

IN THE COURT OF COMMON PLEAS  
MONTGOMERY COUNTY, OHIO

MAX ENGELHART  
11222 Snider Road  
Cincinnati, Ohio 45249

Plaintiff,

vs.

THE UNIVERSITY OF DAYTON  
300 College Park  
Dayton, Ohio 45469

PLEASE SERVE:

ACME AGENT, INC.  
41 S. High Street, Suite 2800  
Columbus, Ohio 43215

and

RICHARD CHAMBERLIN  
807 Sequoia Court  
Dayton, Ohio 45419

and

JARED PHILLIPS  
401 Patterson Road, Apartment 8  
Dayton, OH 45419

and

JOHN AND JANE DOES  
(NOS. 1-20)

and

ABC COMPANIES  
(NOS. 1-5)

Defendants.

Case No. \_\_\_\_\_

Judge \_\_\_\_\_

COMPLAINT FOR:

1) VIOLATIONS OF OHIO'S  
ANTI-HAZING STATUTE;

2) NEGLIGENCE;

3) INTENTIONAL INFLICTION OF  
EMOTIONAL DISTRESS;

4) NEGLIGENT INFLICTION OF  
EMOTIONAL DISTRESS; AND

5) CIVIL CONSPIRACY.

JURY DEMAND

For his Complaint against Defendants the University of Dayton (“UD”), Richard Chamberlin (“Chamberlin”), Jared Phillips (“Phillips”), John and Jane Does Nos. 1-20, and ABC Companies Nos. 1-5, (collectively “Defendants”), Plaintiff Max Engelhart (“Max”) states as follows:

**I. INTRODUCTION -- MAX ENGELHART IS SEVERALLY AND PERMANENTLY INJURED WHILE BEING HAZED AT A UD FOOTBALL RITE OF INITIATION**

1. For decades, the UD football program has knowingly embraced and encouraged upperclassmen football players to haze freshmen football players in an annual rite of initiation called MAD DOGS or MADCAPS (MAD DOGS AND MADCAPS will be used interchangeably). In early December, 2014, Phillips, the assistant strength coach at UD (“Coach Phillips”), warned the Freshmen football players (the freshmen football players, including Max, will be referred to as the “Freshmen”) to get ready for the event. On or about the evening of December 7, 2014, upperclassmen football players (the “Upperclassmen”) ordered then freshman football player Max, and other Freshmen, to be at the house of an Upperclassman. Max and the Freshmen were ordered to stand on the front patio of the house (“House 1”). The Upperclassmen handed each Freshman multiple cans of FOUR LOKO, an alcoholic beverage that contains approximately 12% alcohol and comes in 16 oz. cans. (By alcohol content, consuming one 16 oz. FOUR LOKO is the approximate equivalent of consuming three Miller Lites.) The Freshmen were ordered to begin chugging the alcohol—the quicker they drank their allotment, the quicker they could escape from the cold and enter House 1. The hazing continued over the course of the evening. The Upperclassmen:

- forced the Freshmen to chug more FOUR LOKO;
- forced the Freshmen to chug hard alcohol, like vodka;
- shaved some of the Freshmen’s heads;
- shouted derogatory names for gays and females at the Freshmen; and

- forced some of the Freshmen to wear t-shirts with a penis drawn on it.
2. By the next morning, upon information and belief, one Freshman was taken to Miami Valley Hospital to have his stomach pumped and three other Freshmen were charged with underage consumption by UD Public Safety or Police (“UD Police”).
  3. Over the course of the night, the Upperclassmen took Max to three different houses. Upon information and belief, two of the houses were owned by UD and were rented to Upperclassmen. When Max awoke the next morning in House 3, he was covered in his own vomit, his own urine, and his own excrement. He had also been subjected to head trauma so severe that it would require his withdrawal from college.

