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

**C20172875**

JANE DOE, a minor child by and through her conservator, Fleming and Curti PLC,

Plaintiff,

vs.

STATE OF ARIZONA; ARIZONA DEPARTMENT OF CHILD SAFETY, a state agency; ARIZONA DEPARTMENT OF ECONOMIC SECURITY, a state agency; CHILD PROTECTIVE SERVICES, a state agency; DIVISION OF CHILDREN, YOUTH AND FAMILIES, a state agency; CHRISTIAN FAMILY CARE, a nonprofit corporation; CATHOLIC COMMUNITY SERVICES OF SOUTHERN ARIZONA, INC., a nonprofit corporation; ST. NICHOLAS OF MYRA,

Case No.:

**COMPLAINT**

**(Tort – Respondent Superior; Negligence; Breach of Fiduciary Duty; Intentional Infliction of Emotional Distress; Assault; Battery; 42 U.S.C. § 1983)**

Assigned to:

**SARAH R. SIMMONS**

1 business entity of form unknown; MARK  
2 BRNOVICH, in his individual and official  
3 capacity; GREGORY MCKAY, individually  
4 and in his official capacity; CHARLES  
5 FLANAGAN, individually and in his official  
6 capacity; CLARENCE CARTER, in his  
7 individual and official capacity; JEANNETTE  
8 SHELDON, in her individual and official  
9 capacity; EVA PENA, in her individual and  
10 official capacity; KATHERINE MAYER, in her  
11 individual and official capacity; CASSIE  
12 DIXON, in her individual and official capacity;  
13 MONICA REYES, in her individual and official  
14 capacity; NOREL ALVITI, in her individual and  
15 official capacity; ROSETTE CODNER, in her  
16 individual and official capacity; JACK RODDY,  
17 in his individual and official capacity; DAVID  
18 AND BARBARA FRODSHAM, individually  
19 and jointly as a married couple; SAMANTHA  
20 AND JUSTIN OSTERAAS, individually and  
21 jointly as a married couple; DOES 1-100,  
22 inclusive,

23 Defendants.

24 Jane Doe, by and through her conservator Fleming and Curti, PLC, for her  
25 Complaint against Defendants allege as follows:

26  
**JURISDICTION, VENUE AND PARTIES**

1. Plaintiff, Jane Doe, was nearly 2 years old when the State of Arizona and  
Department of Child Safety removed her from her biological mother and home in Pima  
County, Arizona in April of 2013. Jane Doe is now 6 years old. Fleming and Curti, PLC  
are the court appointed conservator of this minor, Jane Doe, as of May 2, 2017 (Exhibit  
A). Jane Doe is a fictitious name being used to protect the privacy interests of the minor  
Jane Doe. Defendants know or will be advised of the true identity of Jane Doe.

1           2.       Defendant State of Arizona (hereinafter "the State") is a body  
2 politic/governmental entity.

3           3.       Defendant Arizona Department of Child Safety (hereinafter "DCS") is a  
4 subdivision, entity, or administrative arm of Defendant, State of Arizona. In 2014, the  
5 Arizona Legislature created DCS, a stand-alone agency.

6           4.       Defendant Arizona Department of Economic Security (hereinafter "DES")  
7 is a department of the executive branch of the State of Arizona. Prior to 2014 and during  
8 relevant periods of time, DES was a department that administered the Division of Child  
9 Protective Services and the Division of Children, Youth and Families.

10           5.       Defendant Child Protective Services (hereinafter "CPS") was a  
11 subdivision, entity, or administrative arm of Defendant DES at relevant times herein.  
12 Prior to 2014, CPS was a subdivision, entity or administrative arm of Defendant DES.  
13 Jane Doe is informed and believes that the successor entity of CPS is DCS. In 2014, the  
14 Arizona Legislature created DCS, a stand-alone agency, to be the successor entity of CPS.

15           6.       Defendant Division of Children, Youth and Families (hereinafter  
16 "DCYF") was a subdivision, entity, or administrative arm of Defendant DES at relevant  
17 times herein. Prior to 2014, DCYF was a subdivision, entity or administrative arm of  
18 Defendant DES. Jane Doe is informed and believes that the successor entity of DCYF is  
19 DCS.

20           7.       Defendant Christian Family Care Agency, Inc. (hereinafter "CFC") is an  
21 Arizona non-profit corporation. CFC was the licensing agency in Pima County that placed  
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1 Jane Doe for adoption in the care of Defendants Oстераases. The State was responsible for  
2 insuring that CFC did their job properly and safely. CFC and the State were jointly and  
3 severally responsible for the investigation and licensing of Defendants Oстераases as  
4 adoptive parents, and for the grossly negligent licensing and placement of Jane Doe with  
5 the Oстераases.  
6

7 8. Defendant Catholic Community Services of Southern Arizona, Inc.  
8 (hereinafter "CCSSA") is an Arizona non-profit corporation with its principal place of  
9 business in Pima County, Arizona. CCSSA had the adoption agency of St. Nicholas of  
10 Myra under their administration.  
11

