

MICHAEL K. JEANES  
Clerk of the Superior Court  
By Clarissa Cruz, Deputy  
Date 01/16/2018 Time 15:33:51

Description	Amount
CASE# CV2018-000162 CIVIL NEW COMPLAINT	322.00
TOTAL AMOUNT	322.00

Receipt# 26358539

**CARTIER LAW P.L.L.C.**

DON W. CARTIER, ESQ., (AZ BAR NO: 033047)  
40 N. CENTRAL AVENUE, SUITE 1400  
PHOENIX, ARIZONA 85004  
OFFICE: 602-343-2707  
FACSIMILE: 602-343-1801

**THE LAW OFFICE OF MARK F. WILLIMANN, LLC**  
MARK F. WILLIMANN, (ESQ., AZ BAR: 017556)  
P.O. Box 40355  
TUCSON, ARIZONA 85717  
TEL: 520-579-6622  
FAX: 520-203-0203  
MFWILLIMANN@MFWLAWOFFICE.COM

**IN THE SUPERIOR COURT OF ARIZONA  
IN THE COUNTY OF MARICOPA**

**CV 2018-000162**

**CASE NO:** \_\_\_\_\_

**COMPLAINT**

1. BATTERY
2. WILLFUL OR WANTON CONDUCT-AGGRAVATED NEGLIGENCE
3. NEGLIGENCE
4. RES IPSA LOQUITOR
5. INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
6. NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS

**(JURY TRIAL REQUESTED)**

JANE ROE 1, on Behalf of and for the Benefit of JANE DOE 1, her minor child;  
JANE ROE 2, on Behalf of and for the Benefit of JANE DOE 2, her minor child;  
JANE ROE 3, on Behalf of and for the Benefit of JANE DOE 3, her minor child;  
JANE ROE 4, on Behalf of and for the Benefit of JANE DOE 4, her minor child;  
JANE ROE 5, on Behalf of and for the Benefit of JANE DOE 5, her minor child;  
JANE ROE 6, on Behalf of and for the Benefit of JANE DOE 6, her minor child;  
JANE ROE 7, on Behalf of and for the Benefit of JANE DOE 7, her minor child;  
JANE ROE 8, on Behalf of and for the Benefit of JANE DOE 8, her minor child;  
JANE ROE 9, on Behalf of and for the Benefit of JANE DOE 9, her minor child;  
JANE ROE 10, on Behalf of and for the Benefit of JANE DOE 10, her minor child;  
JANE ROE 11, on Behalf of and for the Benefit of JANE DOE 11, her minor child;  
JANE DOE 12, a married woman;  
JANE DOE 12, on Behalf of and for the Benefit of JANE DOE 13, her minor child;  
JANE ROE 13, on Behalf of and for the Benefit of JOHN DOE 1, her minor child;  
JANE ROE 14, on Behalf of and for the Benefit OF JOHN DOE 2, her minor child;

1 JANE ROE 15, on Behalf of and for the Benefit of  
JOHN DOE 3, her minor child;  
2 JANE ROE 16, on Behalf of and for the Benefit of  
JOHN DOE 4, her minor child;  
3 JANE ROE 17, on Behalf of and for the Benefit of  
JOHN DOE 5, her minor child; and JOHN ROE 9,  
4 on Behalf of and for the Benefit of JOHN DOE 6,  
her minor child.

5 *Plaintiffs,*

6 vs.

7 DOUGLAS DUCEY, Governor of Arizona;  
8 CHARLES RYAN, Director, Arizona Department  
of Corrections; KEVIN CURRAN, Warden,  
9 Arizona State Prison Complex-Tucson, AND  
DOES 1-100, INCLUSIVE,

10 *Defendants*

11  
12  
13  
14 **PRELIMINARY STATEMENT**

15 On February 15<sup>th</sup>, 2016, the Arizona State Prison Complex in Florence, Arizona,  
16 recklessly released powerful form of teargas, harming dozens of elementary school children,  
17 as well as, residents who reside near the facility. The prison officials failed to take into account  
18 weather conditions, which were poor consisting of volatile winds. In the end, the winds  
19 expanded the magnitude of this tortious conduct in spreading noxious teargas throughout the  
20 neighboring areas. As a direct result, many victims suffered burning in their eyes, lungs, and  
21 skin for days after the incident. Many children, including the named Plaintiffs, thought they  
22 were going to die from the exposure.