## **II. PARTIES, VENUE AND JURISDICTION**

4. Max Engelhart is a resident of Hamilton County, Ohio.
5. The University of Dayton is a corporation and a private academic university, college or educational institution with its principal place of business at 300 College Park, Dayton, Ohio 45469 in Montgomery County, Ohio. It is an organization, school, university or college as referenced in R.C. § 2307.44.
6. Upon information and belief, Richard Chamberlin is an individual who resides at 807 Sequoia Court, Dayton, Ohio 45419 in Montgomery County, Ohio. He is employed as the Head Football Coach by UD and was on or about December 7, 2014. He is an officer, administrator, employee or faculty member of UD and was at all times relevant to this Action.
7. Upon information and belief, Jared Phillips is an individual who resides at 401 Patterson Road, Apartment 8, Dayton, Ohio 45419 in Montgomery County, Ohio. He is employed as an assistant strength and conditioning coach by UD and was on or about December 7, 2014. He is an officer, administrator, employee or faculty member of UD and was at all times relevant to this Action.

8. John and Jane Does Nos. 1-20 and ABC Companies Nos. 1-5 are former or current UD administrators, UD employees, UD faculty, UD agents, UD students, UD trustees, UD officers, UD directors, or UD coaches who authorized, requested, commanded or tolerated hazing at UD. John and Jane Does Nos. 1-20 and ABC Companies Nos. 1-5, are also current or former UD administrators, UD employees, UD trustees, UD directors, UD officers, UD coaches, or UD faculty members who knew or reasonably should have known of hazing at UD and did not take reasonable attempts to prevent it. John and Jane Does Nos. 1-20 and ABC Companies Nos. 1-5 are also former or current UD employees, UD trustees, UD directors, UD officers, UD coaches, UD students, or UD faculty who participated in the hazing events on or about December 7, 2014, described in this Complaint that give rise to the claims in this action and Max's injuries. John and Jane Does Nos. 1-20 and ABC Companies Nos. 1-5 are persons or entities, whose titles and roles are currently unknown after reasonable investigation, and who are legally responsible and liable for Max's injuries. After diligent and reasonable search and inquiry, the identities of such individuals and entities remain unknown.

9. Venue is proper in this Court pursuant to Civ. R. 3.

10. This Court has jurisdiction over the parties to this action because they transact business in the State of Ohio; reside in the State of Ohio, at least part of the time; purposefully direct or conduct activities in this state; and conducted the actions giving rise to this Complaint in this State.

### **III. UD RECRUITS MAX TO BE A PART OF THE UD FOOTBALL FAMILY**

11. Max attended Sycamore High School in Cincinnati, Ohio. In his junior year he earned a 3.84 GPA. He earned a 3.57 GPA as a senior. He started his junior and senior seasons and in each of those years was voted to the Greater Miami Conference All-Conference team.

12. Max wanted to play football in college. Max spent many hours training and sacrificing to achieve his goal.

13. Max was recruited by several universities to be a student-athlete football player. UD was one of those schools. Max was recruited by various coaches of the 2014 UD football coaching staff, including Chamberlin (“2014 Staff”). Members of the 2014 Staff told Max that the UD football program would become his new family. Members of the 2014 Staff told Max and his parents that the football program would take care of him.

14. Max accepted a partial academic scholarship to attend UD and to be a student-athlete on their football team.

15. Max began classes and being a member of the football team in the summer of 2014. He obtained a 3.8 GPA for the summer.

16. In the fall of 2014, Max and his parents attended the football program orientation. The coaches spoke about how the football program was a family. Before the orientation ended, Chamberlin, asked the parents to say goodbye to their sons. Chamberlin said “all please stand, parents your sons are in good hands – men give your mothers a kiss and shake your father’s hand – it’s time to play football.”

