

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT COURT

D-101-CV-2018-00033

MANUELA VIGIL, Personal Representative
of the ESTATE OF DAVID VIGIL, Deceased,

Plaintiff,

v.

CENTURION CORRECTIONAL
HEALTHCARE OF NEW MEXICO, LLC,
BARRY J. BEAVEN, M.D., STATE OF NEW
MEXICO, NEW MEXICO CORRECTIONS
DEPARTMENT, CENTRAL NEW MEXICO
CORRECTIONAL FACILITY, WARDEN
KEN SMITH, and JOHN DOES 1-10
(employees, staff, agents of NMCD and/or Centurion
Correctional Healthcare of New Mexico, LLC)

Defendants.

**FIRST AMENDED COMPLAINT FOR MEDICAL NEGLIGENCE,
NEGLIGENCE, NEGLIGENT HIRING, TRAINING AND SUPERVISION,
NEGLIGENT OPERATION OF A CORRECTIONAL FACILITY,
RES IPSA LOQUITUR, PUNITIVE DAMAGES**

COMES NOW the Plaintiff, by and through her attorneys Collins & Collins, P.C.
(Parrish Collins, Esq.) and Guebert Bruckner Gentile P.C., (Terry R. Guebert, Robert F. Gentile and
Laura E. Horton) and for her First Amended Complaint states as follows:

PARTIES

1. Plaintiff, Manuela Vigil, was appointed Personal Representative of the
Estate of David Vigil, Deceased, on July 31, 2017, and is a resident of Albuquerque,
Bernalillo County, New Mexico (hereinafter "Plaintiff"); David Vigil, died on July 7, 2017
following the negligent and reckless medical care of Centurion.

2. Prior to his wrongful death, Plaintiff David Vigil was an inmate at

Central New Mexico Correctional Facility (hereinafter “CNMCF”) in Los Lunas, New Mexico.

3. Centurion Correctional Healthcare of New Mexico, LLC (hereinafter “Centurion”) is a domestic limited liability company registered to do business in New Mexico, whose registered agent for service of process is CT Corporation System, 206 S. Coronado Avenue, Espanola, New Mexico, 87532-2792.

4. Centurion is contracted to provide medical services to New Mexico Corrections Department (NMCD) inmates by GENERAL SERVICES CONTRACT #16-770-1300-0097 (GSC) which commenced on June 1, 2016 and continues to the present.

5. At all material times, Centurion acted through its owners, officers, directors, employees, agents or apparent agents, including, but not limited to, administrators, management, nurses, doctors, technicians and other staff, and is responsible for their acts or omissions pursuant to the doctrines of respondeat superior, agency or apparent agency.

6. Upon information and belief, Barry J. Beaven, M.D., is an employee of Centurion.

7. Upon information and belief, Barry J. Beaven, M.D., as an agent for Centurion, was responsible for the care of patients in the LTCU at all times relevant to this complaint.

8. Defendants New Mexico Corrections Department and the Central New Mexico Correctional Facility, (hereinafter “Defendants” and/or “State”) are entities of the State of New Mexico.

9. The Central New Mexico Correctional Facility (hereinafter “CNMCF”) is operated by the State of New Mexico by, under and through the New Mexico Department of Corrections.

10. The New Mexico Corrections Department (hereinafter “NMCD”) is in charge of operating the Central New Mexico Correctional Facility and is considered to be a resident of the State of New Mexico.

11. Defendant State of New Mexico has authorized NMCD to operate the CNMCF, in Los Lunas, Valencia County, New Mexico.

12. Defendant Warden Ken Smith was at all time material to this Complaint a natural person employed by the State of New Mexico as the Warden of Central New Mexico Correctional Facility and acting under of color of state law.

13. John Does 1-10 are employees, staff or agents of NMCD and/or Centurion.

JURISDICTION AND VENUE

14. All acts complained of herein occurred in Los Lunas, Valencia County, State of New Mexico.

15. Centurion's registered agent is in Espanola, New Mexico.

16. The contract for prison medical services between Centurion and the State of New Mexico was, upon information and belief, executed in Santa Fe, New Mexico.

17. Jurisdiction and venue are proper over Dr. Beaven and John Does 1-10 pursuant to NMSA § 38-3-1 (A).

18. This Court has jurisdiction over the subject matter of Plaintiff's New Mexico Tort Claims Act claims under N.M. Stat. Ann. § 41-4-1, et seq.

