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IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF MARICOPA

MARCIA McKEE, surviving mother of
GRANT QUINN McKEE, deceased,

Plaintiff,

vs.

STATE OF ARIZONA, a public entity; and
the ARIZONA STATE FORESTRY
DIVISION, a public entity,

Defendants.

Case No. CV 2014-009070

COMPLAINT

(Tort—Non-Motor-Vehicle;
Wrongful Death;
Infliction of Emotional Harm
and Emotional Distress)

(Jury Trial Demanded)

For her Complaint against the Defendants, and each of them, Plaintiff alleges as follows:

Introduction

1. From June 28 to June 30, 2013, the Arizona State Forestry Division tried to contain, manage, and suppress the Yarnell Hill Fire. It failed miserably.

2. Because of the Arizona State Forestry Division's negligence, 19 firefighters died preventable deaths.

3. One of the 19 firefighters who gave his life fighting the Yarnell Hill Fire was Grant Quinn McKee, Plaintiff Marcia McKee's beloved son.

1 4. If the Arizona State Forestry Division had used proper, standard firefighting
2 management practices, no one need have died.

3 5. Until July 1, 2013, when the Federal Bureau of Land Management finally took
4 command and began managing the Yarnell Hill Fire, the Arizona State Forestry Division
5 unthinkingly and incompetently reacted to events. It failed to devise and implement any coherent
6 plan to contain the Yarnell Hill Fire while simultaneously protecting the firefighters assigned to
7 the firefighting effort.
8

9
10 6. On June 28, 2013, when the Yarnell Hill Fire was still small, the Arizona State
11 Forestry Division negligently took no measures to contain or suppress it.

12
13 7. On June 29, 2013, the Arizona State Forestry Division again failed to use its ground
14 and aerial resources to contain and suppress the Yarnell Hill Fire, failed to summon additional
15 resources, and actually sent away key ground and aerial resources under the unfounded belief that
16 the Yarnell Hill Fire was dying out.
17

18 8. In the afternoon of June 29, 2013, when it became clear that the Yarnell Hill Fire
19 had escaped the initial attack and was rapidly spreading, the Arizona State Forestry Division
20 frantically called in more resources. But it failed to deploy and use those resources in a safe,
21 competent way that would have protected the firefighters assigned to the firefighting effort.
22

23 9. On June 30, 2013, an active plan using reliable communications, proper equipment,
24 firebreaks, burn-outs, coordinated ground crews and ground equipment, and vigorous aerial
25 retardant and water drops could have protected all of the firefighters.
26

27 10. Instead, the Arizona State Forestry Division floundered, adopting a strategy of
28

1 uncoordinated reaction instead of planned action. As a result, the lives of 19 firefighters were
2 sacrificed, including the life of Grant McKee.

3 11. The brightest spot in this story of incompetent mismanagement was the Granite
4 Mountain Interagency Hotshot Crew's unselfish, exemplary, and courageous performance. Grant
5 McKee was a member of that respected, dedicated firefighting contingent.

7 12. When most units under the Arizona State Forestry Division's inept direction were
8 doing little to contain the fire and to protect Yarnell, the Granite Mountain Interagency Hotshot
9 Crew tried to initiate a burn-out and tried to construct and improve firebreaks to contain the
10 southern and eastern part of the Yarnell Hill Fire.

12 13. Because of extreme mismanagement, however, the Arizona State Forestry Division
13 consistently nullified and failed to support the Granite Mountain Interagency Hotshot Crew's
14 commendable efforts.

16 14. For instance, as the Granite Mountain Interagency Hotshot Crew was conducting a
17 burn-out to protect the Yarnell area, the Arizona State Forestry Division's Air Tactical Group
18 Supervisor ordered two aerial retardant drops that extinguished the burn-out effort.

20 15. Shortly after that, the Granite Mountain Interagency Hotshot Crew, which was
21 assigned to ground-resources Division Alpha, was trying to coordinate its firefighting efforts with
22 Division Zulu, the other ground-resources division. But Division Zulu Supervisor suddenly
23 deserted his post with Division Zulu and never returned. That dereliction of duty destroyed all
24 coordination between these ground divisions and left the Granite Mountain Interagency Hotshot
25 Crew even more isolated, unsupported, and unprotected.
26
27
28

1 16. Later in the afternoon of June 30, 2013, the Yarnell Hill Fire began an accelerating
2 turn toward Yarnell. At that point, to do its work and for its personal protection, the Granite
3 Mountain Interagency Hotshot Crew urgently needed concentrated aerial drops of water and fire
4 retardant.
5

6 17. But the Arizona State Forestry Division's Air Tactical Group Supervisor also
7 deserted his post and left for his home in Deer Valley. That dereliction of duty at a crucial point
8 in the fire-management effort made it impossible to effectively coordinate the urgently needed
9 concentrated aerial drops of water and fire retardant.
10

11 18. Moreover, the Arizona State Forestry Division failed to maintain communication
12 links with its scattered units, including with the Granite Mountain Interagency Hotshot Crew, and
13 consistently failed to inform and warn the Granite Mountain Interagency Hotshot Crew about the
14 Yarnell Hill Fire's strength, speed, and direction of advance.
15

16 19. That failure of coordinated action and reliable communications placed the Granite
17 Mountain Interagency Hotshot Crew in danger of being cut off because of changes in the fire's
18 speed, activity, and direction.
19

20 20. Despite getting no reliable information, support, and protection from the Arizona
21 State Forestry Division just when those things were most needed, the Granite Mountain
22 Interagency Hotshot Crew continued to try to contain the fire.
23

24 21. In fact, the Granite Mountain Interagency Hotshot Crew was moving into a new
25 position where it could contribute its skills and efforts to containing the Yarnell Hill Fire when
26 the fire rapidly advanced into its location.
27
28

22. Even then, the members of the Granite Mountain Interagency Hotshot Crew, including Grant Quinn McKee, did not shirk their duty and did not panic.

23. As well as time allowed, they prepared an area for their fire shelters and deployed them.

24. The Granite Mountain Interagency Hotshot Crew, unlike the Arizona State Forestry Division, consistently displayed exemplary competence, dedication, and bravery.

25. Unlike the Division Zulu Supervisor and unlike the Air Tactical Group Supervisor, the members of the Granite Mountain Interagency Hotshot Crew did not abandon their duty.

26. With the exception of one lookout, who himself was nearly cut off from rescue and killed, the entire Granite Mountain Interagency Hotshot Crew died in the unselfish service of the people of Arizona.

27. Doing his duty to the very end, Grant McKee died with the 18 other members of the Granite Mountain Interagency Hotshot Crew.

28. If the Arizona State Forestry Division had competently managed, contained, and suppressed the Yarnell Hill Fire, no member of the Granite Mountain Interagency Hotshot Crew would have died—including Grant McKee.

The Parties

29. Plaintiff Marcia McKee is the natural mother of Grant Quinn McKee, a member of the Granite Mountain Interagency Hotshot Crew.

30. Grant McKee died on June 30, 2013, as a direct and proximate result of the negligence of the State of Arizona and the Arizona State Forestry Division.

1 31. The Defendant State of Arizona is a public entity, subject to suit under the
2 provisions of Arizona Tort Claims Act.

3 32. The Defendant Arizona State Forestry Division is a public entity, subject to suit
4 under the provisions of the Arizona Tort Claims Act.
5

6 33. Proper and timely notices of claim were served on these public entities, which are
7 now subject to suit in superior court.
8

9 34. Under principles of state, public, and government liability, and under principles of
10 respondeat superior, principal-agent, employer-employee, and vicarious liability, the State of
11 Arizona is liable for its own negligent and other wrongful acts and omissions.
12

13 35. Under those same principles, the State of Arizona is liable for the negligent and
14 other wrongful acts and omissions committed in this matter by the Defendant Arizona State
15 Forestry Division and by its agents, contractors, subcontractors, officers, managers, directors,
16 firefighters, operators, consultants, supervisors, leaders, experts, and employees.
17

18 36. All Defendant entities are directly liable for their own negligence, recklessness, and
19 other tortious conduct in the hiring and supervision of the officers, employees, agents, and
20 contractors whose wrongful and negligent acts, omissions, evaluations, and conduct give rise to
21 this action.
22

23 37. At all times relevant to this pleading, the people, agents, employees, and individuals
24 the Defendants employed were acting within the course and scope of their employment or agency
25 such that the Defendants are liable for the acts and or omissions of all employed individuals under
26 the doctrine of respondeat superior.
27
28

Jurisdiction and Venue

38. This Court has subject-matter jurisdiction over this matter.

39. This Court has personal jurisdiction over all parties.

40. The amount in controversy exceeds this Court's minimum jurisdictional limit.

41. Venue for this action is proper in Maricopa County.

COUNT I
(Wrongful Death—Negligence)

42. As if set out fully in this claim for relief, Plaintiff re-alleges and incorporate by reference all of the allegations and paragraphs of this pleading.

43. This Complaint seeks equitable relief as well as reasonable special and general damages for the wrongful death of Grant McKee, in accordance with the provisions of the Arizona Wrongful Death Act, A.R.S. §§ 12-611 to 12-613.

The Events of Friday, June 28, 2013

44. At or shortly after 5:00 p.m. on June 28, 2013, lightning started a wildfire in the Weaver Mountains, near the Town of Yarnell.

45. The wildfire soon received the designation of the Yarnell Hill Fire.

46. At or about 5:30 p.m. on June 28, 2013, several parties reported the Yarnell Hill Fire to the Arizona Dispatch Center.

47. The Arizona State Forestry Division manages the Arizona Dispatch Center.

48. The Arizona State Forestry Division had the legal obligation and the practical and legal authority to manage, control, and suppress the Yarnell Hill Fire and to protect the Yarnell area's structures and residents from harm that the Yarnell Hill Fire might inflict upon them.

1 49. Beside its legal duties, the Arizona State Forestry Division voluntarily undertook
2 the obligation and duty of managing the efforts to control the Yarnell Hill Fire.

3 50. In the exercise of its practical and legal authority, the Arizona State Forestry
4 Division ordered some of the local firefighting assets not to do anything to combat the Yarnell
5 Hill Fire without its specific authorization, permission, and direction.

