VIRGINIA:

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JOHN T. FREY
CLERK CIRCUIT COURT
FAIRFAX VA

IN THE CIRCUIT COURT OF FAIRFAX COUNTY

HARRY W. PRYDE, and
KAREN W. PRYDE, Co-Administrators of the
Estate of Julia Kathleen Pryde, deceased

Plaintiffs,

vs.

Case No. 2009-5671

JOHN W. THYDEN, Administrator of the Estate
of Seung-Hui Cho, deceased
4312 N. 40th St.
Arlington, Virginia 22207
(Arlington County)

and

THE COMMONWEALTH OF VIRGINIA
SERVE: Bill Mims
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and

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Defendants. :

COMPLAINT

COME NOW Plaintiffs, Harry W. Pryde and Karen W. Pryde, as Personal Representatives of the Estate of Julia Kathleen Pryde, by counsel, and move for judgment against the Defendants, on the grounds set forth below:

1. April 16, 2007 Seung-Hui Cho, a/k/a Cho Seung Hui, a student at Virginia Polytechnic Institute and State University, hereinafter called Virginia Tech, entered Norris Hall and, after chaining and locking outside access doors to Norris Hall, entered classrooms on the

second floor, one after another, and with two pistols he had purchased illegally, shot and killed 30 students and faculty and injured 17 others.

2. One of the deceased was Julia Kathleen Pryde, the daughter of Harry W. Pryde and Karen W. Pryde, sister of Keith Pryde, and half sister of Michael Palmer and Leah Palmer. Julia Pryde was shot while attending her 9 a.m. class in advanced hydrology.

3. This action is brought by Harry W. Pryde and Karen W. Pryde, personal representatives of the estate of Julia Kathleen Pryde on their own behalf and on behalf of Keith Pryde, Michael Palmer, and Leah Palmer, the sole survivors and statutory beneficiaries of Julia Kathleen Pryde.

COUNT I

VIRGINIA TECH AS DEFENDANT

4. By statute the board of visitors [of Virginia Tech] is a corporation operating under the name and style of the Virginia Polytechnic Institute and State University. [Va. Code § 23-114].

5. By statute the board of visitors of Virginia Tech is charged with the protection and safety of the students attending the university. [Va. Code § 23-122].

6. To carry out its duties, including the duties to keep the students protected and safe, the board of visitors appoints a President and employs such further agents or servants as are necessary to the operation of the university. [Va. Code § 23-126]

7. The board of visitors establishes rules and regulations for the suspension or dismissal of students who fail or refuse to abide by rules and regulations governing the conduct of students.

8. The Plaintiffs assert, as the facts hereinafter set forth support, that Virginia Tech failed to protect and keep its students safe and is directly liable or liable, *respondeat superior,* for the numerous acts of negligence and gross negligence of its officers, agents and employees, and is further liable for the conduct of a few of its officers, agents, and employees who were deliberately indifferent to the safety needs of its students, as hereinafter set out.

9. In the alternative, Plaintiffs assert, that the Commonwealth of Virginia is liable *respondeat superior*, for the numerous acts of negligence and gross negligence of the officers, agents and employees, of VA Tech, and is further liable for the conduct of a few of VA Tech's officers, agents, and employees who were deliberately indifferent to the safety needs of its students, as hereinafter set out.

10. Your Plaintiffs specifically allege that Virginia Tech, its officers, agents and employees, owed duties to his decedent to provide a reasonably safe campus for her to pursue her studies, Virginia Tech, its officers, agents and employees breached those duties, and the breach of those duties was a proximate cause of Julia Pride's death.

11. Those duties arose out of the special relationship which existed between Virginia Tech and its students. Julia Pride, as one of Virginia Tech's students, was owed, at a minimum, all of the duties owed a business invitee.

12. Virginia Tech owed Julia Pride and its other students duties greater than those owed a bare business invitee in that she was not an occasional visitor to the university for a casual or infrequent business purpose, but had and enjoyed an ongoing university – student relationship.

13. Julia Pride qualified for admission to the university, had applied for and had been accepted as a student, had paid her tuition, and rented dormitory space to reside on campus. Her

presence on the campus and her attendance at its classes was not only foreseeable, it was required if she was to fulfill her joint purpose with the university: the successful pursuit of her education.

14. Julia Pride's status as a student in good standing at Virginia Tech who also resided on campus created a special relationship with Virginia Tech, which enhanced Virginia Tech's duties to keep her safe.

15. Virginia Tech acknowledged to Julia Pride that it had such duties. In the first week of her attendance at Virginia Tech it ordered a lockdown of the campus because a man who had killed two non-students off campus was thought to have been seen on campus.

16. Your Plaintiffs further assert that in furtherance of its duties to provide his decedent with a reasonably safe campus on which she might pursue her studies, Virginia Tech had a duty to warn Julia Pride and its other students while they were on campus of known or reasonably foreseeable dangers so that she and the other students might exercise caution for their own safety.

17. As more fully set forth hereafter, Virginia Tech breached its duties and failed to adequately warn Julia Pride of the known or reasonably foreseeable danger on April 16, 2007.

18. From 7:15 a.m. on in the morning of April 16, 2007 a gunman was at large who had already shot and killed two students on campus. He or she was thought to be armed and presumably dangerous and might be on campus.

19. Instead of giving warning to that effect, Virginia Tech issued a release which obfuscated the fact that there had been a double homicide in a dormitory the morning of April 16th, 2007, would dilute any information to that effect, implied that there were no serious injuries or deaths in the "shooting incident" and further implied that the incident was a completed event,

that there was no gunman at large who was armed and dangerous and potentially on campus, and there was no need for anyone on campus to take specific precautions for their own safety.

20. Your Plaintiffs further assert that by rendering an inadequate, incomplete or misleading notice, Virginia Tech issued no warning at all, but issued a release which served to reassure the reader or listener that there was no reason for personal alarm.

21. Virginia Tech has indicated its culpability for failure to warn in that it is yet to advance any reason, justification or defense why the on-campus citing of a non-student who had killed two non-students off campus hours or a day before warranted a prompt campus lockdown following the citing [the Morva incident], while the on campus killing of two students in April of 2007 warranted no contemporary notice or warning of the occurrence.

22. Your Plaintiffs further assert that if Virginia Tech denies it had any duties to warn his decedent, he will rely on the Virginia doctrine that one who undertakes to perform services it has no duty to take, must exercise those duties with due care. Having indicated its intention to warn of dangers in August of 2006 [the Morva incident], and again on April 2, 2007 – the bomb threat at the Torgensen Building, and again on April 13, 2007 - the bomb threats to three buildings on the Engineering campus – it can not be heard to argue it failed to warn on April 16th because it had no duty to warn.

23. On April 20, 1999, eight years before the Virginia Tech Massacre, twelve students and one teacher at Columbine High School in Columbine, Colorado were killed by two mentally ill students at the school.

24. School based killings of students by students had become an uncomfortably common experience in the preceding three decades.

25. The Columbine killings and prior school killings by mentally ill students stimulated well regarded and authoritative educational groups to formulate plans for the identification of troubled or mentally disturbed students who put other students and faculty at risk, and made recommendations for interventions.

26. By October, 2000 the U. S. Secret Service National Threat Assessment Center in collaboration with the U.S. Department of Education, utilizing support from the National Institute of Justice, had issued its Interim Report on the Prevention of Targeted Violence in Schools.

27. In January 16, 2002 school violence caused by a mentally disturbed student was brought home to Virginia when a student with a history of mental problems who had voluntarily withdrawn for academic reasons from the Appalachian School of Law in Grundy, Virginia, returned to the school and proceeded to the offices of Dean Anthony Sutin and Professor Thomas Blackwell, where he opened fire with a .380 ACP semi-automatic handgun, killing both instantly. He then shot and killed a student, Angela Denise Dales, age 33, and wounded three other people.

28. In May, 2002 the United States Secret Service and the United States Department of Education issued its report: Threat Assessment in Schools: A Guide to Managing Threatening Situations and to Creating Safe School Climates.

29. Research led to an inescapable conclusion. The first line of safety for students, faculty and employees was detection of those students who posed a risk of harm to fellow students, teachers or school employees. The published studies set out a list of early warning signs.

30. The May 2002 report by the U.S. Secret Service and the United States Department of Education specifically set out a roadmap for making a student threat assessment.

31. The process recommended was not a wholesale examination of the student body to identify students who may be at risk, but was limited to students whose conduct or behavior had been brought to the attention of school authorities [page 45].

32. Seung-Hui Cho was such a student.

33. The Secret Service/Department of Education Report, hereinafter referred to as the Threat Assessment report, inquires "How did the student come to the attention of school authorities?" Did the student engage in communications that caused concern, such as submitting a writing assignment which spoke of injuring other students or faculty?

34. Seung-Hui Cho was such a student.

35. Once the student came to the attention of the authorities, did the student's conduct pass a threshold for initiating a threat assessment inquiry?

36. Seung-Hui Cho's conduct passed any reasonable threshold.

37. Cho's writing was accompanied by verbalization which sufficiently frightened a seasoned English Professor, one described as "unflappable", who threatened to resign unless he was removed from her class.

38. His conduct was so frightening and his classroom demeanor so intimidating that students dependent on a good grade in that class stopped coming to class.

39. According to the Threat Assessment report, once a threat assessment inquiry is initiated, the next inquiry to be answered was what communications and behavior was reported and by whom? Here, the communication was an angry, threatening poem delivered in a

threatening way and directed at students in the class and the professor, and the reporting was done by two respected professors.