23 **VENUE & JURISDICTION**

24 1. This Court has jurisdiction pursuant to Arizona Rules of Civil Procedure 8(a),  
25 and A.R.S. 5 § 12-821.01.

26 2. Venue is appropriate in the Maricopa County Superior Court, as that is where  
27 Defendants' headquarters and principal place of business is located.

28 COMPLAINT

1  
2 PARTIES

3 3. Plaintiffs, JANE DOE 1 through JANE DOE 11, wish to protect their true identities  
4 because they are minors and also because of this matter's public and sensitive nature.

5 4. Plaintiff JANE DOE 12 is a married adult and the legal guardian of JANE DOE 13  
6 a minor. They wish to protect their identities because of this matter's public and sensitive  
7 nature.

8 5. Plaintiffs, JOHN DOE 1 through JOHN DOE 7, wish to protect their true identities  
9 because they are minors and also because of this matter's public and sensitive nature.

10 6. JANE ROE 1 through JANE ROE 17 are the parents and legal guardians of the  
11 minors involved in this matter. They bring this matter on behalf of the minors and wish to  
12 protect their identities in order to ensure that the identities of the minors involved are not  
13 revealed.

14 7. Plaintiff, JANE DOE 1 is natural person and a minor who resided in the County  
15 of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was eight years old,  
16 at the time of the cause of action.

17 8. Plaintiff, JANE DOE 2 is natural person and minor who resided in the County  
18 of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was nine years old,  
19 at the time of the cause of action

20 9. Plaintiff, JANE DOE 3 is a natural person and a minor who resided in the  
21 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was eight  
22 years old, at the time of the cause of action.

23 10. Plaintiff, JANE DOE 4 is a natural person and a minor who resided in the  
24 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was nine  
25 years old, at the time of the cause of action.  
26  
27  
28

1 11. Plaintiff, JANE DOE 5 is a natural person and a minor who resided in the  
2 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was ten  
3 years old, at the time of the cause of action.

4 12. Plaintiff, JANE DOE 6 is a natural person and a minor who resided in the  
5 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was six  
6 years old, at the time of the cause of action.

7 13. Plaintiff, JANE DOE 7 is a natural person and a minor who resided in the  
8 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was six  
9 years old, at the time of the cause of action.

10 14. Plaintiff, JANE DOE 8 is a natural person and a minor who resided in the  
11 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was seven  
12 years old, at the time of the cause of action.

13 15. Plaintiff, JANE DOE 9 is a natural person and a minor who resided in the  
14 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was four  
15 years old, at the time of the cause of action.

16 16. Plaintiff, JANE DOE 10 is a natural person and a minor who resided in the  
17 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was six  
18 years old, at the time of the cause of action.

19 17. Plaintiff, JANE DOE 11 is a natural person and a minor who resided in the  
20 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was eight  
21 years old, at the time of the cause of action.

22 18. Plaintiff, JANE DOE 12 is a natural person who resided in the County of Pima,  
23 State of Arizona at all relevant times mentioned herein. Plaintiff is an adult and the mother of  
24 one of the minor Plaintiffs, at the time of the cause of action.

25 19. Plaintiff, JANE DOE 13 is a natural person and a minor who resided in the  
26 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was eight  
27 years old, at the time of the cause of action  
28

1           20. Plaintiff, JOHN DOE 1 is a natural person and a minor who resided in the  
2 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was six  
3 years old, at the time of the cause of action.

4           21. Plaintiff, JOHN DOE 2 is a natural person and a minor who resided in the  
5 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was six  
6 years old, at the time of the cause of action.

7           22. Plaintiff, JOHN DOE 4 is a natural person and a minor who resided in the  
8 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was nine  
9 years old, at the time of the cause of action.

