

STATE OF NEW MEXICO
COUNTY OF SANTA FE
FIRST JUDICIAL DISTRICT

FILED
1st JUDICIAL DISTRICT COURT
Santa Fe County
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STEPHEN T. PACHECO
CLERK OF THE COURT
Tamara Snee

Case No. D-101-CV-2019-00113

Case assigned to Ortiz, Raymond Z.

JADE HETES, as personal representative of
The ESTATE OF KEITH RICHARD KOSIROG,
deceased, and as guardian of
LUKE KOSIROG-HETES and
JAGGER KOSIROG-HETES, minors,

Plaintiff,

v.

CENTRAL NEW MEXICO CORRECTIONAL FACILITY,
STATE OF NEW MEXICO, NEW MEXICO CORRECTIONS DEPARTMENT,
WARDEN KEN SMITH, WENDY PRICE, BEHAVIORAL
HEALTH BUREAU CHIEF,
TRACY HOLLINGWORTH, DEPUTY BUREAU CHIEF,
CENTURION CORRECTIONAL
HEALTHCARE OF NEW MEXICO, LLC, CHRISTOPHER ANDERSON, R.N.,
DR. WILLIAMS, ATTENDING MEDICAL PROVIDER,
JOHN JOHNSON, L.P.C., GAIL A. ROBERTSON, L.M.H.C.,
PAMELA K. SMITH, L.P.C.C., ROBERT MONTOYA, L.B.S.W.,
GABRIELA L. RAMIREZ, M.A., L.M.H.C., B. WOODBURY,
ANNE S. ORTIZ, M.D., MARCIA ESQUIBEL, L.M.S.W.,
ELIZABETH J. CHAVEZ, RDC MANAGER;
and JOHN DOES 1 through 10, employees, staff, agents of
Central New Mexico Correctional Facility
and/or Centurion Correctional Healthcare of New Mexico, LLC,

Defendants.

**COMPLAINT FOR WRONGFUL DEATH, BREACH OF CONTRACT,
MEDICAL MALPRACTICE, NEGLIGENCE,
NEGLIGENT HIRING, TRAINING AND SUPERVISION, NEGLIGENT
OPERATION OF A CORRECTIONAL FACILITY, *RES IPSA LOQUITUR*,
PUNITIVE DAMAGES AND LOSS OF CONSORTIUM**

COMES NOW the Plaintiff, Jade Hetes, Personal Representative of the Estate of
Keith Richard Kosirog, and guardian of Luke Kosirog-Hetes and Jagger Kosirog-Hetes, minors,

by and through her attorneys, Guebert Bruckner Gentile, P.C., and Collins and Collins, P.C., and for her Complaint states as follows:

PARTIES

1. Plaintiff Jade Hetes was appointed Personal Representative of the Estate of Keith Richard Kosirog, deceased, December 11, 2018, and is a resident of Sandoval County, New Mexico (hereinafter “Plaintiff”) see **EXHIBIT A**; Luke Kosirog-Hetes and Jagger Kosirog-Hetes are the biological children of Plaintiff and the decedent.

2. Plaintiff brings this action as the Personal Representative of the Estate of Keith Richard Kosirog, and a guardian of Luke Kosirog-Hetes and Jagger Kosirog-Hetes.

3. Prior to his death, Keith Richard Kosirog was an inmate at Central New Mexico Correctional Facility (hereinafter “CNMCF”) in Los Lunas, New Mexico.

4. Centurion Correctional Healthcare of New Mexico, LLC (hereinafter “Centurion”) is contracted to provide medical services to New Mexico Corrections Department (hereinafter “NMCD”) inmates by GENERAL SERVICES CONTRACT #16-770-1300-0097 (hereinafter “GSC”), including CNMCF 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, Christopher Anderson, R.N., is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

7. Upon information and belief, Dr. Williams, attending medical physician, is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

8. Upon information and belief, John Johnson, L.P.C., is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

9. Upon information and belief, Pamela K. Smith, L.L.P.C., is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

10. Upon information and belief, Gail A. Robertson, L.M.H.C., is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

11. Upon information and belief, Robert Montoya, L.B.S.W., is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

12. Upon information and belief, Gabriela L. Ramirez, M.A., L.M.H.C., is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

13. Upon information and belief, B. Woodbury is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

14. Upon information and belief, Anne S. Ortiz, M.D., is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

15. Upon information and belief, Marcia Esquibel, L.M.S.W. is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog.

16. Upon information and belief, Elizabeth J. Chavez is an employee of Centurion and as an agent for Centurion provided care to Keith Richard Kosirog in her capacity as Reception and Diagnostic Center manager at CNMCF.

