE# CV2010-003000	
CIVIL NEW COMPLAINT	301.00
TOTAL AMOUNT	301.00

Receipt# 20319656

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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA
IN AND FOR THE COUNTY OF MARICOPA

Greyson Pendry,

Plaintiff,

v.

State of Arizona; Arizona State Board of Regents; Arizona State University; LAX Devils Lacrosse Club, Inc., an Arizona nonprofit corporation a/k/a ASU Men's Lacrosse Club; Mike Duffy and Jane Doe Duffy, husband and wife; Chris Malone and Jane Doe Malone, husband and wife; Ben Zils and Jane Doe Zils, husband and wife; John Does I-X; Jane Does I-X;

Defendants.

Case No. CV 2010-003000
COMPLAINT

Plaintiff Greyson Pendry, a single man ("Plaintiff" or "Pendry"), for his complaint against defendants the State of Arizona ("State"), the Arizona State Board of Regents ("ABOR"), Arizona State University ("ASU"), LAX Devils Lacrosse Club, Inc., an Arizona nonprofit corporation a/k/a ASU Men's Lacrosse Club ("the Club"); Mike Duffy ("Duffy") and Jane Doe Duffy, husband and wife; Chris Malone ("Coach Malone") and Jane Doe Malone, husband and wife; Ben Zils ("Zils") and Jane Doe Zils, husband and wife; John Does I-X and Jane Does I-X, alleges as follows:

1. Pendry is a citizen and resident of Tennessee. At the time of the relevant events described in this complaint, he was a student enrolled at ASU, and a member of the Club during the 2008-2009 school year.

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2. Defendant the State of Arizona is a body politic.

3. Defendant Arizona State Board of Regents is a subdivision of the State of Arizona, which is responsible for the State's public universities.

4. Defendant Arizona State University is a public university that provides academic instruction beyond the 12th grade and offers a combination of baccalaureate, master's and doctoral degrees to its students. ASU is supervised by ABOR. ABOR is liable for the conduct of ASU officials and employees occurring within the course and scope of their employment by the University.

5. Defendant LAX Devils Lacrosse Club, Inc., is an Arizona nonprofit corporation also known as the ASU Men's Lacrosse Club. The Club is a student organization recognized by ASU, and subject to regulation and oversight by ASU and ABOR. The club is an athletic team, association, club, or similar group affiliated with ASU, whose membership consists primarily of students enrolled at ASU.

6. The Club is an officially recognized student organization at ASU, subject to ASU's supervision and regulation. ASU provides sport clubs such as the Club with dedicated administrative assistance and some financial assistance through ASU's Department of Campus Recreation. In addition to these services, ASU employs two full-time employees, student office staff and supervisors to help facilitate the club sport programs that are affiliated with ASU, including the Club. ASU provides club sports, such as the Club, with advantages and privileges such as advisement, facility space, funding, storage space, fundraising opportunities, copies, posters, newsletters, team challenge opportunities and discounts in the official ASU student newspaper. ASU also provided the Club with a staff advisor who was to monitor the activities of the Club to assure that the Club was complying with ASU's policies and procedures, including policies regarding hazing and alcohol.

7. Upon information and belief, defendants Mike Duffy and Jane Doe Duffy are husband and wife, and are citizens of Arizona, and all actions taken by Duffy were

1 taken for and on behalf of his marital community with Jane Doe Duffy. The true name
2 of Jane Doe Duffy is not known at this time. Duffy was a member of the Club during
3 the 2008-2009 school year.

4 8. Upon information and belief, defendants Chris Malone and Jane Doe
5 Duffy are husband and wife, and are citizens of Arizona, and all actions taken by Coach
6 Malone were taken for and on behalf of his marital community with Jane Doe Malone.
7 The true name of Jane Doe Malone is not known at this time. Malone was the coach of
8 the Club during the 2008-2009 school year.

