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13 **IN THE SUPERIOR COURT OF THE STATE OF ARIZONA**
14 **IN AND FOR THE COUNTY OF MARICOPA**

15 SUSANA VILLANUEVA GARCIA,
16 individually and on behalf of the
17 statutory beneficiaries of JONATHAN
18 LEON VILLANUEVA, SELIA
19 GARCIA CASTANEDA, MARIA DEL
20 CARMEN RAYA-GARCIA, MARIBEL
21 RAYA-GARCIA, JAVIER RAYA-
22 GARCIA, and ERIKA JANEL
23 CAMACHO RAY,

22 Plaintiff,

23 vs.

24 STATE OF ARIZONA, a public entity;
25 and GILA COUNTY, a public entity,

26 Defendants.

CHRIS DEROSE
Clerk of the Superior Court
By Paulina Hernandez Ramos, Deputy
Date 07/16/2018 Time 13:08:38

Description,	Amount
----- CASE# CV2018-005131 -----	
CIVIL NEW COMPLAINT	333.00

TOTAL AMOUNT	333.00
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Receipt# 26699568

No. CV2018-005131

COMPLAINT

(JURY TRIAL DEMANDED)

(Rule 26.2 Discovery Tier 3)

1 Plaintiff, Susana Villanueva Garcia, complains against Defendants and alleges as
2 follows:

3 **PARTIES**

4 1. Susana Villanueva Garcia (hereinafter "Plaintiff") is a resident of Maricopa
5 County, Arizona.

6 2. Pursuant to A.R.S. § 12-612, Plaintiff is a proper party to bring this action on
7 behalf of all statutory beneficiaries.

8 3. Plaintiff's son, Jonathan Leon Villanueva, was a 13-year-old resident of
9 Maricopa County at the time of his death on July 15, 2017.

10 4. Plaintiff's mother, Selia Garcia Castaneda, was a 57-year-old resident of
11 Maricopa County at the time of her death on July 15, 2017.

12 5. Plaintiff's sister, Maria Del Carmen Raya-Garcia, was a 27-year-old resident
13 of Maricopa County at the time of her death on July 15, 2017.

14 6. Plaintiff's sister, Maribel Raya-Garcia, was a 24-year-old resident of
15 Maricopa County at the time of her death on July 15, 2017.

16 7. Plaintiff's brother, Javier Raya-Garcia, was a 19-year-old resident of
17 Maricopa County at the time of his death on July 15, 2017.

18 8. Plaintiff's niece (and Maribel's daughter), Erika Janel Camacho Ray, was a
19 2-year-old resident of Maricopa County at the time of her death on July 15, 2017.

20 9. Defendant State of Arizona (hereinafter "State") is a public entity, formed
21 and designated as such pursuant to Title 11 of the Arizona Revised Statutes and, as
22 permitted by state and federal law, is independently or vicariously liable, or otherwise
23 responsible for the conduct of its divisions, agents, officers, and employees.

24 10. Defendant Gila County (hereinafter "County") is a public entity, formed and
25 designated as such pursuant to Title 11 of the Arizona Revised Statutes and, as permitted
26 by state and federal law, is independently or vicariously liable, or otherwise responsible,
27 for the conduct of its divisions, agents, officers, and employees.

28

1 11. Defendants State of Arizona and Gila County are charged with managing
2 and maintaining the lands, resources, and recreational facilities of the Tonto National
3 Forest, including Ellison Creek, and the Water Wheel campground and swimming area
4 near Payson, Arizona.

5 **JURISDICTION AND VENUE**

6 12. Plaintiff has satisfied the provisions under A.R.S. § 12-821.01 by serving a
7 timely Notice of Claim upon Defendants more than 60 days prior to the date of filing this
8 Complaint. By operation of statute, the claim is deemed denied.

9 13. The amount in controversy exceeds the jurisdictional threshold of the Court.

10 14. Jurisdiction and venue are proper in this Court pursuant to A.R.S. § 12-401
11 because the events underlying this lawsuit occurred in Gila County, Arizona.

12 15. Plaintiff demands a jury trial.

13 **GENERAL ALLEGATIONS**

14 **A) The Highline Fire leaves 7,198 acres of charred brush and debris in the Ellison**
15 **Creek watershed.**

16 16. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth
17 herein.