17. Defendants NMCD and the CNMCF are entities of the State of New Mexico.

18. The CNMCF is operated by the State of New Mexico by, under and through the NMDC.

19. NMCD manages and operates the Central New Mexico Correctional Facility and is considered to be a resident of the State of New Mexico.

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

21. 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.

23. Defendant Wendy Price was at all time material to this Complaint a natural person employed by the State of New Mexico as Behavioral Health Bureau Chief.

24. Defendant Tracy Hollingworth was at all time material to this Complaint a natural person employed by the State of New Mexico as Deputy Behavioral Health Bureau Chief.

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

JURISDICTION AND VENUE

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

28. This Court has jurisdiction over this matter, and venue is proper before this Court.

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

30. 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.

31. Jurisdiction and venue are proper over Christopher Anderson, R.N., Dr. Williams, John Johnson, L.P.C., Pamela K. Smith, L.L.P.C., Gail A. Robertson, L.M.H.C.,

Robert Montoya, L.B.S.W., Gabriela L. Ramirez, M.A., B. Woodbury, Anne S. Ortiz, M.D., Marcia Esquibel, L.M.S.W., Elizabeth J. Chavez, and John Does 1-10 pursuant to NMSA § 38-3-1 (A).

32. 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.

33. Plaintiff has given timely notice to the State of New Mexico, CNMCF and NMDC pursuant to the provisions of the Tort Claims Act, NMSA 1978, § 41-4-16.

33. 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.

34. Keith Richard Kosirog is deceased and, therefore, the Prison Litigation Reform Act is inapplicable.

STATEMENT OF FACTS

35. Keith Richard Kosirog (hereinafter "Mr. Kosirog") had a traumatic childhood. He witnessed his father murder his mother and her boyfriend when he was three (3) years old, and testified at his father's murder trial when he was four (4) years old.

36. Mr. Kosirog's biological family's pertinent medical history includes severe mental illness and suicide. Mr. Kosirog's father and sister were diagnosed with Bipolar I disorder. One of Mr. Kosirog's sisters committed suicide, and one of his sisters has attempted suicide and has been hospitalized for mental illness.

37. Mr. Kosirog served in the U.S. Marine Corps from 2000 to 2004 and served tours in Iraq, Haiti and Kosovo

38. After his honorable discharge from the U.S. Marine Corps, Mr. Kosirog obtained a degree as a certified diesel mechanic.

39. Mr. Kosirog married Plaintiff Jade Hetes, and had two sons, Luke Kosirog-Hetes and Jagger Kosirog-Hetes.

40. On or about 2011, Mr. Kosirog's mental health began to deteriorate, and he was hospitalized as an in-patient on numerous occasions thereafter at Raymond G. Murphy V.A. Medical Center in Albuquerque, New Mexico (hereinafter "VAMC").

41. During his hospitalizations at VAMC, Mr. Kosirog was diagnosed with Post-Traumatic Stress Disorder, Bipolar Disorder, Delusional Disorder, and Alcoholic Abuse Disorder. It was also noted that Mr. Kosirog had a possible Traumatic Brain Injury, and possible Schizoaffective Disorder.

42. During his hospitalization at VAMC, healthcare providers administered numerous psychiatric medications to Mr. Kosirog, including but not limited to: Haloperidol, Lamotrigine, Lithium Carbonate, Lurasidone, Sertraline, Oxcarbazepine, Chlorpromazine, Amlodipine, Mirtazapine, Olanzapine, Benztopine, Lorazepam, Ativan, Zolpidem, and Trazadone.

42. During his hospitalizations at VAMC, Mr. Kosirog was frequently placed on "direct observation" requiring one on one monitoring, and placed on "suicide/homicide precautions" also requiring one on one monitoring.

45. During his hospitalizations at VAMC, healthcare providers noted that Mr. Kosirog was "a chronic risk for suicide in light of gender, mood disorder, PTSD, history of substance abuse, history of violence, previous suicide attempts and family history of completed suicide."

46. During his hospitalizations at VAMC, Mr. Kosirog told clinicians that he had attempted suicide by hanging, overdose and crashing a vehicle on at least fourteen (14) separate occasions.