6 51. The Arizona State Forestry Division was in charge of the firefighting effort for the
7 Yarnell Hill Fire from June 28, 2013 until July 1, 2013, when the Federal Bureau of Land
8 Management finally took over.

9 52. By about 7:40 p.m. on June 28, 2013, an Arizona State Forestry Division Assistant
10 Fire Management Officer and Type 4 Incident Commander (Russ Shumate) was designated as the
11 Initial Attack Incident Commander for the Arizona State Forestry Division, which had taken
12 charge of the wildland firefighting effort concerning the Yarnell Hill Fire.

13 53. The least complex wildland fire incident is a Type 5 incident; the most complex
14 wildland fire incident is a Type 1 incident.

15 54. On June 28, 2013, Type 4 Incident Commander Russ Shumate decided to take no
16 action to suppress, manage, or contain the Yarnell Hill Fire.

17 55. The Arizona State Forestry Division therefore negligently just let the Yarnell Hill
18 Fire burn and grow unchecked in a dry, windy, fuel-filled area with an exceptionally high fire-
19 spread potential.

20 56. On June 28, 2013, Type 4 Incident Commander Russ Shumate negligently and
21 incorrectly concluded that the Yarnell Hill Fire had low spread potential.

57. On June 28, 2013, Type 4 Incident Commander Russ Shumate negligently failed to plan for potential extreme fire behavior in a location and under conditions with an almost certain potential for extreme fire behavior.

58. In addition, fatigue had apparently degraded the ability of Type 4 Incident Commander Russ Shumate to make competent, effective, and timely decisions.

59. By June 28, 2013, Type 4 Incident Commander Russ Shumate had been working 28 days straight. Instead of getting rest before evaluating the Yarnell Hill Fire in the evening of June 28, 2013, Type 4 Incident Commander Russ Shumate negligently sized up the Yarnell Hill Fire, and handled the wildfire management effort negligently.

60. Early the next morning (June 29, 2013), Type 4 Incident Commander Russ Shumate would arrive in Yarnell, starting a shift that would last for over 30 hours.

61. The Arizona State Forestry Division committed extreme negligence by entrusting management of the Yarnell Hill Fire to a low-level, exhausted, negligent, situationally unaware, inadequately experienced, and overwhelmed Type 4 Incident Commander.

62. The Arizona State Forestry Division committed extreme negligence by keeping Type 4 Incident Commander Russ Shumate on the job as an incident commander on June 29 and June 30, 2013, when it was clear that he was exhausted, was not thinking clearly, was not responding properly and competently, and was negligently mismanaging the wildland firefighting efforts for the Yarnell Hill Fire.

The Events of Saturday, June 29, 2013

63. At about 6:51 a.m. on June 29, 2013, Type 4 Incident Commander Russ Shumate

1 ordered opening the Single Engine Air Tanker Base at Wickenburg Airport to allow use of two
2 Single Engine Air Tankers.

3 64. Type 4 Incident Commander Russ Shumate's plan was to use fire retardant on the
4 north and south sides of the Yarnell Hill Fire, but to leave the west and east flanks of the fire
5 open. That meant that the eastern side of the Yarnell Hill Fire was essentially open to grow and
6 move toward the Yarnell area unimpeded.
7

8 65. At about 10:30 a.m. on June 29, 2013, the estimated perimeter of the Yarnell Hill
9 Fire was about 11 acres.
10

11 66. Despite the objective growth of the Yarnell Hill Fire, at about 12:25 p.m., on June
12 29, 2013, Type 4 Incident Commander Russ Shumate negligently and incorrectly reported that the
13 size of the Yarnell Hill Fire was only 2 acres.
14

15 67. At about 12:25 p.m. on June 29, 2013, Rory Collins, the Air Tactical Group
16 Supervisor, indicated there was a two-track road securing the eastern flank of the fire—the flank
17 closest to the Yarnell area. The Arizona State Forestry Division negligently took no timely steps
18 to improve and widen the area along the two-track road to increase its efficiency and usefulness
19 as a fire break between the Yarnell Hill Fire and the Yarnell area's structures and residents.
20

21 68. At about 2:42 p.m. on June 29, 2013, Type 4 Incident Commander Russ Shumate
22 negligently released the Air Attack and the Single Engine Air Tanker—apparently because of his
23 negligent, mistaken, and unfounded opinion that the Yarnell Hill Fire was contained. It was not.
24

25 69. At about 3:40 p.m. on June 29, 2013, Type 4 Incident Commander Russ Shumate
26 negligently released a Bureau of Land Management brush engine and a Peoples Valley fire
27
28

1 engine, apparently because of his mistaken and unfounded opinion that the Yarnell Hill Fire was
2 contained. It was not.

3 70. At about 4:00 p.m. on June 29, 2013, in response to that area's typical afternoon
4 weather and wind conditions, the fire activity increased.
5

6 71. Then, at about 4:10 p.m. on June 29, 2013, Type 4 Incident Commander Russ
7 Shumate reversed himself and ordered two Single Engine Air Tankers and Air Attack to return to
8 the Yarnell Hill Fire.
9

10 72. At about 4:30 p.m. on June 29, 2013, in response to the area's typical afternoon
11 increase in the winds, the Yarnell Hill Fire jumped the two-track road on the fire's eastern side.
12 The winds at that point did not appear to be associated with thunderstorm activity.
13

14 73. At about 4:55 p.m. on June 29, 2013, Type 4 Incident Commander Russ Shumate
15 finally indicated to the Arizona Dispatch Center that there were concerns about containing the
16 Yarnell Hill Fire—that containment was problematic.
17

18 74. By that point in the afternoon of June 29, 2013, the initial attack forces had clearly
19 failed to stop the fire and put it out in a manner consistent with firefighter safety, consistent with
20 public safety, and consistent with the values to be protected. *See National Wildfire Coordinating*
21 *Group Glossary* (definition of "initial attack").
22

23 75. But despite the initial attack's failure, the Arizona State Forestry Division then
24 negligently failed to declare that the fire had escaped the initial attack.
25

26 76. If the Arizona State Forestry Division had declared that initial attack had failed, the
27 decisions from that moment forward would have been proactive, rather than reactive. Based upon
28

1 the *Wildland Fire Incident Management Guide (PMS 210)*, Type 4 Incident Commander (Russ
2 Shumate) should have completed a complexity analysis, implemented risk-management protocols
3 from the *Incident Response Pocket Guide*, determined and documented incident objectives, and
4 reviewed the Extended Attack Safety Checklist. None of those steps happened in a proper and
5 timely manner.
6

7 77. At about 4:55 p.m. on June 29, 2013, Type 4 Incident Commander Russ Shumate
8 ordered deployment of a Type 1 Heavy Helitanker and a Large Airtanker.
9

10 78. At about 5:30 p.m. on June 29, 2013, Type 4 Incident Commander Russ Shumate
11 assigned a mere 13 firefighters to contain the fire that had jumped the two-track road that had
12 been acting as a firebreak between the Yarnell Hill Fire and the Yarnell area.
13

14 79. At or about 5:30 p.m. on June 29, 2013, Dean Fernandez, the Federal Bureau of
15 Land Management Representative, properly asked Type 4 Incident Commander Russ Shumate if
16 he wanted the Federal Bureau of Land Management to “take over the fire.”
17

18 80. At or about 5:30 p.m. on June 29, 2013, Type 4 Incident Commander Russ Shumate
19 negligently refused to let the Bureau of Land Management take over the Yarnell Hill Fire wildfire
20 control and management effort, although Russ Shumate was exhausted, overwhelmed, and
21 incapable of competently managing the effort to control and manage the Yarnell Hill Fire, and the
22 Arizona State Forestry Division had negligently mismanaged the Yarnell Hill Fire from the very
23 start and showed no signs of being able to contain the fire *and* protect the firefighters
24

25 81. At about 5:43 p.m. on June 29, 2013, the Arizona Dispatch Center offered a Very
26 Large Aerial Tanker to assist in managing the Yarnell Hill Fire.
27
28

1 82. But Type 4 Incident Commander Russ Shumate negligently declined the offer of the
2 Very Large Aerial Tanker—an aerial asset that would have greatly increased the ability of the
3 aerial team to drop fire retardant to contain the fire and protect the firefighters.

4 83. Between 5:30 p.m. and 7:24 p.m. on June 29, 2013, the fire behavior and
5 complexity of the Yarnell Hill Fire continued to escalate.

6 84. In that same period, Type 4 Incident Commander Russ Shumate communicated a
7 request to the Arizona Dispatch Center for an Incident Commander Type 3, and then upgraded the
8 request to a State of Arizona Incident Management Team, Type 2. Russ Shumate's intent was to
9 request to a State of Arizona Incident Management Team, Type 2. Russ Shumate's intent was to
10 have the Type 2 Incident Management Team take over the wildland fire control effort on June 30,
11 2013.
12

13 85. In that same period, Type 4 Incident Commander Russ Shumate finally voiced
14 concerns about potential threats to the Yarnell area over the next 24 to 48 hours.
15

16 86. The Arizona State Forestry Division, however, negligently took no effective steps
17 to mitigate the finally acknowledged potential threats to the Yarnell area—and to its structures
18 and people.
19

20 87. In that same period, Type 4 Incident Commander Russ Shumate requested the
21 dispatch of two Structure Group Specialists: (1) one for the north end of the Yarnell Hill Fire at
22 Model Creek and Peeples Valley; and (2) one for the south end of the fire at Yarnell and Glen
23 Ilah, a Yarnell subdivision.
24

25 88. In that same period, Type 4 Incident Commander Russ Shumate requested the
26 dispatch of three hotshot crews, although only the Blue Ridge Interagency Hotshot Crew and the
27
28

1 Granite Mountain Interagency Hotshot Crew ever actually arrived on scene to help control the
2 Yarnell Hill Fire.

3 89. By the evening of June 29, 2013, the full-suppression plan was finally modified to
4 include some point protection for the Yarnell area.
5

6 90. At about 7:38 p.m. on June 29, 2013, the estimated size of the Yarnell Hill Fire was
7 100 acres, a roughly 10-fold increase since the 10:03 a.m. estimated 11-acre size of that same day.
8

9 91. At about 7:38 p.m. on June 29, 2013, the Yarnell Hill Fire was about one to two
10 miles from structures in Yarnell and Peeple's Valley.