19. Jurisdiction over all parties and claims are proper under Article II, § 10, of the New Mexico Constitution and the law of negligence under New Mexico law.

20. David Vigil is deceased and, therefore, the Prison Litigation Reform Act is inapplicable.

STATEMENT OF FACTS

21. Mr. Vigil had a history of a seizure disorder, Hepatitis C (HCV), poly-substance abuse, depression Hypertension, epilepsy, Insulin-dependent Diabetes Mellitus (DM),

Cerebrovascular Accident (CVA) and diabetic neuropathy in both feet.

22. Mr. Vigil had been recurrently evaluated at the Bernalillo County Metropolitan Detention Center (MDC) for opiate withdrawal.

23. Mr. Vigil was taking Fluoxetine and Mirtazapine for anxiety and depression and Oxcarbazepine for epilepsy.

24. During his incarceration at the Metropolitan Detention Center, from April 26, 2017 to April 27, 2017, Mr. Vigil reported for a sick call, complaining of a head cold and back/neck aches.

25. Mr. Vigil walked very slowly to get to the SC Nurse and noted that he was very tired and that his body hurt.

26. Mr. Vigil complained of red/itchy eyes, stuffy nose, sneezing, sore throat, cough, fever, that he was achy, had a headache and general malaise.

27. Mr. Vigil was evaluated by Natalie Vance, RN and also consulted with Christopher Mercer, P.A.

28. Mr. Vigil's vitals were recorded at BP 92/60, HR 83, RR 20, temperature 99.7101.3 degrees and his O2 Saturation level was at 97%.

29. Mr. Vigil was transferred to Central New Mexico Correctional Facility on April 28, 2017.

30. On April 28, 2017, Mr. Vigil complained of daily headaches and reported blurred/double vision and hearing loss, weakness in his legs, tingling or numbness, and back pain.

31. At this time, Mr. Vigil had clear neurological symptoms along with the pre-existing neck pain and headaches.

32. Mr. Vigil was evaluated by a CNMCF Psychiatrist, instead of a medical doctor, and

advised to continue current medications: Mirtazapine, Fluoxetine and Oxcarbazepine.

33. On May 1, 2017 and May 2, 2017, labs were drawn for Mr. Vigil.

34. On May 3, 2017 physical examination of Mr. Vigil noted no acute distress.

35. It was noted that Mr. Vigil was thin and frail and he had no neck mass or adenopathy, he had no tenderness to back and full mobility, extremities were within normal limits and also with full mobility.

36. It was noted that Mr. Vigil walked slowly with a stiff gait.

37. While in the custody of CNMCF, Mr. Vigil lost 15 pounds in one week.

38. On May 15, 2017, Mr. Vigil made a sick call request for stronger pain medications due to neck and back pain.

39. On May 15, 2017, Mr. Vigil was given three doses of Narcan.

40. Following the Narcan doses, Mr. Vigil went into cardiac arrest and was transferred to the University of New Mexico Hospital.

41. Mr. Vigil was diagnosed with a large epidural abscess that spanned the entire cervical spine resulting in critical spinal canal narrowing.

42. There was also a paravertebral abscess along the entire cervical spine that resulted in severe airway narrowing at the level of oropharynx and hypopharynx.

43. Mr. Vigil was treated at the University of New Mexico Hospital for multiple conditions which complicated his hospitalization, including: epidural abscess, paravertebral abscess, sepsis, septic emboli of the kidney, pneumonia and atelectasis of the lungs, flaccid paralysis and psoas abscess.

44. Mr. Vigil was started on NG tube for nutrition and tracheostomy to secure the airways.

45. Mr. Vigil was treated with appropriate antibiotics for all the infections and transferred to Kindred Hospice on July 7, 2017.

46. Mr. Vigil was immunocompromised due to diabetes.

47. The risk of developing systemic infection in patients with drug abuse and a compromised immune system is high.

48. Any headache or neck pain with history of diabetes, epilepsy and neurological symptoms should be immediately evaluated for infection.

49. Mr. Vigil's wife and other family members report that Mr. Vigil complained that he had reported the growth on his neck, severe neck pain, and severe headaches numerous times to medical staff.

50. Following admission to CNMCF on April 28, 2017, there was little documentation of the patient's headache and neck pain symptoms, despite repeated complaints by Mr. Vigil.