12 9. Defendant St. Nicholas of Myra (hereinafter "St. Nicks") was the adoption  
13 agency that was jointly responsible for the licensing and placement of Jane Doe in  
14 Defendants Oстераases' home.  
15

16 10. Defendant Attorney General Mark Brnovich (hereinafter "Brnovich") is or  
17 was the Arizona Attorney General who, at all times relevant to this matter, represented  
18 Arizona, DES, DCYF, CPS, DCS or any combination of them. Brnovich was mandated  
19 under state law to carry out the purposes of DCS, to formulate and implement policies  
20 plans and programs to effectuate the State's missions and purposes to protect Jane Doe  
21 while in foster care, and to protect the children while in the State's care. Brnovich was an  
22 agent of the State and required to abide by Arizona's policy of protecting the best interests  
23 of children involved in dependency proceedings and placed in foster and/or adoptive  
24 homes. Brnovich is being sued in his individual and official capacity.  
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1           11.       Defendant Gregory McKay (hereinafter "McKay") is the Director of DCS  
2 and was mandated to protect the children in the State's care. McKay was an agent of the  
3 State and required to abide by Arizona's policy of protecting the best interests of children  
4 involved in dependency proceedings and placed in foster and/or adoptive homes. McKay  
5 is being sued in his individual and official capacity.  
6

7           12.       Defendant Charles Flanagan (hereinafter "Flanagan") was, during relevant  
8 time periods mentioned herein, the Director of DCS and was mandated to protect the  
9 children in the State's care. Flanagan was an agent of the State and required to abide by  
10 Arizona's policy of protecting the best interests of children involved in dependency  
11 proceedings and placed in foster and/or adoptive homes. Flanagan is being sued in his  
12 individual and official capacity.  
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14           13.       Defendant Clarence Carter (hereinafter "Carter") was, during relevant  
15 time periods mentioned herein, the director of DES and was mandated to protect the  
16 children in the State's care. DES administered CPS and the DCYF. Carter was an agent  
17 of the State and required to abide by Arizona's policy of protecting the best interests of  
18 children involved in dependency proceedings and placed in foster and/or adoptive homes.  
19 Carter is being sued in his individual and official capacity.  
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21           14.       Defendant Jeannette Sheldon (hereinafter "Sheldon") is an employee of  
22 DCS who, during the relevant time periods, served as a case manager for CPS and/or  
23 DCYF and was involved in the removal of Plaintiff and her placement in various foster  
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1 homes and her adoptive home. Sheldon is being sued in her individual and official  
2 capacity.

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4 15. Defendant Eva Pena (hereinafter "Pena") is an employee of DCS. Pena  
5 served as a Unit Supervisor within CPS and/or DCYF during the relevant time periods and  
6 was involved in the removal of Plaintiff and her placement in various foster homes and  
7 her adoptive home. Pena is being sued in her individual and official capacity.

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9 16. Defendant Katherine Mayer (hereinafter "Mayer") is an employee of DCS  
10 who, during the relevant time periods, served as a case manager for CPS and/or DCYF  
11 and was involved in the removal of Plaintiff and her placement in various foster homes  
12 and her adoptive home. Mayer is being sued in her individual and official capacity.

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14 17. Defendant Cassie Dixon (hereinafter "Dixon") is an employee of DCS  
15 who, during the relevant time periods, served as the case manager and/or supervisor for  
16 CPS and/or DCYF and was involved in the removal of Plaintiff and her placement in  
17 various foster homes and her adoptive home. Dixon is being sued in her individual and  
18 official capacity.

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20 18. Defendant Monica Reyes (hereinafter "Reyes") is an employee of DCS  
21 who, during the relevant time periods, served as a case manager for CPS and/or DCYF  
22 and was involved in the removal of Plaintiff and her placement in various foster homes  
23 and her adoptive home. Reyes is being sued in her individual and official capacity.

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25 19. Defendant Norel Alviti (hereinafter "Alviti") is an employee of DCS who,  
26 during the relevant time periods, served as a specialist for CPS and/or DCYF and was

1 involved in the removal of Plaintiff and her placement in various foster homes and her  
2 adoptive home. Alviti is being sued in her individual and official capacity.

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4 20. Defendant Rosette Codner (hereinafter "Codner") is an employee of DCS  
5 who during the relevant time periods served as a supervisor for CPS and/or DCYF and  
6 was involved in the removal of Plaintiff and her placement in various foster homes and  
7 her adoptive home. Codner is being sued in her individual and official capacity.

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9 21. Defendant Jack Roddy (hereinafter "Roddy") is an employee of DCS who,  
10 during the relevant time periods, served as a supervisor for CPS and/or DCYF and was  
11 involved in the removal of Plaintiff and her placement in various foster homes and her  
12 adoptive home. Roddy is being sued in his individual and official capacity.