11 92. Although that gave space, time, and opportunity for the Arizona State Forestry
12 Division to create effective firebreaks, cleared areas, burnouts, and other protections between the
13 Yarnell Hill Fire and the Yarnell area's structures and people, the Arizona State Forestry Division
14 negligently failed to use that space, time, and opportunity to create any effective firebreaks,
15 cleared areas, burnouts, or other protections.
16

17 93. The June 29, 2013, 7:59 p.m. Arizona State Forestry Division Incident Status
18 Summary finally reported that the communities of Yarnell and Peeple's Valley were at risk.
19

20 94. The Arizona State Forestry Division negligently took no effective steps to reduce
21 that risk or the risks posed to the firefighters.
22

23 95. The June 29, 2013, 7:59 p.m. Arizona State Forestry Division Incident Status
24 Summary reported that the projected incident movement and spread of the fire was +200 acres in
25 the next 12 hours and an additional +400 acres in the next 24 hours. The estimates were far lower
26 than what actually happened.
27
28

1 96. The Arizona State Forestry Division negligently took no effective steps to protect
2 the Yarnell area's people and structures—and the firefighters—from the projected rapid growth of
3 the Yarnell Hill Fire.

4 97. The June 29, 2013, 7:59 p.m. Arizona State Forestry Division Incident Status
5 Summary reported that a major problem and concern was “[m]ovement of fire into the
6 communities of Yarnell and Peeple’s Valley if the fire continues to be [a]ffected by weather.”
7

8 98. The Arizona State Forestry Division negligently took no effective steps to prevent
9 movement of the Yarnell Hill Fire into the Yarnell area or to protect the firefighters.
10

11 99. The June 29, 2013, 7:59 p.m. Arizona State Forestry Division Incident Status
12 Summary listed, as an action planned for the next operational period (June 30, 2013): “Establish
13 structure protection in the Yarnell area.” (But during June 29 and 30, 2013, the Arizona State
14 Forestry Division negligently took no effective steps to establish meaningful structure protection
15 in the Yarnell area or to protect the firefighters.)
16

17 100. By 8:13 p.m. on June 29, 2013, the estimated perimeter of the Yarnell Hill Fire was
18 113 acres.
19

20 101. At about 10:00 p.m. on June 29, 2013, according to dispatch logs, the Arizona State
21 Forestry Division ordered additional resources to manage the Yarnell Hill Fire, including 14 fire
22 engines, 6 water tenders, 2 Type 2 handcrews, 2 bulldozers, and numerous aircraft. (Despite that,
23 on June 30, 2013, the Arizona State Forestry Division was unable to use those many assets to
24 protect the Yarnell area's structures and people or to protect the firefighters.)
25

26 102. At about 11:40 p.m. on June 29, 2013, Structure Protection Group 1 Supervisor
27
28

1 Gary Cordes finally arrived and received a briefing from Type 4 Incident Commander Russ
2 Shumate.

3 103. At about 11:40 p.m. on June 29, 2013, Structure Protection Group 1 Supervisor
4 Gary Cordes was assigned to structure protection for the Yarnell area and started assessing the
5 infrastructure threats, including structures at risk, road networks, and location of safety zones,
6 including Boulder Springs Ranch as well as other locations for structure-protection personnel.
7

8 104. Also late in the evening of June 29, 2013, Structure Protection Group 2 Supervisor
9 Darrell Willis arrived, and worked with Structure Protection Group 1 Supervisor Gary Cordes and
10 with Type 4 Incident Commander Russ Shumate to order more resources and start making a plan
11 for June 30, 2013.
12

13 105. Although Structure Protection Group 2 Supervisor Darrell Willis had described
14 abnormally active fire behavior throughout the night of June 29, 2013, a mere 13 firefighters were
15 working to contain the fire during the night of June 29, 2013.
16

17 106. That is, over the night of June 29, 2013, a mere 13 firefighters were actually on the
18 ground and working in any way to protect the Yarnell area from destruction.
19

20 **The Events of Sunday, June 30, 2013**

21 107. Throughout June 30, 2013, the fire situation, and the response to it, deteriorated,
22 placing the firefighters seeking to contain the fire at extreme risk.
23

24 108. At about 1:00 a.m. on June 30, 2013, Type 4 Incident Commander Russ Shumate,
25 Bureau of Land Management Representative Dean Fernandez, and Structure Protection Group 1
26 Supervisor Gary Cordes met to discuss using roads for an indirect attack on the Yarnell Hill Fire
27
28

1 and to discuss the use of point protection, that is, protecting specific points from the fire while not
2 actively trying to line the entire fire's edge.

3 109. At and just after 1:00 a.m. on June 30, 2013, Structure Protection Group 1
4 Supervisor Gary Cordes evaluated the situation, and negligently concluded—from his dark-of-
5 the-night evaluation of an area that he was not familiar with and that was in disarray—that the
6 Yarnell area's structures were not defensible.
7

8 110. By about 6:00 a.m. on June 30, 2013, Structure Protection Group 1 Supervisor Gary
9 Cordes had available to him four Type-6 fire engines, 2 tenders, and an experienced Taskforce
10 Leader Trainee (Tyson Esquibel), who had 12 to 20 firefighters available to him in the Glen Ilah
11 subdivision area of Yarnell.
12

13 111. At or about 6:00 a.m. on June 30, 2013, Structure Protection Group 1 Supervisor
14 Gary Cordes again negligently concluded that he had insufficient resources available to perform
15 structure protection, so he negligently did nothing useful to protect the Yarnell area structures or
16 residents.
17

18 112. At about 7:00 a.m. on June 30, 2013, a discussion was conducted between Type 4
19 Incident Commander Russ Shumate, personnel from the previous shift, and incoming personnel.
20

21 113. That discussion continued as personnel moved to the Incident Command Post at
22 Model Creek School.
23

24 114. Placing the Incident Command Post at Model Creek School was another negligent
25 act, because that location was not secure and the later advance of the fire toward it (on June 30,
26 2013) would further disrupt the already ineffective, overwhelmed, and negligent command-and-
27
28

1 control operations.

2 115. The discussion at about 7:00 a.m. on June 30, 2013 included Roy Hall (the
3 incoming Incident Commander Type 2), the two Operations Section Chiefs (Planning OSC and
4 Field OSC), Structure Protection Group 1 Supervisor Gary Cordes, a Fire Behavior Analyst
5 (Byron Kimball), and deputies from the Yarnell County Sheriff's Office.
6

7 116. Eric Marsh, the Granite Mountain Interagency Hotshot Crew Superintendent, had
8 arrived before the 7:00 a.m. meeting of June 30, 2013, and listened in on much of the information
9 sharing that occurred at that meeting.
10

11 117. Granite Mountain Interagency Hotshot Crew Superintendent Eric Marsh was
12 assigned as Division Alpha Supervisor. That transferred leadership of the Granite Mountain
13 Interagency Hotshot Crew to its Captain, Jesse Steed.
14

15 118. The Granite Mountain Interagency Hotshot Crew was assigned to Division Alpha
16 with the task of establishing an anchor point at the fire's heel, using direct and indirect attack.
17

18 119. At about 7:00 a.m. on June 30, 2013, the plan was for Division Alpha (under
19 Supervisor Eric Marsh) to create an anchor point at the south heel of the Yarnell Hill Fire and tie
20 that anchor point into a bulldozer line (to be constructed by Division Zulu) that would expand
21 across the valley floor north of Yarnell and Glen Ilah, and protect those areas from the Yarnell
22 Hill Fire.
23

24 120. At about 7:00 a.m. on June 30, 2013, in one of the few accurate and reasonable
25 evaluations made during June 30, 2013, Type 4 Incident Commander Russ Shumate, Operations
26 Sections Chief 1 Todd Abel, Operations Sections Chief 2 Paul Musser, and Structure Protection
27
28

1 Group 1 Supervisor Gary Cordes believed that, if there were favorable winds—as there regularly
2 were in that area and as there were until the late afternoon of June 30, 2013—the firefighters
3 could conduct a burnout from the bulldozer line to protect Yarnell and Glen Ilah from the Yarnell
4 Hill Fire.
5

6 121. But the Arizona State Forestry Division's negligently failed to implement that
7 reasonable plan.
8

9 122. At about 9:30 a.m. on June 30, 2013, Russ Shumate (outgoing Type 4 Incident
10 Commander) briefed Roy Hall (the incoming Incident Commander Type 2), the overhead team
11 members, and some of the other firefighters.
12

13 123. Just after the 9:30 a.m. briefing on June 30, 2013, the Planning Operations Section
14 Chief 2 (Paul Musser), assigned several resources to Structure Protection Group 2 (under
15 Supervisor Darrell Willis) to protect homes in the Peebles Valley area.
16

17 124. At some point shortly after the 9:30 a.m. briefing on June 30, 2013, Paul Musser,
18 the Planning Operations Section Chief 2, directed Structure Protection Group 1 Supervisor Gary
19 Cordes to assess structures in the Yarnell area.
20

21 125. Instead of implementing an effective plan to deploy necessary resources, to create
22 effective firebreaks, to conduct proper burnout operations, and to devise and implement other
23 methods to protect the firefighters and to protect Yarnell area's structures and people, Structure
24 Protection Group 1 Supervisor Gary Cordes negligently and incorrectly decided that most of the
25 structures in the Yarnell area were indefensible—and operating with that negative attitude and
26 evaluation—did little that was timely and effective to protect the Yarnell area's structures and
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1 residents and to protect the firefighters battling the fire.

2 126. By 9:30 a.m. on June 30, 2013, the Division Alpha bulldozer had created a line
3 extending about three-fourths of the way to the east side of Division Alpha.

4 127. At or just after 9:30 a.m. on June 30, 2013, the Structure Protection Group 1's
5 crews met at the Ranch House Restaurant and were tasked—not with protecting Glen Ilah and
6 Yarnell—but with merely scouting the area.

7 128. At about 10:00 a.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
8 Fire was 418 acres.

9 129. At about 10:00 a.m. on June 30, 2013, the Granite Mountain Interagency Hotshot
10 Crew members completed their hike to the south side of the fire along the eastern ridge of the
11 Weaver Mountains.

12 130. At about 10:00 a.m. on June 30, 2013, the Granite Mountain Interagency Hotshot
13 Crew members had the task of establishing an anchor point and of connecting that anchor point to
14 a bulldozer line in the valley below the anchor point.