47. VAMC clinicians noted that, at times, Mr. Kosirog appeared to be underreporting symptoms, including suicidal ideation/intention.

48. After each hospitalization at VAMC, Mr. Kosirog was discharged with “safety plans.” These plans indicated that Mr. Kosirog would decompensate quickly if he did not continue one on one therapy, avoid triggers, and maintain the appropriate medication regimen.

49. In 2018, Mr. Kosirog was arrested and detained in Quay County Jail on charges stemming from allegations of damage to property and stalking.

50. On February 2, 2018, Mr. Kosirog’s competency to stand trial on some of these charges was questioned, and the Magistrate Court entered a transfer order to District Court.

51. On May 31, 2018, Mr. Kosirog was indicted on charges of property damage and stalking in District Court.

52. On July 26, 2018, the Hon. Albert J. Mitchell of the Tenth Judicial District entered an “Order for Transport to the New Mexico Correctional Department for the Safekeeping of Quay County Inmate, Keith Kosirog.” Mr. Kosirog’s attorney, Roger Bargas, did not sign the order.

53. On or about August 3, 2018, Mr. Kosirog was transported to Central New Mexico Correctional Facility (hereinafter “CNMCF”) for the sole purpose of safekeeping.

54. Upon information and belief, staff at the Reception and Diagnostic Center (hereinafter “RDC”) performed Mr. Kosirog’s mental health screening and intake.

55. At intake, Mr. Kosirog was taking Haloperidol 5 mg, Lithium 600 mg, and Lamictal 25 mg twice per day.

56. Upon information and belief, Defendant Marcia Esquibel L.M.S.W. completed the RDC intake interview and recommendations.

57. Defendant Esquibel's intake report indicated that Mr. Kosirog had attempted suicide on twelve (12) separate occasions by "hanging, overdose, cutting and vehicle." Additionally, Defendant Esquibel noted a family history of mental illness and suicide, history of severe cerebral trauma, past mental health hospitalization, and current psychotropic medications.

58. Defendant Esquibel indicated that Mr. Kosirog "**Requires One-on-One Watch.**"

59. Sometime shortly thereafter, Mr. Kosirog was placed in solitary confinement.

60. On August 6, 2018, Defendant Gail A. Robertson, L.M.H.C. completed a restrictive housing inmate mental status evaluation. The file review portion of the evaluation does not mention Mr. Kosirog's twelve (12) previous suicide attempts, or that he "**Requires One-on-One Watch.**" Defendant Robertson's findings were unremarkable and did not indicate any treatment plan or suicide precautions. This evaluation was reviewed by Defendant Pamela K. Smith, L.P.C.C.

61. On August 31, 2018, Mr. Kosirog saw Defendant Gabriela L. Ramirez, L.M.H.C., after medical staff expressed concerns to security. Defendant Ramirez reported that Mr. Kosirog only told her, "I just want to know if the medications I'm taking are causing the shakes in my hands." Despite all evidence to the contrary, Defendant Ramirez did not indicate any treatment plan or suicide precautions and forwarded the interaction to therapist B. Woodbury.

62. Around this time, Anne Ortiz M.D. lowered the doses of Mr. Kosirog's psychiatric medications from Haldol 5mg to Haldol 2mg, and Lithium 600 mg to Lithium 150 mg.

63. On October 1, 2018, John Johnson, L.P.C., completed a restrictive housing inmate mental status evaluation, noting that Mr. Kosirog had "wide-open eyes." Defendant Johnson's

findings were otherwise unremarkable. Defendant Johnson's evaluation did not indicate any treatment plan or suicide precautions. This evaluation was reviewed by Defendant Pamela K. Smith, L.P.C.C.

64. Despite being on "**One-on-One Watch**" Defendant Elizabeth J. Chavez, L.P.C.C., manager of the CNMCF RDC reported that this October 1, 2018 encounter was the last time Mr. Kosirog was seen or evaluated by CNMCF staff.

65. On or about the morning of December 2, 2018, Defendant CNMCF staff found Mr. Kosirog hanging in his cell. Yellow fabric was wound around his neck and secured to the rear window grate in his cell.

66. Defendant Christopher Anderson, R.N., reported the encounter, incorrectly indicating that Mr. Kosirog had a history of "psychosis" and "depression."

67. Defendant Anderson reported that Mr. Kosirog was found cool to the touch, with blood mottled in his forearms bilaterally. This is indicative that Mr. Kosirog had been dead for a prolonged period of time.