40. Following the initiation of a threat assessment inquiry, an in depth inquiry is then made into the personal, situational and historical qualities of the student thought to be at risk.

41. Following are a list of characteristics which suggest the nature of the risks:

a. Does the student have a major grievance or a grudge, and, if so, against whom?

b. Has the student shown inappropriate interest in school attackers.

c. Is the student experiencing hopelessness, desperation and/or despair?

d. Has the student experienced a recent loss of status.

e. Has the student ever been suicidal or considered ending his own life?

f. Does the student have a trusting relationship with at least one responsible adult?

g. Does the student have friends to whom he can turn for support

42. As more fully set forth below, Seung-Hui Cho exhibited a significant majority of the characteristics of a troubled student for whom a positive threat assessment should have been made and intervention ordered.

43. Virginia Tech was aware or should have been aware of these studies, but negligently failed to utilize or react to them.

44. Had Virginia Tech followed this roadmap, Seung-Hui Cho would have been identified as a student at risk.

45. Dr. Lucinda Roy, formerly the Chair of the English Department of Virginia Tech and then a professor in that department, instinctively knew that she was dealing with a troubled student when she first came into contact with Seung-Hui Cho.

46. As more fully set forth below, Dr. Roy, while not formally trained to detect a troubled student, and not in a position at Virginia Tech where she would be expected to have read and been familiar with the contents of the May 2002 report or to have any responsibility for the adoption of its recommendations, undertook numerous, ongoing efforts to involve the administration of Virginia Tech in his assessment and his care.

47. Notwithstanding the importance of the findings and recommendations of the May 2002 Threat Assessment report, and the impetus the killings and woundings at Appalachian Law School gave other colleges and universities of Virginia to seek ways to reduce the risk of violence inflicted by disturbed students, your Plaintiffs can find no evidence that Virginia Tech was aware of the risks, or was aware of the report of May, 2002 or had any plan to predict and prevent campus violence caused by troubled students.

48. Upon information and belief, as of October, 2005 into April 16, 2007, Virginia Tech had no threat assessment process, no threat assessment team no threat assessment policies, protocols or plans.

49. As a direct and proximate consequence of this failure, which was negligent, Virginia Tech had no formal or informal way of dealing with the information brought to it by Dr. Lucinda Roy, information that to any person familiar with threat assessment would have indicated that Seung-Hui Cho was a student at high risk and high potential for violence.

50. Should Virginia Tech contend that the procedure in place for identifying students at risk was referral of the student to Judicial Affairs, such a referral was made in this case and produced no assessment at all, let alone a threat assessment.

51. Should Virginia Tech contend that the procedure in place for identifying students at risk was referral of the Care Team, such a referral was made in this case and produced no assessment at all, let alone a threat assessment.

52. Should Virginia Tech contend that the procedure in place for identifying students at risk was referral of the student either directly or through Judicial Affairs or the Care Team to the Cook Counseling Center, such a referral was made in this case and produced no assessment at all, let alone a threat assessment.

53. As between Judicial Affairs, the Care Team and the Cook Counseling Center, to all of which Seung-Hui Cho had been referred, the entity which on paper was the one most likely to recognize that he was mentally ill and a hazard to himself and others was the Cook Counseling Center, which held itself out as "the provider of mental health services to the student population. . . ."

54. While Virginia Tech represented that "the staff of the Cook Counseling Center was guided by the highest professional and ethical standards of their professions and dedicated to providing quality services," Dr. Roy's efforts (as described below) to get the staff of the Cook Counseling Center involved in Mr. Cho's mental illness and to assess his needs and evaluate his risk of harm to himself and others tell a quite different story.

55. Reference is made to the more detailed allegations of the negligence and gross negligence of the Cook Counseling Center directors, staff, agents and employees in Count III, which are incorporated herein by reference.

56. Because the professional staff of the Cook Counseling Center professes to have lost all records of Seung-Hui Cho's contacts with the professionals at the center, it is clear they rendered no mental health services to an obviously disturbed student despite Dr. Roy's urgent

request for their assistance and her description of the behaviors which made her inquiry so urgent.

57. Not only did Dr. Roy describe behaviors to the officers, agents and employees of the Cook counseling Center which would have caused a reasonably prudent mental health professional to be concerned, its then Director was specifically notified by Dr. Gerard Kowalski, the Director of Residence Life that Mr. Cho, "who had a history of erratic behavior and counseling based issues over the course of the semester" and "had expressed suicidal ideations" and "had previously had 'blades' in his room" was detained at the New River Valley Medical Center for further examination/counseling."

58. When Mr. Cho appeared at the Cook Counseling Center on December 14, 2005, the same day that this advice was given to Dr. Miller, the Director of the Cook Counseling Center, by Dr. Kowalski, Mr. Cho was seen for 45 minutes by a therapist who was provided no history of his prior contacts with the Cook Counseling Center, no history of Dr. Roy's request for intervention, no history of his adjudication as one mentally ill who posed a risk of harm to himself and others, no history of his violent writings and no history of his erratic behavior.

59. Nor did that therapist make any effort to elicit this information despite the advice that Mr. Cho had a history of erratic behavior and counseling based issues.

60. The therapist who saw him on that date made no threat assessment, made no diagnosis, offered no treatment, has lost her notes and claims to have no specific memory of this patient.

61. The therapist made no such evaluations because Virginia Tech had not adopted any plan, program, policy, process or protocol requiring that such an evaluation be made of any student thought to pose a risk of harm to himself or others.

62. All of these failings by Virginia Tech were negligent, and on occasion grossly negligent, and individually and collectively they constituted a proximate cause of the death of Julia Pride.

63. Another failing by Virginia Tech that contributed to cause the death of Julia Pride was its failure to have a policy, procedure, plan or process in place which would allow a designated office or department within the university to investigate, in the aggregate, complaints of disruptive behavior, complaints which called into question the student's mental health, complaints which suggested a potential for violence, complaints of violent writings coupled with abnormal behavior, complaints of harassment of students of the opposite sex, or complaints of unauthorized photography or photography which might be considered sexually harassing.

64. Virginia Tech had no policies, procedures, processes, or protocols in place which would allow the non-academic suspension or termination of a student exhibiting behaviors such as those exhibited by Seung-Hui Cho or condition his continued attendance at the university on his consent to and attendance at psychiatric diagnostic and/or treatment sessions, or counseling, or other university approved therapy.

65. While on notice of behaviors which were erratic, frightening to faculty and students, and potentially dangerous, Virginia Tech made no effort to procure from Seung-Hui Cho his consent to obtain a prior mental health history, procure prior mental health records, consult with his prior therapists, discuss his condition with his parents or high school teachers or counselors.

66. In short, Virginia Tech has taken the position that it was powerless to intervene with Seung-Hui Cho, either through the exercise of its inherent powers to protect its students and faculty, or by encouraging him to cooperate as a condition of his continued presence on campus.

67. Virginia Tech has taken the position that it was barred from doing anything other than what it did with respect to Seung-Hui Cho on the grounds that two federal enactments, Family Educational Rights and Privacy Act (FERPA) and the Health Insurance Portability and Accountability Act (HIPAA) so protected his privacy that the university could not intervene - even after he had been adjudicated mentally ill and a danger to himself or others.

68. In reaching the conclusion that it was barred by FERPA or HIPPA from doing anything other than what it did, if the university contends it relied on legal advice, it relied on erroneous legal advice provided by an officer, agent or employee of the university, legal advice which was deficient upon a plain reading of FERPA or HIPPA or the associated regulations.

69. If university counsel lacked a working familiarity with FERPA or HIPPA, Virginia Tech was negligent in not consulting counsel with experience with FERPA and HIPPA.

70. If Virginia Tech harbored a good faith belief that FERPA and/or HIPPA rendered it powerless to protect its students from dangerous fellow students then it was negligent.

71. As a direct and proximate result of the negligence, gross negligence, and reckless disregard of Virginia Tech, Julia Kathleen Pride was killed, and her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00) compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

COUNT II

RESPONDEAT SUPERIOR LIABILITY OF THE COMMONWEALTH OF VIRGINIA

72. Plaintiffs incorporate paragraphs 1-71 by reference as though fully set out herein.

73. Plaintiffs filed a timely claim against the Commonwealth of Virginia as required by Va. Code 8.01-195.6.

74. In the alternative, Plaintiffs assert that the Commonwealth of Virginia is liable *respondeat superior*, for the numerous acts of negligence and gross negligence of Virginia Tech and the officers, agents and employees, of VA Tech, and is further liable for the conduct of a few of VA Tech's officers, agents, and employees who were deliberately indifferent to the safety needs of its students, as hereinafter set out.

75. As a direct and proximate result of the negligence, gross negligence, and reckless disregard of the Defendants, Julia Kathleen Pride was killed, and her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii)

services, protection, care and assistance provided by the decedent;

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COUNT III

CLAIMS AGAINST ROBERT MILLER, MAISHA SMITH, CATHYE BETZEL, SHERRY LYNCH CONRAD, AND SANDRA "SANDY" WARD OF THE COOK COUNSELING CENTER: NEGLIGENCE, GROSS NEGLIGENCE AND DELIBERATE INDIFFERENCE

76. At all times relevant to these proceedings, Defendant Robert Miller was Director of the Cook counseling Center, and as such was responsible for the Cook Counseling Center's compliance with all applicable state laws governing the provision of mental health services and with the center's compliance with the applicable standards of professional care.