51. Defendant Beaven failed to diagnose the abscess.

52. Defendant Beaven gave Mr. Vigil excessive doses of Narcan.

53. Narcan is contraindicated for patients with Mr. Vigil's medical history and symptoms at the time it was given.

54. Neither Centurion nor NMCD were accredited by the American Corrections Association (ACA) or the National Commission on Correctional Health Care (NCCHC) at times relevant to this Complaint.

55. The ACA and NCCHC establish mandatory minimum standards for correctional healthcare.

56. Failure to maintain accreditation suggests failure to establish and maintain minimum standards in correctional healthcare.

57. NMCD, the State of New Mexico and Warden Ken Smith failed to enforce critical terms of the GSC essential to the protection of the health and safety of NMCD inmates.

58. NMCD, the State of New Mexico and Warden Ken Smith failed to compel ACA and NCCHC medical accreditation for CNMCF.

59. NMCD, the State of New Mexico and Warden Ken Smith have allowed Centurion to operate the medical facilities and provide medical services to CNMCF inmate, including Plaintiff, despite the lack of ACA and NCCHC medical accreditation since the inception of the GSC.

60. NMCD, the State of New Mexico and Warden Ken Smith failed to compel ACA and NCCHC medical accreditation for CNMCF.

61. NMCD, the State of New Mexico and Warden Ken Smith failed to hold Centurion to the standards of the ACA or NCCHC.

62. NMCD, the State of New Mexico and Warden Ken Smith failed to hold Centurion to the standard of care under New Mexico law.

63. NMCD, the State of New Mexico and Warden Ken Smith failed to establish any standard of care for Centurion's provision of medical care for NMCD inmates.

64. NMCD, the State of New Mexico and Warden Ken Smith failed to properly oversee, monitor, supervise and manage Centurion's operation of medical facilities and provision of medical services to CNMCF inmates, including Plaintiff.

65. NMCD, the State of New Mexico and Warden Ken Smith failed to take corrective action against Centurion despite clear knowledge of the negligent and reckless provision of medical care by Centurion.

66. NMCD, the State of New Mexico and Warden Ken Smith fail to properly and

seriously consider medical grievances of NMCD inmates, including those at CNMCF.

67. NMCD, the State of New Mexico and Warden Ken Smith routinely denies said grievances despite clear evidence of negligence on the part of Centurion.

68. NMCD, the State of New Mexico and Warden Ken Smith have by its routine denial of medical grievances without due consideration has established a de facto policy of automatic denial of grievances.

69. NMCD, the State of New Mexico and Warden Ken Smith, and various John Doe employees and staff, routinely interfere in the grievance process of inmates.

70. NMCD, the State of New Mexico and Warden Ken Smith have created an environment and de facto policy of interference with the grievance process for purposes of preventing inmates from pursuing medical negligence claims thereon.

71. Interference includes but is not limited to:

- a. routine loss of grievance forms completed by inmates,
- b. routine failure to respond to grievances,
- c. failure to provide appropriate guidance for inmates for preparing grievance forms,
- d. refusal to accept grievance forms on arbitrary grounds,
- e. refusal of attorney involvement in the grievance process, and
- f. refusal to accept grievances prepared by lawyers on behalf of inmates.

72. The State of New Mexico and NMCD have a non-delegable duty to provide for proper, necessary and competent medical care for all inmates in the care of New Mexico Corrections Department (NMCD).

73. New Mexico Corrections Department is the agency responsible for the management

and oversight of NMCD correctional facilities including CNMCF.

74. NMCD is responsible, on behalf of the State of New Mexico, for the provision of proper, necessary and competent medical care of NMCD inmates, including those at CNMCF and for Plaintiff.

75. NMCD contracted with Centurion for the provision of medical services to NMCD inmates.

76. Centurion by the terms of the GSC was contracted by NMCD for the purposes of providing medical care to inmates in the New Mexico Department of Corrections prison system, including Plaintiff.

77. The term of the GSC began on June 1, 2016 and continues to the present.

78. By contract with the State of New Mexico, Centurion is solely responsible for medical care to inmate patients at CNMCF.

79. The GSC delegation of responsibility for medical care to NMCD inmates does not lessen the duties of the State of New Mexico or NMCD to insure proper, necessary and competent medical care to NMCD inmates.

80. NMCD's duty to provide proper, necessary and competent medical care to NMCD remains intact despite the assignment of said duties to outside contractors, including Centurion.