68. CNMCF staff spent at least five (5) to ten (10) minutes outside of Mr. Kosirog's cell, observing his body hanging in the corner of his cell, before entering and cutting him down. Mr. Kosirog was pronounced dead by paramedics around 10:34 a.m, with the cause of death as cardiac arrest resulting from suicide by hanging.

69. Defendant Elizabeth J. Chavez, L.P.C.C., and manager of the CNMCF RDC, submitted a Behavioral Health Death Review to Defendant Wendy Price, Behavioral Health Bureau Chief of NMCD, and Tracy Hollingsworth, Deputy Bureau Chief.

70. Defendant Chavez acknowledged that Mr. Kosirog died by suicide, but noted that there were “discrepancies” in Mr. Kosirog’s CNMCF file regarding appropriate supervision and that they would be addressed.

71. According to the New Mexico Department of Health, mental disorders increase the risk for both attempted suicide and suicide; approximately 90 percent of suicide victims have a diagnosable mental health condition, most commonly a mood or substance use disorder.

72. More than 6,000 U.S. military veterans commit suicide every year, accounting for fourteen (14) percent of all suicides in the U.S., while comprising only eight (8) percent of the population.

74. The Veterans Administration lists PTSD, mood disorders, combat experience, traumatic life events, along with feelings of isolation as circumstances and conditions that exacerbate suicide risk.

75. Mr. Kosirog suffered from all of these.

73. It is also well recognized that suicidal individuals may deny suicidal ideation or want to discuss their suicidal thoughts with care givers.

74. CNMFC has a history of inmates dying or committing suicide while incarcerated. In fact, another inmate who was also being kept in solitary confinement committed suicide by hanging four hours after Mr. Kosirog.

75. Suicide is the second leading cause of death in jails and the jail suicide rate is nine (9) times that of the general population.

75. Given CNMFC’s history of suicide, and the suicide rate in prisons, CNMCF should have known or knew and should have been trained to recognize the significant suicidal risk factors displayed by Mr. Kosirog.

76. Given Mr. Kosirog's mental health history, pertinent social history, and his status as a combat veteran, Centurion should have known or knew and should have trained its agents and employees to care for such patients at chronic risk for suicide, and to make the appropriate recommendations, treatment plans, housing plans and referrals.

78. 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.

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

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

81. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to enforce critical terms of the GSC essential to the protection of the health and safety of NMCD inmates.

82. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to compel ACA and NCCHC medical accreditation for CNMCF.

83. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have allowed Centurion to operate the medical/behavioral health facilities and provide medical/behavioral health services to CNMCF inmate, including Mr. Kosirog, despite the lack of ACA and NCCHC accreditation since the inception of the GSC.

84. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to compel ACA and NCCHC accreditation for CNMCF.

85. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to hold Centurion to the standards of the ACA or NCCHC.

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

87. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to establish any standard of care for Centurion's provision of medical/behavioral healthcare for NMCD inmates.

88. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to properly oversee, monitor, supervise and manage Centurion's operation of medical facilities and provision of medical services to CNMCF inmates, including Mr. Kosirog.

89. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to take corrective action against Centurion despite clear knowledge of the negligent and reckless provision of medical/behavioral health care by Centurion.

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

91. New Mexico Corrections Department is the agency responsible for the management and oversight of NMCD correctional facilities including CNMCF.

92. 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 Mr. Kosirog.

93. NMCD contracted with Centurion for the provision of medical/behavioral health services to NMCD inmates.

94. Centurion by the terms of the GSC was contracted by NMCD for the purposes of providing medical/behavioral health care to inmates in the New Mexico Department of Corrections prison system, including Mr. Kosirog.

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

96. By contract with the State of New Mexico, Centurion is solely responsible for Medical/behavioral health care to inmate patients at CNMCF.

97. 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/behavioral health care to NMCD inmates.

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

COUNT I – NEGLIGENCE against ALL DEFENDANTS

99. Plaintiff realleges Paragraphs 1 through 98 pursuant to NMRA Rule 1-010(C).

100. For the period complained of herein, NMCD, CNMCF and Centurion acting through their employees, agents, apparent agents, or contractors, who were acting within the

scope of their employment, agency, apparent agency, or contract, were negligent in the care and services they provided to Mr. Kosirog while he was an inmate and patient.