77. At all times relevant to these proceedings, Robert Miller as Director of the Cook Counseling Center was responsible for supervising the compliance of all mental health therapists and administrative staff with the recording keeping requirements of state law and the Cook Counseling Center's record keeping standards.

78. At all times relevant to these proceedings, Robert Miller as Director of the Cook Counseling Center, was responsible for ensuring that students in need of mental health services

were appropriately handled and that faculty concerns expressed about the mental health of specific patients investigated and responded to appropriately.

79. On October 18, 2005, Robert Miller was notified by Lucinda Roy, Chair of the English Department, about a student, Seung-Hui Cho, whose writing was so violent and behavior so disturbing to Professor Nikki Giovanni, a professor in Dr. Roy's department that Dr. Giovanni wanted him out of her class or she would resign her professorship.

80. On that date and time Dr. Miller was also advised that he should not take Dr. Giovanni's concerns about Mr. Cho lightly because, in Dr. Roy's words, Dr. Giovanni was ordinarily "never rattled by anything", but was seriously concerned about Mr. Cho.

81. On or about October 18, 2005, Robert Miller was also notified that Seung-Hui Cho's behavior in Dr. Giovanni's class frightened not only Dr. Giovanni but that his writings and his behavior had frightened a number of her students who had stopped coming to her class because of Mr. Cho.

82. On or about October 18, 2005 Robert Miller was also notified that Seung-Hui Cho's behavior in Dr. Giovanni's class so intimidated her that she had requested security.

83. On or about October 18, 2005 Robert Miller was also notified that the threat posed by Seung-Hui Cho was thought to be so substantial that Lucinda Roy had offered to have a police officer present or outside Dr. Giovanni's office door should Dr. Giovanni meet with Seung-Hui Cho any further.

84. Sometime on or about October 19, 2005, Dr. Miller was notified that during a meeting between Dr. Roy and Seung-Hui Cho, attended by Cherly Ruggiero on October 19th, Mr. Cho:

a. Had seated himself as far away from Dr. Roy as he could get.

b. Shook hands with a sweaty but inert hand.

c. Wore a baseball cap pulled very low on his head and wore reflective sunglasses, even inside.

d. Spoke with a voice so low that it was difficult to hear.

e. His responses to questions put to him, if he chose to respond, were very slow to come and were monosyllabic.

f. He admitted taking pictures of young women under his desk.

g. Evidenced a spark of anger or resentment if he were to be kicked out of class.

h. When asked if anything terrible or bad has happened to him, he waited a long time before answering in the negative.

i. Asked if he had ever worked with a counselor and whether he'd be comfortable doing that, he gave no answer.

j. Asked directly if he would consider talking to a counselor, he waited a long time, then responded "I don't know."

k. Said he had a sister, but did not know what her job was.

l. Seemed near tears and had trembling hands at the end of the session.

85. At the end of the meeting with Seung-Hui Cho, both Dr. Roy and Ms. Ruggiero thought he was deeply depressed and were very worried about him.

86. On October 19, 2005, Dr. Roy suggested to Seung-Hui Cho that he seek counseling with Defendant Cathye Betzel, one of Mr. Miller's therapists at the Cook Counseling Center.

87. On October 21, 2005, Dr. Roy notified Mr. Miller that Cho had elected to transfer from Dr. Giovanni's class to independent study and that Dr. Giovanni would not need security at a meeting with Cho because that meeting had been cancelled.

88. On October 21, 2005, Dr. Roy also notified Mr. Miller that she had again tried to convince Cho to seek assistance from Counseling, "though my sense is that he will not respond favorably to that suggestion."

89. On November 27, 2005, the Virginia Tech Police Department (VTPD) was notified by complaint that Cho had frightened a female student by appearing at her dorm room uninvited and unannounced, with a hat pulled down and wearing sunglasses, introducing himself as "Question mark." The VTPD referred the matter to the Virginia Tech Judicial Affairs.

90. On November 30, 2005, Cho called Mr. Miller's Cook Counseling Center and requested an appointment with therapist Cathye Betzel and indicated that his professor had spoken to Cathye Betzel about Mr. Cho.

91. In October 2005, Dr. Roy had spoken with Cathye Betzel about her concerns regarding Mr. Cho.

92. Instead of speaking with Cathye Betzel, he was referred to another of Mr. Miller's therapists, Maisha Smith, a professional counselor, who spoke with Cho by phone.

93. Defendant Smith, who was required by state law to create and maintain records of this contact either failed to do so, which is negligence *per se*, or created records which were lost, misplaced, or destroyed either before or after April 16, 2007, constituting spoliation of those records by either Defendant Smith or other defendants. Drawing all natural inferences from the spoliation of records, if any ever existed, Defendant Smith provided no mental health services to Cho.

94. Defendant Smith contends she has neither records nor recollection of Mr. Cho, further indicating she provided no mental health services to Mr. Cho.

95. As a direct and proximate consequence of her negligence in the performance of ministerial acts, her gross negligence, and the reckless indifference with which Defendant Smith treated this contact with a student suffering a serious mental illness, no mental health services were provided him, and no further inquiry was made about Cho's mental health history or what specifically brought him to the Cook Counseling Center on that occasion. An opportunity to deflect him from his dangerous and ultimately tragic course was lost.

96. As a further consequence of Defendant Smith's negligence in the performance of ministerial acts, her gross negligence, and her reckless disregard of her duties to Seung-Hui Cho and derivatively to those who might be adversely impacted by Cho's mental illness and violent fantasies, an opportunities to bring Cho into the Virginia Tech mental health system and deflect him from his dangerous and ultimately tragic course was lost.

97. As of November 30, 2005, despite the several contacts with Mr. Miller by one or more members of the faculty describing Seung-Hui Cho's violent writings, frightening and intimidating demeanor and bizarre behavior, and despite notice to Mr. Miller that faculty members were encouraging Cho to seek counseling with Mr. Miller's Cook Counseling Center, specifically therapist Cathye Betzel, Mr. Miller had not alerted his therapists or administrative staff to be on the look-out for Mr. Cho or directed them to have him see Defendant Betzel should he call.

98. As a direct and proximate consequence of Mr. Miller's negligence in failing to perform ministerial acts, his gross negligence, and his reckless indifference to a serious risk of harm, Cho's inquiry was not directed to therapist Cathye Betzel, who had been informed of his

risky attitude and behavior by Dr. Lucinda Roy. Instead Mr. Cho was passed off to Defendant Smith, who, upon information and belief may have had no history on this patient because neither Defendant Betzel nor Defendant Miller had caused any records to either be kept or maintained on this patient, and, as a consequence Defendant Smith may have dismissed his mental health inquiries with a level of indifference equal to that of Dr. Miller's.

99. As a further consequence of Mr. Miller's negligence in the performance of ministerial acts, his gross negligence and his reckless disregard of his duties to Seung-Hui Cho and derivatively to those who might be adversely impacted by Cho's mental illness and violent fantasies, in the Fall of 2006, Professor Lisa Norris, another of Cho's English professors, alerted Mary Ann Lewis, Associate Dean of Liberal Arts and Human Sciences about Cho's bizarre behavior, but Lewis, upon inquiry could find no reports of either police or mental health contacts for Cho.

100. As a further consequence of Mr. Miller's negligence in the performance of ministerial acts, his gross negligence, and his reckless disregard of his duties to Seung-Hui Cho and derivatively to those who might be adversely impacted by Cho's mental illness and violent fantasies, another opportunity to bring Cho into the Virginia Tech mental health system and deflect him from his dangerous and ultimately tragic course was lost.

101. On December 12, 2005, following Cho's involvement in a second or third stalking type incident, another opportunity to deflect Cho from his dangerous and ultimately tragic course arose and was lost.

102. Seung-Hui Cho failed to keep his December 12, 2005 appointment at the Cook Counseling Center, but he called the Center shortly after the time of his missed appointment and was given an appointment for triage by phone for forty-five minutes later.

103. The triage was conducted by Cathye Betzel.

104. Defendant Betzel should have appreciated on December 12, 2005 that Cho was the student about whom she has spoken with Dr. Roy in October, 2005. About what Defendant Betzel and Cho spoke on December 12, 2005 is unknown. Whether Defendant Betzel was aware that Cho had earlier spoken with Defendant Smith is unknown.

105. These matters are unknown because Defendant Betzel and Defendant Smith either failed to make and retain any records of their interaction with Cho, or they made records which were lost, misplaced or destroyed, intentionally or otherwise.

106. Cathye Betzel has no recollection of the brief triage with him and, again, the documentation that typically would have been created and was required to be kept by state law and regulations is missing.

107. Although Dr. Roy had consulted with Cathye Betzel about her concerns regarding Cho, the documentation that typically would have been associated with such a consultation is also missing.

108. Defendant Betzel, who was required by state law to create and maintain records of this contact either failed to do so, or created records which were lost, misplaced, or destroyed either before or after April 16, 2007, constituting spoliation of those records by either Defendant Betel or other defendants. Drawing all natural inferences from the spoliation of records, if any ever existed, Defendant Betzel provided no mental health services to Cho.

109. Whether the records were never created or created but then lost, misplaced, or destroyed either before or after April 16, 2007, constituted spoliation of those records, if they existed, by Defendants Betzel, Smith or other defendants.

110. If the records were never created, then that constitutes negligence *per se*, and given the other information known to or which should have been known by Defendant Betzel, constitutes gross negligence under the circumstances. If the records were created but thereafter lost, misplaced or destroyed, intentionally or otherwise, that constitutes spoliation of the evidence and gives rise to inferences adverse to Defendant Smith, Betzel, or other defendants.