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14 22. Defendants, David and Barbara Frodsham, (hereinafter "Frodshams") are  
15 a married couple who resided in Cochise County during all relevant time periods  
16 mentioned herein. Defendant David Frodsham is currently an inmate in the Arizona State  
17 Prison System. (See Plea Agreement, attached as Exhibit B.) The Frodshams were  
18 licensed as foster parents by the State, DES, CPS, DCYF and/or DCS in 2002. The State,  
19 DES, CPS, DCYF, DCS and/or their employees acting as agents, negligently placed Jane  
20 Doe in the Frodshams' home beginning June 2013 and kept her there until January 2015.  
21 Plaintiff was removed in January 2015.

22  
23 23. Defendants, Samantha and Justin Osteraas, (hereinafter "Osteraases") are  
24 a married couple living in Pima County and who have resided in Pima County Arizona  
25 during all relevant time periods mentioned herein. Defendant, Samantha Osteraas, is  
26

1 presently facing child abuse charges as a result of her abuse of Jane Doe, in Pima County  
2 Superior Court. (See felony criminal complaint, attached as Exhibit C.) The Osteraases  
3 were licensed as foster and adoptive parents by the State, CFC, CCSSA, and St. Nicks.  
4 The Osteraases were approved as adoptive parents for Jane Doe by the State, CFC,  
5 CCSSA, and St. Nicks. Jane Doe resided with the Osteraases and was in their home and  
6 care from June 2015 until December 29, 2016 when Jane Doe was hospitalized due to  
7 severe burns caused by scalding water by Defendant, Samantha Osteraas. Jane Doe  
8 remained in the Intensive Care Unit of Banner-University Medical Center in Tucson,  
9 Arizona, as a result of the child abuse until she was transferred to an out-of-state hospital  
10 that agreed to treat her for free.  
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13           24. Jane Doe remained in the legal custody of the Osteraases until March  
14 2017. Upon information and belief, Jane Doe alleges that the State, its subdivisions,  
15 entities, and/or administrative arms of the State, did not begin severance or dependency  
16 proceedings until approximately March 2017, so as not to be liable for the intensive care  
17 hospital bills. As a result, Defendant Justin Osteraas was permitted to visit Plaintiff in the  
18 hospital and be involved in her care which has harmed Jane Doe in her mental health and  
19 ability to recover.  
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22           25. Defendants DOES 1 through 100, inclusive, and each of them, are sued  
23 herein under said fictitious names. Jane Doe is unaware as to the true names and  
24 capacities of DOES 1 through 100, whether individual, corporate, associate, or otherwise,  
25 and therefore sues said Defendants by such fictitious names. When their true names and  
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1 capacities are ascertained, Jane Doe will request leave of Court to amend this Complaint  
2 to state their true names and capacities herein. These defendants were in charge of the  
3 care and treatment of Jane Doe and they are sued in their individual and official capacity.  
4

5 26. Defendants State, DCS, DES, CPS, DCYF; CFC, CCSSA, St. Nicks,  
6 Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alвити, Codner,  
7 Roddy, Frodshams, Osteraases, and DOES 1 through 100, inclusive, are sometimes  
8 collectively referred to herein as "Defendants" and/or as "All Defendants"; such collective  
9 reference refers to all specifically named Defendants as well as those fictitiously named  
10 herein.  
11

12 27. Jane Doe is informed and believes, and on that basis, alleges that at all  
13 times mentioned herein, each Defendant was responsible in some manner or capacity for  
14 the occurrences herein alleged, and that Jane Doe's damages, as herein alleged, were  
15 proximately caused by all said Defendants.  
16

17 28. At all times mentioned herein, each and every Defendant was an  
18 employee, agent, and/or servant of the State, DCS, DES, CPS, DCYF, CFC, CCSSA, St.  
19 Nicks, Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alвити,  
20 Codner, Roddy, Frodshams, Osteraases, and DOES 1 through 100, and/or was under their  
21 complete control and/or active supervision. Defendants and each of them are individuals,  
22 corporations, partnerships and/or other entities that engaged in, joined in, and conspired  
23 with other Defendants and wrongdoers in carrying out the tortuous and unlawful activities  
24 described in this Complaint and are jointly and severally liable for her damages.  
25  
26

1           29.     Jane Doe is informed and believes, and on that basis alleges that at all  
2 times mentioned herein, there existed a unity of interest and ownership among Defendants  
3 and each of them such that any individuality and separateness between Defendants, and  
4 each of them, ceased to exist. Defendants, and each of them, were the successors-in-  
5 interest and/or alter egos of the other Defendants.  
6

7           30.     Jane Doe is informed and believes, and on that basis alleges that at all  
8 times mentioned herein, Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA, St.  
9 Nicks, Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti,  
10 Codner, Roddy, Frodshams, Osteraases, and DOES 1 through 100, were the agents,  
11 representatives and/or employees of each and every other Defendant. In doing the things  
12 hereinafter alleged, Defendants and each of them were acting within the course and scope  
13 of said alternative personality, capacity, identity, agency, representation and/or  
14 employment and were within the scope of their authority, whether actual or apparent.  
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17           31.     Jane Doe is informed and believes, and on that basis alleges that at all  
18 times mentioned herein, Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA, St.  
19 Nicks, Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti,  
20 Codner, Roddy, Frodshams, Osteraases, and DOES 1 through 100, were the trustees,  
21 partners, servants, joint venturers, shareholders, contractors, and/or employees of each and  
22 every other Defendant, and the acts and omissions herein alleged were done by them,  
23 acting individually, through such capacity and within the scope of their authority, and  
24 with the permission and consent of each and every other Defendant and that said conduct  
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26

1 was thereafter ratified by each and every other Defendant, and that each of them is jointly  
2 and severally liable to Jane Doe.

