

**SECOND JUDICIAL DISTRICT COURT
COUNTY OF BERNALILLO
STATE OF NEW MEXICO**

JANE DOE,

Plaintiff,

v.

No. _____

**FORMER CORRECTIONAL
OFFICER BENNY CHEE, in his individual
capacity; FORMER WARDEN ROBERTA
LUCERO-ORTEGA, in her individual capacity;
SERGEANT RANDY GIFFORD, in his
individual capacity; and MAJOR GARY
TRUJILLO, in his individual capacity,**

Defendants.

COMPLAINT FOR VIOLATIONS OF CIVIL RIGHTS

Plaintiff Jane Doe brings this Complaint for damages resulting from the deprivation of her rights under the Eighth Amendment to the United States Constitution, pursuant to 42 U.S.C. Sections 1983 and 1988. As grounds for this Complaint, Jane Doe alleges as follows.

INTRODUCTION

Like most incarcerated women, Jane Doe came to prison with a tragic personal history of trauma and abuse. While behind bars, she tried to wrestle with the impact of the past traumas that brought her there in the first place. Defendant Benny Chee took advantage of Jane Doe when she most needed support and guidance. He slowly broke down her defenses, gained her trust, and made her believe that she could feel safe with him. Jane Doe trusted Defendant Chee with the most vulnerable parts of herself. Instead of honoring his duty as a correctional officer to protect her, Defendant Chee used his position of power to exploit Jane Doe's vulnerability and violate her in the most intimate way possible.

Defendant Chee raped Jane Doe while she was imprisoned and powerless. He shattered her whole world and irreparably changed who she was. The violence Defendant Chee inflicted on her infected every part of Jane Doe's life. He stole her sense of safety and replaced it with fear. He robbed her of the ability to trust and he replaced it with self-doubt and mistrust. He made her feel worthless and damaged. When Defendant Chee raped Jane Doe, he left her with emotional scars that can never fully heal.

Even after Defendant Chee was prosecuted and sentenced for what he did, Jane Doe could not escape the place where he raped her or the people who allowed it to happen. She suffered harassment, humiliation, and abuse at the hands of other prison employees and fellow prisoners. Defendant Chee impregnated Jane Doe and left her scared and alone in an unimaginable environment to experience any pregnancy. She suffered a frightening and difficult miscarriage, after which she again had to return to the site of her abuse and attempt to move forward with her life.

Society has chosen to punish people who commit criminal acts with incarceration. Being subjected to rape and sexual abuse by the very people charged with keeping the prison environment safe is not a part of that punishment. Rather, every individual employed by the New Mexico Corrections Department had a constitutional, legal, and moral duty to care for Jane Doe and *protect* her from abuse. Defendants grievously failed to fulfill that responsibility and they grievously failed Jane Doe. Each Defendant in this case actively fostered the culture at WNMCF that emboldened, enabled, and empowered Defendant Chee to rape Jane Doe. Each Defendant participated in the culture that made Defendant Chee believe he could get away with it. Defendants created an environment at WNMCF in which sexual abuse is normalized, ignored, and dismissed, and they forced Jane Doe to pay the price.

Jane Doe comes before this court at great personal cost, reliving some of the worst moments of her life. She comes to redress her injuries, to shed light on Defendants' wrongdoing, and in the hope that she can prevent what happened to her from happening to others. Jane Doe comes before this court to reclaim some of what Defendants have taken from her, because she refuses to live her life only as their victim.

PARTIES

1. Because of the deeply intimate and traumatic nature of the allegations herein and to protect her from further retraumatization, Plaintiff brings this case under the pseudonym "Jane Doe." During the incidents complained of herein, Plaintiff Jane Doe was incarcerated at Western New Mexico Correctional Facility ("WNMCF"), located in Grants, Cibola County, State of New Mexico. Jane Doe is a current resident of Sandoval County, New Mexico.

2. WNMCF is a governmental entity which at all material times employed Defendant Benny Chee ("Defendant Chee") as a Correctional Officer, Defendant Roberta Lucero-Ortega ("Defendant Lucero-Ortega") as Warden, Defendant Randy Gifford ("Defendant Gifford") as a Sergeant Correctional Officer, and Defendant Gary Trujillo ("Defendant Trujillo") as a Major Correctional Officer.

3. Jane Doe contends that at all material times Defendant Chee was acting within the course and scope of his duties, is a person under 42 U.S.C. § 1983, and he is sued in his individual capacity. Upon information and belief, Defendant Chee is a current resident of Apache County, Arizona.