15 131. At and just after 10:00 a.m. on June 30, 2013, the fire behavior at the heel of the fire
16 slowed as the Yarnell Hill Fire, pushed by winds from the south, progressed north toward Peeples
17 Valley.

18 132. Although the morning change in wind direction would have let the Structure
19 Protection Group 1 firefighters set backfires and burnouts that would have protected the
20 firefighter as well as Yarnell Hill area and its residents, the Arizona State Forestry Division
21 negligently failed to exploit that opportunity.

1 133. At about 10:22 a.m. on June 30, 2013, there was a formal transfer of command from
2 the overwhelmed, exhausted, and negligent Type 4 Incident Commander (Russ Shumate) to the
3 apparently more rested but equally overwhelmed and negligent incoming Incident Commander
4 Type 2 (Roy Hall).
5

6 134. At about 10:22 a.m. on June 30, 2013, the Incident Management Type 2 Short Team
7 now in control of managing the Yarnell Hill Fire remained understaffed and lacked a Planning
8 Section Chief and a Safety Officer—required personnel under the Arizona State Forestry Division
9 Standard Operating Guidelines.
10

11 135. Despite its negligent and incompetent performance so far, the Arizona State
12 Forestry Division remained in charge of the overall effort to manage the Yarnell Hill Fire.
13

14 136. At about 10:30 a.m. on June 30, 2013, on Sesame Street on the outskirts of the
15 Yarnell area, the Blue Ridge Interagency Hotshot Crew encountered Structure Protection Group 1
16 Supervisor (Gary Cordes), who requested a Heavy Equipment Boss to manage a bulldozer.
17

18 137. The bulldozer was to clear out the two-track road between Sesame Street and Shrine
19 Road on both sides as far as possible. That was meant to provide access to the area and to prepare
20 for a possible burnout that would provide a firebreak to protect the Yarnell area.
21

22 138. To help with that bulldozer-clearing project—which was one of the few things that
23 the Arizona State Forestry Division actually tried to do to protect the Yarnell area from the
24 Yarnell Hill Fire—the Blue Ridge Interagency Hotshot Crew assigned one of its squad leaders, a
25 qualified Heavy Equipment Boss.
26

27 139. The Superintendent (Brian Frisby) and Captain (Rogers Trueheart Brown) of the
28

1 Blue Ridge Interagency Hotshot Crew scouted the fire's edge while the Heavy Equipment Boss
2 took the bulldozer as far as an old abandoned grader to push a clear area around it.

3 140. The Heavy Equipment Boss turned in the direction of the saddle near the Granite
4 Mountain Interagency Hotshot Crew's anchor point, then planned to turn around and clear out the
5 two-track road between Sesame Street and Shrine Road.
6

7 141. During these operations, the remaining crewmembers of the Blue Ridge Interagency
8 Hotshot Crew did nothing and simply stayed with their crew-carrier vehicles.
9

10 142. By about 11:00 a.m. on June 30, 2013, the Superintendent (Brian Frisby) and the
11 Captain (Rogers Trueheart Brown) of the Blue Ridge Interagency Hotshot Crew had reached the
12 old grader and were able to see the Granite Mountain Interagency Hotshot Crew working on the
13 east side of the ridge, slowly burning off the two-track road.
14

15 143. Over the radio, the Blue Ridge Interagency Hotshot Crew Superintendent (Brian
16 Frisby) and Captain (Rogers Trueheart Brown) noted that the Granite Mountain Interagency
17 Hotshot Crew was trying to get the fireline connected with the two-track road so the fire could not
18 burn back up the ridge.
19

20 144. At about 11:00 on June 30, 2013, based on the escalating fire danger, the Incident
21 Commander Type 2 (Roy Hall) finally informed the Arizona State Forestry Division's Fire
22 Management Officer (David Geyer) that the Yarnell Hill Fire needed a full Incident Management
23 Team, Type 2.
24

25 145. Between about 11:30 a.m. and 11:45 a.m. on June 30, 2013, the Granite Mountain
26 Interagency Hotshot Crew conducted burnout operations to help create a firebreak that would
27
28

1 protect the Yarnell area's structures and residents.

2 146. At about that same time, the Division Alpha Supervisor (Eric Marsh) and the Air
3 Tactical Group Supervisor (Rory Collins) discussed tactical options.

4
5 147. At 11:36 a.m. and at 11:45 a.m. on June 30, 2013, the Air Tactical Group
6 Supervisor (Rory Collins) negligently directed two Single Engine Air Tanker drops directly onto
7 the burnout operations that had been helping to create a firebreak between the Yarnell Hill Fire
8 and the Yarnell area.

9
10 148. Naturally, Division Alpha Supervisor Eric Marsh indicated by radio that the aerial
11 drops were not what he wanted.

12
13 149. As a result of the two negligent aerial drops that had disrupted and nullified the
14 burnout operations that would have helped protect the firefighters and the Yarnell area's
15 structures and residents, the Granite Mountain Interagency Hotshot Crew shifted tactics from
16 building an indirect line to going direct along the fire edge.

17
18 150. During that same period, a short squad of the Granite Mountain Interagency
19 Hotshot Crew moved to the west side of the ridge and tied into the burned area on the steep rocky
20 terrain.

21
22 151. Division Alpha Supervisor Eric Marsh considered this connection to be a good
23 anchor point.

24
25 152. At about 11:50 a.m. on June 30, 2013, Blue Ridge Interagency Hotshot Crew
26 Superintendent Brian Frisby met with Division Alpha Supervisor Eric Marsh.

27 153. At or just after 11:50 a.m. on June 30, 2013, Blue Ridge Interagency Hotshot Crew
28

1 Superintendent Brian Frisby reported to Division Alpha Supervisor Eric Marsh that radio
2 communications problems had been experienced by the bulldozer operator, by Operations Section
3 Chief Todd Abel, and by the aviation resources.

4
5 154. At or just after 11:50 a.m. on June 30, 2013, Blue Ridge Interagency Hotshot Crew
6 Superintendent Brian Frisby and Division Alpha Supervisor Eric Marsh confirmed between
7 themselves that Division Alpha would create an anchor by burning out a section of brush located
8 between the heel of the fire and the existing two-track road that led down into the valley.
9

10 155. They agreed that the Blue Ridge Interagency Hotshot Crew would manage the
11 Division Zulu area and work with the bulldozer to connect to the anchor point developed by
12 Division Alpha.
13

14 156. At about 12:10 p.m. on June 30, 2013, Division Zulu Supervisor Rance Marquez
15 arrived at the Blue Ridge Interagency Hotshot Crew crew-carrier vehicles and called Division
16 Alpha Supervisor Eric Marsh to discuss the location of a division break and resource assignments.
17

18 157. Division Zulu Supervisor Rance Marquez had radio problems, so he used a Blue
19 Ridge Interagency Hotshot Crew radio to talk with the Division Alpha Supervisor Eric Marsh
20 over the Blue Ridge intra-crew frequency.
21

22 158. At about 12:39 p.m. on June 30, 2013, the head of the fire had pushed north toward
23 structures in Peeples Valley.

24 159. At about 12:39 p.m. on June 30, 2013, the fire was also backing towards the Granite
25 Mountain Interagency Hotshot Crew location, starting to place them in a position of increased
26 danger.
27
28

1 160. Drainages were located between the crew and the fire.

2 161. The Granite Mountain Interagency Hotshot Crew apparently anticipated the fire
3 would become more active around mid-afternoon—just as it had on June 29, 2013—and
4 apparently expected no additional support because the focus of aircraft and firefighters was at the
5 head of the fire on the north end.
6

7 162. As a direct and proximate result of that increasingly perilous situation, the Granite
8 Mountain Interagency Hotshot Crew planned to construct a line directly along the fire edge.
9

10 163. At about 1:00 p.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
11 Fire was 1,812 acres.

12 164. At about 1:00 p.m. on June 30, 2013, in a breakdown of command, control, and
13 cooperation, Division Alpha Supervisor Eric Marsh and Division Zulu Supervisor Rance
14 Marquez could not agree on the division-break location or on associated supervisory duties and
15 responsibilities.
16

17 165. Instead of competently and professionally working out the command, control, and
18 cooperation issues, however, Division Zulu Supervisor Rance Marquez simply left, drove to the
19 Incident Command Post, and never bothered to return to Division Zulu—although he was tasked
20 with supervising it.
21

22 166. The Arizona State Forestry Division negligently assigned Rance Marquez to be
23 Division Zulu Supervisor, negligently supervised him once he was appointed to that important
24 post, and negligently failed to replace Rance Marquez at once after he proved to be incompetent
25 and abandoned his important post.
26
27
28

1 167. As a result of the negligent, unprofessional abandonment of his post by Division
2 Zulu Supervisor Rance Marquez, Division Zulu was effectively neutralized.

3 168. As a result of the negligent, unprofessional abandonment of his post by Division
4 Zulu Supervisor Rance Marquez, the Granite Mountain Interagency Hotshot Crew was deprived
5 of the protection that joint, planned, coordinated action would have provided.
6

7 169. The cooperative plan that Blue Ridge Interagency Hotshot Crew Superintendent
8 Brian Frisby and Division Alpha Supervisor Eric Marsh had agreed upon to protect the Yarnell
9 area by conducting their planned back-burn, burnover, and bulldozer operations was never
10 implemented.
11

12 170. At about 1:27 p.m. on June 30, 2013, Arizona State Forestry Division District
13 Forester Jim Downey and Incident Commander Type 2 Roy Hall finally developed the long
14 overdue complexity analysis for the Yarnell Hill Fire.
15

16 171. Based on the complexity analysis, Incident Commander Type 2 Roy Hall
17 recommended ordering a full Type 2 Incident Management Team.
18

19 172. By about 1:30 p.m. on June 30, 2013, the Yarnell Hill Fire had advanced toward the
20 negligently-situated Incident Command Post at Model Creek School. The advance of the Yarnell
21 Hill Fire toward the Incident Command Post forced firefighting personnel to waste time and
22 effort moving vehicles to keep them from being burned.
23

24 173. At about 2:02 p.m. on June 30, 2013, Fire Behavior Analyst Byron Kimball
25 received a weather update from the National Weather Service indicating that thunderstorms were
26 predicted to occur east of the fire and might produce wind gusts up to 35 to 45 miles per hour
27
28

1 with winds out of the northeast.