3  
4 32. The State, its subdivisions, entities, administrative arms, individual  
5 employees and agents had notice and knowledge that their practices posed a danger to  
6 children in their care, including Jane Doe. In 2014, Former Governor Jan Brewer publicly  
7 acknowledged that, “[t]he Arizona child welfare system is broken, impeded by years of  
8 structural and operations failures.”

9  
10 33. The State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks, and  
11 Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner,  
12 Roddy, and DOES 1 through 100, are designated as individuals and entities, and  
13 responsible for receiving and investigating allegations of child maltreatment, properly  
14 investigating prospective foster parents, placing children in safe environments,  
15 supervising the placement of the children in their care, properly licensing and supervising  
16 foster parents and placements, properly investigating and licensing prospective and  
17 adoptive parents, and for providing protective services to the minor children of Arizona.

18  
19  
20 34. The State, by and through its agencies DCS, DES, CPS, DCYF, CFC,  
21 CCSSA, St. Nicks, and Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer,  
22 Dixon, Reyes, Alviti, Codner, Roddy, and DOES 1 through 100, was and are responsible  
23 for the safe placement of minor foster children, both in foster homes and in adoptive  
24 homes. These Defendants, and each of them, had an obligation to insure that once they  
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1 removed Jane Doe from her mother, that her placements were safe, and free from abuse  
2 and harm.

3  
4 35. The Defendants removed Jane Doe from her home and her biological  
5 mother based on a fear of potential future harm. There was no abuse proven or  
6 demonstrated by the Defendants when they removed Jane Doe, only a fear that her mother  
7 would allow Jane Doe to be with her biological father when he visited Jane Doe and her  
8 mother. Based on the possibility of potential abuse by her biological father (which never  
9 happened), Defendants placed Jane Doe in successive dangerous environments, far more  
10 dangerous and abusive than her home with her mother. Defendants took Jane Doe from  
11 her home where she had not been abused and placed her in homes where criminals ran  
12 pornographic rings, sexually abused children entrusted in their care, including Jane Doe.  
13 The Defendants then placed Jane Doe in a home where she was almost burned to death.

14  
15  
16 36. The State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks, Brnovich,  
17 McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alвити, Codner, Roddy,  
18 and DOES 1 through 100, were and are legally bound to promulgate policies and  
19 procedures so that the minor children in their custody are safe, and are legally bound to  
20 supervise and insure the safety of the minor children in their custody, whether in foster  
21 care or in placement by adoption.

22  
23 37. As a result of the Defendants failure to fulfill their duties and obligations  
24 and remedy these problems, Jane Doe was exposed to unreasonable risk and harm, in  
25  
26

1 violation of her federal and state constitutional and statutory rights, and as a result was  
2 severely and permanently injured.

3 38. The actions and omissions of the employees of the State, its subdivisions,  
4 entities, and/or administrative arms of the State alleged herein were done within the scope  
5 of their duties as employees of the State of Arizona.  
6

7 39. The acts and omissions of the parties herein were done for the benefit of  
8 the community of their marriages.  
9

10 40. The events and acts alleged herein, out of which this action arises,  
11 occurred in Pima County and Cochise County, Arizona.

12 41. Venue and jurisdiction are proper pursuant to A.R.S. § 12-401(7) (10) and  
13 (16).  
14

15 42. The amount in controversy exceeds the jurisdictional requirement for  
16 filing an action in this Court.

17 43. All procedural requirements of A.R.S. § 12-821 et. seq. have been met.  
18

#### 19 **FACTUAL ALLEGATIONS**

20 44. On April 22, 2013, DCS filed a Dependency Petition to remove Jane Doe  
21 from her biological mother, and three days later, Jane Doe was moved from foster care to  
22 another placement.