4. Jane Doe contends that at all materials times Defendant Lucero-Ortega was acting within the course and scope of her duties, is a person under 42 U.S.C. § 1983, and she is sued in

her individual capacity. Upon information and belief, Defendant Lucero-Ortega is a current resident of Bernalillo County, New Mexico.

5. Jane Doe contends that at all materials times Defendant Gifford was acting within the course and scope of his duties, is a person under 42 U.S.C. § 1983, and he is sued in his individual capacity. Upon information and belief, Defendant Gifford is a current resident of Cibola County, New Mexico.

6. Jane Doe contends that at all materials times Defendant Trujillo was acting within the course and scope of his duties, is a person under 42 U.S.C. § 1983, and he is sued in his individual capacity. Upon information and belief, Defendant Trujillo is a current resident of Cibola County, New Mexico.

JURISDICTION AND VENUE

7. This Court has jurisdiction over the subject matter and parties to this action because New Mexico district courts are courts of general jurisdiction and have original jurisdiction in all matters and causes which are not listed as exceptions in the New Mexico Constitution. N.M. Const. art. VI, § 13.

8. Venue is proper in the County of Bernalillo because at least one Defendant, Defendant Lucero-Ortega, currently resides in the county. *See* NMSA 1978, § 38-3-1.

FACTUAL ALLEGATIONS

I. Defendant Chee Sexually Assaulted Jane Doe

9. Jane Doe was incarcerated on December 16, 2015.

10. Defendant Chee began paying special attention to Jane Doe around December 2017, when she was being held in solitary confinement in a part of WNMCF known to prisoners as “the dungeon.”

11. In solitary confinement, Jane Doe was vulnerable, isolated, and starved for human interaction.

12. Defendant Chee talked to her and brought her books and magazines, which provided a small amount of relief in the awful condition of her confinement.

13. When she was released from solitary confinement, Jane Doe was placed in Unit 8.

14. Defendant Chee became the evening correctional officer for Unit 8 around the same time that Jane Doe was placed there.

15. As a correctional officer in Jane Doe's unit, Defendant Chee had profound power over all aspects of her life at WNMCF.

16. He had the power to control where she went, what she ate, and who she communicated with.

17. Defendant Chee also had the power to extend Jane Doe's incarceration by taking away her earned "good time" credits.

18. As officer for Unit 8, Defendant Chee continued to pay special attention to Jane Doe.

19. In the evenings, he would call her into the unit control room to talk and spend time alone with him, violating prison rules which prohibited prisoners from being out and about after evening call, and which prohibited them from being in the control room at all.

20. Upon information and belief, there are no cameras in the Unit 8 control room.

21. For a couple of months, Jane Doe believed that she had a friend in Defendant Chee.

22. She was vulnerable and distraught about being in prison and the circumstances that brought her there, and for that reason she liked having someone to talk to about her feelings.

23. Defendant Chee listened to Jane Doe and gave her advice about the troubles she was facing.

24. He made her feel as though they had a special, close relationship and that she could trust him.

25. After breaking down her defenses and lulling her into this sense of safety, Defendant Chee took advantage of Jane Doe's defenselessness and his position of authority over her to abuse her.

26. In mid-February, after a late-night conversation in which Jane Doe was particularly emotionally vulnerable, Defendant Chee made sexual advances toward her in his control room office.

27. Jane Doe felt helpless to say no to Defendant Chee, who was a correctional officer with incredible power over her life.¹

28. She felt that she had no choice but to acquiesce and allow Defendant Chee to have sex with her.

29. After that night, Jane Doe told Defendant Chee clearly that she did not want to have sex with him.

30. When she told Defendant Chee this, he got angry and started treating Jane Doe badly.

31. He would get angry if Jane Doe was not outside of her cell and waiting for him when he arrived at the unit for his shift.

32. If Jane Doe wasn't where Defendant Chee wanted her to be, he would look for her on the prison security cameras and demand to know where she had been.

33. About a week after this first incident, Defendant Chee again called Jane Doe to come out of her cell to the control room after count.

¹ Because of the immense power that corrections staff wield over every part of prisoners' lives, sexual contact between staff and prisoners is inherently coercive. In recognition of this fact, New Mexico law makes it a felony for corrections staff to have sex with prisoners under any circumstances. *See* NMSA 1978, § 30-9-11(E)(2).