2 174. That meant that the Yarnell Hill Fire could soon be turning and rapidly advancing
3 toward the Yarnell area's structures and people—and toward the advanced location of the Granite
4 Mountain Interagency Hotshot Crew.
5

6 175. At about 2:13 p.m. on June 30, 2013, after finally recognizing the actual danger that
7 the Yarnell Hill Fire posed, Arizona State Forestry Division District Forester Kim Downey and
8 State Fire Management Officer David Geyer changed the fire-management recommendation to a
9 Type 1 Incident Management Team—the highest level—and placed the order through the Arizona
10 State Forestry Division's Arizona Dispatch Center.
11

12 176. At about 2:20 p.m. on June 30, 2013, after conducting some operations to protect
13 property and structures, the firefighters who had been assigned to Structure Protection Group 2
14 (under Supervisor Darrell Willis) located north of the Yarnell Hill Fire retreated because of the
15 fire's advance near the Double Bar A Ranch.
16
17

18 177. At about 2:45 p.m. on June 30, 2013, Task Force Leader Trainee Tyson Esquibel, a
19 30-year wildland firefighting veteran, met with Group 1 Structure Protection Supervisor Gary
20 Cordes.
21

22 178. Reversing himself yet again, Group 1 Structure Protection Supervisor Gary Cordes
23 instructed Task Force Leader Trainee Tyson Esquibel to take several resources to the east end of
24 Division Zulu's bulldozer line and construct a saw-line up a small hill north of Yarnell. The plan
25 was for the saw-line to tie into the bulldozer line. Once completed, the plan was to burn-off the
26 line later that evening or night to stop the Yarnell Hill Fire from moving south toward Glen Ilah
27
28

1 and Yarnell.

2 179. But the negligent delay in devising and implementing a plan that should have been
3 devised and implemented on June 29, 2013, or, at the latest, early in the day on June 30, 2013,
4 meant that the plan had little chance of success unless it was put into effect at once—which,
5 because of the Arizona State Forestry Division's continuing negligence, did not happen.
6

7 180. At about 2:47 p.m. on June 30, 2013, the Aerial Supervision Module 2 Officer
8 arrived to relieve the Aerial Supervision Module 1 Officer. After a 10-minute briefing, the Aerial
9 Supervision Module 2 officer met an arriving Very Large Aerial Tanker and supported structure
10 protection north of the fire. But at this point, that did nothing meaningful in general and did
11 nothing to protect the Yarnell area's structures and people.
12
13

14 181. That also did nothing to protect the Granite Mountain Interagency Hotshot Crew
15 from the advance of the increasingly active and dangerous fire.
16

17 182. The changing fire conditions eventually shifted the aerial tanker priorities toward
18 the Yarnell area. But it was rapidly becoming too late to overcome the earlier almost complete
19 lack of protective operations for the Yarnell area and for the Granite Mountain Interagency
20 Hotshot Crew that had resulted from the Arizona State Forestry Division's earlier negligent
21 indecision and inaction.
22

23 183. At that time, Air Tactical Group Supervisor Rory Collins was still overhead.

24 184. Meanwhile, the Yarnell Hill Fire continued to expand.

25 185. At about 3:00 p.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
26 Fire was 2,413 acres.
27
28

1 186. At about 3:00 p.m. on June 30, 2013, an outflow boundary originated from
2 thunderstorms to the northeast of the fire area, pushing the Yarnell Hill Fire toward the Yarnell
3 area's structures and people—and toward the Granite Mountain Interagency Hotshot Crew.

4 187. At about 3:00 p.m. on June 30, 2013, the bulldozer was diverted from efforts to
5 protect the Yarnell area and was sent to protect the negligently placed Incident Command Post.

6 188. At about 3:15 p.m. on June 30, 2013, Task Force Leader Trainee Tyson Esquibel
7 and his crew drove to the Shrine Road and hiked about ¼ mile to the bulldozer line, where they
8 started building a saw line up a small hill directly north of Yarnell.

9 189. Task Force Leader Trainee Tyson Esquibel's active firefighting crew consisted of
10 Peeples Valley Fire Department Engine 54 (2 crew members), Peeples Valley Fire Department
11 Tender 54 (2 crew members), and Sun City West Engine 103 (4 crew members).

12 190. In the Peeples Valley area, none of the outer line of houses burned and no
13 firefighters died, because the firefighters in that area had actually been allowed to perform some
14 basic protective measures, such as igniting backfires.

15 191. At about 3:15 p.m. on June 30, 2013, the Blue Ridge Interagency Hotshot Crew was
16 working on Division Zulu's bulldozer line about ¼ mile to the west of Task Force Leader Trainee
17 Tyson Esquibel's crew.

18 192. At about 3:26 p.m. on June 30, 2013, Fire Behavior Analyst Byron Kimball
19 received another update from the National Weather Service. The prediction was for north to
20 northeast winds of up to 40 to 50 miles per hour from the thunderstorm outflows.

21 193. At about 3:30 p.m. on June 30, 2013, the winds predictably changed course by 90°
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1 to the south-southwest. At that point, there were about three miles of an active flaming front.

2 194. At about 3:30 p.m. on June 30, 2013, Group 1 Structure Protection Supervisor Gary
3 Cordes placed an evacuation order for Glen Ilah and Yarnell.

4 195. At about 3:40 p.m. on June 30, 2013, Group 1 Structure Protection Supervisor Gary
5 Cordes observed the fire one mile north of Yarnell and then a spot fire about ½ mile south of the
6 main fire.
7

8 196. At about 3:40 p.m. on June 30, 2013, Group 1 Structure Protection Supervisor Gary
9 Cordes reported to his supervisor, Operations Sections Chief 1 Todd Abel, that he could not
10 transmit to the air resources on the air-to-ground radio frequency.
11

12 197. At about 3:40 p.m. on June 30, 2013, Operations Sections Chief 1 Todd Abel
13 relayed a message to the aviation resources from Group 1 Structure Protection Supervisor Gary
14 Cordes that the aviation resources should drop fire retardant and water on the fire at will, although
15 by then, that tactic was perilously close to too late to protect the Yarnell area structures and
16 people—or to protect the Granite Mountain Interagency Hotshot Crew.
17
18

19 198. Between about 3:30 p.m. and 3:45 p.m. on June 30, 2013, the two-mile flanking fire
20 started to look like a head fire and was moving to the southeast toward the Yarnell area.
21

22 199. At about 3:40 p.m., the fire reached the first geographic trigger point for Structure
23 Protection Group 1 Supervisor Gary Cordes—and an evacuation of the Town of Yarnell was
24 requested.
25

26 200. Because of the negligence of the Arizona State Forestry Division, the evacuation
27 notice was long overdue and, even then, was not promptly and effectively communicated to all of
28

1 the residents of the Yarnell area who were in that area in the afternoon of June 30, 2013.

2 201. As a direct and proximate result of the overly late and ineffectively communicated
3 evacuation notice, many of Yarnell's residents were forced to flee for their lives and suffered the
4 loss of, and damage to, their homes, other structures, real property, and personal property. They
5 also suffered varying degrees of intense and severe emotional upset, harm, and distress.
6

7 202. At about 3:40 p.m. on June 30, 2013, Division Alpha Supervisor Eric Marsh called
8 the Planning Operations Section Chief and reported that the retardant line and the bulldozer lines
9 were compromised but that the Granite Mountain Interagency Hotshot Crew was in an area that
10 had already been burned over.
11

12 203. At about 3:45 p.m., the Air Tactical Group Supervisor told Division Alpha
13 Supervisor Eric Marsh that the fire was headed toward Yarnell, that the fire could reach Yarnell
14 in one to two hours, and that the Granite Mountain Interagency Hotshot Crew's crew-carrier
15 vehicles were in the path of the fire.
16

17 204. Between about 3:50 p.m. and 3:54 p.m., some of the Granite Mountain Interagency
18 Hotshot Crew members took photos of the Yarnell Hill Fire and sent text messages to their family
19 members about the status of the fire.
20

21 205. At about 3:55 p.m. on June 30, 2013, the fire was burning along the ridge north of
22 the Yarnell area.
23

24 206. Also at about 3:55 p.m. on June 30, 2013, Structure Protection Group 1 Supervisor
25 Gary Cordes lost use of an air-to-ground radio frequency and suffered an interruption of radio
26 communications for an extended period.
27
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1 207. At about 3:58 p.m. on June 30, 2013, Air Tactical Group Supervisor Rory Collins
2 abruptly and negligently abandoned his duties and left for Deer Valley.

3 208. At about 3:58 p.m. on June 30, 2013, Air Tactical Group Supervisor Rory Collins
4 negligently dumped the air tactical operations onto the Aerial Supervision Module Officer 2 who
5 was already very busy trying to deal with his own lead-plane duties.
6

7 209. The Aerial Supervision Module Officer 2 got a very brief update from Air Tactical
8 Group Supervisor Rory Collins. The brief update was essentially useless and did not even include
9 division-break locations or the location of the on-the-ground firefighters.
10

11 210. As a direct and proximate result of Air Tactical Group Supervisor Rory Collins's
12 negligent abandonment of his post, no effective aerial retardant and water drops were made to
13 protect the Granite Mountain Interagency Hotshot Crew.
14

15 211. By about 4:00 p.m., the Arizona State Forestry Division was managing about 325
16 firefighters and other resources to suppress and contain the Yarnell Hill Fire, but had negligently
17 been unable to use those personnel and resources effectively and competently to protect the
18 Granite Mountain Interagency Hotshot Crew.
19

20 212. At about 4:00 p.m. on June 30, 2013, the Yarnell Hill Fire reached the outskirts of
21 the Yarnell area, with no firebreaks, no backfires, no burnouts, no bulldozed clear areas, no
22 firefighters, no firefighting equipment, and no effective aerial retardant and water drops to protect
23 the Granite Mountain Interagency Hotshot Crew.
24

25 213. By about 4:00 p.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
26 Fire was 3,394 acres.
27
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1 214. At about 4:00 p.m. on June 30, 2013, the chaotic, negligently managed, last-second,
2 late-started evacuation was still underway.