23 45. In June 2013, Jane Doe was placed in the Frodshams' home, a State  
24 licensed foster home. Defendants Frodshams are required and obligated to meet the  
25 licensing requirements of the State of Arizona, and must follow the rules and regulations  
26

1 promulgated by Arizona Revised Statutes. Jane Doe is informed and believes, and on that  
2 basis alleges, that the Frodshams failed to meet these requirements and failed to follow  
3 safe rules and regulations and that the State negligently licensed the Frodshams for foster  
4 care. Jane Doe is informed and believes, and on that basis, alleges that she was  
5 negligently placed in the Frodshams' home, which was not properly investigated, despite  
6 a history of complaints and problems that did or should have put the Defendants on notice.  
7

8  
9 46. Upon information and belief, Jane Doe alleges, that at least one, if not  
10 several, of the minor foster children placed with the Frodshams were physically and  
11 sexually abused. Complaints were made by the abused child to the State about abuse at  
12 the home and nothing was done to protect the children placed there, despite having  
13 received multiple complaints. The Defendants failed to adequately investigate the  
14 complaints and reports made about the Frodshams' fitness as foster and adoptive parents,  
15 all to the detriment of the minor foster and adoptive children residing there, specifically  
16 Jane Doe.  
17

18  
19 47. The State, DCS, DES, CPS, DCYF, Brnovich, McKay, Flanagan, Carter,  
20 Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner, Roddy, and DOES 1 through 100,  
21 had a duty to supervise and monitor the safety and compliance of the Frodshams' home,  
22 and to insure that no children in their care would be harmed.  
23

24  
25 48. Defendant Frodshams, had a pattern and practice of abusing their foster  
26 children, including but not limited to using the minor children entrusted in their care in a  
pornographic pedophile ring. The Frodshams had a history of problems that placed

1 Defendants on actual, constructive and/or inquiry notice.

2 49. During Jane Doe's placement with the Frodshams, from June 2013  
3 through January 2015, Doe's biological mother complained about Jane Doe's placement  
4 to DCS, DES, CPS, DYCF, and the Defendant caseworkers. During this time, Doe's  
5 biological mother worked a Reunification Plan, trying to regain custody of her daughter.  
6 Despite her sobriety and meeting many of the reunification plan requirements, Jane Doe's  
7 biological mother was not successful in reunification.  
8

9  
10 50. Jane Doe's biological mother raised repeated concerns about her  
11 daughter's safety in the Frodshams' home, including Jane Doe's repeated documented  
12 urinary tract infections. Jane Doe's biological mother raised repeated concerns that her  
13 daughter feared men and when returning to the Frodshams' home, would only return to  
14 her foster home in a taxi driven by a female. Jane Doe would cry upon having to return to  
15 the Frodshams' home after visits with her mother.  
16

17 51. Instead of investigating Jane Doe's biological mother's concerns of abuse,  
18 the State DCS, DES, CPS, DYCF, and the Defendant caseworkers accused her of making  
19 false and exaggerated reports to DCS and caseworkers regarding the Frodshams' home.  
20 Additionally, the State DCS, DES, CPS, DYCF, and the Defendant caseworkers accused  
21 Jane Doe's mother of causing Jane Doe to fear men.  
22

23 52. Defendant David Frodsham, was arrested on January 6, 2015, for driving  
24 under the influence with Jane Doe in the vehicle (See Cochise County Superior Court  
25 Indictment, attached as Exhibit D.) David Frodsham was in a state office getting his  
26

1 monetary foster child benefits, and left Jane Doe, age 3, and another minor child, outside  
2 in the parked vehicle. David Frodsham was visibly drunk and acting belligerent so the  
3 police were called, found Jane Doe and the other minor in the vehicle, and David  
4 Frodsham with a .28 blood alcohol concentration. This incident caused the State to  
5 remove Jane Doe from the Frodshams' home, but the Defendants did not investigate the  
6 Frodshams' home to determine what occurred, if anything else had been occurring, and  
7 whether there had been abuse of Jane Doe or others.  
8  
9

10 53. Later, David Frodsham was arrested and accused of sexual misconduct  
11 with a minor, procuring minors for sex, and possessing and/or manufacturing child  
12 pornography. Law enforcement's investigation revealed a video made by David  
13 Frodsham of a 3 or 4-year-old girl being penetrated by an adult male and screaming for  
14 her mommy. David Frodsham pled guilty rather than face a trial and has been sentenced  
15 to 17 years in the Arizona Department of Corrections. (See Sentencing Minute Entry,  
16 attached as Exhibit E.) David Frodsham was part of a pornography ring involving  
17 numerous children in his pornography and the procurement of sex for the ring. Four cases,  
18 in State and federal court, involving a child from the Frodshams' home are pending  
19 against David Frodsham. According to the federal and State prosecutors, more cases are  
20 expected to be filed involving this pedophile ring operated by David Frodsham, Jane  
21 Doe's foster parent.  
22  
23  
24

25 54. Upon information and belief, Defendants negligently failed to investigate  
26 and supervise the Frodshams' and their home. If Defendants had proper procedures and



1 policies to investigate and license foster and adoptive parents, the Frodshams would not  
2 have been able to foster Jane Doe. As a result of the Defendants' negligent acts and  
3 omissions, Jane Doe was placed as a foster child in the dangerous home of the Frodshams.  
4

5 55. Instead of investigating and supervising the Frodshams' home, the  
6 Defendants worked to terminate the rights of Jane Doe's mother and ignored Jane Doe's  
7 mother's repeated warnings.  
8