10          23. Plaintiff, JOHN DOE 5 is a natural person and a minor who resided in the  
11 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was five  
12 years old, at the time of the cause of action.

13          24. Plaintiff, JOHN DOE 6 is a natural person and a minor who resided in the  
14 County of Pima, State of Arizona at all relevant times mentioned herein. Plaintiff was one  
15 year old, at the time of the cause of action.

16          25. Defendant DOUGLAS DUCEY is the Governor of the State of Arizona (the  
17 "Governor" or "Governor Ducey") and heads the Executive Branch of Arizona's government.  
18 In that capacity, Governor Ducey selects and appoints the Director of the Arizona Department  
19 of Department of Corrections. Governor Ducey is vested with ultimate authority and  
20 responsibility over the corrections system. Governor Ducey is sued in his official capacity as the  
21 Governor of the State of Arizona.

22          26. Defendant CHARLES RYAN ("Ryan") is a citizen of Arizona and is employed as  
23 Director ("Director") of the Arizona Department of Corrections ("ADOC") and exercises  
24 administrative control of, and responsibility for, the ADOC. As Director of the ADOC, Mr.  
25 Ryan is responsible for establishing, administering, and applying statewide operations,  
26 policies, institutions, and programs of the ADC, which directly affect how inmates are housed  
27  
28

1 and employed at the Prison Complex *See* Ariz. Rev. Stat. § 31-201, 41-1604. As Director, Mr.  
2 Ryan also is responsible for decisions concerning staff deployment and training.

3 27. Defendant KEVIN CURRAN (“Curran”) is a citizen of Arizona and is employed  
4 as the Warden (“Warden”) of the Arizona State Prison Complex-Florence (“Prison  
5 Complex”). In his capacity as Warden, Mr. Curran is responsible for the day-to-day operations  
6 of the entire Prison Complex, Warden Schroeder is in his official capacity.

7 28. Defendants DOE 1 through DOE 100, inclusive, are sued under fictitious  
8 names. Their true names and capacities are unknown to Plaintiff. When their true names and  
9 capacities are ascertained, Plaintiff will amend this complaint by inserting their true names  
10 and capacities. Plaintiff is informed and believes and therefore alleges that each of the  
11 fictitiously named defendants is responsible in some manner for the occurrences alleged, and  
12 that Plaintiff’s harms as alleged were proximately caused by those Defendants.

13  
14 **STATEMENT OF FACTS**

15 A. TEAR GAS EXPOSURE ON FLORENCE ELEMENTARY SCHOOL PLAYGROUND AND  
16 NEIGHBORHOOD.

17 29. On February 15<sup>th</sup>, 2016, employees at the Prison Complex deployed three  
18 grenades composed of chlorobenzylidene malononitrile (“CS”). The compound is a white  
19 solid powder mixed with a dispersal agent, like methylene chloride, which carries the particles  
20 through the air.

21 30. The Prison Complex is located just east of Florence Elementary School K-8  
22 (“Florence Elementary”) and 17 mph winds carried CS gas clouds to the surrounding  
23 neighborhood, as well as, Florence Elementary playground.

24 31. Defendants were each aware of the risks and effects of CS gas. In fact, guards  
25 at the Prison Complex do not deploy CS gas unless they wear protective masks.  
26  
27  
28

1           32.     By 8:00 a.m, CS gas clouds reached Florence Elementary School. The first and  
2 third graders playing on the Florence Elementary playground were the first ones exposed to  
3 the CS gas clouds.

4           33.     Within a few minutes, the children reported burning eyes and throats. They  
5 screamed and cried desperately attempting to get the attention of teachers, or medical  
6 personnel. Upon information and belief, at least twenty-five first and third-grade students  
7 suffered harm. (*See Exhibit A*).

8           34.     Plaintiffs from Florence Elementary School reported excruciating eye irritation;  
9 nausea; chest pain; panic; and suffocation. For many student, the exposure was nearly fatal.  
10 Children, like JANE DOE 10 experienced side effects so severe, that paramedics provided  
11 heightened monitoring in order to prevent heart failure.