34. She was sitting in his office talking with him when he pulled down her sweatpants and put his mouth on her vagina.

35. Jane Doe told Defendant Chee that she wanted to leave.

36. Instead of allowing her to go back to her bed, Defendant Chee unbuttoned his pants and pulled out his penis.

37. He grabbed Jane Doe's head and hair and put her mouth around his penis.

38. Defendant Chee ejaculated into Jane Doe's mouth.

39. Afterward, Defendant Chee said nothing and simply left the room.

40. The next time Defendant Chee assaulted Jane Doe it was again in the control room.

41. He bent Jane Doe over his desk, pulled down her pants, and raped her from behind.

42. Defendant Chee again ejaculated inside Jane Doe.

43. Defendant Chee assaulted Jane Doe a final, fourth time, again in the control room.

44. After talking with Defendant Chee for a while one night, Jane Doe told him that she was going to bed and said good night.

45. Defendant Chee responded, "You're not going anywhere."

46. As Jane Doe got up to leave, he violently grabbed her arms, pushing her up against the door of the office and then pulling her back toward him.

47. Defendant Chee pulled down Jane Doe's pants and bent her over the desk.

48. He took off his belt and put on it on his desk next to her.

49. Then Defendant Chee pulled down his pants and raped Jane Doe again, ejaculating into her.

50. On several occasions, Defendants Gifford saw Defendant Chee sitting alone with Jane Doe in his office with the lights off after evening count, which was strictly against the rules.

51. In fact, no prisoners were supposed to be in the control room at all, let alone one-on-one at night, after count, with the lights off.

52. Upon information and belief, Defendant Trujillo was also aware of Defendant Chee's inappropriate conduct.

53. Yet neither Defendant intervened or said anything to Jane Doe about what they knew or witnessed.

54. Jane Doe knew that other correctional officers had seen what was going on and wanted to ask for help.

55. However, she was scared and unsure who to trust, because she knew that victims of sexual abuse at WNMCF were often blamed and retaliated against by prison staff.

56. Upon information and belief, neither Defendant Gifford nor Defendant Trujillo said anything to Defendant Chee regarding his inappropriate, prohibited conduct with Jane Doe or otherwise attempted to prevent him from engaging in further inappropriate and illegal conduct.

57. On March 22, 2017, Jane Doe learned that she was pregnant with Defendant Chee's baby.

58. That same day, the New Mexico State Police began its criminal investigation into Defendant Chee.

59. On Friday, May 19, 2017, when she was approximately eight weeks into her pregnancy, Jane Doe woke up with severe cramping in her abdomen and found she was bleeding.

60. Jane Doe, who had two children already, knew that something was wrong.

61. Over the course of the weekend, Jane Doe repeatedly told prison staff that she was bleeding.

62. On Monday, May 22, 2017, Jane Doe woke up to find blood everywhere.

63. Finally, prison staff took her to the hospital, where she learned that she had suffered a miscarriage.

64. At the time of her miscarriage, Jane Doe had come to terms with and decided to continue her pregnancy.

65. The miscarriage left her feeling devastated and depressed; she cried for days after it happened.

66. This ordeal also resurfaced her most raw and painful feelings about Defendant Chee and what he had done to her.

67. Even after Defendant Chee was gone, Jane Doe couldn't escape the environment where he had raped her, or his former co-workers and supervisors, who harassed, verbally abused, and blamed her for what he had done.

68. On March 26, 2018, Defendant Chee admitted to raping Jane Doe and pleaded guilty to Criminal Sexual Penetration in the Third Degree (Force or Coercion) in violation of New Mexico Statutes Annotated Section 30-09-11(F).

II. Defendants Enabled and Fostered a Dangerous Environment at WNMCF Rife with Sexual Abuse

69. Upon information and belief, Defendants, including Defendant Lucero Ortega as Warden of WNMCF, fostered a culture at the prison that emboldens and empowers correctional officers to use their positions of power to sexually abuse women in NMCD custody.

70. Upon information and belief, sexual harassment, coercion, and assault by correctional officers at WNMCF frequently goes unreported because the victims of sexual abuse are afraid that they will be retaliated against for reporting or cooperating in investigations into abuse by officers.

71. Additionally, upon information and belief, even after reporting sexual assaults and harassment by correctional officers, women in WNMCF custody are often forced to remain in close contact with and under the control of their abusers.

72. Further, upon information and belief, victims of sexual abuse in NMCD custody are often themselves punished for reporting or for allegedly having “inappropriate relationships” with their abusers.

73. Upon information and belief, offending officers are often serial offenders because they know that women cannot leave the facility and will remain under their control.