COUNT I
MEDICAL MALPRACTICE AND NEGLIGENCE
(All Defendants)

81. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

82. In undertaking the diagnosis, care and treatment of David Vigil, Defendants have a duty to possess and apply the knowledge, skill, and care that is used by reasonably well-qualified healthcare providers in the local community.

83. Defendants breached their duties and were grossly negligent and reckless in the management of Mr. Vigil's health and safety.

84. Defendants' negligence and recklessness include, but are not limited to:

- a) Failure to evaluate, treat and manage Mr. Vigil's abscess;
- b) Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management Mr. Vigil's abscess;
- c) Failure to create an appropriate treatment plan;
- d) Failure to implement an appropriate treatment plan;
- e) Failure to take the reasonable steps to acquire proper treatment of Mr. Vigil;
- f) Failure to refer Mr. Vigil to appropriate specialists;
- g) Failure to timely transfer Mr. Vigil to an acute care facility, such as UNMH;
- h) Failure to protect and preserve the health of Mr. Vigil;
- i) Improper prescription of Narcan prior to transfer to UNMH; and
- j) Excessive dosing of Narcan.

85. Defendants' failure to assess, treat and manage Mr. Vigil's infection was reckless, wanton and in utter disregard for the safety and welfare of Mr. Vigil.

86. The negligent and reckless acts and omissions of Defendants were the direct and proximate cause of Mr. Vigil's wrongful death.

87. Plaintiff is entitled to compensatory damages for the negligent acts and omissions of Defendants.

88. Plaintiff is entitled to punitive damages against all Defendants for their reckless and wanton acts and omissions.

COUNT II
NEGLIGENT OPERATION OF A MEDICAL FACILITY
(Centurion and NMCD)

89. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

90. NMCD has authority over all NMCD correctional facilities including CNMCF.

91. NMCD has authority and control over the operation of all medical facilities within NMCD correctional facilities including those within CNMCF.

92. NMCD is the contracting party to General Services Contract #16-770-1300-0097 (GSC) entered into between NMCD and Centurion on June 6, 2016.

93. NMCD has sole authority, control and responsibility over the execution, implementation and enforcement of the GSC.

94. NMCD has allowed numerous serious breaches and violations of the GSC, ACA and NCCHC that led to the death of David Vigil.

95. NMCD and Centurion are entrusted with the medical care of New Mexico inmates who have no other source of medical care.

96. Centurion's medical staff at CNMCF lacked sufficient expertise to assess, treat and manage Mr. Vigil's health conditions, including the abscesses.

97. Centurion was negligent in failing to properly refer Mr. Vigil to be seen by a physician who could effectively treat him.

98. By failing to either: (1) properly treat Mr. Vigil's medical conditions, or (2) properly refer Mr. Vigil to be seen by a physician who could effectively treat him, Centurion breached its

duty to medically treat Mr. Vigil in a reasonably prudent manner.

99. Such conduct amounts to negligence in running a medical facility.

100. Such conduct amounts to negligence in the treatment of Mr. Vigil.

101. The actions of Centurion were negligent, willful, wanton, and in gross and reckless disregard for Mr. Vigil's well-being.

102. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation.

103. Defendant Centurion has violated numerous provisions of ACA and NCCHC.

104. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have been complicit in the failure to obtain or maintain ACA and NCCHC through its failure to enforce the GSC.

105. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards.

106. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have failed to properly maintain oversight and enforcement of the GSC.

107. The failures of Defendants Centurion, State of New Mexico, NMCD, CNMCF and Warden Ken Smith led to the death of David Vigil.

108. As a result of the foregoing, Mr. Vigil suffered wrongful death, pain and suffering, and severe psychological and emotional distress for which Plaintiff is entitled to damages, including punitive damages.

COUNT III
NEGLIGENCE PER SE
(All Defendants)

109. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

110. Defendant Centurion is bound by the GSC to obtain and maintain American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCHC) accreditation under the terms of the GSC.

111. Defendant Centurion has never sought, obtained or maintained either ACA or NCCHC accreditation for the medical facilities and services at CNMCF as required by the GSC.

112. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation.

113. Defendants Centurion has violated numerous provisions of ACA and NCCHC.

114. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have been complicit in the failure to obtain or maintain ACA and NCCHC through its failure to enforce the GSC.

115. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards.

116. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have failed to properly maintain oversight and enforcement of the GSC.

117. The failures of Defendants Centurion, State of New Mexico, NMCD, CNMCF and Warden Ken Smith led to the death of David Vigil.