3 215. Highlighting the existing and growing confusion, at about 4:00 p.m. on June 30,
4 2013, Group 1 Structure Protection Supervisor Gary Cordes notified Operations Sections Chief 1
5 Todd Abel that the Structure Protection Group 1 trigger point number 2 had been met, indicating
6 a one-hour evacuation time for Yarnell. (Cordes apparently forgot that he had already placed an
7 evacuation order for Glen Ilah and Yarnell at about 3:30 p.m. and apparently was unaware of the
8 fact that a chaotic evacuation was already underway.)
9

10 216. At about 4:00 p.m. on June 30, 2013, Operations Sections Chief 1 Todd Abel
11 radioed a negligently late evacuation order to the Arizona State Forestry Division's Arizona
12 Dispatch Center.
13

14 217. At about 4:00 p.m. on June 30, 2013, Group 1 Structure Protection Supervisor Gary
15 Cordes advised the Structure Protection Group 1 crews to evacuate Glen Ilah and Yarnell.
16

17 218. No firefighter ground-based resources capable of doing anything effective remained
18 between the Yarnell Hill Fire, Yarnell's structures and people, or the Granite Mountain
19 Interagency Hotshot Crew.
20

21 219. At about 4:15 p.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
22 Fire was 3,841 acres.
23

24 220. At about 4:18 p.m. on June 30, 2013, the outflow boundary neared the northern end
25 of the fire area and was moving at 16 miles per hour.
26

27 221. At about 4:22 p.m. on June 30, 2013, the Yarnell Hill Fire had reached the second
28

1 geographic trigger point and firefighters in the Shrine area started moving out of the area toward
2 Highway 89.

3 222. At about 4:30 p.m. on June 30, 2013, the outflow boundary moved across the
4 southern end of fire.
5

6 223. At about 4:34 p.m. on June 30, 2013, the outflow boundary crested the ridge for the
7 first time in the direction of Yarnell.
8

9 224. At about 4:40 p.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
10 Fire was 5,463 acres.

11 225. At about 4:40 p.m. on June 30, 2013, Structure Protection Group 1 Supervisor Gary
12 Cordes directed the Aerial Supervision Module 2 Officer to drop aerial retardant at will to stop
13 the fire from reaching the Yarnell area. By negligently waiting so long, however, there was then
14 almost nothing that even well-aimed and energetic aerial retardant drops and water drops could do
15 to protect the Granite Mountain Interagency Hotshot Crew.
16
17

18 226. At about 4:42 p.m. on June 30, 2013, the outflow boundary crested the ridge for the
19 second time, trapping Grant McKee and 18 other members of the Granite Mountain Interagency
20 Hotshot Crew.
21

22 227. Although Grant McKee and his fellow crewmembers were able to deploy and use,
23 or at least start to deploy and use, the personal fire shelters provided as part of their basic
24 equipment, many of the personal fire shelters deployed too slowly. In any event, all of the fire
25 shelters, including all that were fully deployed and used, failed because they were not designed
26 and built to withstand the high-temperatures that are a known element of Arizona brush and
27
28

1 chaparral fires.

2 228. In other words, Grant McKee and his fellow crewmembers were given equipment
3 that was incapable of protecting them in the firefighting environment in which the Arizona State
4 Forestry Division had directed them to operate.
5

6 229. At and shortly after 4:42 p.m., the Yarnell Hill Fire overwhelmed the fire-shelter
7 area, causing the excruciatingly painful death by smoke inhalation and extreme heat of the 19
8 Granite Mountain Interagency Hotshot Crew personnel, including Grant McKee.
9

10 230. At about 4:50 p.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
11 Fire was 5,817 acres.
12

13 231. At about 5:00 p.m. on June 30, 2013, the estimated perimeter of the Yarnell Hill
14 Fire was 6,206 acres.
15

16 **The Defendants Are Liable for Causing Grant McKee's Death**

17 1. **The Industrial Commission of Arizona found that the Arizona State Forestry**
18 **Division caused the death of Grant McKee and his fellow crewmembers.**

19 232. The Industrial Commission of Arizona has determined that on June 30, 2013, from
20 and after 3:30 p.m., the 19 members of the Granite Mountain Interagency Hotshot Crew
21 (including Grant McKee) continued to undertake their fire-suppression activities, until 4:42 p.m.,
22 when they were entrapped and killed by a rapidly-progressing, wind-driven wildland fire.
23

24 233. The Industrial Commission of Arizona has determined that Grant McKee and the 18
25 other members of the Granite Mountain Interagency Hotshot Crew sustained death because of the
26 Arizona State Forestry Division's safety violations.
27

28 234. The Industrial Commission of Arizona determined that the Arizona State Forestry

1 Division had: (1) implemented suppression strategies that prioritized protection of non-defensible
2 structures and pastureland over firefighter safety, and (2) failed to prioritize strategies consistent
3 with Arizona State Forestry Division—Standard Operational Guideline 701 *Fire Suppression and*
4 *Prescribed Fire Policy* (2008). See A.R.S. § 23-403(A). The ICA classified that misconduct as
5 serious and “willful.”
6

7 235. The Industrial Commission of Arizona also determined that, when the Arizona State
8 Forestry Division knew that suppression of the extremely active chaparral fuels was ineffective
9 and that wind would push active fire towards non-defensible structures, firefighters working
10 downwind were not promptly removed from exposure to smoke inhalation, burns, and death. See
11 A.R.S. § 23-403(A). The ICA classified that conduct as serious and “willful.”
12
13

14 236. When, as here, an employee’s injury or death is the result of an employer’s “willful
15 misconduct,” workers’ compensation is not the exclusive remedy. A.R.S. § 23-1022(A).
16

17 237. At the time of Grant McKee’s death, Marcia McKee was not his dependent, did not
18 have the right to receive any workers’ compensation benefits for his death, and has not received
19 or accepted any workers’ compensation benefits for his death.
20

21 238. The Industrial Commission of Arizona determined that, because of the above-stated
22 violations of A.R.S. § 23-403(A), under the terms of A.R.S. § 23-418.01 Grant McKee and his
23 fellow crewmembers had sustained death that was not as a result of any disobedience to specific
24 instructions that the Arizona State Forestry Division had given them.
25

26 239. The Industrial Commission of Arizona determined that the Arizona State Forestry
27 Division failed to implement fire-suppression plans consistent with A.R.S. § 37-623 (on
28

1 suppression of wildfires) and Arizona State Forestry Division—Standard Operational Guideline
2 701 *Fire Suppression and Prescribed Fire Policy* (2008) in a timely way during the life-
3 threatening transition between initial attack and extended attack fire operations.

4
5 240. The Industrial Commission of Arizona determined that on June 29, 2013, when the
6 fire had escaped initial attack, an incident complexity analysis was not conducted and reviewed
7 by fire management to ensure that wildfires increasing in complexity were quickly identified and
8 a safe transition occurred to the appropriate level of incident response.

9
10 241. The Industrial Commission of Arizona determined that, on June 29, 2013, when the
11 fire escaped initial attack, an Escaped Fire Situational Analysis (EFSA) or similar Wildland Fire
12 Situation Analysis (WFSA), Wildland Fire Decision Support System (WFDSS), or Operational
13 Needs Assessment was not conducted by fire management to ensure a safe transition to extended
14 attack.

15
16 242. The Industrial Commission of Arizona determined that, on June 29, 2013, after the
17 fire escaped initial attack and prior to transitioning to a more complex management team, an
18 Incident Action Plan (IAP) containing objectives reflecting the overall incident strategy, specific
19 tactical actions, and supporting information for the next operational period was not conducted by
20 fire management to ensure a safe transition to extended attack.

21
22 243. The Industrial Commission of Arizona determined that, in accordance with Arizona
23 State Fire Division Standard Operating Guideline SOG-701, the transition from initial attack to an
24 extended attack operations is extremely dangerous, and determined that critical incident
25 management personnel necessary to support the planning and implementation of fire suppression
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1 operations arrived late or were absent from their assigned positions during the life-threatening
2 transition, which increased the risk of firefighter exposure to smoke inhalation, burns, and death.

3 244. The Industrial Commission of Arizona determined that, on or about June 30, 2013,
4 the fire-management positions of Safety Officer and Planning Section Chief were unfilled and
5 therefore unable to participate during critical fire-suppression planning, transition planning, and
6 oversight of ongoing wildfire-suppression operations.
7

8 245. The Industrial Commission of Arizona determined that, on June 30, 2013, at about
9 1:30 p.m., the Division Z Supervisor departed from his assigned position, which left Division Z
10 without supervision during ongoing wildfire-suppression operations.
11

12 246. The violations of these and other operational and safety procedures and protocols
13 directly and proximately caused the death of Grant McKee and 18 members of the Granite
14 Mountain Interagency Hotshot Crew.
15

16 **2. The Arizona State Forestry Division negligently violated all ten of the *Standard***
17 ***Firefighting Orders*. Those violations proximately caused the death of Grant McKee**
18 **and 18 other Granite Mountain Interagency Hotshot Crew members.**

19 247. The Arizona State Forestry Division negligently and proximately caused the death
20 of Grant McKee and 18 other members of the Granite Mountain Interagency Hotshot Crew by
21 violating established firefighting standards, including all of the ten nationally recognized industry
22 standards designated as the *Standard Firefighting Orders*.
23

24 248. Standard Firefighting Order No. 1 requires firefighting managers to “*Keep informed*
25 *on fire weather conditions and forecasts.*” But the Arizona State Forestry Division negligently
26 used poor and untimely information about the relevant fire weather conditions and forecasts, and
27
28

1 even with the forecasts that it did get, failed to understand them or to communicate them to forces
2 in the field, including to the Granite Mountain Interagency Hotshot Crew.