74. Defendants have fostered a sexually abusive culture by:

- a. negligently hiring, training, supervising, and retaining correctional officers who commit violence, harassment, and abuse against women in NMCD custody;
- b. failing to enforce existing policies that, upon information and belief, were enacted for the purpose of protecting individuals in NMCD custody from being taken advantage of, victimized, and abused;
- c. failing to maintain sufficient camera placement around WNMCF, including failing to repair broken or non-functional cameras placed around the prison;
- d. failing to properly screen correctional officers entering WNMCF, allowing them to bring special items to curry favor with and/or bribe certain prisoners;
- e. allowing officers such as Defendant Chee to have extended and unsupervised one-on-one time with prisoners;
- f. failing to follow PREA protocols and procedures;
- g. refusing to keep prisoners’ PREA grievances and details of resulting investigations confidential, leaving victims open to retaliation and further harassment from

correctional officers and other prisoners, thereby chilling prisoners' ability to report abuse in the first place; and

- h. other acts, omissions, customs, and practices in willful, deliberately indifferent, and/or reckless disregard of the constitutional rights of women in WNMCF custody.

75. The sexually abusive culture Defendants fostered at WNMCF emboldened and enabled Defendant Chee to rape Jane Doe multiple times, resulting in a pregnancy and traumatic miscarriage.

76. Defendants' failure to follow protocol and refusal to take the risk of sexual abuse seriously is evidenced by the fact that, upon information and belief, numerous WNMCF staff, including Defendants Gifford and Trujillo, knew that Defendant Chee was frequently spending extended unsupervised time at night alone with Jane Doe, but did nothing to address the risk of harm to her.

77. By fostering a dangerous culture of sexual abuse at WNMCF, Defendants emboldened and implicitly sanctioned the actions of numerous officers who harassed and abused Jane Doe for having been victimized by Defendant Chee and for having cooperated with investigations into Defendant Chee's illegal conduct.

78. Upon information and belief, numerous WNMCF officers have been investigated by the state police for sexual misconduct involving prisoners.

79. Numerous WNMCF officers, including Defendant Chee, have been charged with felony crimes for physically and sexually assaulting women prisoners.

80. These criminal charges include, but are not limited to, the following:

- a. On June 12, 2017, Correctional Officer Alexander Barron was charged with two (2) counts of Criminal Sexual Penetration in the Second Degree (Position of Authority Over Inmate).
- b. On August 11, 2017, Correctional Officer Michael A. Martinez was charged with six (6) counts of Criminal Sexual Penetration in the Second Degree (Position of Authority Over Inmate). Officer Martinez pleaded guilty to Criminal Sexual Penetration in the Third Degree (Force or Coercion) on March 26, 2018.
- c. On March 23, 2018, Correctional Officer Kegan Jones was charged with two (2) counts of violating NMSA 1978, § 30-9-11(E)(2), Criminal Sexual Penetration in the Second Degree (Position of Authority Over Inmate).
- d. On January 12, 2018, Correctional Officer Eluid Stan Arguello was charged with two (2) counts of Criminal Sexual Penetration in the Second Degree (Position of Authority Over Inmate).

81. On March 23, 2017, Defendant Benny Chee was charged with four (4) counts of Criminal Sexual Penetration in the Second Degree (Position of Authority Over Inmate).

82. On March 26, 2018, Defendant Chee pleaded guilty to Criminal Sexual Penetration in the Third Degree (Force or Coercion) for raping Jane Doe.

83. The culture of sexual abuse at WNMCF poses a threat and risk of harm to the entire community of women who are imprisoned at the facility.

CAUSES OF ACTION

**COUNT I: CRUEL AND UNUSUAL PUNISHMENT IN VIOLATION OF THE EIGHTH
AMENDMENT
Against Defendant Chee**

84. Jane Doe incorporates by reference all preceding paragraphs as though they were stated fully herein.

85. Jane Doe had the right to be free from cruel and unusual punishment under the Eighth Amendment to the United States Constitution.

86. Jane Doe had the right to be secure in her bodily integrity and free from sexual assault and battery.

87. After consulting with his lawyer and being fully advised of his constitutional rights, Defendant Chee plead guilty to raping Jane Doe by use of force and/or coercion.

88. Defendant Chee violated Jane Doe's Eighth Amendment rights when he used his position as a correctional officer to inflict cruel and usual punishment on her by sexually assaulting her.

89. Defendant Chee's acts were knowing, intentional, malicious, sadistic, willful, wanton, and in gross disregard of Jane Doe's constitutional rights.

90. Defendant Chee acted with the purpose of causing harm to and victimizing Jane Doe.

91. Defendant Chee did not act with the purpose of achieving any legitimate goal.

92. As a direct and proximate result of Defendant Chee's criminal conduct, Jane Doe suffered, and continues to suffer, damages.