17. Max continued as a student-athlete in the fall of 2014. Max loved being a part of his new family at UD.

#### **IV. MAD DOGS**

18. MAD DOGS is an annual initiation rite where upperclassmen football players haze freshman football players. It has taken place for decades. Upon information and belief, some of the 2014 Staff, including Chamberlin, knew that MAD DOGS was an annual event or reasonably should have known. Coach Phillips told some of the Freshmen football players to get ready for the event in December 2014. At MAD DOGS, upperclassmen football players coerce or force freshman

football players to drink large quantities of alcohol. The upperclassmen players put the freshmen into teams, where they are forced or coerced into chugging alcohol, including hard liquor. The upperclassmen players also order or coerce freshmen into wrestling with each other or with upperclassmen. The upperclassmen players subject the freshmen to verbal abuse and humiliation. Underclassmen have their heads shaved; they are forced to wear shirts with derogatory and vulgar words or derogatory images of body parts.

19. MAD DOGS is hazing, as referenced in R.C. § 2307.44 and as defined at R.C. § 2903.31. As more fully described below, Max was hazed in violation of R.C. § 2307.44 and R.C. § 2903.31.

#### **V. MAX IS HAZED AT MAD DOGS 2014**

20. On or about the evening of December 7, 2014, Max and three other freshman offensive linemen -- Logan Loeloff, Bryan Corpuz, and Mitch Schlyer—were ordered to come to House 1, which was rented by some Upperclassmen. Other Freshmen were present as were numerous Upperclassmen. Upon information and belief, at that time and presently, House 1 was and is owned by UD.

21. The Upperclassmen handed the Freshmen multiple cans of FOUR LOKO. The Upperclassmen ordered or coerced the Freshmen to chug the FOUR LOKO.

22. The Upperclassmen told the Freshmen that the quicker they chugged the FOUR LOKO, the quicker they could escape from the cold and enter House 1.

23. Inside House 1, the Upperclassmen coerced or forced Freshman to chug more FOUR LOKO.

24. Inside House 1, the Upperclassmen coerced or forced Freshman to chug hard alcohol.

25. Inside House 1, the Upperclassmen coerced or forced Freshmen to have their heads shaved.

26. Inside House 1, the Upperclassmen shouted derogatory phrases for gays and women at them.

27. Some Upperclassmen forced or coerced Freshmen to wear a t-shirt with a drawing of a penis on it.

28. Some Upperclassmen spray painted the torsos of Freshmen. (The hazing in December, 2014, described in this Complaint will be referred to as “MAD DOGS 2014”.)

29. The above described activities were not unique to MAD DOGS 2014. Upon information and belief, some of these same activities have taken place at MAD DOGS for decades. Indeed, alumni UD football players came back to participate in MAD DOGS 2014. Coach Phillips knew about MAD DOGS and warned the Freshmen to get ready for it. Upon information and belief, Coach Phillips knew of MAD DOGS from his time as a player.

30. Later in the evening, Max was separated from the other Freshmen.

31. The Upperclassmen took Max to a different house, located at or near Evanston Avenue (“House 2”). Upperclassmen were at the House 2 when Max arrived.

32. Upon information and belief, in December, 2014, House 2 was rented by Upperclassmen. Upon information and belief, at that time and presently, House 2 was and is owned by UD. The Upperclassmen forced or coerced the Freshmen into three teams – “Blue,” “Red,” and “Wild” to see which team could drink the most and the fastest. At least one UD football alumni came back to participate in the hazing.

33. By the time Max was taken to House 2, he was extremely inebriated. Upon being helped in, an upperclassman told Max – “hang in there; you’ll get through this.” Upon information

and belief, while being hazed by Upperclassmen at House 2, Max sustained traumatic head injuries and became completely unconscious.

34. The Upperclassmen removed Max from House 2 and rather than return Max to his dorm, took him to House 3 located at Chambers and Alberta (“House 3”).

35. House 3 is located about one mile from House 2. At the time, it was rented by two upperclassmen football players – Zac Morgan and Will Will.

## **VI. MAX SUFFERS SEVERE HEAD TRAUMA FROM HAZING AT MAD DOGS**

36. On the morning of December 8, 2014, Max woke in a bed at House 3.

37. When he awoke, Max was covered in his own vomit, his own urine and his own excrement. He had a terrible, pounding headache that would not relent.