12           35.     The CS clouds harmed those outside of Florence Elementary School. Plaintiffs  
13 outside of Florence elementary include one adult and an infant no more than one year old.  
14 (*See Exhibit B*)

15           36.     Plaintiffs suffered physical and emotional injury from this substance's release.  
16 (*See Exhibit C*). The physical injuries which stem from the chemical compounds in the CS  
17 gas, and include intense and painful burning in the eyes, nose, throat and skin, and lung  
18 congestion, which caused long hours of suffocation. (*See Exhibit D*)

19           B. CS CLOUD EXPOSURE AFTERMATH.

20           37.     On February 15<sup>th</sup>, 2016, Prison Officials took responsibility for this incident.  
21 The Department alleged CS exposure was due to "routine, quarterly training exercise." The  
22 Department reported that this incident was "the first time that tear gas used in exercises  
23 traveled off of the property" and that officials have taken immediate actions to "effectively  
24 prevent the incident from happening in the future."

25           38.     Prison officials alleged only a "small" amount of gas was released to the  
26 neighboring areas and suggested exposure to the CS gas was "minimal." But acknowledged  
27 that medical personnel treated the children after exposure to the gas. Still, after the situation  
28

1 was contained, Plaintiffs from Florence Elementary School, and dozens of other children,  
2 reported they could not immediately go to the nurse or seek medical attention because of the  
3 large volume of children who also needed immediate medical assistance.

4 39. Ultimately, prison officials admitted failure to check weather conditions prior  
5 to the tear gas grenade explosion played a significant role in the harm the children  
6 experienced.

7 40. Unfortunately, plaintiffs from the Florence Elementary and other children who  
8 were able to seek medical attention discovered that there was no medical remedy available to  
9 treat CS gas exposure. Medical personnel and physician advised families that they had to  
10 endure this pain until it went away on its own.

11 41. Upon information and belief, employees at Prison Complex gas acted recklessly  
12 with the use, management and release of the CS grenades on February 15<sup>th</sup> 2016. Employees  
13 conducted this tortious conduct during their agency relationship at the Prison Complex and  
14 the Defendants are liable for the reckless and negligent under the law of vicarious liability,  
15 including the doctrine of respondeat superior.

16 42. Upon information and belief, Defendants failed to institute a policy to minimize  
17 the likelihood of accidental exposure of CS gas to members of the surrounding community.

18 43. As a direct result of the conduct alleged, Plaintiffs suffered injuries and  
19 damages described herein.

20  
21 C. DEFENDANTS' FAILURE TO SETTLE WITHIN STATUTORY TIME FRAME.

22  
23 44. Under Arizona law, a claim against the state must be filed within 180 days "after  
24 the cause of action accrues." A.R.S. § 12-821.01(A). Immediately afterwards, Plaintiffs  
25 timely filed the notices of claims. Between the months of April and July, Plaintiffs served  
26 Defendants with notices of claims. Claims are deemed denied sixty days after filing, unless  
27 the claimant is advised of the denial in writing before sixty days passed. A.R.S. § 12-

1 821.01(E). By October 28<sup>th</sup>, 2017, Defendants failed to settle this matter within statutorily  
2 defined time frame.

3 **COUNT I**  
4 **(BATTERY)**

5 45. Plaintiff reallege and incorporates by reference the allegations contained in  
6 Paragraphs 1 through 44 as fully set forth herein.

7 46. On February 15<sup>th</sup>, 2016, Plaintiffs suffered harmful and offensive contact upon  
8 being exposed to CS gas clouds which came from the Prison Complex.

9 47. Agents or employees at the Prison Complex intended to release CS gas on  
10 February 15<sup>th</sup>, 2016.

11 48. The Plaintiffs suffered harm as a result of the CS gas release and such harm is  
12 highly offensive to a reasonable person.

13 49. Defendants are vicariously liable for the conduct, actions or omissions which  
14 caused the Plaintiffs harm.

15  
16 **COUNT II**  
**(WILLFUL OR WANTON CONDUCT - AGGRAVATED NEGLIGENCE)**

17  
18 50. Plaintiffs reallege and incorporates by reference the allegations contained in  
19 Paragraphs 1 through 49 as fully set forth herein.