101. Defendants' negligence included, but was not limited to:

- A. Failing to provide adequate staff, adequately paid staff, and adequately trained staff at CNMCF to care for inmates such as Mr. Kosirog, with the full knowledge that such inadequate staffing practices would place inmates such as Mr. Kosirog at risk for injuries;
- B. Negligently hiring, retaining and supervising staff at CNMCF, with the full knowledge that such negligent staffing practices would place inmates such as Mr. Kosirog at risk for injuries;
- C. Failing to provide proper suicide prevention planning, suicide prevention monitoring, suicide prevention policies and procedures, suicide prevention equipment, and suicide prevention training, so that Mr. Kosirog was allowed to commit suicide without proper monitoring, prevention and treatment;
- D. Failing to provide and implement proper care plans that would adequately meet Mr. Kosirog's needs, including his risk for suicide;
- E. Allowing Mr. Kosirog to remain unattended and unmonitored despite Mr. Kosirog's known risk for suicide;
- F. Failing to provide a safe environment;
- G. Failing to ensure that Mr. Kosirog received adequate supervision and assistance devices to prevent suicide;

- H. Failing to have adequate and effective policies, procedures, staff and equipment to adequately supervise Mr. Kosirog;
- I. Failing to provide services to attain or maintain the highest practicable physical, mental and psycho-social well-being of Mr. Kosirog in accordance with a written plan of care;
- J. Failing to adequately monitor Mr. Kosirog;

102. These acts and failures to act by Defendants and their employees, agents, apparent agents and contractors, were willful, wanton and in reckless disregard for the safety and well being of Mr. Kosirog. This is particularly so in regard to allowing Mr. Kosirog to commit suicide without properly correcting the care plan or attending to the suicide risk and allowing Mr. Kosirog to remain unattended in solitary confinement despite his behavioral health history, suicide attempts and high risk of suicide.

103. All acts or omissions done by Defendants and their employees, contractors, agents or apparent agents, were done within the scope of those persons' employment, contract, agency or apparent agency.

104. All acts complained of herein were authorized, participated in, or ratified by Defendants, or their administrators, managers, officers or directors or shareholders.

105. As a proximate result of the acts or omissions of Defendants, and their willful, wanton and reckless misconduct, Mr. Kosirog: (1) was allowed to commit suicide at CNMCF on December 2, 2018; (2) Mr. Kosirog's wrongful death was the result of the misconduct of Defendants.

COUNT II - MEDICAL MALPRACTICE against CENTURION, and CHRISTOPHER ANDERSON, R.N., DR. WILLIAMS, ATTENDING MEDICAL PROVIDER, JOHN JOHNSON, L.P.C., GAIL A. ROBERTSON, L.M.H.C., PAMELA K. SMITH, L.P.C.C., ROBERT MONTOYA, L.B.S.W., GABRIELA L. RAMIREZ, M.A., L.M.H.C., B. WOODBURY, ANNE S. ORTIZ, M.D., MARCIA ESQUIBEL, L.M.S.W., ELIZABETH J. CHAVEZ, RDC MANAGER, and JOHN DOES 1-10

106. Plaintiff realleges Paragraphs 1 through 105 pursuant to NMRA Rule 1-010(C).

107. In undertaking the diagnosis, care and treatment of Mr. Kosirog, 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.

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

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

- A. Failure to evaluate, treat and manage Mr. Kosirog's severe psychiatric condition;
- B. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management Mr. Kosirog's severe psychiatric condition;
- 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. Kosirog;
- F. Failure to refer Mr. Kosirog to appropriate specialists;
- G. Failure to timely transfer Mr. Kosirog to an appropriate psychiatric facility or behavioral health facility;

- H. Failure to protect and preserve the health of Mr. Kosirog; and
- I. Failure to implement any suicide prevention whatsoever, despite Mr. Kosirog's chronic suicide risk.

109. Defendants' failure to assess, treat and manage Mr. Kosirog's severe psychiatric condition was reckless, wanton and in utter disregard for the safety and welfare of Mr. Kosirog.

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

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

**COUNT III – NEGLIGENT OPERATION OF A MEDICAL FACILITY against
CENTURION and NMCD**

112. Plaintiff realleges Paragraphs 1 through 111 pursuant to NMRA Rule 1-010(C).

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

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

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

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

117. NMCD has allowed numerous serious breaches and violations of the GSC, ACA and NCCHC that led to the death of Mr. Kosirog.

118. NMCD and Centurion are entrusted with the medical/behavioral health care of New Mexico inmates who have no other source of medical/behavioral health care.