9 9. Upon information and belief, defendants Ben Zils and Jane Doe Zils are
10 husband and wife, and are citizens of Arizona, and all actions taken by Zils were taken
11 for and on behalf of his marital community with Jane Doe Zils. The true name of Jane
12 Doe Zils is not known at this time. Zils was the president and captain of the Club during
13 the 2008-2009 school year. Upon information and belief, Zils participated in and/or had
14 knowledge amounting to acquiescence of the Club's activities alleged herein, and was
15 guilty of negligence in the management and supervision of the Club's affairs, causing or
16 contributing to Plaintiff's injuries. As the president of the Club, Zils was required to
17 monitor the activities of the Club to ensure compliance to the policies and procedures
18 promulgated by ASU governing club sports, including policies relating to alcohol use
19 and hazing. As an officer of a recognized ASU club sport, Zils was required to enforce
20 ASU's policies with club members, participants, and coaches/instructors. He was also
21 required to report all safety concerns, issues and incidents to ASU's club sports staff in
22 a timely manner.

23 10. Defendants John Does I-X and Jane Does I-X are unknown persons who
24 are liable for the injuries suffered by Plaintiffs.

25 11. Defendants caused events to occur in Maricopa County, Arizona out of
26 which this litigation arises.

27 12. Plaintiff seeks damages in excess of the jurisdictional minimum of this
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1 Court.

2 **FACTUAL BACKGROUND OF CLAIMS**

3 13. On January 31, 2009, the Club held its annual "Rookie Night" party ("the
4 Party") at an off campus house ("the House") owned by John Doe I and Jane Doe I
5 ("the Property Owners").

6 14. Upon information and belief, John Does II - IV were tenants of the
7 House, and possessed and controlled the House at the time of the Party.

8 15. All first year members of the Club (i.e. "Rookies") were informed that
9 they were expected to attend the Party, and that if they did not attend, they would
10 basically be forced to quit the Club.

11 16. The Rookie Night party was an annual tradition of the Club.

12 17. Coach Malone and the other members of the Club's coaching staff were
13 aware of when the Party was scheduled. Upon information and belief, Coach Malone
14 and other members of the Club's coaching staff knew that the Party was an annual
15 tradition, and knew what typically occurred at this annual event.

16 18. Whenever members of the Club discussed the Party with Coach Malone
17 and the other members of the coaching staff, they responded that they did not want to
18 hear about the Party.

19 19. The Saturday before the Party, Coach Malone acknowledged to Plaintiff
20 and the rest of the members of the Club that he was aware that the Party was coming up,
21 and that there would be excessive drinking at the Party. Coach Malone did not
22 discourage the members of the Club from hosting or attending the Party, and simply
23 told the team to take care of their bodies, and be sure they would be ready for their
24 game the following week.

25 20. Upon information and belief, Coach Malone and other members of the
26 Club's coaching staff knew, or reasonably should have known, that the Rookie Night
27 party would involve underage drinking, and hazing of the Rookies, but did nothing to
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1 stop the Rookie Night party.

2 21. Plaintiff and other Rookies were picked up from on-campus dormitories at
3 ASU by defendant Zils, and hauled to the Party in the back of a pickup. Before the
4 Rookies entered the pickup, Zils and another member of the Club took all of the
5 Rookies keys, wallets and cell phones, allegedly for safekeeping.

6 22. Upon arrival at the party, the Rookies were all bound to other Rookies
7 with duct tape, and upperclassmen members of the Club then drew on all of the Rookies
8 with markers, including writing offensive phrases such as "bitch tits" (an apparent
9 reference to his muscular chest) on Plaintiff's forehead.

10 23. The Rookies were then ordered to drink cups full of some mystery liquid
11 that looked like beer, but tasted like hard liquor and hot sauce.

12 24. The upperclassmen next ordered the Rookies into the garage at the House,
13 and told the Rookies that they had to drink a five gallon water cooler full of beer, plus
14 an additional 30 pack of canned beer within 30 minutes, or "it would get worse."

15 25. After the drinking in the garage was completed, the upperclassmen used
16 markers to write and draw on the Rookies again. They then ordered the Rookies to strip
17 to their underwear, and to put on adult diapers.

18 26. The Rookies were next led into the main room of the House, and ordered
19 to play a drinking relay game, in which the Rookies were separated into teams, and
20 were ordered to participate in a race to see which team could finish drinking a bottle of
21 liquor first. The Rookies were told that the team that lost would have to continue
22 drinking.