38. Max returned to his dorm on December 8, 2014.

39. For the next three days, Max mostly slept. He was unable to attend classes these three days.

40. On the next Wednesday, after a number of calls with Max, Max’s father, Joseph Engelhart, drove to Dayton. Max and Mr. Engelhart met with the UD football team physician.

41. The physician gave Max a series of tests. Max was asked to remember and repeat four words. He failed the test.

42. Max was asked to hold his arms out to his side and to close his eyes. Max did so and then immediately collapsed.

43. The physician ordered that Max be taken home to the Engelhart residence and ordered that he rest. The physician informed the Engelharts that Max had sustained a severe concussion.

44. The UD football team physician recommended that Mr. and Mrs. Engelhart remove Max from classes and that they take Max home to Cincinnati. They did.

45. Max attempted to take his fall, 2014 finals. He obtained a 3.3 GPA for the fall semester, a drop from the 3.8 GPA he obtained over the summer.

46. Max attempted to return to UD for the spring semester, 2015. Because of the injuries he suffered from the hazing, he was forced to withdraw.

47. Max attempted to re-enroll at UD for the fall, 2015 semester. He again was forced to withdraw because of the injuries he suffered while being hazed.

## **VII. MAX'S INJURIES ARE ONGOING AND WILL PERMANENTLY AFFECT HIS LIFE**

48. Because of his injuries, Max has treated with a psychologist, a neurologist and a neuropsychologist since leaving UD in the spring of 2015.

49. As a direct and proximate cause of Defendants' actions, Max was diagnosed with and sustained a severe concussion.

50. As a direct and proximate cause of Defendants' actions, Max went into a prolonged bout of depression.

51. As a direct and proximate cause of Defendants' actions, Max was ordered by at least two doctors to never play football again.

52. As a direct and proximate cause of Defendants' actions, Max has been under the care of a psychologist, a specialist in traumatic head injuries, a neurologist and a neuropsychologist.

53. As a direct and proximate cause of Defendants' actions, Max has been diagnosed with and suffers from cognitive brain damage.

54. As a direct and proximate cause of Defendants' actions, Max has been diagnosed with and suffers from short-term memory loss.

55. As a direct and proximate cause of Defendants' actions, Max's prescribed treatment for his injuries has included "retraining" the brain. The treatment could take years and there is no assurance Max will fully regain full cognitive function.

56. In addition to weekly therapy sessions, Max has been prescribed a prescription drug typically prescribed for Alzheimer's and dementia patients.

## VIII. THE COVER-UP

57. After MAD DOGS, Mr. Engelhart asked Chamberlin about the events at MAD DOGS. Chamberlin informed Mr. Engelhart that Chamberlin would ask around. Later, Chamberlin informed Mr. Engelhart that none of the football players ever told him what happened.

58. William Fischer, the Vice President of Student Development at UD, told Mr. Engelhart that Mike Kelly, the former UD football coach and current Assistant Vice President of Athletics at UD ("Kelly"), was furious about the incident and that Kelly said it "went too far this year."

59. In the spring of 2015, Mr. Engelhart was informed that the UD administration was fully aware of MAD DOGS hazing and of Max's injuries. Mr. Engelhart was informed by Chamberlin that UD was investigating the incident.

60. On or about the evening of December 7, 2014 or the morning of December 8, 2014, UD Police investigated a report of three of the Freshmen found intoxicated at a UD dorm.

61. UD Police prepared three Student Judiciary Citation Rep forms attendant to the Investigation.

62. On their respective forms, the UD Police reported:

- a) Some of the Freshmen stated that they were on the football team;
- b) The resident assistant who reported the incident stated the he believed the Freshmen "**were involved in a hazing incident;**"