111. As a direct and proximate consequence of the negligence in the performance of ministerial acts, her gross negligence and the reckless, indifference with which Defendant Betzel treated this contact with a student suffering a serious mental illness, no mental health services were offered him, no arrangements were made for follow-up appointments to provide such services, no further inquiry was made about Cho's mental health history or what specifically brought him to the Cook Counseling Center on that occasion. Another opportunity to deflect him from his dangerous and ultimately tragic course was lost.

112. As a further consequence of Defendant Betzel's negligence in the performance of ministerial acts, her gross negligence, and her reckless disregard of her duties to Seung-Hui Cho and derivatively to those who might be adversely impacted by Cho's mental illness and violent fantasies, another opportunity to bring Cho into the Virginia Tech mental health system and deflect him from his dangerous and ultimately tragic course was lost.

113. On December 13, 2005, after Cho articulated suicidal ideation, he was pre-screened at the VTPD by Kathy Godbey, a mental health professional from the New River Valley Community Services Board, to determine if he posed an imminent threat of harm to himself and others.

114. Ms. Godbey found him to be mentally ill and a threat to himself and others, and she filed a petition for a temporary restraining order for his hospitalization.

115. Cho was hospitalized the night of December 13, 2005.

116. The matters which took him to the police department for the pre-screening were summarized in an email from Patricia Schwery Smith forwarding an "On Call Report." Schwery Smith was the Residence Life Administrator on Call on the 13th of December.

117. On the 14th of December Schwery Smith advised that "Cho who had a history of erratic behavior and counseling-based issues over the course of the semester" [with which AD Settle, GHD Virga and RA Trotman were familiar] went to the VTPD on his own to talk to an ACCESS counselor because of suicidal ideation. The magistrate entered a temporary detention order "for further examination/counseling."

118. In the morning of December 14th Special Magistrate Barnett, after interviewing Mr. Cho, found that he suffered from a mental illness which placed him at imminent risk of harm to himself and ordered him into outpatient therapy and further ordered that he comply with all treatment plans.

119. On December 14, 2005, with the assistance of the Patient Service Representative at the psychiatric hospital, Mr. Cho made an appointment with the Cook Counseling Center for 3:00 p.m. that day.

120. The Schwery Smith email was sent, *inter alia*, to Gerard Kowalski, Director of Residence Life at 08:05 a.m. on December 14th, who sent it on to Defendant Robert Miller at 10:46 a.m. on the 14th, and Miller sent it on to Defendants Smith, Betzel, Lynch (now Conrad) and Ward at 4:43 p.m., with "FYI in the event this student is seen here".

121. Defendant Sandra "Sandy" Ward reported back to Miller that Cho had already been seen at 3:00 by therapist Lynch (now Conrad).

122. Defendant Miller, alerted by Dr. Roy just two months earlier that Cho was thought to be dangerous, now knew that Cho was seen by one of his therapists, but made no inquiry to determine the outcome of the "further examination/counseling," whether Cho was taken into the system, whether he was under any compulsion for diagnosis and treatment, such as a court order, what Lynch determined about his condition, or whether any follow up was ordered, another indication of Defendant Miller's disregard for his responsibilities with respect to this patient.

123. When Cho was seen by Defendant Lynch (now Conrad) for about 45 minutes, he was simply triaged again. No diagnosis was given.

124. Defendant Lynch (now Conrad), who was required by state law to create and maintain records of this contact either failed to do so, or created records which were lost, misplaced, or destroyed either before or after April 16, 2007, constituting spoliation of those records by either Defendant Lynch (now Conrad) or other defendants, but in the absence of such records provided no mental health services, neither made nor kept any notes and has no recollection of this patient. She ordered no follow up diagnosis or treatment, made no determination whether he was under a court order to attend and participate in therapy, and evidenced a reckless disregard for this patient's needs and for those in the foreseeable range of risk of harm Cho might cause.

125. As a direct and proximate consequence of the negligence in the performance of ministerial acts, her gross negligence and the reckless indifference with which Defendant Lynch (now Conrad) treated this contact with a student suffering a serious mental illness, no mental health services were offered him, no arrangements were made for follow-up appointments to provide such services, no further inquiry was made about Cho's mental health history or what

specifically brought him to the Cook Counseling Center on that occasion. Another opportunity to deflect him from his dangerous and ultimately tragic course was lost.

126. As a further consequence of Defendant Lynch's (now Conrad) negligence in the performance of ministerial acts, her gross negligence, and her reckless disregard of her duties to Seung-Hui Cho and derivatively to those who might be adversely impacted by Cho's mental illness and violent fantasies, another opportunity to bring Cho into the Virginia Tech mental health system and deflect him from his dangerous and ultimately tragic course was lost.

127. Defendant Sandra Ward was the Office Administrator of the Cook Counseling Center who oversaw record creation and retention.

128. Defendant Ward failed to oversee the creation and retention of Cook Counseling Center's contact with Cho.

129. As a direct and proximate consequence of the negligence in the performance of ministerial acts, her gross negligence and the reckless indifference with which Defendant Ward failed to oversee the creation and retention of the Cook Counseling Center's contact with Mr. Cho, who was suffering a serious mental illness, no mental health services were offered him, no arrangements were made for follow-up appointments to provide such services, no further inquiry was made about Cho's mental health history or what specifically brought him to the Cook Counseling Center on that occasion.

130. As a direct and proximate consequence of the negligence in the performance of ministerial acts, her gross negligence and the reckless indifference with which Defendant Ward failed to oversee the creation and retention of the records concerning Cook Counseling Center's contact with Mr. Cho, in the Fall of 2006, Professor Lisa Norris, another of Cho's English professors, alerted Mary Ann Lewis, Associate Dean of Liberal Arts and Human Sciences about

Cho's bizarre behavior in 2006, but Lewis, upon inquiry could find no reports of either police or mental health contacts for Cho.

131. As a further consequence of Defendant Ward's negligence in the performance of ministerial acts, her gross negligence, and her reckless disregard of her duties to Seung-Hui Cho and derivatively to those who might be adversely impacted by Cho's mental illness and violent fantasies, the opportunities to bring Cho into the Virginia Tech mental health system and deflect him from his dangerous and ultimately tragic course was lost.

132. In January 2006, the Cook Counseling Center received the mental health records created at the time of Seung-Hui Cho's detention at Carilion Behavioral Health Center, which records, upon information and belief, reflected that he had twice been adjudicated mentally ill [the evening of December 13, 2005 and the morning of December 14, 2005] and that he had been found by the court to represent a danger to himself or others.

133. In February 10, 2006, Cho once again came to the attention of his professors for aberrant and erratic behaviors and mental and emotional problems.

134. On February 10, 2006, Professor Bob Hicok observed that he could not engage Cho in conversation even when he was called on in class. The most he would do was nod, and then do so almost imperceptibly.

135. Professor Hicok encouraged Cho to tell him by email what his difficulties were. Cho did not respond.

136. When professor Hicok emailed Cho asking him to describe his difficulty speaking Cho only responded "I don't know. I have trouble talking. I don't know."

137. On April 17, 2006, Seung-Hui Cho, who had evidenced numerous shortcomings in his writings for Professor Carl Bean's technical writing course, pursued the professor to his office where he angrily confronted him about the professor's suggestion Cho drop the course.

138. Likewise in the Spring of 2006 Cho wrote a paper for professor Hicok's class in which a young man, who hates the students at his school, plans to kill them and himself. The themes in this paper echo the story of Columbine and had themes of the events of April 16, 2007 and the tapes Cho sent to NBC.

139. In 1999, after the Columbine shootings, Cho, then a middle school student, had evidenced homicidal and suicidal ideation in his writings and he was promptly and correctly referred for psychiatric counseling, which he satisfactorily received and for which he was medicated.

140. Seung Hui Cho's mental illness was susceptible to diagnosis and treatment with beneficial results, both to Mr. Cho and those students with whom he was placed.

141. In September of 2006, from September 6 to September 12, professor Lisa Norris who had Cho in a writing class, encouraged Cho to attend counseling sessions, but he declined to attend.

142. In that same period in September, 2006 professor Norris observed that in three of Cho's upper level courses he had apparently never spoken more than a word and he was a senior.

143. In that same period professor Norris noticed that his behavior was disturbing to other students in her class, that he seemed unable to speak even to say "Pass" and he did not make eye contact with her.

144. In that same period in 2006 Professor Lisa Norris contacted Mary Ann Lewis, Associate Dean of Liberal Arts and Human Sciences, about her concerns over Cho's behavior and performance.

145. Ms. Lewis, upon information and belief, queried the Virginia Tech Police Department and Cook Counseling Center about Cho and found no mention of mental health or behavioral issues in the files and advised Professor Norris that she was powerless to do anything about Cho.

146. The records of Cho's visits to the Cook Counseling Center and the records made by others but accumulated at the Cook Counseling Center with respect to Cho were required by Virginia law to be maintained. They were not.

147. The absence of any records of Cho's contacts with the Cook Counseling Center, the absence of records of his adjudication of mental illness and dangerousness, the absence of records of his involuntary detention and involuntary order into out patient therapy based upon that illness and that dangerousness reflects the continued consequences of the negligence and gross negligence of the officers, agents and employees of the Cook counseling Center, and, more specifically the negligence and gross negligence of Robert Miller, the then past director of the Cook Counseling Center, the negligence and gross negligence of Sandra Ward, the Office Administrator of the Cook Counseling Center who oversaw record creation and retention, and the ongoing negligence and gross negligence of Christopher Flynn, who was a therapist at the Cook Counseling Center in times relevant to these proceedings, and who had become the new director of the Cook Counseling Center in 2006.