118. The ACA violations by Defendants include but are not limited to:
- a. ACA standard 4-4350 which provides for a mandatory written treatment plan that is required for offenders requiring close medical supervision, including chronic and convalescent care.
 - b. ACA standard 4-4350 which requires that that mandatory written treatment plan include directions to health care and other personnel regarding their roles in the care and supervision of the patient, and is to be approved by the appropriate licensed physician.
 - c. ACA Standard 4-4348 requiring that offenders who need health care beyond the resources available in the facility as determined by the responsible physician, are transferred under appropriate security provisions to a facility where such care is on call or available 24 hours per day.
 - d. ACA Standard 4-4348 which specifically states that treatment of an offender's condition should not be limited to resources and services available within a facility.
 - e. ACA Mandatory Standard 4-4359 which further requires that with chronic conditions that the treatment plan address the monitoring of medications, laboratory testing, the use of chronic care clinics, health record forms, and specialist consultation and review.

119. As a result of the foregoing, Defendants' negligence per se, Mr. Vigil has suffered wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

COUNT IV
NEGLIGENT HIRING, TRAINING AND SUPERVISION
(All Defendants)

120. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

121. Centurion had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of muscular dystrophy patients.

122. On information and belief, Centurion failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage Mr. Vigil's multiple medical conditions and including the emergent abscesses.

123. On information and belief, Centurion failed to properly train and supervise its employees, contractors, or agents in the use of Narcan with a patient with Mr. Vigil's medical history and contemporaneous emergent conditions.

124. Centurion is liable for damages caused by their employees and other agents while working within the scope of their employment under the doctrines of respondeat superior and agency, in an amount not presently determinable but to be proven at trial.

125. Defendant Centurion is bound by the GSC to obtain and maintain American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCHC) accreditation under the terms of the GSC.

126. Defendant Centurion has never sought, obtained or maintained either ACA or NCCHC accreditation for the medical facilities and services at CNMCF as required by the GSC.

127. The ACA and NCCHC set mandatory minimum standards for training of both medical personnel and non-medical personnel in the provision of medical services in a prison.

128. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have

knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation and to comply with the minimum mandatory standards of the ACA and NCCHC on hiring, training and supervision.

129. Defendant Centurion has violated numerous ACA and NCCHC minimum mandatory standards related to hiring, training and supervision.

130. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have been complicit in the failure to abide by ACA and NCCHC minimum mandatory standards for hiring, training and supervision.

131. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards on hiring, training and supervision.

132. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have failed to properly maintain oversight and enforcement of the GSC resulting in violations of the ACA and NCCHC minimum mandatory standards on hiring, training and supervision.

133. The failures of Defendants Centurion, State of New Mexico, NMCD, CNMCF and Warden Ken Smith led to the death of David Vigil.

134. As a result of the foregoing, Mr. Vigil's wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

COUNT V
NEGLIGENCE
(NMCD, the State of New Mexico and Warden Ken Smith)

135. NMCD, the State of New Mexico and Warden Ken Smith negligently failed to oversee Centurion in the provision of medical care to NMCD inmates, which contributed to the death of Plaintiff.

136. NMCD, the State of New Mexico and Warden Ken Smith failed to take corrective action against Centurion in clear face of recurrent and consistent negligent and reckless medical care to NMCD inmates which contributed to the death of Plaintiff.

137. NMCD, the State of New Mexico and Warden Ken Smith negligently, intentionally and knowingly interfered in the inmate grievance process with a pattern and practice of routine denial of medical grievances without due consideration of the facts and circumstances of the grievances which contributed to the death of Plaintiff.

138. NMCD, the State of New Mexico and Warden Ken Smith negligently failed to enforce critical terms of the GSC including but not limited to failure to compel CNMCF and/or Centurion accreditation by the ACA and NCCHC which contributed to the death of Plaintiff.

139. NMCD, the State of New Mexico and Warden Ken Smith negligently failed to hold Centurion to standards and guidelines of the ACA or NCCHC.

140. NMCD, the State of New Mexico and Warden Ken Smith negligently failed to hold Centurion to the medical standard of care established under New Mexico law which contributed to the death of Plaintiff.

141. NMCD, the State of New Mexico and Warden Ken Smith failed to establish or enforce any standards at all for Centurion's provision of proper, necessary and competent medical care to NMCD inmates.