- c) Some of the Freshmen stated the incident was **“football hazing gone wrong”** and they were **“hazed”** as a part of an **“annual thing that happens after the season where the freshmen players are initiated into the team;”**
- d) That hazing was involved;
- e) Two of the reports note the Freshmen drinking was attendant to a **“group/gang” being involved;**
- f) Some Freshmen admitted to **being encouraged to drink by upperclassmen** football players, including one Freshman saying that **he drank 8-10 shots of hard alcohol;**
- g) Some of the Freshmen admitted to being drunk;
- h) Some of the Freshmen had **freshly-shaven heads**, and some of the Freshmen admitted that they were told by the Upperclassmen before MAD DOGS that their heads would be shaven;
- i) Some of the Freshmen had **red paint or marker on their abdomens;**
- j) Some of the Freshmen admitted to being made fun of and being ostracized;
- k) Some of the Freshmen admitted to being **called a derogatory term for alternative lifestyles** at the party;
- l) One of the Freshmen admitted to being forced to **wear a shirt that had a “PENIS” drawn on the front and a vulgar term for female anatomy on the back;**
- m) One of the Freshmen reported that **football team alumni shaved at least one of the Freshmen’s heads;** and
- n) **One of the Freshmen called the incident “Mad Dogs.”**

63. Three of the Freshmen were cited for underage consumption of alcohol.

64. One of the Freshmen was taken to Miami Valley Hospital, where, upon information and belief, he had his stomach pumped.

65. Hazing is prohibited by UD's Student Handbook. Yet, no one was cited for hazing. UD did not report or refer the hazing at MAD DOGS 2014 to the City or County authorities. UD did not conduct an investigation into the hazing at MAD DOGS 2014. No students were charged with hazing at MAD DOGS 2014. No student was reprimanded or punished for hazing at MAD DOGS 2014.

66. Defendants knew or should of have known about that hazing of the Freshmen that took place on or about December 7 and 8, 2014, as more fully described above. Coach Phillips knew of MAD DOGS. Coach Phillips knew of MAD DOGS 2014 prior to it happening. Defendants did not take responsible steps to prevent it.

67. None of the Upperclassmen or 2014 Staff were disciplined for MAD DOGS 2014.

68. UD covered up the hazing that took place at MAD DOGS 2014.

## **IX. CAUSES OF ACTION**

### **COUNT I** **(Violation of R.C. § 2307.44)** **(Max v. All Defendants)**

69. Max restates paragraphs 1 through 68 of the Complaint as if fully set forth here.

70. In December, 2014, Max was student at UD.

71. UD is an organization, university, college or educational institution, as described at R.C. § 2307.44.

72. As more fully described above, Max was hazed at MAD DOGS 2014, in violation of R.C. § 2307.44.

73. Some Defendants, such as Chamberlin and Phillips, are officers as referenced in R.C. § 2307.44

74. Defendants authorized, requested, commanded or tolerated the hazing more fully described above.

75. Defendants knew or reasonably should have known of the hazing, more fully described above, and did not take reasonable attempts to prevent it.

76. UD was not actively enforcing a policy against hazing as to its football program at the time of MAD DOGS 2014.

77. As a direct and proximate cause of Defendants' conduct, as more fully described above, Max has suffered physical, mental and emotional injuries; he has suffered severe emotional distress and physical pain; and he has incurred medical expenses and other expenses. The full extent of Max's damages will be determined at trial, but they exceed \$25,000.

**COUNT II**  
**(Negligence)**  
**(Max v. All Defendants)**

78. Max restates paragraphs 1 through 77 of the Complaint as if fully set forth here.

79. Defendants actively recruited Max to UD to be a student-athlete, as more fully described above. Defendants voluntarily acted as *in loco parenti* for Max, as more fully described above.

80. Upon information and belief, in December, 2014, UD owned House 1 and House 2. House 1, House 2 and House 3 were subject UD rules, regulations, and the student handbook. Max was expressly or impliedly invited to House 1, House 2, and House 3. Max was an invitee to House 1 and House 2 on December 7 and/or 8, 2014. Defendants owed Max special duties because he was an invitee and because of its special relationship with him, as described more fully above. Max

was acting in his student-athlete capacity while injured on December 7 and/or 8, 2014 at House 1, House 2 and House 3.