23 27. During this drinking game, Duffy, who was extremely intoxicated, and
24 appeared to have been intoxicated before he arrived at the Party, violently hit the liquor
25 bottle while Plaintiff was drinking from it, and stated "don't choke on it." This jammed
26 the bottle into Plaintiff's mouth, chipping his front tooth.

27 28. After his tooth was chipped, the upperclassmen insisted that Plaintiff calm
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1 down by drinking a few more shots of liquor with them. Certain upperclassmen then
2 offered Plaintiff illegal drugs to help him "relax." Plaintiff declined to use the illegal
3 drugs.

4 29. As a result of all of the alcohol he had been forced to consume, Plaintiff
5 later began vomiting, and suffered difficulty breathing (he suffers from asthma). One of
6 Plaintiff's friends ultimately called a taxi and attempted to take Plaintiff back to the
7 dorms at ASU. Because he continued to vomit, and have difficulty breathing, an
8 ambulance was called and Plaintiff was transported to the hospital.

9 30. At the hospital, Plaintiff was diagnosed as suffering from alcohol
10 poisoning. As a result, he was charged criminally with underage drinking.

11 31. Because of this incident at the Party, and the resulting investigation by
12 ASU, Plaintiff and his friend who had helped him on the night of the Party were
13 subjected to numerous hostile comments from other members of the Club, its boosters
14 and its alumni, including thinly veiled threats from other members of the Club.

15 32. As a result, Plaintiff withdrew from his studies at ASU, and returned to
16 living with his parents in Nevada.

17 33. Plaintiff suffered both physical and emotional damages as a result of this
18 incident, and the subsequent threats and harassment by members of the Club.

19 34. The activities of the Club on the night in question ("the Hazing Incident")
20 constituted hazing. Such activities were intentional, knowing or reckless acts
21 committed by students, whether individually or in concert with other persons, against
22 another students, in which: (a) the acts were committed in connection with an initiation
23 into, an affiliation with or the maintenance of membership in an organization affiliated
24 with an educational institution; and (b) the acts contributed to a substantial risk of
25 potential physical injury, mental harm or degradation, and in fact caused physical
26 injury, mental harm, and personal degradation.

27 35. The Hazing Incident violated policies against hazing and alcohol abuse
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1 adopted by ABOR and by ASU, including, but not limited to, STA 104-03, Chapter 9,
2 Section II of the Sports Club Program Policies and Procedures Manual, and University
3 Student Initiatives Manual Section 104-03.

4 36. ASU had knowledge of prior infractions by members of the Club. Slightly
5 over one year earlier, several members of the Club had been implicated in on-campus
6 assaults on other students in a campus parking lot during a football game.

7 37. As a result of the Party and the Hazing Incident, ASU suspended its
8 recognition of the Club. The Club appealed the sanctions imposed by ASU. A hearing
9 was held, at which the Club was represented by counsel. On or about April 14, 2009,
10 ASU's University Hearing Board issued Findings and Recommendations. By a vote of
11 five to zero, the Hearing Panel recommended upholding ASU's suspension of
12 recognition of the Club.

13 38. As part of these proceedings, the Club admitted it had violated numerous
14 sections of the ASU Student Code of Conduct, including sections dealing with
15 possession and consumption of alcoholic beverages, and hazing.

16 39. The Hearing Panel's findings included findings that the Club had
17 demonstrated an inability to internalize responsibility for the Hazing Incident, as
18 reflected in the testimony of Coach Malone, and findings that members of the Club also
19 had an inability to internalize and acknowledge the dangers of their conduct.

20 40. The Hearing Panel also found that the Party was a "nearly unanimous
21 team event," and not the activities of limited individual members of the Club.

22 41. The Hearing Panel also found that "officers of the club were involved in
23 the activity, promoted it, and even followed up to determine whether there was any
24 additional physical damage from the forced activities."

25 **Count One (Negligence – All Defendants)**

26 42. Plaintiff incorporates all prior paragraphs of the Complaint.

27 43. Defendants owed Plaintiff a duty of reasonable care.
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44. Defendants breached their duty of reasonable care owed to Plaintiff.