142. As a result of the foregoing, Mr. Vigil has suffered wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages.

**COUNT VIII
INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS
(All Defendants)**

143. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

144. Defendants intentionally denied Mr. Vigil proper and necessary medical care for his emergent abscesses.

145. Defendants intentionally denied Mr. Vigil access to the appropriate specialists for his emergent abscesses.

146. The conduct of Defendants was extreme, outrageous and intentional.

147. Mr. Vigil suffered severe emotional distress as a result of the conduct of Defendants.

148. As a result of the foregoing, Mr. Vigil has suffered wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT VIII
RESPONDEAT SUPERIOR AND AGENCY
(Centurion)**

149. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

150. Centurion is responsible to Mr. Vigil under the doctrine of respondeat superior for the conduct of its employees and agents.

151. Centurion is responsible to Mr. Vigil under the doctrine of agency for the conduct of its employees and agents.

COUNT IX
RESPONDEAT SUPERIOR AND AGENCY
(Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith)

152. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have a non-delegable duty to provide proper and necessary healthcare to inmates in the custody of NMCD and CNMCF.

153. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have violated the duty by its failure to properly screen, hire, manage, supervise, train or exert contractual control over Defendants Centurion, Dr. Beaven and John Does 1-10.

154. Defendant Centurion is bound by the GSC to obtain and maintain American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCHC) accreditation under the terms of the GSC.

155. Defendant Centurion has never sought, obtained or maintained either ACA or NCCHC accreditation for the medical facilities and services at CNMCF as required by the GSC.

156. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation.

157. Defendant Centurion has violated numerous provisions of ACA and NCCHC.

158. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have been complicit in the failure to obtain or maintain ACA and NCCHC through its failure to enforce the GSC.

159. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have failed to properly maintain oversight and enforcement of the GSC.

160. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have been complicit in the failure to abide by ACA and NCCHC minimum mandatory standards for healthcare in a correctional setting.

161. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards for healthcare in a correctional setting.

162. Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith have failed to properly maintain oversight and enforcement of the GSC resulting in violations of the ACA and NCCHC minimum mandatory standards for healthcare in a correctional setting.

163. Under the doctrine of agency, NMCD, the State of New Mexico and Warden Ken Smith are responsible for all acts and omissions of Centurion, its employees, staff, and other agents for its non-delegable duty to provide proper, necessary and competent medical care to NMCD inmates.

164. The failures of Defendants State of New Mexico, NMCD, CNMCF and Warden Ken Smith led to the death of David Vigil.

COUNT VI
RES IPSA LOQUITUR
(All Defendants)

165. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

166. The injuries and damages, suffered by Mr. Vigil were proximately caused by Defendants.

167. It was Defendants' responsibility to manage and control their medical staff and the care and treatment of Mr. Vigil.

168. The events causing the injuries and damages to Mr. Vigil were of a kind which would not ordinarily occur in the absence of negligence on the part of Defendants.

169. The doctrine of Res Ipsa Loquitur is applicable as a theory of negligence, causation and damages in this case.

170. As a result of the foregoing, Mr. Vigil has suffered wrongful death, pain and suffering, and severe psychological and emotional distress, for which Plaintiff is entitled to damages, including punitive damages.

**COUNT VII
PUNITIVE DAMAGES
(Centurion and Dr. Beaven)**

171. Plaintiff incorporates by reference as if fully set forth herein, each and every allegation contained in the paragraphs above.

172. The acts and omissions complained of in the causes of action stated above are egregious in reckless, wanton and total disregard to the rights of Mr. Vigil, that in addition to the actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter these types of acts and omissions from occurring in the future are appropriate.

WHEREFORE, Plaintiff requests judgment as follows:

- A. Compensatory damages in an amount to be determined by this Court as adequate for pain, suffering, and injuries to David Vigil;
- B. Costs incurred by Plaintiff, including pre-judgment and post-judgment interest;
- C. Compensatory damages in an as yet undetermined amount, jointly and severally

I HEREBY CERTIFY that on the 4th day of October, 2018, I filed the foregoing Notice of Completion of Briefing electronically through the State of New Mexico's Odyssey File & Serve system and that a copy of the same was served by Odyssey on all counsel of record listed on the Service Contact list.

Alfred A. Park
Lawrence M. Marcus Geoffrey D. White
Park & Associates, LLC
3840 Masthead Street, N.E.
Albuquerque, NM 87109
(505) 246-2805
apark@parklawnm.com
lmarcus@parklawnm.com
gwhite@parklawnm.com

/s/ Laura E. Horton

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