148. The missing records were essential to the interception and deflection of Mr. Cho from his perilous and ultimately tragic course, and their absence a proximate cause of the death of Julia Pride.

149. Mr. Cho was under a court order for out-patient psychotherapy with which he had not complied. That order was ongoing until he had completed his therapy.

150. He was not monitored by the New River Valley Community Services Board, as required by law, and that obligation was a continuing one until he had completed his ordered therapy.

151. The custodian of the medical records at Cook Counseling Center had lost, misplaced or destroyed his records, and the duty to maintain those records was an ongoing one.

152. Defendants, Miller, Smith, Betzel, Lynch (now Conrad), Ward, and Flynn knew or should have known that if Cho did not receive the ordered treatment he was likely to cause harm to himself in a manner which was likely to cause bodily harm to others.

153. It was foreseeable to Defendants, Miller, Smith, Betzel, Lynch (now Conrad), Ward, and Flynn that if Cho did not receive the ordered treatment he was likely to cause harm to himself in a manner which was likely to cause bodily harm to others.

154. Cho did in fact undertake to cause himself harm when he massacred the people in Norris Hall, which led to the response by the police and Cho's suicide.

155. Plaintiffs' decedent was a member of an identifiable class, which consisted of the faculty, staff and the student body at Virginia Tech and was within an identifiable zone of danger if Cho were left untreated.

156. The Defendants, Miller, Smith, Betzel, Lynch (now Conrad), Ward, and Flynn owed those in the identifiable class, of which Plaintiffs' decedent was a member, a duty to

provide treatment to Cho, or if their protocol did not allow them to accept a patient under court ordered treatment, to advise NRVCS and the NRVCSB that they would not treat Mr. Cho.

157. As a direct and proximate result of the failure of the Defendants, Miller, Smith, Betzel, Lynch (now Conrad), Ward, and Flynn to perform their duties, Julia Kathleen Pride lost her life.

158. In addition to the spoliation of the records which were required by state law to be created and maintained on this patient, the officers, agents and employees of the Cook Counseling Center, or some of them, following the tragic events of April 16, 2007 engaged in a cover-up of the events surrounding Cho's overnight detention at Carilon St. Albans Behavioral Center, the court order that he undergo outpatient therapy, and his subsequent release by the Cook Counseling Center.

159. Defendant Flynn became the Director of the Cook Counseling Center in 2006. When interviewed by Harry Smith of CBS Morning News following the events of April 16, 2007 and asked why Cho had been released by the Cook Counseling Center on December 14, 2005, Defendant Flynn falsely stated that Cho had been released because he had been diagnosed and treated by others and not released by them until it was determined that he was no longer a danger to himself or others, and that Virginia Tech had no control over the others.

160. The cover-up continues. As recently as April 9, 2009, Dr. Edward Spencer Vice-President of Student Affairs, being interviewed on the Diane Rehm Radio Show (NPR) asserted that three mental health professionals associated with Dr. Miller's Cook Counseling Center had independently done a threat assessment on Seung-Hui Cho and concluded he was not a threat to himself and others.

161. No threat assessment of Seung-Hui Cho was ever made by any mental health professional at Cook counseling Center, and the poverty of Dr. Spencer's contention that they had so evaluated him is evident because one such professional, Sherry Lynch Conrad, saw Cho the very day he had been adjudicated mentally ill and a danger to himself and denies any awareness that Cho was in to see her because of that adjudication.

162. Defendants Miller, Smith, Betzel, Lynch (now Conrad), Ward, and Flynn, and each of them individually, were negligent in the performance of ministerial duties, and grossly negligent as their conduct amounts to that degree of negligence which shows such indifference to others as constitutes an utter disregard of prudence amounting to a complete neglect of the safety of Julia Pride and the other students and the faculty on the campus who it was foreseeable would be exposed to the danger associated with the failure to treat Mr. Cho.

163. As a direct and proximate result of the negligence, gross negligence, and reckless disregard of these Defendants, and each of them individually, Julia Kathleen Pride lost her life, and her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00) compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

COUNT IV

RESPONDEAT SUPERIOR LIABILITY OF VIRGINIA TECH

164. The allegations of paragraphs 1 to 163 are hereby incorporated by reference.

165. Defendant Virginia Tech is liable respondeat superior for the negligence, gross negligence and deliberate indifference of the Cook Counseling Center and its agents and employees.

166. The university's anticipated defense that the killings and the maimings were the act of a demented student over which it had no control and less responsibility, are belied by the abject failure of the officers, agents and employees associated with the Cook Counseling Center to meet anything close to the applicable standard of professional care, their failure to render Seung-Hui Cho mental health services of any kind or form, despite being literally begged to do so by concerned faculty members, the failure of the officers, agents and employees of the Cook Counseling Center to heed the warnings of those concerned faculty members, and their failure to create even a case file on Seung-Hui Cho which might alert other mental health professionals to this student in need.

167. Their anticipated defenses fall of their own weight. They contend that:

a. they couldn't compel him to accept therapy; yet

b. once they had him in their custody pursuant to a court order that he undergo out-patient psychotherapy, they didn't provide him any diagnosis or render him any treatment because they didn't know he was under court order, and then they assert that;

c. had they known he was there under court order they would not have accepted him as a patient because they don't accept patients under court ordered therapy, a position they had successfully hidden from the New River Valley Community Services Board with which they have ongoing relationships.

168. As a direct and proximate result of the negligence, gross negligence, and reckless disregard of the Defendants, Julia Kathleen Pride was killed, and her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against the Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00)

compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

COUNT V

RESPONDEAT SUPERIOR LIABILITY OF THE COMMONWEALTH OF VIRGINIA

169. The allegations of paragraphs 1 to 168 are hereby incorporated by reference.

170. Plaintiffs filed a timely claim against the Commonwealth of Virginia as required by Va. Code 8.01-195.6.

171. In the alternative, the Commonwealth of Virginia is liable *respondeat superior* for the negligence, gross negligence and deliberate indifference of the Cook Counseling Center and its agents and employees.

172. As a direct and proximate result of the negligence, gross negligence, and reckless disregard of the Defendants, Julia Kathleen Pride was killed, and her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against the

Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00) compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

COUNT VI

CLAIMS OF NEGLIGENCE, GROSS NEGLIGENCE AND DELIBERATE INDIFFERENCE WITH RESPECT TO DEFENDANTS STEGER, HYATT, HINCKER, BYERS, FLINCHEM, FORD, MCNAMEE, AND HEIDBERDER

173. Plaintiffs incorporate paragraphs 1-172 by reference as thought fully set out herein.

174. The defendants involved in this portion of the Complaint are:

a. Charles W. Steger individually and as President of the University and as a member of the Emergency Policy Group.

b. James Hyatt, individually and as Executive Vice-President of the University and as a member of the Emergency Policy Group.

c. Larry Hincker, individually and as Vice President in charge of University (Public) Relations and as a member of the Emergency Policy Group.

d. Ralph Byers, individually and as Vice President in charge of Governmental Relations and as a member of the Emergency Policy Group.

e. Wendell Flinchum, individually and as Chief of Police of the Virginia Tech Police Department and as a member of the Emergency Policy Group.

f. David R. Ford, individually and as Vice President and Dean of Undergraduate Education, Emeritus and as a member of the Emergency Policy Group

g. Mark G. McNamee, individually and as Senior Vice President and Provost and as a member of the Emergency Policy Group.

h. Kay K. Heidberder, individually and as counsel and as a member of the Emergency Policy Group.

175. On or about 07:15 on the morning of April 16, 2007, two students at Virginia Tech, Emily Hilscher and Ryan Clark, were shot and killed by Seung-Hui Cho while they were in room 4040 West Ambler Johnston Hall.

176. Room 4040 was Emily Hilscher's dormitory room

177. Emily Hilscher was the first to be shot by Seung-Hui Cho, although she was not declared dead until after Ryan Clark was declared dead.

178. Ryan Clark, the Resident Advisor for that section of West Ambler Johnston Hall, was shot and killed as he entered 4040 West Ambler Johnston Hall in response to the noise made when Seung-Hui Cho shot Emily Hilscher.

179. By 07:24 a.m. on the 16th of April, 2007, the Virginia Tech Police Department was aware that two people had been fatally shot or wounded in 4040 West Ambler Johnston Hall.

180. Between 7:24 a.m. and 08:00 a.m. on April 16, 2007 University President, Defendant Charles W. Steger, Defendant James Hyatt, Executive Vice-President and COO of Virginia Tech, Defendant Larry Hincker, Vice-President in Charge of the university's public relations and Chief of Police, Defendant Wendall Flinchum, Defendant Davis R. Ford and Defendant MacNamee were notified of the shootings, notified that the gunman was unknown and that no gun had been found at the scene.

181. At that time the gunman was on the loose, was presumably armed and might still be on campus.

182. On or about 08:00 a.m. on April 16, 2007, President Steger called for the convening of the university's Emergency Policy Group. Why the 40 minute delay in doing so is unknown.

183. Ample time then remained in which to cancel 09:00 a.m. classes and all other classes until the gunman was captured or the campus otherwise cleared of this clear and present danger.