45. As a direct and proximate cause of Defendants' negligence, Plaintiff suffered damage.

Count Two (Negligent Infliction of Emotional Distress – Duffy and the Club)

46. Plaintiff incorporates all prior paragraphs of the Complaint.

47. Defendant Duffy was negligent in injuring Plaintiff with the liquor bottle during the Party.

48. The Club was negligent in organizing and hosting the Party, and in engaging in the Hazing Incident directed at Plaintiff and other Rookies described above.

49. The negligence of defendants Duffy and the Club created an unreasonable risk of bodily harm to Plaintiff.

50. The negligence of defendants Duffy and the Club proximately caused emotional distress to Plaintiff.

51. Plaintiff suffered damage as a result of such emotional distress.

Count Three (Intentional Infliction of Emotional Distress – Duffy and Club)

52. Plaintiff incorporates all prior paragraphs of the Complaint.

53. The conduct of defendants Duffy and the Club were extreme and outrageous.

54. The conduct of defendants Duffy and the Club were intentional or reckless.

55. Alternatively, defendants Duffy and the Club were aware of and disregarded the near certainty that their actions would result in emotional distress.

56. Defendants Duffy and the Club had no legitimate business purposes for their conduct.

57. Defendant the Club abused a position or relationship with Plaintiff which gave the Club actual or apparent authority over Plaintiff.

58. The conduct of defendants Duffy and the Club caused Plaintiff to suffer

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2 severe emotional distress.

3 **Count Four (Battery – Duffy and the Club)**

4 59. Plaintiff incorporates all prior paragraphs of the Complaint.

5 60. Defendants Duffy and the Club intended to cause harm or offensive
6 contact with Plaintiff, or to cause Plaintiff apprehension of an immediately harmful or
7 offensive contact.

8 61. Defendants Duffy and the Club caused a harmful or offensive contact with
9 Plaintiff.

10 62. Defendants Duffy's and the Club's contact with Plaintiff would offend a
11 reasonable person.

12 63. As a direct and proximate result of the harmful or offensive contact by
13 defendants Duffy and the Club, Plaintiff suffered damage.

14 **Count Five (Assault – Duffy and the Club)**

15 64. Plaintiff incorporates all prior paragraphs of the Complaint.

16 65. Defendants Duffy and the Club intended to cause harm or offensive
17 contact with Plaintiff, or to cause Plaintiff apprehension of an immediately harmful or
18 offensive contact.

19 66. Defendants Duffy and the Club caused a harmful or offensive contact with
20 Plaintiff.

21 67. Defendants Duffy's and the Club's actions caused Plaintiff to have an
22 apprehension of immediate harmful or offensive contact.

23 68. As a direct and proximate result of the actions by defendants Duffy and
24 the Club, Plaintiff suffered damage.

25 **Count Six (False Imprisonment –the Club and Zils)**

26 69. Plaintiff incorporates all prior paragraphs of the Complaint.

27 70. Defendants the Club and Zils acted intentionally to restrain Plaintiff to an
28 area within the control of the Club, including, but not limited to, taking Plaintiff's keys,

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2 wallet and telephone, locking Plaintiff and other Rookies in the garage at the House
3 until they had finished consuming massive quantities of beer, and informing them that if
4 they did not finish the beer within 30 minutes, things would get worse.

5 71. Defendant the Club and Zils acted without lawful authority or consent.

6 72. The actions of defendants the Club and Zils resulted in direct restraint of
7 Plaintiff's liberty or freedom of movement, either by actual force or by fear of force.

8 73. The actions of defendants the Club and Zils would have caused a
9 reasonable person in the same situation as Plaintiff to believe he or she was restrained.

10 74. Plaintiff was aware that he was being restrained and was harmed by the
11 restraint.

12 75. Defendant Zils instigated or participated in the unlawful confinement of
13 Plaintiff. Upon information and belief, Zils engaged in words or acts which directed,
14 requested, invited or encouraged the false imprisonment of Plaintiff, and by
15 participating, taking part in, and aiding others in falsely imprisoning Plaintiff.

16 **Count Seven (Aiding and Abetting Liability – Coach Malone and Zils)**

17 76. Plaintiff incorporates all prior paragraphs of the Complaint.

18 77. Defendant the Club engaged in various torts alleged herein which caused
19 injuries to Plaintiff.