9 56. In October 2015, after a two-day trial, Jane Doe's mother's parental rights  
10 were terminated after the State and its agents opined that Jane Doe was not well-bonded  
11 with her mother because she exhibited prolonged temper tantrums, self-urination, and  
12 crying. The Defendants and their agents, responsible for child welfare, should recognized  
13 these red-flags as signs of abuse from the Frodsham's home. Defendants negligently  
14 failed to protect Jane Doe from this abuse despite having notice of this abuse as it was  
15 occurring.  
16

17 57. Jane Doe was moved from the Frodshams' home, a den of physical and  
18 sexual abuse and violence, and placed in the Osteraases' home, another place of domestic  
19 violence, mental and physical abuse.  
20

21 58. The State DCS, DES, CPS, DYCF, CFC, CCSSA, St. Nicks, Brnovich,  
22 McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner, Roddy,  
23 and DOES 1 through 100, negligently placed Jane Doe with Justin and Samantha  
24 Osteraas.  
25

26 59. Upon information and belief, Defendants ignored the warnings of Justin

1 Osteraas's brother and other family members of the Osteraases' that the Osteraases' home  
2 would be a danger to children. Defendants and each of them ignored warnings that the  
3 Osteraases household was unsafe and unfit for Jane Doe's placement.  
4

5 60. Upon information and belief, Defendants negligently failed to investigate  
6 and supervise the Osteraases and their home. If Defendants had proper procedures and  
7 policies to investigate and license foster and adoptive parents, the Osteraases would not  
8 have been able to foster and adopt Jane Doe. As a result of the Defendants' negligent acts  
9 and omissions, Jane Doe was placed as a foster child and then adopted and placed in the  
10 dangerous home of the Osteraases.  
11

12 61. Defendants' gross negligence and deliberate indifference in the licensing,  
13 placement, investigation, and supervision of the Osteraases', including complete  
14 indifference to the safety of Jane Doe resulted in Jane Doe nearly dying from tortuous  
15 abuse she suffered in the Osteraases' home. (See news article dated March 4, 2017,  
16 attached as Exhibit F.) On December 29, 2016, Jane Doe was scalded by her adoptive  
17 mother and left in agony for hours before medical attention was sought. Defendant  
18 Samantha Osteraas submerged and held down Jane Doe, a 5-year-old, in a bath of  
19 scalding hot water. Jane Doe suffered severe burns over 80% of her body. When police  
20 arrived, there was blood on the floor, and pieces of Jane Doe's skin was falling off her  
21 body. There were bruises to her neck and arm(s) along with other signs of trauma.  
22  
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24

25 62. Jane Doe had to be placed in a medically induced coma for a substantial  
26 period, as she was suffering from organ failure. Jane Doe has already lost her toes to

1 amputation and will undergo lifelong operations to replace 80% of the skin on her body  
2 and will need incredible amounts of care for the duration of her life as a result of the abuse  
3 she suffered in the Osteraases' home.  
4

5 63. On January 5, 2017, the newly adoptive mother, Samantha Osteraas, was  
6 arrested for the child abuse of Jane Doe. Jane Doe is critically wounded resulting from  
7 her adoptive mother's abuse.  
8

9 64. Defendants and each of them, were responsible for the welfare of Jane  
10 Doe, and were acting as fiduciaries in their relationship with Jane Doe.

11 65. Defendants and each of them, could have prevented the abuse suffered by  
12 Jane Doe, by the following omission and actions:

- 13 a. Failed to properly investigate and supervise the placement of Jane Doe in  
14 foster and adoptive homes;
- 15 b. Failed to provide and follow proper policies to protect Jane Doe,  
16 including investigating, supervising, evaluating Jane Doe's situations;  
17
- 18 c. Failed to listen and investigate the warnings about the dangers in the  
19 homes in which Jane Doe was placed;
- 20
- 21 d. Failed to listen to Jane Doe's mother's complaints about Jane Doe's  
22 physical illnesses, injuries and placements;
- 23
- 24 e. Failed to listen to the complaints made by others regarding the  
25 Frodshams' and Osteraases';
- 26 f. Failed to supervise, investigate and monitor the placements; and

1 g. Failed to pay attention and listen to Jane Doe's complaints, physical  
2 illnesses and injuries.

3  
4 66. The failure of Defendants to take the proper actions to protect Jane Doe  
5 resulted in Jane Doe suffering and continuing to suffer years of severe pain, physical  
6 injury and emotional damage.

7 67. The actions and/or omissions of Defendants were grossly negligent, and  
8 done with deliberate indifference to the safety of Jane Doe, who was entrusted in their  
9 care. All Defendants knew that there was a statewide failure to comply with safety  
10 standards, and that investigation and supervision foster and adopting families were being  
11 addressed in a negligent and sub-standard manner. Defendants and each of them ignored  
12 the evidence in front of them, ignored the concerns and issues presented by Jane Doe's  
13 mother and failed to perform their most basic duties of training, supervision, and  
14 investigation of the foster homes and adoptive parents. The gross negligence and  
15 deliberate indifference to the welfare of the child, the above-named entities and  
16 individuals, allowed Jane Doe to suffer horrific, permanent, life-threatening, disabling  
17 physical abuse and emotional injuries.