3 249. Standard Firefighting Order No. 2 requires firefighting managers to “*Know what*
4 *your fire is doing at all times.*” But the Arizona State Forestry Division negligently lost track of
5 what the Yarnell Hill Fire was doing well before Grant McKee and his crew became engulfed in
6 smoke and flames.
7

8 250. Standard Firefighting Order No. 3 requires firefighting managers to “*Base all*
9 *actions on current and expected behavior of the fire.*” But the Arizona State Forestry Division
10 negligently did not base its firefighting actions on the Yarnell Hill Fire’s current and expected
11 behavior.
12

13 251. Standard Firefighting Order No. 4 requires firefighting managers to “*Identify escape*
14 *routes and safety zones and make them known.*” But the Arizona State Forestry Division
15 negligently failed to identify available escape routes and safety zones, and thus failed to make
16 escape routes and safety zones known to Grant McKee and his crew.
17

18 252. Standard Firefighting Order No. 5 requires firefighting managers to “*Post lookouts*
19 *when there is possible danger.*” Despite the possible danger of entrapment from rapid fire
20 movement, the Arizona State Forestry Division negligently failed to post and maintain lookouts at
21 strategic locations.
22

23 253. Standard Firefighting Order No. 6 requires firefighting managers to “*Be alert. Keep*
24 *calm. Think clearly. Act decisively.*” But instead of being alert, keeping calm, thinking clearly,
25 and acting decisively, the Arizona State Forestry Division’s firefighting managers were
26
27
28

1 negligently unaware of the weather and fire changes and of the location of Grant McKee and his
2 crew, were not professionally calm in managing the firefighters, were not thinking clearly about
3 what needed to be done to protect the firefighters, and acted indecisively.

4
5 254. Standard Firefighting Order No. 7 requires firefighting managers to “*Maintain*
6 *prompt communications with your forces, your supervisor and adjoining forces.*” But the
7 Arizona State Forestry Division negligently failed to maintain prompt and accurate
8 communications with the firefighting forces, failed to maintain contact with all relevant
9 supervisors and resources, and failed to maintain communications among and between adjoining
10 forces.
11

12
13 255. Standard Firefighting Order No. 8 requires firefighting managers to “*Give clear*
14 *instructions and insure they are understood.*” But the Arizona State Forestry Division negligently
15 failed to give clear instructions to Grant McKee’s crew and to support personnel and failed to
16 insure that instructions were understood.
17

18 256. Standard Firefighting Order No. 9 requires firefighting managers to “*Maintain*
19 *control of your forces at all times.*” But the Arizona State Forestry Division negligently had little
20 control over its firefighting forces, especially as the fire situation confronting Grant McKee and
21 his crew deteriorated.
22

23 257. Standard Firefighting Order No. 10 requires firefighting managers to “*Fight fire*
24 *aggressively, having provided for safety first.*” But the Arizona State Forestry Division both
25 negligently failed to fight the fire aggressively and negligently failed to provide for safety first as
26 it was trying to contain the Yarnell Hill Fire.
27
28

1 **3. The Arizona State Forestry Division negligently failed to recognize and take timely**
2 **precautions against 13 of the firefighting “Watch Out Situations.”**

3 258. The United States Forestry Service’s authoritative *Red Book* warns those who
4 manage efforts to contain wildfires to be aware of and take timely precautions when any of a
5 number of dangerous “Watch Out Situations” are present.

6 259. In trying to contain the Yarnell Hill Fire, the Arizona State Forestry Division
7 negligently failed to recognize and take any suitable precautions against 13 of the “Watch Out
8 Situations” listed below:
9

- 10 • Fire not scouted and sized up.
- 11 • Safety zones and escape routes not identified.
- 12 • Unfamiliar with weather and local factors influencing fire behavior.
- 13 • Uninformed on strategy, tactics, and hazards.
- 14 • Instructions and assignments not clear.
- 15 • No communication link with crew members/supervisor.
- 16 • Unburned fuel between you and fire.
- 17 • Cannot see main fire, not in contact with anyone who can.
- 18 • On a hillside where rolling material can ignite fuel below.
- 19 • Weather is getting hotter and drier.
- 20 • Wind increases and/or changes direction.
- 21 • Getting frequent spot fires across line.
- 22 • Terrain and fuels make escape to safety zones difficult.
- 23
- 24
- 25
- 26
- 27
- 28

1 260. The Arizona State Forestry Division's negligent failure to recognize and take
2 suitable precautions against these 13 "Watch Out Situations" proximately caused the death of
3 Grant McKee and 18 other members of the Granite Mountain Interagency Hotshot Crew.

4
5 **4. From the start, the Arizona State Forestry Division negligently managed the Yarnell**
6 **Hill Fire and negligently violated standard wildfire fighting practices.**

7 261. To the extent there was any coherent initial plan for dealing with the Yarnell Hill
8 Fire, that strategy was full suppression.

9 262. By selecting and implementing a suppression plan for the Yarnell Hill Fire, the
10 Arizona State Forestry Division committed negligence.

11
12 263. The Arizona State Forestry Division knew, or should have known, that, when
13 dealing with a wildland fire in windy, dry desert conditions in a remote, hard-to-access brushy
14 area, a full-suppression plan was negligent and violated industry standards, practices, and
15 guidelines.

16
17 264. The Arizona State Forestry Division knew, or should have known, that the proper
18 way to manage a wildland fire in hot, dry, brushy, windy conditions is to contain the wildland fire
19 and protect people and structures, not to attack the wildland fire directly, because by the time a
20 direct attack arrives, the wildland fire has moved elsewhere.

21
22 265. Indeed, the *S-336 Tactical Decision Making in Wildland Fire Course* textbook
23 explains that: "Direct attack on a fast moving desert or brush fire is seldom successful. Using
24 natural barriers and roads when burning out is very common."

25
26 266. Type 4 Incident Commander Russ Shumate negligently failed to adequately brief
27 incoming and in-place personnel and supervisors on June 29 and June 30, 2013.
28

1 267. Type 4 Incident Commander (Russ Shumate) negligently failed to provide a written
2 Incident Action Plan for the incoming Type 2 Incident Commander (Roy Hall) on June 30, 2013.

3 268. By the morning of June 30, 2013, the Arizona State Forestry Division knew, or
4 should have known, that the predicted Energy Release Potential for the day was over 100 in the
5 fuel model, meaning an elevated potential for a large, rapidly growing, and difficult to manage
6 wildland fire. The Arizona State Forestry Division negligently failed to appreciate and to act on
7 that important factor.
8

9
10 269. The Arizona State Forestry Division negligently failed to provide a Wildland Fire
11 Situation Analysis or a Wildland Fire Decision Support System document, and a rationale for
12 selecting its suppression alternative to the Type 2 Incident Management Team, when that team
13 finally tried to assume some sort of rational and coherent management over the Yarnell Hill Fire.
14

15 270. The Arizona State Forestry Division negligently failed to provide the Type 2
16 Incident Management Team with clear written direction in the form of a “Delegation of Authority
17 Letter.” The “Delegation of Authority Letter” gives incident commanders their marching orders
18 to properly conduct a wildland firefighting effort. But the Letter was not provided, resulting in
19 confusion, lack of a coherent plan, and lack of coordination of aerial and ground assets.
20

21 271. Type 4 Incident Management Commander Russ Shumate and Type 2 Incident
22 Management Commander Roy Hall both failed to create and implement a coherent tactical or
23 strategic plan—a plan that ground resources and air resources could uniformly understand. As a
24 result, there was no such plan for suppressing the Yarnell Hill Fire or for protecting the Yarnell
25 area’s structures and people.
26
27
28

1 272. The Arizona State Forestry Division failed to give clear management direction to
2 incoming Type 2 Incident Management Commander Roy Hall because the Arizona State Forestry
3 Division had not completed the Escaped Fire Situation Analysis required by its own policy for
4 fires that have escaped the initial attack.
5

6 273. The Arizona State Forestry Division negligently failed to ensure that the Planning
7 Operations Section Chief had aviation resources and ground resources acting cooperatively on the
8 same tactical plan.
9

10 274. For instance, while the Granite Mountain Interagency Hotshot Crew was trying to
11 burn out a fireline that was a significant and long-overdue step toward protecting the firefighters
12 and Yarnell, the Arizona State Forestry Division's Air Tactical Group Supervisor (Rory Collins)
13 negligently ordered two aerial fire retardant drops directly on the burnout area. That negligence
14 ended that effort to protect Yarnell and the firefighters.
15

16 275. Likewise, although the Structure Protection Group was using a bulldozer to
17 construct a contingency fireline near Yarnell to protect Yarnell and the firefighters, Air Tactical
18 Group Supervisor Rory Collins negligently chose to drop fire retardant on a similar vector close
19 to the bulldozer line.
20

21 276. Air Tactical Group Supervisor Rory Collins negligently missed the opportunity to
22 reinforce the bulldozer line with aerial fire retardant drops and to provide protection to Yarnell
23 and the firefighters—because the aerial fire retardant drops were not properly coordinated with
24 Structure Protection Group 1.
25
26

27 277. The Arizona State Forestry Division also negligently failed to coordinate the efforts
28

1 of the Granite Mountain Interagency Hotshot Crew and the Blue Ridge Interagency Hotshot
2 Crew. Those crews could have been used in Division Alpha to establish the anchor point and
3 connect with the bulldozer line.

4
5 278. Assigning both of those hot shot crews to work together would have used the
6 concept of mass action. The combined hot shot crews would have been able to conduct a burnout
7 from the top of the ridge to the bulldozer line fairly quickly, providing substantial protection to
8 Yarnell and to the firefighters. But that did not happen.

9
10 279. The Arizona State Forestry Division negligently failed to order or direct the Granite
11 Mountain Interagency Hotshot Crew to move to a position of safety when the wildfire shifted to a
12 position that could threaten their safety on June 30, 2013.

13
14 280. The Arizona State Forestry Division negligently failed to evacuate the Granite
15 Mountain Interagency Hotshot Crew when conditions became so complex and deadly that
16 evacuation was a proper course of action on June 30, 2013.

17
18 281. The Arizona State Forestry Division negligently failed to inform the Granite
19 Mountain Interagency Hotshot Crew of available locations where they would be safe from being
20 engulfed by the fire on June 30, 2013.

21
22 282. The Arizona State Forestry Division negligently failed to use available air assets to
23 drop fire retardant and water on the Granite Mountain Interagency Hotshot Crew and into the path
24 of the advancing fire that was threatening to engulf them on June 30, 2013.

25
26 283. The Arizona State Forestry Division negligently failed to provide adequate, reliable
27 communications gear to the Granite Mountain Interagency Hotshot Crew and other units
28

1 combatting the Yarnell Hill Fire.