**COUNT II: FAILURE TO PROTECT IN VIOLATION OF THE EIGHTH
AMENDMENT
Against Defendants Lucero-Ortega, Gifford, and Trujillo**

93. Jane Doe incorporates by reference all preceding paragraphs as though they were stated fully herein.

94. Jane Doe had the right under the Eighth Amendment to be protected from serious harm.

95. Defendant Chee seriously harmed Jane Doe when he sexually assaulted her, in violation of the Eighth Amendment.

96. Defendants Lucero-Ortega, Gifford, and Trujillo violated Jane Doe's Eighth Amendment right to bodily integrity and freedom from cruel and unusual punishment when they failed to protect her from sexual assault.

97. Defendants failed to protect Jane Doe from sexual assault when they created the dangerous environment rife with sexual abuse at WNMCF.

98. Defendants knew that this dangerous environment put Jane Doe and other women at WNMCF at substantial risk of serious harm.

99. Defendants further failed to protect Jane Doe and other women at WNMCF when they refused to address and remedy the dangerous environment and culture among correctional officers regarding sexual harassment and abuse.

100. Defendants Gifford and Trujillo particularly failed to protect Jane Doe when they decided not to act on the knowledge that Defendant Chee was spending extended, unsupervised time alone with Jane Doe after evening count.

101. Defendants refused to take reasonable actions to reduce Jane Doe's risk of being victimized.

102. Defendant Lucero-Ortega's acts and omissions were willful, wanton, deliberately indifferent, and in reckless disregard of Jane Doe's constitutional rights.

103. Defendant Gifford's acts and omissions were willful, wanton, deliberately indifferent, and in reckless disregard of Jane Doe's constitutional rights.

104. Defendant Trujillo's acts and omissions were willful, wanton, deliberately indifferent, and in reckless disregard of Jane Doe's constitutional rights.

105. As a direct and proximate result of Defendants' acts and omissions, including creation of and failure to correct a general condition of unreasonable risk at WNMCF, Jane Doe suffered, and continues to suffer, damages.

106. As a direct and proximate result of Defendants' failure to address the known risk of harm to Jane Doe from Defendant Chee, Jane Doe suffered, and continues to suffer, damages.

107. Jane Doe's damages were exacerbated by Defendants' treatment of her after the sexual abuse and her resulting pregnancy came to light.

**COUNT III: CLAIM FOR SUPERVISORY LIABILITY
Against Defendants Lucero-Ortega, Gifford, and Trujillo**

108. Jane Doe incorporates by reference all preceding paragraphs as though they were stated fully herein.

109. At all times relevant to this Complaint, the Eighth Amendment prevented WNMCF and its employees from inflicting cruel and unusual punishment by subjecting prisoners in state custody to sexual abuse.

110. Defendants' failure to adequately train, supervise, and discipline WNMCF employees, along with its refusals to enforce adequate procedures and regulations to prevent conduct such as that complained of herein, constitutes a violation of Jane Doe's Eighth Amendment rights.

111. Defendants' failure to follow PREA protocols and to prevent retaliation against individuals who report violations of PREA, thereby chilling future reporting of misconduct such as occurred in this case, constitutes a violation of Jane Doe's Eighth Amendment rights.

112. Defendants' failures were a direct cause of the injuries suffered by Jane Doe, including pain and suffering, invasion of bodily integrity, and severe psychological and emotional distress.

113. Defendants owed Jane Doe an affirmative duty to keep her safe from serious harm and free from violations of her constitutional rights.

114. Defendants' actions and failures to act were so culpable as to constitute participation in Defendant Chee's unlawful conduct, in violation of the Eighth Amendment.

JURY DEMAND

115. Plaintiff hereby demands a trial by jury on all counts so triable.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff Jane Doe respectfully requests that the Court enter a judgment in her favor and award:

- A. Damages in an amount a jury deems sufficient to compensate Jane Doe for Defendants' unlawful conduct;
- B. Damages for the nature, extent, and duration of Jane Doe's injuries including, but not limited to, her mental and emotional injuries, pain and suffering, personal humiliation, and costs;
- C. Punitive damages in an amount a jury deems sufficient to deter Defendants and other prison officials and staff from acting in gross and reckless disregard of, or indifference to, the rights and safety of women in NMCD custody;
- D. Reasonable attorneys' fees and costs incurred bringing this action, including expert fees, pursuant to 42 U.S.C. § 1988; and
- E. Such other and further relief as the Court deems just and proper.

Dated: November 4, 2019

Respectfully Submitted,

/s/ Lalita Moskowitz

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