

Public Access to Court Information - Case Search

Case Information

Case Number:	S-1100-CV-201900097	Category:	Civil
Title:	BORTUGNO VS PIMA ANIMAL CARE	Filing Date:	1/17/2019
Court:	Pinal County Superior	Disposition Date:	
Judge:			

KRISTEN AUERBACH	DEFENDANT - D 5
JOSEPH BORTUGNO	PLAINTIFF - P 1
SHELLY BORTUGNO	PLAINTIFF - P 2
ERIK W CENTNER	ATTORNEY - Y 2
PIMA ANIMAL CARE CENTER	DEFENDANT - D 1
PIMA COUNTY	DEFENDANT - D 3
PIMA COUNTY HEALTH DEPARTMENT	DEFENDANT - D 2
B RORY RILEY	ATTORNEY - Y 1
JENNIFER WILCOX	DEFENDANT - D 4

Case Activity

Date	Description	Party
10/31/2019	CORRESPONDENCE: CERT MAIL RECEIPT RET / DELIVERED	P 1
10/31/2019	CORRESPONDENCE: CERT MAIL RECEIPT RET / DELIVERED	P 1
7/22/2019	ORDER: COURT ORDER / RULING	D 1
7/22/2019	ORDER: COURT ORDER / RULING	D 4
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7/12/2019	ORDER: COURT ORDER / RULING	P 1
7/12/2019	ORDER: COURT ORDER / RULING	P 1
7/12/2019	ORDER: COURT ORDER / RULING	P 1
7/12/2019	ORDER: COURT ORDER / RULING	P 1
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7/12/2019	ORDER: COURT ORDER / RULING	D 4
7/12/2019	ORDER: COURT ORDER / RULING	D 4
7/12/2019	ORDER: COURT ORDER / RULING	D 4
7/12/2019	ORDER: COURT ORDER / RULING	D 4
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2/8/2019	SERVICE: Certificate	D 1
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2/8/2019	SERVICE: AFFIDAVIT	D 5
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Document Search

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Attorneys for Plaintiffs

IN THE SUPERIOR COURT OF THE STATE OF ARIZONA

IN AND FOR THE COUNTY OF PINAL

JOSEPH BORTUGNO, in his sole and
separate right; SHELLY BORTUGNO,
in her sole and separate right;

Plaintiffs,

vs.

PIMA ANIMAL CARE CENTER, a
division of the Pima County Health
Department; PIMA COUNTY HEALTH
DEPARTMENT, a department of Pima
County; PIMA COUNTY, a political
subdivision of the State of Arizona;
JENNIFER WILCOX, individually and
as veterinarian of Pima Animal Care
Center; KRISTEN AUERBACH,
individually and as director of Pima
Animal Care Center; ABC
PARTNERSHIPS I-X; XYZ
CORPORATIONS I-X; JOHN DOES I-
X and JANE DOES I-X,

Defendants.

NO.

COMPLAINT

Assigned to:

COMES NOW the Plaintiffs, JOSEPH BORTUGNO and SHELLY BORTUGNO,
individually, by and through undersigned counsel, complaining of the Defendants, and in
support thereof, states as follows:

I. JURISDICTION & VENUE

1. Plaintiff Joseph Bortugno is a resident of Pinal County, Arizona, and the cause of action on which this Complaint is based occurred in Pinal County, Arizona.

2. Plaintiff Shelly Bortugno is a resident of Pinal County, Arizona, and the cause of action on which this Complaint is based occurred in Pinal County, Arizona.

3. Upon information and belief, Defendant Pima Animal Care Center is a division of the Pima County Health Department and is an employer within the meaning of A.R.S. § 41-1461(6).

4. Upon information and belief, Defendant Pima County Health Department is a department of Pima County and is an employer within the meaning of A.R.S. § 41-1461(6).

5. Upon information and belief, Defendant Pima County is a political subdivision of the State of Arizona and is an employer within the meaning of A.R.S. § 41-1461(6).