20 78. Defendants Coach Malone and Zils knew, or reasonably should have
21 known, that the Club intended to host the Party and engage in hazing and forcing minors
22 to consume alcohol in violation of rules and policies promulgated by ASU and ABOR.

23 79. Defendants Coach Malone and Zils knew that the Club's activities
24 constituted breaches of the Club's duties.

25 80. Defendants Coach Malone and Zils substantially assisted or encouraged
26 the Club in the achievement of the breaches of such duties.

27 81. As a result of their aiding and abetting of the Club's breaches of its duties
28 to Plaintiff, defendants Coach Malone and Zils are also liable to Plaintiff for the

1 damages caused by such torts.

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3 **Count Eight (Premises Liability – John Doe I and Jane Doe I)**

4 82. Plaintiff incorporates all prior paragraphs of the Complaint.

5 83. John Doe I and Jane Doe I were the owners of the House (“the Property
6 Owners”). John Does II – IV were tenants of the House (“the Tenants”), and possessed
7 and controlled the House at the time of the Party.

8 84. Upon information and belief, the Property Owners and the Tenants failed
9 to exercise reasonable care to discover that acts were being taken on the property or that
10 acts were likely to be taken on the property that represented an unreasonable risk of
11 harm from criminal actions of third parties, such as the Club.

12 85. The Property Owners’ and the Tenants’ failures to exercise reasonable
13 care proximately caused damage to Plaintiff.

14 **Count Nine (Dram Shop Liability – the Club and Zils)**

15 86. Plaintiff incorporates all prior paragraphs of the Complaint.

16 87. The Club and Zils had a duty to avoid furnishing alcohol to underaged
17 consumers, such as Plaintiff.

18 88. As the President of the Club, Zils had a right to direct and govern the
19 conduct of the Club in connection with the serving of alcohol to underaged Rookies at
20 the Party.

21 89. The Club and Zils violated this duty by providing alcohol to Rookies,
22 including Plaintiff and Duffy.

23 90. The Club and Zils knew or reasonably should have known that Duffy was
24 extremely intoxicated during and/or prior to the Party.

25 91. The Club and Zils, however, continued to serve Duffy additional alcohol.

26 92. As a direct and proximate result of the Club’s and Zils’ breach of this
27 duty, Plaintiff was injured both by consuming alcohol, and by Duffy’s actions which
28 were contributed to by his consumption of alcohol at the Party.

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93. Plaintiff suffered damages as a result of the Club's and Zils' breach of these duties.

Count Ten (Negligent Supervision – the State, ABOR, ASU, Coach Malone and Zils)

94. Plaintiff incorporates all prior paragraphs of the Complaint.

95. Defendants ASU, Coach Malone and Zils had or assumed duties to supervise the Club, and to prevent the Club from engaging in illegal conduct, or conduct that violated policies and procedures enacted by ASU and/or ABOR.

96. Defendants ASU, Coach Malone and Zils negligently failed to supervise the activities of the Club, and to prevent the hosting of the Party and the Hazing Incident that took place during the Party.

97. As a direct and proximate result of the breach of these duties by defendants ASU, Coach Malone and Zils, Plaintiff suffered injuries.

98. Defendants ABOR and the State are vicariously liable for ASU's negligent supervision of the Club.

Count Eleven (Punitive Damages – the Club, Duffy and Zils)

99. Plaintiff incorporates all prior paragraphs of the Complaint.

100. Defendants the Club, Duffy and Zils either intended to injure Plaintiff, or consciously pursued a course of conduct knowing that it created a substantial risk of significant harm to Plaintiff.

101. As a result of the actions of the Club, Duffy and Zils, Plaintiff was injured.

102. Plaintiff is entitled to recover punitive damages from the Club, Duffy and Zils.

WHEREFORE, Plaintiff requests judgment against Defendants, and each of them, jointly and severally, as follows:

A. For compensatory damages in an amount to be determined at the time of

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trial;

- B. For punitive damages against defendants the Club, Duffy and Zils;
- C. For Plaintiffs' taxable costs incurred in this litigation; and
- D. For such other and further relief as the Court deems just and proper.

DATED: January 27, 2010

SHERMAN & HOWARD L.L.C.

By 

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