20 51. On February 15<sup>th</sup>, 2016, employees the Prison Complex engaged in action or  
21 inaction that were recklessly indifferent to its results, rights or safety of others in the  
22 surrounding community.

23 52. Releasing CS gas four blocks from Florence elementary school under highly  
24 unfavorable weather conditions are presumed to be recklessly indifferent because those  
25 responsible knew or should have known that releasing CS gas under poor weather conditions  
26 close proximity created unreasonable risk and high probability of harm.

1 53. Releasing CS gas in close proximity to a residential community under highly  
2 unfavorable weather conditions are presumed to be recklessly indifferent because those  
3 responsible knew or should have known these circumstances created unreasonable risk and  
4 high probability of harm.

5 54. Agents or employees responsible for the CS gas's release knew, or in the  
6 exercise of reasonable care should have known, that failing to check weather conditions prior  
7 to releasing powerful chemical agents in close proximity to a residential community created  
8 a risk so great that it was highly probable that harm will result to the surrounding community.

9 55. Due to the actions and inactions by agents or employees in the Prison complex,  
10 the Plaintiffs suffered harm.

11 56. Defendants are vicariously liable for the conduct, actions or omissions by  
12 agents or employees which caused the Plaintiffs harm.

13 **COUNT III**  
14 **(NEGLIGENCE)**

15 57. Plaintiffs reallege and incorporate herein by reference, as though fully set forth  
16 herein, Paragraphs 1 through 56 of this Complaint.

17 58. Plaintiffs are informed and believe and, based thereon, allege that the  
18 Defendants, and each of them, owed the Plaintiffs the duties of care, as set forth above.

19 59. Plaintiffs are informed and believe and thereupon, allege that the Defendants,  
20 breached their duties of care that were owed to the Plaintiffs, as set forth above.

21 60. Plaintiffs are informed and believe and thereupon allege that as a result of each  
22 Defendant's breach of their respective duties of care, Plaintiffs have suffered, without  
23 limitation, physical, emotional, as set forth above.

1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

**COUNT IV**  
(RES IPSA LOQUITOR)

61. Plaintiffs reallege and incorporate herein by reference, as though fully set forth herein, Paragraphs 1 through 60 of this Complaint.

62. The conduct and omissions are presumed negligent because Plaintiffs suffered harm as a result of an instrumentality that was under Prison Complex's exclusive control.

63. In the normal course of events, the harm Plaintiffs suffered would not have occurred unless absence of negligence.

**COUNT V**  
(INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS)

64. Plaintiffs reallege and incorporate herein by reference, as though fully set forth herein, Paragraphs 1 through 63 of this Complaint.

65. Plaintiffs are informed and believe and thereupon allege agents or employees at the Prison Complex engaged in, instigated, and directed a course of extreme and outrageous conduct with reckless disregard of the probability of causing, emotional distress to Plaintiffs.

66. As a proximate result of the acts alleged herein Plaintiff suffered severe or extreme emotional distress, entitling her to damages.

67. Defendants are vicariously liable the conduct and omissions by agents or employees which caused the Plaintiffs harm.

**COUNT VII**  
(NEGLIGENT INFLICTION OF EMOTIONAL DISTRESS)

68. Plaintiff reallege and incorporate by reference the allegations of the original Complaint as though set forth herein, Paragraphs 1 through 67 of this Complaint.

69. Negligent acts and omissions at the Prison Complex harmed the Plaintiffs.



1  
2  
3  
4  
5  
6  
7  
8  
9  
10  
11  
12  
13  
14  
15  
16  
17  
18  
19  
20  
21  
22  
23  
24  
25  
26  
27  
28

*Co-Counsel for Plaintiffs*

/s/ Mark Willimann  
Mark F. Willimann, Esq.  
P.O. Box 40355  
Tucson, Arizona 85717  
Tel: 520-579-6622  
Fax: 520-203-0203

*Co-Counsel for Plaintiffs*