6. Upon information and belief, Defendant Jennifer Wilcox is a resident of Pima County, Arizona.

7. Upon information and belief, Defendant Kristen Auerbach is a resident of Pima County, Arizona.

8. Upon information and belief, Defendants ABC PARTNERSHIPS I-X, XYZ CORPORATIONS I-X, JOHN DOES I-X AND JANE DOES I-X were either spouses or servants or employers or owners or parent companies or subsidiaries or other persons and/or entities legally responsible for the negligent conduct of Defendant Wilcox, and/or Defendant Auerbach, and/or employer Defendant Pima Animal Care Center, and/or employer Defendant Pima County Health Department, and/or employer Defendant Pima County, as described herein, upon theories of master/servant, employment, agency and/or contract, and these persons and/or entities are legally responsible for the conduct of Defendant Wilcox, and/or Defendant Auerbach, and/or employer Defendant Pima Animal Care Center, and/or employer Defendant Pima County Health Department, and/or employer Defendant Pima County and the resulting injuries and damages suffered by the

1 Plaintiffs as alleged herein. On information and belief, the fictitiously named defendants
2 are, in some manner, responsible for the acts of Defendant Wilcox, and/or Defendant
3 Auerbach, and/or employer Defendant Pima Animal Care Center, and/or employer
4 Defendant Pima County Health Department, and/or employer Defendant Pima County
5 alleged herein. When the true names of these defendants are ascertained, Plaintiffs will
6 seek leave of the court to amend the Complaint.

7 9. Venue is proper in Pinal County because the facts giving rise to the cause of
8 action occurred in Pinal County, Arizona.

9 10. Plaintiffs seek damages in excess of the minimum jurisdictional limits of this
10 Court.

11 11. Upon information and belief, at the time of said collision, Defendant Jennifer
12 Wilcox was acting for and on behalf of her marital community.

13 12. Defendant Jennifer Wilcox was acting within the course and scope of her
14 employment or under the direction and control of Defendant Pima Animal Care Center
15 such that legal liability is imputed to Defendant Pima Animal Care Center under the
16 doctrine of *Respondeat Superior* for the acts of Defendant Jennifer Wilcox.

17 13. Upon information and belief, at the time of said collision, Defendant Kristen
18 Auerbach was acting for and on behalf of her marital community.

19 14. Defendant Kristen Auerbach was acting within the course and scope of her
20 employment or under the direction and control of Defendant Pima Animal Care Center
21 such that legal liability is imputed to Defendant Pima Animal Care Center under the
22 doctrine of *Respondeat Superior* for the acts of Defendant Kristen Auerbach.

23 **II. GENERAL ALLEGATIONS OF FACT**

24 15. On or about January 17, 2018, Plaintiff Shelly Bortugno entered into an
25 adoption agreement with Defendant Pima Animal Care Center to adopt a Rottweiler named
26 Clarke.
27
28

1 16. Pima County benefits from the adoption of dogs and the issuance of dog
2 licenses by establishing a fee for each dog license pursuant to A.R.S. §11-1008 and §11-
3 1013, et seq.

4 17. Plaintiff Shelly Bortugno paid \$30.00 to adopt Clarke.

5 18. Defendant Pima Animal Care Center's Refund Policy stated that they screen
6 animals for aggression.

7 19. On January 9, 2018, Defendant Jennifer Wilcox examined Clarke and wrote
8 she was unable to examine (attempting to bite).

9 20. Defendant Pima Animal Care Center's new facility located at 4000 N.
10 Silverbell Rd., Tucson, AZ 85745 was at capacity on January 16, 2018 after taking in 140
11 dogs between January 14, 2018 and January 16, 2018.

12 21. The second half of the new facility located at 4000 N. Silverbell Rd., Tucson,
13 AZ 85745 was closed and under renovation between January 14, 2018 and January 16,
14 2018, creating severely limited kennel space.

15 22. To alleviate the over-crowding situation, Defendant Pima Animal Care
16 Center offered half-off dog adoption fees to help boost traffic into the new facility located
17 at 4000 N. Silverbell Rd., Tucson, AZ 85745.

18 23. Defendant Kristen Auerbach stated "we're really going to need people to
19 come out and keep adopting and fostering [dogs] so we can keep these dogs out of the
20 shelter to keep the numbers down".

21 24. Due to a severely overcrowded dog population at Defendant Pima Animal
22 Care Center, Defendant Kristen Auerbach instructed Defendant Pima Animal Care Center
23 to incentivize dog adoptions by reducing adoption fees in half.

24 25. Defendant Pima Animal Care Center failed to properly screen some of these
25 adoptions, including Clarke's adoption.