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20  
21 68. The actions of the defendants as set forth above were grossly negligent,  
22 and done with deliberate indifference to the safety of the children entrusted in their care.  
23 Defendants knew that the children were particularly vulnerable, yet failed to perform their  
24 most basic duties of supervision, investigation, preventing, and reporting abuse. As a  
25 result of the gross negligence and deliberate indifference to the welfare of the children  
26

1 Defendants had the duty to protect, Jane Doe has suffered severe emotional distress and  
2 lifelong physical damage.

3  
4 **COUNT I**  
5 **(Respondent Superior/Vicarious Liability)**

6 69. Jane Doe re-alleges all prior paragraphs of this Complaint and  
7 incorporates them by reference as if fully set forth herein.

8 70. The State is responsible for the acts and omissions of its agents and  
9 employees DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks, Brnovich, McKay,  
10 Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner, Roddy, and DOES  
11 1 through 100. The acts and omissions of Defendants described above, were done within  
12 the scope of their employment or agency with Defendants State, DCS, DES, CPS, DCYF,  
13 CFC, CCSSA, St. Nicks, in that they were authorized or incidental to conduct authorized  
14 by their employer Defendants. Moreover, Defendants acquiesced in, affirmed and/or  
15 ratified Defendants' acts and omissions by its concurrent and subsequent conduct, making  
16 them vicariously liable. The acts and omissions were motivated at least in part by a  
17 purpose to serve the State.  
18  
19

20 **COUNT II**  
21 **(Negligence)**

22 71. Jane Doe re-alleges all prior paragraphs of this Complaint and  
23 incorporates them by reference as if fully set forth herein.  
24  
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26

1           72.       Defendants and each of them owed minor, Jane Doe, a duty to place her  
2 in a safe environment; to properly monitor and supervise the environment, and report all  
3 criminal acts of employees or agents associated with them to the police.  
4

5           73.       Defendants and each of their agents and employees had a duty to exercise  
6 care in referring, training or hiring or retaining employees or agents, including Defendants  
7 McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alвити, Codner, Roddy,  
8 and DOES 1 through 100, so that no harm would come to Jane Doe.  
9

10          74.       Defendants had a duty investigate foster parents and potential adoptive  
11 parents, a duty to investigate any complaints or suspicions that would put Defendants on  
12 notice that a minor child could be in danger, a duty supervise their employees, agents and  
13 placement defendants, a duty to protect so that a safe environment and services would be  
14 provided to Jane Doe and prevent any abuse or harm to Jane Doe. Defendants failed to do  
15 so.  
16

17          75.       Defendants Frodshams and Oстераases had a duty to report criminal  
18 behavior in their home, a duty to protect the children in their harm and failed to do so,  
19 which resulted in serious harm to Jane Doe.  
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21          76.       Defendants breached the above duties to Jane Doe, causing Jane Doe to  
22 suffer injuries and damage, including physical injuries and emotional distress.  
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**COUNT III**  
**(Breach of Fiduciary Duty & Intentional Infliction of Emotional Distress)**

77. Jane Doe re-alleges all prior paragraphs of this Complaint and incorporates them by reference as if fully set forth herein.

78. All Defendants had a special relationship with Jane Doe constituting a confidential or fiduciary duty.

79. All of Defendants' actions in its failure to supervise, investigate and report the abuse were done with either conscious disregard or deliberate indifference to the safety of Jane Doe.

80. Defendants' conduct in failing to investigate, supervise, and report abuse was extreme and outrageous, was done intentionally or recklessly and caused Jane Doe to suffer emotional distress.

81. Defendants and each of them breached their confidential and fiduciary duties to Jane Doe by failing to take the actions described above, causing her to suffer injuries and damage, including physical injuries and emotional distress.

**COUNT IV**  
**(Assault and Battery)**

82. Jane Doe incorporates and re-alleges all prior paragraphs of this Complaint by reference as though fully set forth herein.

83. Defendants Frodshams and Samantha Osteraas committed acts of assault and battery against Jane Doe.

1           84.     The acts of Defendants Frodshams and Samantha Osteraas were done with  
2 intent to cause Jane Doe apprehension of and actual immediate bodily harm and offensive  
3 contact.  
4

5           85.     Defendants Frodshams and Samantha Osteraas caused Jane Doe  
6 apprehension of an immediate harmful or offensive contact.  
7

8           86.     As a result of the acts described herein, Jane Doe has suffered and  
9 continues to suffer economic and non-economic damages as set forth herein.  
10

11           87.     Defendants Frodshams' and Samantha Osteraas's actions were  
12 outrageous, intentional, willful, wanton and/or reckless, for which punitive damages are  
13 warranted in an amount that will punish and deter these Defendants and others from like  
14 conduct.  
15

16           88.     Defendants and each of them are jointly and severally liable for the  
17 damages resulting from their negligence in allowing this assault and battery to be inflicted  
18 on Jane Doe.  
19

20                                   **COUNT V**  
21                                   **(42 U.S.C. § 1983 – Violation of Constitutional Rights)**

22           89.     Jane Doe re-alleges all prior paragraphs of this Complaint and  
23 incorporates them by reference as if fully set forth herein.  
24

25           90.     Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks,  
26 Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti; Codner,  
27



1 Roddy, Frodshams, Osteraases, and DOES 1 through 100, and each of them, acted under  
2 the color of state law and are being sued in their individual and official capacities.