81. Defendants had a special relationship with Max, owing him a duty of care, including but not limited to ordinary care.

82. Defendants breached their duties of care to Max.

83. The hazing at MAD DOGS 2014 was known to Defendants, or was reasonably foreseeable to Defendants, as more fully described above. Max's injuries were reasonably foreseeable to Defendants. Defendants had notice, actual or implied, of MAD DOGS 2014 and its inherent dangers. The dangers of MAD DOGS 2014 were not so obvious and apparent to Max that he reasonably should be expected to discover them and protect himself from them.

84. As a direct and proximate cause of Defendants' conduct, as described above, Max has suffered physical, mental and emotional injuries, he has suffered severe emotional distress and physical pain; and he has incurred medical expenses and other expenses. The extent of Max's damages will be determined at trial, but they exceed \$25,000.

**COUNT III**  
**(Intentional Infliction of Emotional Distress)**  
**(Max v. All Defendants)**

85. Max restates paragraphs 1 through 84 of the Complaint as if fully set forth here.

86. Defendants intended to cause emotional distress to Max.

87. As more fully described above, the conduct of Defendants was so extreme and outrageous as to go beyond the bounds of decency and was such that the conduct can be considered utterly intolerable in a civilized society. The conduct of Defendants was intentional and/or reckless.

88. Defendants were the proximate cause of Max's injuries, as more fully described above.

89. The mental anguish suffered by Max is so serious and of a nature that no reasonable man should or could be expected to endure.

90. As a direct and proximate cause of Defendants' conduct, as described above, Max has suffered physical, mental and emotional injuries; he has suffered severe emotional distress and physical pain; and he has incurred medical expenses and other expenses. The extent of the Engelharts' damages will be determined at trial, but they exceed \$25,000.

**COUNT IV**  
**(Negligent Infliction of Emotional Distress)**  
**(Max v. UD and All Defendants)**

91. Max restates paragraphs 1 through 90 of the Complaint as if fully set forth here.

92. At MAD DOGS 2014, Max was in fear of physical consequences to his own person.

93. As more fully described above, Defendants owed Max a duty.

94. As more fully described above, Defendants breached that duty to Max.

95. As a direct and proximate cause of the conduct of Defendants, Max suffered serious emotional distress.

96. The serious emotional distress of Max was reasonably foreseeable by Defendants at the time Max suffered his injuries.

97. As a direct and proximate cause of Defendants' conduct, as described above, Max has suffered physical, mental, and emotional injuries; he has suffered severe emotional distress and physical pain; and he has incurred medical expenses and other expenses. The extent of the Engelharts' damages will be determined at trial, but it exceeds \$25,000.

**COUNT V**  
**(Civil Conspiracy)**  
**(Max v. All Defendants)**

98. Max restates paragraphs 1 through 97 of the Complaint as if fully set forth here.

99. Hazing is an unlawful act, pursuant to the Ohio Revised Code, and Defendants violated R.C § 2307.44.

100. Defendants acted purposefully, maliciously, and in concert, with the intent to cause injury or damage to Max, as described above.

101. Defendants' acts described above are independent from the conspiracy itself.

102. As a direct and proximate cause of Defendants' conduct, as described above, Max has suffered physical, mental and emotional injuries; he has suffered severe emotional distress and physical pain; and he has incurred medical expenses and other expenses. The extent of the Engelhart's damages will be determined at trial, but they exceed \$25,000.

WHEREFORE, Max demands:

- 1) An award of compensatory damages, as more fully described above, greater than \$25,000, but to be determined at trial;
- 2) An award of punitive damages;
- 3) An award of his Attorney's fees and costs; and
- 4) Such other and further relief as justice requires.

*OF COUNSEL:*

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Respectfully submitted,

/s/Scott K. Jones

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*Attorney for Plaintiff Max Engelbart*

**JURY DEMAND**

Max Engelhart demands a trial on issues triable to a jury.

*OF COUNSEL:*

Respectfully submitted,

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/s/Scott K. Jones  
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