184. At that time President Steger or his deputy, Executive Vice-President Hyatt had full authority to order and/or issue an alert and warning to the student body and university faculty of the events which had transpired at West Ambler Johnston Hall and warn that the gunman was still at large, presumably armed and dangerous, and might still be on campus, but elected not to do so.

185. As the time for cancelling 09:00 a.m. classes was approaching neither the Virginia Tech Police Department nor the members of the Emergency Policy Group, including these named defendants, had any information of the killer's identity or whereabouts.

186. In anticipation that the killer was still on campus and posed a clear and present danger to the safety of students and faculty, Wendell Flinchum, the Chief of Police for the Virginia Tech Police Department, initially ordered the assembly of the Emergency Response Team (ERT, a/k/a SWAT) at 8:15 a.m.

187. For reasons unrelated to the safety of students and faculty, Defendant Flinchum thereafter ordered the Emergency Response Team to stage at the Blacksburg Police Department, not the Virginia Tech Police Department.

188. Upon information and belief, the Emergency Response Team, was staged at the Blacksburg Police Department out of concern that its staging on campus could adversely impact the university's image as a safe place for students and faculty.

189. In the alternative, Defendant Flinchum, was ordered or directed to stage the Emergency Response Team off campus by the Emergency Policy Group or some of its members, probably Defendants Steger, Hyatt, Hincker and Byers out of concern about the university's image.

190. By staging the Emergency Response Team off campus and by failing to invoke those portions of its mutual aid agreement under which additional law enforcement officers and agencies would respond to the campus to establish a police presence, the deterrent effect of an on campus police presence was lost.

191. In the window of opportunity between the 07:24 determination that two students had been fatally shot by an unknown gunman who remained at large and presumably was armed, and the opportunity to cancel the 09:00 classes (approximately one hour and 30 minutes), the Emergency Policy Group labored with what to advise the faculty and student body about the 07:15 a.m. incident and when to notify them.

192. A simple, factually correct message that at 7:15 a.m. there had been a homicide in West Ambler Johnston Hall, a second student had been critically wounded and the gunman was still at large and was presumably armed and dangerous was rejected by the Emergency Policy Group on the urgings of its "image group."

193. The Emergency Policy Group was divided into roughly two camps, one camp, hereinafter called the "safety group", was desirous of adhering to prior university policy of warning the faculty and student body about the risk of harm as soon as reasonably practical, and

to do so by telling the truth, and a second group, hereinafter called the "image group" made up of the Defendants Steger, Hyatt, Hinckle and Byers, Ford and McNamee also called the control group who wanted to "manage the message" in the way least damaging to the university's image as they saw that image.

194. The university's image was foremost on the mind of Defendants Steger, Hyatt, Hincker, Byers, Ford and McNamee for two reasons:

a. The University's image as "a safe place to send one's child" had been damaged by three incidents in the preceding 8 months.

b. On or about the first day of class in 2006 an escaped killer (Morva) who had killed two persons off campus was thought to have been observed on campus. In accordance with then university policy a "lockdown" was called by the then Emergency Policy Group within the hour of the killer's citing. Morva was subsequently captured off campus. No student had been injured or killed.

c. On April 2, 2007 Torgensen Hall on the Engineering Campus had been evacuated and closed down in response to a bomb threat, and reopened only after a search of the building disclosed no bomb. The campus had been alerted and warned within the hour of the discovery of the bomb threat.

d. On April 13, 2007 three buildings on the Engineering campus were evacuated and shut down by a bomb threat and reopened only after a search of the building disclosed no bomb. The campus had been alerted and warned within the hour of the discovery of the bomb threat.

e. Now, on April 16, 2007, two students had been slain on campus, the gunman was still at large and presumably armed and dangerous. Those responsible for

protecting the university's image had to craft a response which would do the least further damage to that image, yet warn the campus. As a result they did neither.

195. Those in the Emergency Policy Group "safety group" wanted the campus alerted and warned of the threat and proposed that the campus be advised that there had been a homicide in West Ambler Johnston Hall around 7:15 that morning, that another student had been critically wounded and was not expected to survive, that no gun had been found at the scene and the gunman was at large and presumably armed and dangerous.

196. Upon information and belief, the "safety group" also recommended that further classes be cancelled pending resolution of this crisis.

197. Save for the damage such a warning and cancelling of classes might have had to the university's image, there was no argument asserted until approximately 08:45 for not giving this truthful warning so that students might take precautions for their own safety.

198. At or about 08:45 a.m., as a result of the negligence of certain officers in the VTPD, members of the Emergency Policy Group were erroneously alerted that there was a chance the double shooting might have been a domestic dispute in the nature of a lovers triangle.

199. The "image group' members of the Emergency Policy Group argued successfully that no notice be given to the campus until the lovers triangle possibility was explored and perhaps resolved by the apprehension of the now deceased girl's boyfriend.

200. Evidence which contradicted the possibility that it was the deceased female's boyfriend was dismissed, overlooked or ignored by the image conscious group because it was inconsistent with their desire withhold information about the true nature of the 07:15 incident.

201. Dramatic evidence which contradicted the possibility that the shooting was a result of a love triangle between Karl Thornhill and Ryan Clark competing for the attention of

Emily Hilscher was dismissed, overlooked or ignored by the image group because it was inconsistent with that group's desired theory of the case.

202. The image group was seduced by the ability to control the message of the university's image if the incident was a domestic incident and the suspect, Karl Thornhill, Emily Hilscher's boyfriend, was promptly apprehended and his hands or his apparel tested positive for gunpowder residue, the "image group" could then depict the 07:15 incident for what it thought it might be, a domestic incident, and declare it closed with the apprehension of the presumed killer.

203. There were numerous problems with this approach:

a. Even if the killer of Emily Hilscher and Ryan Clark turned out to be Karl Thornhill, he was, until apprehended, a gunman at large, armed and presumably dangerous.

b. He was not likely to be the killer because the informant who identified Thornhill as Emily Hilscher's boyfriend had also advised the police that while she knew Thornhill owned a gun, she further described him as very devoted to Ms. Hilscher, that Ms. Hilscher had no conflicts with Mr. Thornhill, and the informant was in a position to know those facts.

c. Thornhill was never considered a probable killer, only a suspect, and delaying a true warning to the campus based on that mere possibility and the fact that, in any event, the suspect was still armed, presumed dangerous and at large did not diminish the risk.

204. The failure to issue a full, fair and accurate warning prior to the change-over of the 09:00 a.m. class to allow students and faculty to take precautions for their own safety turned

out to be a failure of momentous proportions, because Seung-Hui Cho had elected that change-over time to take his videotapes for mailing to NBC to the Blacksburg Post Office off campus.

205. The time of the 09:00 a.m. class change-over was the only time the killer of Emily Hilscher and Ryan Clark, though armed and dangerous, was off campus and the campus was briefly safe. He posted his mailings at the Blacksburg Post Office at 09:01 a.m.

206. As a direct and proximate result of the image group's deliberate indifference to the real risks, and its deliberate indifference to the weaknesses and inconsistencies in its own argument and position, the Emergency Policy Group issued a compromise release, one which gave no indication of the nature or the magnitude of the risks, or the conduct which gave rise to the release.

207. At 09:26 a.m., after Seung-Hui Cho had returned to campus, the Emergency Policy Group issued an alert which said: "A shooting incident occurred at West Ambler Johnston this morning. Police are on the scene and are investigating. The university community is urged to be cautious and are asked to contact Virginia Tech Police if you observe anything suspicious or with information on the case."

208. The alert did not constitute a warning. While it urged the university community to be cautious, about what should it be cautions - a shooting incident of undescribed nature, which made no mention of any injuries, let alone a double homicide?

209. The alert made no mention that the gunman who had already killed two people was still at large, that he [or she, for that matter] might still be on campus, that he or she was presumably still armed and potentially dangerous, and that students, faculty and employees should take all precautions for their own safety and that classes and all extra-curricular activities were being cancelled until further notice.

210. As an inadequate warning, it constituted no warning at all, and in a sense artificially reassured the students, faculty and employees that whatever occurred in West Ambler Johnston Hall that morning was of much lesser consequences and risks than the Morva incident and the two recent threatened bombings on the engineering campus. The language, content and lack of specificity of the alert clearly implied that there was no reason to take any specific action for one's own safety.

211. Did the members of the Emergency Policy Group believe the students and faculty were exposed to a lesser risk? No. The behavior of the individual members of the policy group belied the unimportance of taking safety measures.

212. Upon being advised of the shooting death of Ryan Clark and the critical wounding of Emily Hilscher, Ralph Byers, in charge of Government Relations for Virginia Tech notified William H. Leighty, Chief of Staff to Governor Kane, before 9 a.m. that one student was dead and another one critically wounded and a gunman was at large.

213. Byers made no mention to the Governor's Office of the possibility that the critically wounded female student's boyfriend might be the killer.

214. Mr. Byers also notified Laura Fornash, Virginia Tech's government relations representative in Richmond before the 9.a.m. class turnover that there was "one dead and one wounded, gunman on the loose," but advised her not to disclose those facts.

215. Nor did Byers make any mention to Ms. Fornash of the possibility that the critically wounded female student's boyfriend might be the killer.

216. Before 09:00 a.m. Byers notified his administrative assistant to lock their doors. Mr. Byers was then meeting with the Emergency Policy Group in an office in the Burrus building on the same floor with his office that he had just directed be locked down.

217. Upon information and belief at that time and place Burrus Hall, the administration office building, was locked down.