3 91. Jane Doe, at all times relevant herein, had Constitutional rights, including  
4 the right to due process, the right to liberty, and the right to privacy of her own body. Jane  
5 Doe's constitutional rights were at all relevant times clearly established by law.  
6

7 92. Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks,  
8 Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner,  
9 Roddy, and DOES 1 through 100, by virtue of their employment, were required to take  
10 adequate steps to ensure the safety of the children with the care, custody and control of  
11 Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks, Brnovich, McKay,  
12 Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner, Roddy, and DOES  
13 1 through 100.  
14  
15

16 93. Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks,  
17 Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner,  
18 Roddy, and DOES 1 through 100, failed to take steps to insure the safety and well-being  
19 of the children placed in the custody, care and control of these Defendants.  
20

21 94. The failure of Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA,  
22 St. Nicks, Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes,  
23 Alviti, Codner, Roddy, Frodshams, Osteraases, and DOES 1 through 100, to insure the  
24 safety of children within the care, custody and control of Defendants, and each of them,  
25 and was so widespread and pervasive so as to constitute a pattern of behavior  
26

1 demonstrating willful indifference and conscious disregard to the rights of children placed  
2 in their care, including Jane Doe.

3           95.       As a result of the acts of Defendants State, DCS, DES, CPS, DCYF, CFC,  
4 CCSSA, St. Nicks, Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon,  
5 Reyes, Alviti, Codner, Roddy, Frodshams, Osteraases, and DOES 1 through 100, as  
6 described above, Defendants, and each of them, promulgated and acted and implemented  
7 a *de facto* custom and policy of recklessly and consciously disregarding the safety and  
8 well-being of children placed within the care, custody and control of these Defendants,  
9 and each of them, including Jane Doe.

10           96.       The *de facto* custom and policy implemented by Defendants State, DCS,  
11 DES, CPS, DCYF, CFC, CCSSA, St. Nicks, and DOES 1 through 100 as described  
12 above, placed Jane Doe in a position where her welfare and safety was endangered,  
13 violating her constitutional rights including the right to privacy, the right to liberty, the  
14 right to due process of law, the right to the sanctity of her own body.

15           97.       Jane Doe's constitutional rights were violated by the custom, policy and  
16 official acts of Defendants, who by their acts of gross negligence and omissions and  
17 deliberate indifference to the rights of Plaintiff and other children under the custody of the  
18 State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks, Brnovich, McKay, Flanagan,  
19 Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner, Roddy, Frodshams,  
20 Osteraases, and DOES 1 through 100. As a result of the aforesaid acts and omissions,  
21 Jane Doe suffered and will continue to suffer severe emotional distress and physical  
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1 injury. These acts were done knowingly and with reckless indifference to Jane Doe's civil  
2 and constitutional rights and to her personal safety, security and legal rights.

3 98. Defendants State, DCS, DES, CPS, DCYF, CFC, CCSSA, St. Nicks,  
4 Brnovich, McKay, Flanagan, Carter, Sheldon, Pena, Mayer, Dixon, Reyes, Alviti, Codner,  
5 Roddy, Frodshams, Ostersaases, and DOES 1 through 100, acting in their official and  
6 individual authority participated in creating a dangerous condition by their deliberate  
7 indifference to the safety of the minors in state care in Arizona by their lack of policies  
8 and procedures to protect children, and their pattern and practice of failing to investigate  
9 or report abuse, failing to monitor, supervise and report the abuse, and negligent licensing  
10 of foster and adoptive parents. The Defendants, and each of them, acted with deliberate  
11 indifference to the known and obvious dangers to Jane Doe and as a result of the  
12 deliberate indifference by Defendants to Jane Doe's rights, Jane Doe suffered severe  
13 injuries and a deprivation of her rights under the Constitution.

14 99. Jane Doe is entitled to damages, attorneys' fees, and costs as well as  
15 punitive damages against these defendants for their willful violation of Jane Doe's  
16 constitutional rights pursuant to 42 USC § 1983.

17 **WHEREFORE**, Jane Doe prays for judgment against Defendants, their successors  
18 in interests, and each of them jointly and severally, as follows:

- 19 1. For compensatory and consequential damages in an amount to be determined at  
20 trial;
- 21 2. For punitive or exemplary damages in an amount to be determined at trial;

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- 3. For costs and attorneys' fees under 42 USC § 1988 as may be allowed; and
- 4. For such other and further relief as is just under the circumstances.

DATED this 16<sup>th</sup> day of June, 2017.

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