119. Centurion's medical staff at CNMCF lacked sufficient expertise to assess, treat and manage Mr. Kosirog's mental health conditions.

120. Centurion was negligent in failing to properly refer Mr. Kosirog to be seen by a Psychiatrist or behavioral health provider who could effectively treat him.

121. By failing to either: (1) properly treat Mr. Kosirog's behavioral health conditions, or (2) properly refer Mr. Kosirog to be seen by a physician who could effectively treat him, Centurion breached its duty to treat Mr. Kosirog in a reasonably prudent manner.

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

123. Such conduct amounts to negligence in the treatment of Mr. Kosirog.

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

125. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation.

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

127. 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.

128. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards.

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

130. The failures of Defendants Centurion, State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth led to the death of Mr. Kosirog.

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

COUNT IV – BREACH OF CONTRACT against CENTURION and NMCD

132. Plaintiff realleges Paragraphs 1 through 131 pursuant to NMRA Rule 1-010(C).

133. NMCD has allowed Centurion to breach the GSC on numerous occasions, by failing to provide proper behavioral health care to inmates.

134. As an inmate of CNMCF, Mr. Kosirog was a third-party beneficiary of the GSC.

135. As a direct and proximate result of the acts and omissions set forth herein, Centurion breached the GSC.

136. In breaching the GSC, Centurion's actions were willful, malicious, wanton, or in reckless disregard for the safety and well-being of Mr. Kosirog.

137. As a direct and proximate result of this contractual breach by Defendants, Mr. Kosirog suffered those damages set forth in this Complaint.

138. Additionally, Plaintiff is entitled to damages for breach of contract as a third-party beneficiary of the GSC.

COUNT V – NEGLIGENCE PER SE against ALL DEFENDANTS

139. Plaintiff realleges Paragraphs 1 through 138 pursuant to NMRA Rule 1-010(C).

140. 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.

141. 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.

142. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation.

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

144. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have been complicit in the failure to obtain or maintain ACA and NCCHC through its failure to enforce the GSC.

145. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards.

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

147. The failures of Defendants Centurion, State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth led to the death of Mr. Kosirog.

148. 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.
- 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.

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

**COUNT VI – NEGLIGENT HIRING, TRAINING AND SUPERVISION against
ALL DEFENDANTS**

150. Plaintiff realleges Paragraphs 1 through 149 pursuant to NMRA Rule 1-010(C).

151. Centurion had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates with psychiatric illness, mood disorders, and chronic risk for suicide.

152. 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. Korisog's mental health conditions and chronic risk for suicide.

153. 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.

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. 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.

157. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth 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.

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

159. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards on hiring, training and supervision.

160. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth 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.

161. The failures of Defendants Centurion, State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth led to the death of Mr. Kosirog.

162. As a result of the foregoing, Mr. Kosirog'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 against NMCD, THE STATE OF NEW MEXICO,
WARDEN KEN SMITH, WENDY PRICE, BEHAVIORAL HEALTH BUREAU CHIEF
and TRACY HOLLINGWORTH, DEPUTY BUREAU CHIEF**

163. Plaintiff realleges Paragraphs 1 through 162 pursuant to NMRA Rule 1-010(C).

164. NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth negligently failed to oversee Centurion in the provision of healthcare, including behavioral health, to NMCD inmates, which contributed to the death of Mr. Kosirog.

165. NMCD, the State of New Mexico and Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to take corrective action against Centurion in clear face of recurrent and consistent negligent and reckless behavioral healthcare to NMCD inmates which contributed to the death of Mr. Kosirog.

166. NMCD, the State of New Mexico and Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth negligently, intentionally and knowingly placed inmates with severe mental illness and at chronic suicide risk in solitary confinement without due consideration of the immediate danger of suicide which contributed to the death of Mr. Kosirog.

167. NMCD, the State of New Mexico and Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth 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 Mr. Kosirog.

168. NMCD, the State of New Mexico and Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth negligently failed to hold Centurion to standards and guidelines of the ACA or NCCHC.

169. NMCD, the State of New Mexico and Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth negligently failed to hold Centurion to the medical standard of care established under New Mexico law which contributed to the death of Mr. Kosirog.

170. NMCD, the State of New Mexico and Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth failed to establish or enforce any standards at all for Centurion's provision of proper, necessary and competent medical care to NMCD inmates.