18 17. On June 25, 1990, lighting struck near Bonita Creek, Payson, Arizona.

19 18. The resulting fire, named the Dude Fire, burned 25,000 acres of forest.

20 19. On June 8, 2017, firefighters returned to the forest to battle the Highline Fire,
21 which originated eight (8) miles north of Payson, Arizona.

22 20. The Highline Fire burned across the Dude Fire's scar and incinerated 7,198
23 acres of grass, brush, and down and dead trees on the National Forest system lands in the
24 Mogollon Rim area.

25 21. Nine hundred fourteen (914) firefighters battled the Highline Fire for two (2)
26 weeks.

27 22. The fire was finally extinguished near the beginning of the monsoon season
28 which was certain to bring sporadic heavy rain storms to the area.

1 23. The Highline Fire was located in the watershed for Ellison Creek.

2 24. Defendants Forest Service, State, and County knew that the monsoon rain
3 storms, which fed into Ellison Creek, would also wash debris left over from the Highline
4 Fire into the creek and into public recreation areas, such as the Water Wheel area, where
5 people went hiking and swimming.

6 25. Defendants Forest Service, State, and County knew of the long-term impact
7 of wildfires, including dramatically increased erosion and flash flood risk.

8 26. The debris and scarred ground left behind from the Highline Fire, combined
9 with the foreseeable monsoon storms, constituted an unreasonably and abnormally
10 dangerous condition in the Tonto National Forest and Ellison Creek watershed.

11 27. Defendants knew or should have known of the dangerous condition and had
12 ample notice and opportunity to remedy the condition.

13 **B) The Garcia Family is tragically trapped and swept away by flash flood waters.**

14 28. On Saturday, July 15, 2017, members of the Garcia and Garnica families
15 gathered at the Water Wheel, a popular swimming and day use area on Ellison Creek in the
16 Tonto National Forest, to celebrate Maria Raya-Garcia's birthday.

17 29. The Water Wheel area was open to the public.

18 30. At all relevant times, the Garcia family members were invitees on public
19 land.

20 31. The family played and swam under clear blue skies in part of the Water
21 Wheel called the Cold Springs swimming hole—an area innocuously known as “the
22 beach”—and could not have anticipated the heavy rains that fell eight (8) miles upstream.

23 32. At 1:45 p.m., the National Weather Service (“NWS”) issued a flash flood
24 warning for the region for the remainder of Saturday, as well as Sunday and Monday.

25 33. The Water Wheel area and Cold Springs swimming hole remained open to
26 the public after the NWS flood alert was issued.

27 34. Many people, including the Garcia family, remained in the Water Wheel
28 area, apparently unaware of the NWS flood alert.

1 35. Without warning, a black wall of water, logs, rocks, mud, and debris
2 descended on the Water Wheel area, moving far too fast for those in its path to escape.

3 36. A total of ten (10) people were trapped and swept away by the wall of debris
4 and died in the flood, including Garcia family members Selia Garcia Castaneda, Maria Del
5 Carmen Raya-Garcia, Maribel Raya-Garcia, Javier Raya-Garcia, Erika Janel Camacho
6 Ray, and Jonathon Leon Villanueva.

7 37. The Forest Service closed this area of Ellison Creek after the deaths of the
8 Garcia family members.

9 **C) Defendants failed to take precautions to protect or warn invitees of the extreme**
10 **flash flood danger.**

11 38. Defendants were aware of the NWS flood alert and knew that the flash flood
12 danger and the residual effects of the Highline Fire posed a serious risk of injury or death
13 to individuals playing or swimming in Ellison Creek and Water Wheel.

14 39. At all relevant times, there was no system in place to specifically warn
15 visitors in the Tonto National Forest about the potential for flash flood danger and/or the
16 residual effects of the Highline Fire.

17 40. Defendants failed to take adequate action to warn visitors in Ellison Creek
18 and Water Wheel of the NWS flood alert, the flash flood danger, and/or the residual effects
19 of the Highline Fire on July 15, 2017.

20 41. Defendants allowed the Water Wheel area to remain open to the public after
21 the NWS alert was issued at approximately 1:45 p.m. on July 15, 2017.