218. Another member of the Emergency Policy Group, Kim O'Rourke, staff assistant to President Steger, had called her home and recommended that her child stay inside.

219. The university's veterinary school went into lockdown.

220. Seung-Hui Cho's route of travel back from the Blacksburg Post Office to Norris Hall where he shot and killed 30 people took him directly past Burrus Hall, whose occupants were safe because, armed with the knowledge of the risks involved, they had gone to lockdown.

221. Passing by Burrus Hall, which he could not enter, Seung-Hui Cho arrived at Norris Hall, which was unprotected because neither the students nor faculty in Norris Hall had been warned that a gunman was loose, perhaps on campus.

222. As Seung-Hui Cho opened fire on his defenseless victims in Norris Hall, the sound of his gunfire could be heard in the room occupied by the Emergency Policy Group.

223. Was there a reason why the "image group" on the Emergency Policy Group was especially concerned with the university's image at this time?

a. Scheduled at the University in the succeeding two weeks was a meeting described as a "gala kickoff" for the largest fund raising drive the university had ever undertaken.

b. During this fund drive the university hoped to raise up to $1.2 billion dollars from both individual contributors and corporate and institutional donors.

c. The university had for some time as of April 16, 2007 been utilizing the resources of outside public relations agencies to monitor, and on occasion shape, the university's image.

d. To monitor the university's image the outside agency or agencies monitored over 200 newspaper sources as well as radio and television sources for stories on or about Virginia Tech.

e. Each of the stories, without regard to source were rated as: Favorable, Neutral, or Unfavorable.

f. Most, if not all unfavorable stories were addressed by the university's in-house public relations arm and, on occasion, by an outside public relations agency to see if the story could be countered, retracted or controverted.

g. The university administration, and more specifically defendants Steger, Hyatt, Hincker and others had become sensitized to the impact bad news could have on the university's image, and how an impact on that image might in turn impact on public and private financing for the university.

h. The impact on public and private financing could come from numerous sources:

i. Elected officials whose support for the university would be conditioned in part on the university's image.

ii. Appointed government officials with whom the university would interact on one or more programs, who were sensitive to the university's image.

iii. Corporate and institutional donors whose interest in being identified with the university would be dependent on the university's image.

iv. Contracting parties with on campus installations whose short, intermediate and long term relationship with the university would depend in part on its image.

v. Alumni who wanted to be identified with the university so long as its image met their or their employers' expectations.

vi. Existing students whose continued attendance at the university would be dependent on how safe they felt on campus.

vii. Prospective students whose subsequent attendance would be dependent on the university's image as a safe place to go to school.

viii. Stories that a killer of two, including a deputy sheriff and a security guard, was seen on campus did not reinforce the image that the university was a safe place to be, for what ever reason one was on campus.

ix. Stories that the university went to lockdown because of the threat posed by having a killer of two on campus did not reinforce the university's image as a safe place.

x. Stories that there had been a bomb threat which closed down a building on the engineering campus on April 2, 2007 did not reinforce the university's self image and tended to impact on potential donor companies who were identified with the engineering school.

xi. A second bombing threat which closed three buildings on the engineering campus 11 days after the first bomb threat heightened the concern for the overall impact on the university's image and on potential donors to the engineering school.

i. Information that there had been a double homicide on campus had to be very carefully managed because that incident had the potential, standing alone and in conjunction with the Morva incident and the two recent bomb threats to convey the

message that the university had substantial safety issues which were not being adequately addressed.

j. The "image group" on the Emergency Policy Group succumbed to the temptation to hope or wish that Hilscher's boyfriend would prove to be the killer, because that conclusion offered the only possibility that the public reaction to the information which would emanate from the university about this double homicide could be managed or controlled.

k. The image group's wishes or hopes were not grounded in fact, were tragically wrong, misguided and in error. Their reliance on a hope or wish that Emily Hilscher and Ryan Clark were somehow killed by a jealous lover not only denied them the dignity in death to which they were entitled, but blinded the leadership of the university to a far harsher reality. There was, as there had been since 07:15 a.m. [with the exception of Seung-Hui Cho's trip to the Blacksburg Post Office] "a gunman loose on campus".

l. When the university made that announcement gunfire could be heard in the Emergency Policy Group meeting. The correct announcement, the first adequate announcement came at least one hour too late and it could have been given at 07:50 a.m., two hours earlier based upon the information then known.

m. Was the university fixated on its image to the exclusion of the safety of its students and faculty?

i. At 1:58 p.m. on April 16, 2007 Defendant Steger received an email from the Advisory Co-Chair of the fund raising gala scheduled in the next two weeks following that morning's massacre.

ii. At that time the bodies of most of the victims still lay in Norris Hall.

iii. After expressing his condolences for the events of that morning, the gentleman said, "I am also thinking of the ramifications to the (fundraising) weekend... the tragedy ...also represents an opportunity to communicate ... and to solicit support both financially and morally.

iv. Within two weeks of that email, after negotiations with the largest public relations firm in the United States, the university, through its President, entered into a contract with Burson Marstellar in which it agreed to pay that agency $600,000 for "corporate positioning" with respect to this tragedy and in support of its fund drives.

224. On the 16th of April, 2007, the duly authorized agents of the university, seduced by the prospect of a successful fund drive, and driven to control the message of the morning of April 16th in fulfillment of that ambition and to protect the general reputation and image of the university, behaved in a deliberately indifferent way to the safety of the university's students and faculty, failed to warn them of the risks inherent in allowing a gunman who had already killed two to run loose on the campus.

225. These Defendants, in possession of the incontrovertible facts of a double homicide on campus, a gunman who had not been identified save for some speculation about who it might possibly be, a gunman, whoever his identity, who had not been apprehended, the fact that a gun had not been found at the scene and presumably was still with the gunman, struggled over the intervening two and one quarter hours to draft a release which, when issued, omitted critical facts and warned of nothing, were grossly negligent in addition to being deliberately indifferent to the safety of those killed or injured shortly thereafter.

226. These Defendants had a duty to warn of and protect the faculty, staff and students on the Campus, including Julia Kathleen Pride, from the armed gunman who had just killed two students West Ambler Johnston.

227. These defendants breached their duty to warn and protect in that they failed to give a timely warning.

228. These Defendants breached their duty to warn and protect in that they failed to give an adequate warning.

229. The failures of the Defendants who insisted that no warning be provided constitute gross negligence and deliberate indifference to the safety of the faculty and students on campus.

230. As a proximate result of the Defendants' breaches of their duties, Julia Kathleen Pride lost her life.

231. These defendants knew or should have known that if they did not issue an adequate warning for the protection of the faculty and students on campus, it was foreseeable that the gunman, who had murdered two students, might kill others.

232. Plaintiffs' decedent was a member of an identifiable class, which consisted of the faculty, staff and the student body at Virginia Tech and was within an identifiable zone of danger, the Virginia Tech campus.

233. These Defendants owed those in the identifiable class, of which Plaintiffs' decedent was a member, a duty to adequately warn of the known danger and, in the words of the statute, to protect them and keep them safe.

234. As a direct and proximate result of the failure of these Defendants to perform their duties, the Julia Kathleen Pride lost her life.

235. As a direct and proximate result of the death of Julia Kathleen Pride her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00) compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

COUNT VII

RESPONDEAT SUPERIOR LIABILITY OF VIRGINIA TECH

236. Plaintiffs incorporate by reference paragraphs 1 to 235 as though fully set out.

237. Defendant Virginia Tech is liable respondeat superior for the negligence, gross negligence and deliberate indifference of its agents and employees as alleged in Count I, III, VI , supra.

238. As a direct and proximate result of the negligence, gross negligence, and reckless disregard of the Defendants, Julia Kathleen Pride was killed, and her father, mother, brother,

half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against the Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00) compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

COUNT VIII

RESPONDEAT SUPERIOR LIABILITY OF THE COMMONWEALTH OF VIRGINIA

239. Plaintiffs incorporate paragraphs 1-239 by reference as though fully set out herein.

240. Plaintiffs filed a timely claim against the Commonwealth of Virginia as required by Va. Code 8.01-195.6.

241. In the alternative, Plaintiffs assert, that the Commonwealth of Virginia is liable *respondeat superior*, for the numerous acts of negligence and gross negligence of Virginia Tech and of the officers, agents and employees, of Virginia Tech, and is further liable for the conduct

of a few of VA Tech's officers, agents, and employees who were deliberately indifferent to the safety needs of its students, as alleged in Count I, III, and VI, supra.

242. As a direct and proximate result of the negligence, gross negligence, and reckless disregard of the Defendants, Julia Kathleen Pride was killed, and her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

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COUNT IX
NEW RIVER VALLEY COMMUNITY SERVICES
NEW RIVER VALLEY COMMUNITY SERVICES BOARD
H. LYNN CHENAULT, DR. HARVEY BARKER

243. Plaintiffs incorporate paragraphs 1-243 by reference as though fully set out herein.

244. In addition to the claims against Virginia Tech, your Plaintiffs also asserts that the entity, New River Valley Community Services and the New River Valley Community Services Board and certain of its officers, agents, employees and directors were negligent in the performance of ministerial functions, grossly negligent or deliberately indifferent to the mental health needs of Seung-Hui Cho and that these failures were the proximate cause of the death of Julia Pride.

245. New River Valley Community Services (NRVCS) is a creature of statute operated by a board of directors and intended to provide mental and behavioral health services to residents of its operating area, which includes Blacksburg and the campus of Virginia Tech.