2 284. The Arizona State Forestry Division negligently failed to provide GPS tracking
3 equipment to the Granite Mountain Interagency Hotshot Crew that would have reported their
4 exact position at all times to the firefighting managers.
5

6 285. The Arizona State Forestry Division negligently failed to provide the Granite
7 Mountain Interagency Hotshot Crew with fire shelters that were capable of withstanding the fire
8 conditions they would be facing in their general operations in Arizona and, in particular, in the
9 brush-filled rugged areas they would be operating in during the Yarnell Hill Fire on June 30,
10 2013.
11

12 286. The Arizona State Forestry Division negligently failed to inform and warn the
13 Granite Mountain Interagency Hotshot Crew that deploying the fire shelters that they had been
14 issued and carried would lead to their deaths because those fire shelters were inadequate to
15 protect them under any but the mildest conditions.
16
17

18 287. These failures were a direct and proximate cause of the death of Grant McKee and
19 18 other members of the Granite Mountain Interagency Hotshot Crew
20

21 **5. The Arizona State Forestry Division negligently violated the 2013 *Interagency***
22 ***Standards for Fire and Fire Aviation Operations.***

23 288. The *2013 Interagency Standards for Fire and Fire Aviation Operations* (January
24 2013), produced by the Federal Fire and Aviation Task Force of the National Interagency Fire
25 Center, sets out some of the many established industry standards for wildland fire management
26 professionals.
27

28 289. Under the *2013 Interagency Standards for Fire and Fire Aviation Operations*

1 (January 2013): "As an incident escalates, a continuing reassessment of the complexity level
2 should be completed to validate the current command organization or identify the need for a
3 higher level of incident management." *2013 ISFFAO* at 11-3:19-21.

4
5 290. In managing the Yarnell Hill Fire, the Arizona State Forestry Division negligently
6 failed to comply with this standard. That failure was a direct and proximate cause of the death of
7 Grant McKee and 18 other members of the Granite Mountain Interagency Hotshot Crew.

8
9 291. Under the *2013 Interagency Standards for Fire and Fire Aviation Operations*
10 (January 2013): The Wildland Fire Decision Support System "will be used for decision support
11 documentation for all fires that escape initial attack or exceed initial response." *2013 ISFFAO* at
12 11-10:28-29.

13
14 292. In managing the Yarnell Hill Fire, the Arizona State Forestry Division negligently
15 failed to comply with this standard. That failure was a direct and proximate cause of the death of
16 Grant McKee and 18 other members of the Granite Mountain Interagency Hotshot Crew.

17
18 **6. The Arizona State Forestry Division negligently breached its duties of care under**
19 **Arizona law.**

20 293. Under A.R.S. § 37-623(A), the Arizona State Forester "has authority to prevent and
21 suppress any wildfires on state and private lands located outside incorporated municipalities."
22 The Arizona State Forester, through the Arizona State Forestry Division, undertook suppression
23 of the Yarnell Hill Fire, and negligently failed to suppress it.

24
25 294. The Arizona State Forestry Division undertook to render wildfire suppression and
26 control services in connection with the Yarnell Hill Fire for the benefit of the people of Arizona
27 in general, and for the benefit of the Granite Mountain Interagency Hotshot Crew in particular.
28

1 295. The Arizona State Forestry Division negligently failed to render proper, competent
2 wildlife suppression and control services. That failure was a direct and proximate cause of the
3 death of Grant McKee and 18 other members of the Granite Mountain Interagency Hotshot Crew.
4

5 **7. The Arizona State Forestry Division negligently breached the doctrines of voluntary**
6 **assumption of risk and of duty based on an undertaking.**

7 296. The Arizona State Forestry Division voluntarily assumed the risk and the duty of
8 trying to manage the Yarnell Hill Fire and of protecting the firefighters assigned to accomplish
9 that mission.
10

11 297. Under the doctrines of voluntary assumption of risk and of duty based on an
12 undertaking, the Arizona State Forestry Division is liable for negligently failing to protect from
13 harm the firefighters assigned to fighting the Yarnell Hill Fire, including Grant McKee and the
14 other members of the Granite Mountain Interagency Hotshot Crew.
15

16 **8. The Arizona State Forestry Division negligently breached the abnormally dangerous**
17 **activity doctrine.**

18 298. Combatting a wildland fire is an abnormally dangerous activity.

19 299. Under the abnormally dangerous activity doctrine, the Arizona State Forestry
20 Division is liable for negligently failing to protect from harm the firefighters assigned to fighting
21 the Yarnell Hill Fire, including Grant McKee and the other members of the Granite Mountain
22 Interagency Hotshot Crew.
23

24 **Wrongful-Death Damages**

25 300. As a direct and proximate result of the negligence of the State of Arizona and the
26 Arizona State Forestry Division, Grant McKee suffered an excruciating death on June 30, 2013
27
28

1 from catastrophic heat and from smoke inhalation.

2 301. Knowing about the devastating and excruciatingly painful way that Grant McKee
3 died has greatly exacerbated Marcia McKee's distress, upset, and anguish.

4 302. Grant McKee's untimely and preventable death has deprived Marcia McKee of
5 decades of her son's care, affection, companionship, services, consortium, and love.

6 303. Their love, mutual appreciation, and mature friendship were growing steadily
7 stronger as they moved through life. That is now all at an end.
8
9

10 **COUNT II**
11 **(Infliction of Emotional Harm and Emotional Distress)**

12 304. As if set out fully in this claim for relief, Plaintiff re-alleges and incorporate by
13 reference all of the allegations and paragraphs of this pleading.

14 305. This claim for infliction of emotional harm and emotional distress is separate and
15 distinct from Marcia McKee's wrongful-death claim.
16

17 306. The Arizona State Forestry Division had a duty to safeguard Grant McKee and the
18 other members of the Granite Mountain Interagency Hotshot Crew, and a duty to avoid causing
19 their loved ones to suffer severe emotional distress.
20

21 307. The Arizona State Forestry Division breached that duty.

22 308. The Arizona State Forestry Division committed the tort of intentional infliction of
23 emotional distress because: (1) its misconduct was extreme and outrageous; (2) it recklessly
24 disregarded the near certainty that such distress would result from its misconduct; and (3) severe
25 emotional distress occurred as a result of its misconduct.
26

27 309. In this context, the Arizona State Forestry Division acted recklessly because it knew
28

1 of the risk of severe emotional harm—or knew facts making that risk obvious—but failed to take
2 reasonable precautions that would have eliminated or reduced the risk, although the burden was
3 slight relative to the magnitude of the risk.

4
5 310. Incompetent indifference to the lives, well-being, and emotions of others is a
6 reasonable way to describe the Arizona State Forestry Division's firefighting effort.

7 311. In the course of mishandling the Yarnell Hill fire, the Arizona State Forestry
8 Division placed Grant McKee and the other members of the Granite Mountain Interagency
9 Hotshot Crew in danger of immediate bodily harm and death.

10
11 312. The Arizona State Forestry Division's acts and omissions directly caused Marcia
12 McKee to suffer extreme emotional distress.

13
14 313. By their conduct in negligently, recklessly, and carelessly failing to protect and
15 safeguard her son from becoming hopelessly trapped in a box canyon and from suffering extreme
16 emotional and physical pain and suffering, the State of Arizona and the Arizona State Forestry
17 Division have inflicted severe, lasting emotional harm and distress on Marcia McKee.

18
19 314. In addition, from June 30, 2013 forward, the State of Arizona and the Arizona State
20 Forestry Division have negligently, carelessly, and intentionally misrepresented the facts in an
21 effort to avoid any blame for the causing the death of Grant McKee and the 18 other Granite
22 Mountain Hotshot Interagency Crew who died with him.

23
24 315. The misrepresentations and cover-up violated the public trust. And for Marcia
25 McKee personally, the negligent, careless, and intentional misrepresentation of the facts and
26 cover-up have multiplied her emotional devastation.

1 316. The public entities that Marcia McKee had trusted with her son's life caused his
2 death. But to make matters infinitely worse for Marcia McKee, to avoid blame those public
3 entities have negligently, carelessly, and intentionally misrepresented and sought to cover-up
4 what they did and failed to do.
5

6 317. The misrepresentations and cover-up have independently, directly, and proximately
7 caused Marcia McKee to experience enhanced and severe emotional pain and anguish, upset,
8 depression, and extreme distress—just when she was most vulnerable and just when she was at
9 the lowest point in her life.
10

11 **WHEREFORE**, in light of the above, Plaintiff prays for judgment against Defendants as
12 follows:
13

- 14 1. For reasonable general, compensatory, and actual damages, in an amount to be
15 proved in a trial;
- 16 2. For special damages in an amount to be proved at trial;
- 17 3. For suitable injunctive relief including, but not limited to, an injunction directing
18 the State of Arizona and the Arizona State Forestry Division:
 - 19 (a) To equip all Hotshot Crews and other units fighting wildfires with GPS
20 devices that will automatically report their precise locations to the central
21 command post managing any Arizona wildfire.
 - 22 (b) To equip all Arizona Hot Shot Crews and similar units with person-portable
23 fire shelters that are capable of providing adequate protection by withstanding
24 the extreme temperatures associated with Arizona wildfires.
25
26
27
28

- 1 (c) To develop an effective recruitment and training program to ensure that future
2 managers of Arizona wildfires are competent and capable of containing those
3 wildfires while, at the same time, protecting the firefighters assigned to the
4 firefighting effort.
5
6 (d) To ensure that all Arizona Hotshot Crew members assigned to fighting fires
7 receive the benefits (such as death, disability, and lost income) accorded to
8 Arizona state full-time firefighting employees.
9
10 (e) To require adoption of a clear policy that, while wildfire containment is the
11 ultimate goal, that must be done consistently with protecting: (1) firefighters;
12 (2) people living in the area; and (3) homes, structures, and infrastructure.
13
14 (f) To erect suitable memorials at the Wesley Bolin Plaza of the Arizona State
15 Capitol and in the City of Prescott to celebrate the heroism of the 19 Granite
16 Mountain Interagency Hotshot Crew members who gave their lives while
17 valiantly trying to protect Yarnell and its people from the devastating Yarnell
18 Hill Fire.
19

- 20 4. For costs of suit incurred in this action;
21
22 5. For such other and further relief as the Court deems just and proper.
23

24 **Demand for Trial by Jury**

25
26 Plaintiff demands a trial by jury on all claims in this action.

27 **DATED** this 26th day of June, 2014.
28

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