26 26. Defendant Kristen Auerbach was motivated to adopt out as many dogs as
27 possible to relieve the overcrowding at the new facility located at 4000 N. Silverbell Rd.,
28 Tucson, AZ 85745.

1 27. Defendant Jennifer Wilcox, Defendant Kristen Auerbach and Defendant
2 Pima Animal Care Center knew that Clarke was aggressive and that she was not suitable
3 for adoption.

4 28. On January 19, 2018, Clarke bit Plaintiff Joseph Bortugno on the cheek.

5 29. Two weeks later, on February 4, 2018, Plaintiff Shelly Bortugno was bitten
6 in the face by Clarke, suffering severe facial injuries and infection.

7 30. On February 4, 2018, Plaintiff Shelly Bortugno filed a report with Defendant
8 Pima Animal Care Center and Clarke was removed and euthanized.

9 31. At the time of Clarke's removal, Pinal Animal Control Officer Luke Ziccardi
10 mentioned to Plaintiffs that Clarke should have never been allowed to be adopted because
11 she showed aggressive behavior prior to being released to them for adoption

12 32. That as a proximate result of the negligence, carelessness and recklessness
13 of Defendants, Plaintiffs sustained severe personal injuries. Plaintiffs have suffered
14 emotional distress, pain and suffering, as well as having incurred medical and other special
15 damages, and other losses and miscellaneous expenses in amounts to be proven at trial.
16 Plaintiff will continue to suffer pain as a result of the injuries and will incur additional
17 medical expenses in the future.

18 33. That Plaintiffs' enjoyment of life has been impaired and will remain so in the
19 future.

20 **III. COUNT ONE**

21 **(Negligence – Defendant Pima Animal Care Center)**

22 34. Plaintiffs incorporate all previous paragraphs and allegations herein by
23 reference.

24 35. Defendant Pima Animal Care Center, as owner, controller, resident, manager
25 and/or representative of the facility located at 4000 N. Silverbell Rd., Tucson, AZ 85745,
26 negligently:

27 a. Failed to warn Plaintiffs of the danger presented by the adoption of a
28 dangerous or vicious dog;

1 b. Failed to ensure that adoptees such as Plaintiffs were safeguarded from
2 attacks by the dogs they are trying to adopt.

3 c. Failed to safeguard Plaintiffs by allowing the adoption of a dangerous or
4 vicious dog.

5 e. Failed to comply with the applicable laws and regulations of the State of
6 Arizona and the applicable Federal laws and regulations; and

7 f. Failed to exercise the degree of care required under the circumstances.

8 36. The actions and/or inactions of Defendant Pima Animal Care Center are the
9 legal and proximate cause of the Plaintiffs' damages.

10 37. Plaintiffs have been damaged as a result of the Defendant Pima Animal Care
11 Center's negligence.

12 **IV. COUNT TWO**

13 **(Negligence – Defendant Kristen Auerbach)**

14 38. Plaintiffs incorporate all previous paragraphs and allegations herein by
15 reference.

16 39. Defendant Kristen Auerbach, as director of the facility located at 4000 N.
17 Silverbell Rd., Tucson, AZ 85745, negligently:

18 a. Failed to warn Plaintiffs of the danger presented by the adoption of a
19 dangerous or vicious dog;

20 b. Failed to ensure that adoptees such as Plaintiffs were safeguarded from
21 attacks by the dogs they are trying to adopt.

22 c. Failed to safeguard Plaintiffs by allowing the adoption of a dangerous or
23 vicious dog.

24 e. Failed to comply with the applicable laws and regulations of the State of
25 Arizona and the applicable Federal laws and regulations; and

26 f. Failed to exercise the degree of care required under the circumstances.

27 40. The actions and/or inactions of Defendant Kristen Auerbach are the legal and
28 proximate cause of the Plaintiffs' damages.

41. Plaintiffs have been damaged as a result of the Defendant Kristen Auerbach's negligence.

V. COUNT THREE

(Negligence – Defendant Jennifer Wilcox)

42. Plaintiffs incorporate all previous paragraphs and allegations herein by reference.

43. Defendant Jennifer Wilcox, as veterinarian of the facility located at 4000 N. Silverbell Rd., Tucson, AZ 85745, negligently:

a. Failed to warn Plaintiffs of the danger presented by the adoption of a dangerous or vicious dog;

b. Failed to ensure that adoptees such as Plaintiffs were safeguarded from attacks by the dogs they are trying to adopt.

c. Failed to safeguard Plaintiffs by allowing the adoption of a dangerous or vicious dog.

e. Failed to comply with the applicable laws and regulations of the State of Arizona and the applicable Federal laws and regulations; and

f. Failed to exercise the degree of care required under the circumstances.