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

COUNT VI – INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS against ALL DEFENDANTS

172. Plaintiff realleges Paragraphs 1 through 171 pursuant to NMRA Rule 1-010(C).

173. Defendants intentionally placed Mr. Kosirog in solitary confinement.

174. Defendants intentionally denied Mr. Kosirog proper and necessary behavioral health care.

175. Defendants intentionally denied Mr. Kosirog access to the appropriate specialists for his behavioral conditions.

176. Defendants denied Mr. Kosirog social support and privileges available to other inmates by intentionally placing him in solitary confinement.

177. Defendants knew that placing Mr. Kosirog in solitary confinement would exacerbate his mental illness.

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

179. Mr. Kosirog suffered severe emotional distress as a result of the conduct of Defendants.

180. As a result of the foregoing, Mr. Kosirog 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 – RESPONDEAT SUPERIOR AND AGENCY against CENTURION

181. Plaintiff realleges Paragraphs 1 through 180 pursuant to NMRA Rule 1-010(C).

182. Centurion is responsible to Mr. Kosirog under the doctrine of *respondeat superior* for the conduct of its employees and agents.

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

COUNT VIII – RESPONDEAT SUPERIOR AND AGENCY against CNMCF, NMCD, THE STATE OF NEW MEXICO, WARDEN KEN SMITH, WENDY PRICE, BEHAVIORAL HEALTH BUREAU CHIEF and TRACY HOLLINGWORTH, DEPUTY BUREAU CHIEF

184. Plaintiff realleges Paragraphs 1 through 183 pursuant to NMRA Rule 1-010(C).

185. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have a non-delegable duty to provide proper and necessary behavioral healthcare to inmates in the custody of NMCD and CNMCF.

186. 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, Christopher Anderson, RN, Dr. Williams, John Johnson, L.P.C., Gail Robertson, L.M.H.C., Pamela K. Smith, L.P.C.C., Robert Montoya, L.B.S.W., Gabriela L. Ramirez, L.M.H.C., B. Woodbury, Anne S. Ortiz, M.D., Marcia Esquibel, L.M.S.W., Elizabeth J. Chavez and John Does 1-10.

187. 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.

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

189. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have knowingly allowed, aided and abetted in Centurion's failure to obtain and maintain ACA and NCCHC accreditation.

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

191. Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth have been complicit in the failure to obtain or maintain ACA and NCCHC through its failure to enforce the GSC.

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

193. 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.

194. 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.

195. 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.

196. Under the doctrine of agency, NMCD, the State of New Mexico, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth 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/behavioral health care to NMCD inmates.

197. The failures of Defendants State of New Mexico, NMCD, CNMCF, Warden Ken Smith, Bureau Chief Wendy Price, and Deputy Bureau Chief Tracy Hollingsworth led to the death of Mr. Kosirog.

COUNT IX – *RES IPSA LOQUITUR* against ALL DEFENDANTS

198. Plaintiff realleges Paragraphs 1 through 197 pursuant to NMRA Rule 1-010(C).

199. The injuries and damages, suffered by Mr. Kosirog were proximately caused by Defendants.

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

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

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

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

**COUNT X – NEGLIGENT OPERATION AND MAINTENEANCE OF CNMCF against
STATE OF NEW MEXICO, CNMFC and WARDEN KEN SMITH**

204. CNMCF and Warden Ken Smith were negligent in their operation and maintenance of CNMCF.

205. The immunity granted pursuant to Section 41-4-4(A) NMSA 1978 does not apply to negligent operation and maintenance of buildings such as CNMCF.

206. CNMCF and Warden Ken Smith were operating CNMCF in a manner that prevented proper observation of Mr. Kosirog.

207. There were no surveillance cameras with an unobstructed view into Mr. Kosirog's cell.

208. The furnishings inside the cell were situated such that guards could not properly observe Mr. Kosirog.

209. The window into Mr. Kosirog's cell did not afford an unobstructed view into Mr. Kosirog's cell.

210. Mr. Kosirog's cell was situated in the corner of "E-pod" where CNMCF guards could not properly observe Mr. Kosirog.

211. As a direct and proximate result of these negligent acts and omissions, Mr. Kosirog was able to hang himself until he died, and was so concealed guards did not discover his dead body for a prolonged period of time.