22 42. As a result of Defendants' negligent, grossly negligent, and/or reckless acts
23 and omissions, Plaintiff and all statutory beneficiaries of Selia Garcia Castaneda, Maria
24 Del Carmen Raya-Garcia, Maribel Raya-Garcia, Javier Raya-Garcia, Erika Janel Camacho
25 Ray, and Jonathon Leon Villanueva sustained economic and noneconomic damages,
26 including pain and suffering, grief, emotional distress, loss of love and affection, and loss
27 of enjoyment of life.
28

COUNT I

(Negligence/Gross Negligence against All Defendants)

43. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

44. Defendants owed a duty of reasonable care to prevent harm to the decedents, who were lawfully present on the land as invitees.

45. Defendants breached the duty of reasonable care they owed to decedents in that they knew or should have known of the unreasonably dangerous condition created by the flash flood risk and the residual effects of the Highline Fire, and they failed to use reasonable efforts to correct the unsafe condition or to warn decedents of it.

46. Under the doctrine of *respondeat superior*, Defendants are vicariously liable for the negligence of their employees and agents.

47. As a direct and proximate result of Defendants' negligent, grossly negligent, and/or reckless acts and omissions, Plaintiff and all statutory beneficiaries of decedents have and will continue to suffer damages, including pain and suffering, grief, emotional distress, loss of support, loss of love and affects, and loss of enjoyment of life.

COUNT II

(Premises Liability against all Defendants)

48. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

49. At all relevant times, decedents were invitees on public lands and had a legal right to be on the premises.

50. Defendants owed decedents a duty to maintain the premises in a reasonably safe condition.

51. The flash flood risk and residual effects of the Highline Fire constituted an unreasonably dangerous condition, which Defendants knew or should have known would endanger the lives and safety of invitees.

52. Defendants breached their duty of reasonable care in at least the following ways:

- a. Failing to properly inspect and maintain the Ellison Creek watershed and Water Wheel day use area in a reasonably safe condition;
- b. Failing to warn and/or protect individuals from the danger presented by the flash flood risk and residual effects of the Highline Fire;
- c. Failing to warn individuals in the Water Wheel area of the NWS flood alert that was issued on July 15, 2017;
- d. Failing to close the Water Wheel day use area to the public after the NWS flood alert was issued on July 15, 2017;
- e. Failing to properly supervise, train, oversee, and instruct their employees and agents in the proper inspection, maintenance, and warning systems to be used in the Ellison Creek watershed and Water Wheel day use area; and
- f. Other such acts yet to be discovered.

53. Under the doctrine of *respondeat superior*, Defendants are vicariously liable for the negligence of their employees and agents.

54. As a direct and proximate result of Defendants' negligent, grossly negligent, and/or reckless acts and omissions, Plaintiff and all statutory beneficiaries of decedents have and will continue to suffer damages, including pain and suffering, grief, emotional distress, loss of support, loss of love and affects, and loss of enjoyment of life.

COUNT III

(Strict Liability against All Defendants)

55. Plaintiff hereby incorporates all preceding paragraphs as if fully set forth herein.

56. The flash-flood risk and residual effects of the Highline Fire present in the Ellison Creek watershed and Water Wheel day use area constituted an abnormally dangerous condition.

1 57. Defendants are strictly liable for the harm decedents, Plaintiff, and all
2 statutory beneficiaries suffered because of the abnormally dangerous condition.

3 **RULE 26.2 DISCOVERY TIER**

4 This case is a Rule 26.2 Discovery Tier 3 case.

5 **PRAYER FOR RELIEF**

6 WHEREFORE, Plaintiff requests that the Court enter judgment against all
7 Defendants as follows:

8 A. For general damages, including but not limited to the loss of love, affection,
9 companionship, and guidance resulting from decedents' deaths, pain, grief, sorrow,
10 anguish, stress, shock, and mental suffering already experienced and reasonably probable
11 to be experienced in the future;

12 B. For special damages, including but not limited to the expenses of decedents'
13 funerals and burials;

14 C. For pre- and post-judgment interest to the extent permitted by law;

15 D. For attorneys' fees and taxable costs to the extent permitted by law; and

16 E. For such further relief as the Court deems just and proper.

17 **RESPECTFULLY SUBMITTED:** July 13, 2018

18 **ROBBINS & CURTIN, p.l.l.c.**

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