44. The actions and/or inactions of Defendant Jennifer Wilcox are the legal and proximate cause of the Plaintiffs' damages.

45. Plaintiffs have been damaged as a result of the Defendant Jennifer Wilcox's negligence.

VI. COUNT FOUR

(Respondeat Superior)

46. Plaintiffs incorporate all previous paragraphs and allegations herein by reference.

47. Defendant Pima Animal Care Center, Defendant Kristen Auerbach and Defendant Jennifer Wilcox were employees of Defendants Pima County and/or Pima County Health Department at the time of the collision.

1 48. At the time of the incident, Defendant Pima Animal Care Center, Defendant
2 Kristen Auerbach and Defendant Jennifer Wilcox were acting within the course and scope
3 of their employment with Defendants Pima County and/or Pima County Health
4 Department.

5 49. Defendant Pima Animal Care Center, Defendant Kristen Auerbach and
6 Defendant Jennifer Wilcox owed a duty to the Plaintiffs to keep them safe from dogs with
7 known and/or unknown propensities for aggression.

8 50. Defendant Pima Animal Care Center, Defendant Kristen Auerbach and
9 Defendant Jennifer Wilcox breached their duty of care by adopting a dog that they knew
10 was vicious and/or aggressive.

11 52. Since Defendant Pima Animal Care Center, Defendant Kristen Auerbach and
12 Defendant Jennifer Wilcox were working within the course and scope of their employment,
13 Defendants Pima County and/or Pima County Health Department are vicariously liable for
14 the negligent actions of their employees pursuant to the doctrine of *Respondeat Superior*.

15 53. The actions and/or inactions of Defendants Pima County and/or Pima County
16 Health Department and Defendant Pima Animal Care Center, Defendant Kristen Auerbach
17 and Defendant Jennifer Wilcox are the legal and proximate cause of the Plaintiffs'
18 damages.

19 54. The Plaintiffs have been damaged as a direct and proximate result of
20 Defendant Pima Animal Care Center, Defendant Kristen Auerbach and Defendant Jennifer
21 Wilcox's negligence and carelessness, for which Defendants Pima County and/or Pima
22 County are liable.

23 **VII. COUNT FIVE**

24 **(Breach of Implied or Expressed Warranty)**

25 55. Plaintiffs incorporate all previous paragraphs and allegations herein by
26 reference.

27 56. Pursuant to Paragraph 4 of Defendant Pima Animal Care Center's Refund
28 Policy, it states "PACC screens animals for aggression, but makes no other claim or
representations as to the behavior if the animal(s) we place into adoption'.

1 57. Defendant Pima Animal Care Center breached its warranty pursuant to
2 Arizona Revised Statute § 47-2313 that they would screen Clarke for aggression, among
3 other things, failing to notify Plaintiffs' of Defendant Jennifer Wilcox's January 9, 2018
4 encounter with Clarke consistent with their policies and procedures.

5 58. The actions and/or inactions of Defendants are the legal and proximate cause
6 of Plaintiff's damages.

7 59. The Plaintiffs have been damaged as a direct and proximate result of
8 Defendant Pima Animal Care Center, Defendant Kristen Auerbach and Defendant Jennifer
9 Wilcox's breach or implied or expressed warranties, for which Defendants Pima County
10 and/or Pima County are liable.

11 **WHEREFORE**, Plaintiffs respectfully requests that this Honorable Court enter
12 judgment for the Plaintiffs and against the Defendants in an amount in excess of the
13 minimum jurisdictional limits of this Court for the damages caused by the Defendants.
14 Plaintiffs also pray that they be awarded their costs, pre- and post-judgment interest at the
15 maximum rate allowed by law, expenses and fees associated with prosecuting this matter,
16 and for any additional damages the Court deems just and proper.

17 DATED this 17th day of January, 2019.

18 ***DOUG ZANES & ASSOCIATES, PLLC***

19 By /s/ Rory B. Riley.
20 Rory B. Riley, Esq.
21 Attorney for Plaintiff
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