246. The localities of Floyd, Giles, Montgomery, Pulaski, and the City of Radford each allocate an annual amount of funding to NRVCS and appoint representatives to the agency's Board of Directors.

247. Defendant H. Lynn Chenault was at all time relevant to this proceeding the Executive Director of New River Valley Community Services.

248. Defendant Dr. Harvey Barker, was the Director of Emergency and Assessment Services for the New River Valley Community Services at all times relevant to this proceeding.

249. On or about the 13th of December, 2005 Seung-Hui Cho, rebuffed for a second time in slightly over two weeks in his efforts to establish a relationship with a member of the opposite sex, indicated his intention to commit suicide.

250. Cho sent an instant message to his roommate, "I might as well kill myself."

251. Cho's roommate contacted the VTPD and the VTPD took Cho to the VTPD.

252. On the 13th day of December, 2005, Kathy Godbey, a pre-screener from and an officer, agent or employee of the New River Valley Community Services Board saw Cho at the VTPD.

253. Kathy Godbey interviewed Cho and the police officer, and also called his roommate and a suitemate.

254. Ms. Godbey was a person designated by the New River Valley Community Services Board (NRVCSB) to conduct the pre-screening evaluation pursuant to Va. Code 37.2-808.

255. Based upon Ms. Godbey's lengthy interview with Seung-Hui Cho and her mental health assessment of him, she deemed him mentally ill and an imminent danger to himself and others, and prepared a Petition that he be detained for his own protection and the protection of others.

256. Ms. Godbey indicated NRVCS could assist with treatment and discharge planning.

257. Based in turn upon Ms. Godbey's Petition that Seung-Hui Cho was mentally ill and a hazard to himself or others, Special Magistrate Elinor Williams of the Montgomery County, Virginia General District Court ordered him detained, pending a further evaluation and hearing.

258. He was hospitalized overnight at Carilion St. Albans Psychiatric Hospital.

259. The morning of December 14, 2005 Seung-Hui Cho was presented before Special Magistrate Paul Barnett of the Montgomery County, Virginia General District Court, who considered Ms. Godbey's report, additional mental health evaluations, and his own interview with Mr. Cho.

260. At the conclusion of the hearing Special Magistrate Barnett adjudicated Seung-Hui Cho as mentally ill and a danger to himself, and ordered him into out-patient therapy.

261. The clinical support representative from St. Albans called NRVCS and advised them of the outcome of the hearing.

262. Sometime prior to December, 2005, Defendant Barker in his capacity as Director of Emergency and Assessment Services for NRVCS determined that NRVCS would no longer provide personnel at commitment hearings who would be available to take charge of developing any out-patient treatment plan that might be ordered by the Court.

263. The clinical support representative from St Albans contacted the Cook Counseling Center and had Cho set up an appointment with them for 3:00 p.m. that day.

264. The Court's Order imposed two responsibilities on the New River Valley Community Services Board: to "recommend a specific course of treatment and programs for the provision of involuntary outpatient treatment" and to "monitor the patient's compliance with the treatment ordered by the court under this section. . . ." [Va. Code § 37.2-817(C)].

265. Additionally, the Order of Special Magistrate Barnett directed Mr. Cho to comply with all terms of treatment.

266. After his discharge from the hospital on December 14, 2005, Cho kept his 3:00 p.m. appointment he had made earlier that day with the Cook Counseling Center.

267. When Cho arrived at the Cook Counseling Center he was only triaged and no diagnosis was made and no treatment was provided.

268. Cho never returned to the Cook Counseling Center and never received the ordered treatment.

269. Pursuant to Va. Code § 37.2-817 (C), the Defendants, H. Lynn Chenault, Harvey Barker, NRVCSB and NRVCS, had a duty to recommend a specific course of treatment and program for the provision of involuntary outpatient treatment as ordered by the court.

270. The Defendants H. Lynn Chenault, Harvey Barker, NRVCS, and NRVCSB never set up a treatment plan for Mr. Cho.

271. The Defendants, H. Lynn Chenault, Harvey Barker, NRVCS, and NRVCSB, breached their statutory duty to recommend a specific course of treatment for Cho.

272. Pursuant to Va. Code §37.2-817 (C), Defendants, H. Lynn Chenault, Harvey Barker, NRVCS and NRVCSB, had a duty to monitor Cho's compliance with the treatment ordered by the court for outpatient treatment.

273. The Defendants H. Lynn Chenault, Harvey Barker, NRVCS, and NRVCSB never monitored Cho's compliance with the treatment ordered by the court.

274. The Defendants, H. Lynn Chenault, Harvey Barker, NRVCSB, and NRVCS, breached their statutory duty to monitor Cho's compliance with the treatment ordered by the court for outpatient treatment.

275. Defendants, H. Lynn Chenault, Harvey Barker, NRVCS and NRVCSB, were aware that Cho had been deemed to be a mentally ill and a danger to himself.

276. Defendants, H. Lynn Chenault, Harvey Barker, NRVCS and NRVCSB, knew or should have known that if Cho did not receive the ordered treatment he was likely to cause harm to himself in a manner which was likely to cause bodily harm to others.

277. It was foreseeable to Defendants, H. Lynn Chenault, Harvey Barker, NRVCS and NRVCSB, that if Cho did not receive the ordered treatment he was likely to cause harm to himself in a manner which was likely to cause bodily harm to others.

278. Cho did in fact undertake to cause himself harm when he massacred the people in Norris Hall, which led to the response by the police and Cho's suicide.

279. Plaintiffs' decedent was a member of an identifiable class, which consisted of the faculty, staff and the student body at Virginia Tech and was within an identifiable zone of danger if Cho were left untreated.

280. The Defendants, H. Lynn Chenault, Harvey Barker, NRVCS and NRVCSB, owed those in the identifiable class, of which Plaintiffs' decedent was a member, a duty to recommend a specific course of treatment and program for the provision of involuntary outpatient treatment as ordered by the court.

281. The Defendants, H. Lynn Chenault, Harvey Barker, NRVCS and NRVCSB, owed those in the identifiable class, of which Plaintiffs' decedent was a member, a duty to monitor Cho's compliance with the outpatient treatment as ordered by the court.

282. As a direct and proximate result of the failure of the Defendants, H. Lynn Chenault, Harvey Barker, NRVCS and NRVCSB, to perform their duties, the Julia Kathleen Pride lost her life.

283. The New River Valley Community Services Board, acting through its agents and employees, neither met nor attempted to meet either of their two statutorily imposed duties, but instead abandoned this patient after the court hearing on December 14, 2005.

284. Each of these duties were continuing duties until complied with and were the duties imposed on the New River Valley Community Services Board as of April 16, 2007, which only expired with their patient's death.

285. Had a treatment plan been devised and Mr. Cho's compliance therewith and with the court order been monitored as required by law, both Mr. Cho and 32 other students and

faculty of Virginia Tech would be alive today, in that:

a. Mr. Cho's mental illness would have been diagnosed and treated without exposing his fellow students to the risk of harm he posed; or

b. If he was non-compliant with the treatment plan designed by the New River Valley Community Services Board or the court order, he was subject to being called back before the Special Magistrate and ordered into inpatient treatment.

c. If ordered into inpatient treatment, his adjudication as mentally ill and a danger to himself or others would have been made of record with the Central Criminal Records Exchange (CCRE) and the gun dealers who sold him the guns would have refused to do so.

286. The Directors, Executive Director and others, including Defendant H. Lynn Chenault, Executive Director of NRVCS, and Dr. Harvey Barker, the Director of Emergency and Assessment Services for the New River Valley Community Services Board either failed to comply with the statutory mandates placed on the Board because they were guilty of negligence in the performance of ministerial acts, or they were grossly negligent, or they were deliberately indifferent to those statutory obligations.

287. As a direct and proximate result of their negligence in the performance of ministerial acts, their gross negligence, and/or their reckless disregard, Julia Kathleen Pride was killed, and her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00) compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

COUNT X

Claim against John W. Thyden, Personal Representative of the Estate of Seung-Hui Cho

288. Plaintiffs incorporate paragraphs 1-287 by reference as though fully set out herein.

289. John W. Thyden has been appointed Personal Representative of the Estate of Seung-Hui Cho.

290. On April 16, 2007, as a result of the negligent and grossly negligent failures of other defendants to provide treatment to Seung-Hui Cho, as set out above, or to suspend or terminate him as a student, and as a result of Seung-Hui Cho's wrongful actions, Julia Kathleen Pride was killed by Seung-Hui Cho.

291. As a direct and proximate result of the death of Julia Kathleen Pride her father, mother, brother, half-brother, and half-sister have suffered the following damages for which they are entitled to recover:

a) Sorrow mental anguish, and solace which may include the loss of society, companionship, comfort, guidance, kindly offices and advice of the decedent;

b) Compensation for reasonably expected loss of (i) income of the decedent and (ii) services, protection, care and assistance provided by the decedent;

c) Expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death;

d) Reasonable funeral expenses.

WHEREFORE, Plaintiffs, by counsel, as Personal Representatives of the Estate of Julia Kathleen Pride, deceased, request that this Court enter judgment in his favor and against Defendants, jointly and severally, in the amount of TEN MILLION DOLLARS ($10,000,000.00) compensatory damages, together with attorneys' fees, costs of litigation, interest from the date of Julia's death, and any further relief that this Court may deem appropriate.

A JURY TRIAL IS DEMANDED

Harry W. Pryde and Karen W. Pryde,
Personal Representatives of the
Estate of Julia Kathleen Pride
By Counsel

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