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

COUNT X – WRONGFUL DEATH against ALL DEFENDANTS

212. Plaintiff realleges Paragraphs 1 through 203 pursuant to NMRA Rule 1-010(C).

213. Defendants, acting through their employees, administrator, agents, servants, representatives, officers, directors, designees, physicians, counselors, nurses, nurse's aides, and/or contractors, who were acting within the scope of their employment, agency, apparent agency or contract, were negligent in the care and services they provided to Mr. Kosirog.

214. Defendants failed to use ordinary care in providing the appropriate treatment and care that a reasonable and prudent correctional facility would have provided under the same or similar circumstances.

215. Defendants breached their duty by failing to ensure that Mr. Kosirog received proper precautions to prevent suicide, and adequate and proper supervision in an appropriate manner.

216. As a direct and proximate result of Defendants' actions and/or inactions, Mr. Kosirog suffered physical and psychological pain, suffering and ultimately death.

COUNT XI – LOSS OF CONSORTIUM against ALL DEFENDANTS

217. Plaintiff realleges Paragraphs 1 through 208 pursuant to NMRA Rule 1-010(C).

218. Plaintiff Jade Hetes is the biological mother of Mr. Kosirog's sons Luke Kosirog-Hetes and Jagger Kosirog-Hetes, both minors.

219. Mr. Kosirog had a close familial relationship with his sons Luke and Jagger.

220. Defendants' negligent acts and omissions that caused Mr. Kosirog's death have caused Luke and Jagger to lose the love and companionship of their father.

DAMAGES

221. As a direct and proximate result of the actions of Defendants enumerated above, Mr. Kosirog sustained serious personal injuries, which caused or contributed to his tragic and untimely death.

222. As a direct and proximate result of the actions of Defendants enumerated above, Plaintiff is entitled to an award of monetary damages for the pain and suffering experienced prior to the death of Mr. Kosirog, the aggravating circumstances attending his death, the reasonable expenses of necessary medical care and treatment and funeral and burial, the monetary worth of the life of Mr. Kosirog, and hedonic damages, or damages for the loss of value of Mr. Kosirog's life itself, all to Plaintiff's damage in an amount to be determined by the Court at trial.

223. In the alternative, as a direct and proximate result of the actions of Defendants enumerated above, Mr. Kosirog experienced pain and suffering, loss of enjoyment of activities, hedonic damages, or loss of the value of life itself, all to Plaintiff's damage in an amount to be determined by the Court at trial.

224. 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. Kosirog, that in addition to the actual damages ascertained and demonstrated by a preponderance of the evidence, that

STATE OF NEW MEXICO
COUNTY OF SANDOVAL
THIRTEENTH JUDICIAL DISTRICT COURT

FILED
13th JUDICIAL DISTRICT COURT
Sandoval County
12/17/2018 11:33 AM
CHRISTAL BRADFORD
CLERK OF THE COURT
Patricia Trujillo

IN THE MATTER OF THE WRONGFUL DEATH
OF KEITH RICHARD KOSIROG, Deceased.

No. D-1329-CV-2018-02666

**ORDER APPOINTING PERSONAL REPRESENTATIVE TO PURSUE WRONGFUL
DEATH CLAIM IN ACCORDANCE WITH § 41-2-3 NMSA 1978**

THIS MATTER comes before the Court on the Petition of Jade Hetes, for appointment as personal representative of the wrongful death estate of Keith Richard Kosirog. The Court has reviewed the petition, and being fully advised in the premises, finds that good cause exists for granting the petition for appointment of personal representative of the wrongful death estate of Keith Richard Kosirog.

THEREFORE, THIS COURT ORDERS that:

- A. The Petition is granted.
- B. The Petitioner, Jade Hetes, is hereby appointed Wrongful Death Personal Representative of the Estate of Keith Richard Kosirog, deceased, for the sole purpose of pursuing a wrongful death claim, pursuant to the New Mexico Wrongful Death Act, NMSA 1978 §41-2-1, et seq.
- C. The Petitioner will perform her fiduciary function as wrongful death personal representative in accordance with and pursuant to the New Mexico Wrongful Death Act, NMSA 1978 §41-2-1, et seq.
- D. The Petitioner will distribute any funds or proceeds of said wrongful death claim in accordance with and pursuant to the law.



JOHN F. DAVIS
District Court Judge

EXHIBIT A

Submitted by:

COLLINS & COLLINS, PC

/s/ Parrish Collins

Parrish Collins

P.O. Box 506

Albuquerque, NM 87103

(505) 242-5958

parrish@collinsattorneys.com

Attorneys for Petitioner