

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEW MEXICO**

GABRIEL MIERA,

Plaintiff,

- against -

CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO LLC, NEW MEXICO CORRECTIONS DEPARTMENT, PENITENTIARY OF NEW MEXICO, MARY GALLEGOS, JESSICA HERRERA, PAT LOVATO, PNM DEPUTY WARDEN, PNM CAPTAIN RIOS, PNM CAPTAIN BACA, CNMCF CLASSIFICATION OFFICER, DR. GARY FRENCH, DR. BENJAMIN HUANG, PA ELLEN WHITTMAN, LPN KATHY BUSTOS, DOE DOCTOR ONE, DOE DOCTOR TWO, DOE DOCTOR THREE,

Defendants.

No. _____

**COMPLAINT AND
DEMAND FOR JURY
TRIAL**

Plaintiff Gabriel Miera (“Mr. Miera” or “Plaintiff”), by his attorneys, Collins & Collins, P.C. and Guebert Gentile & Piazza P.C., and pursuant to 42 U.S.C. §§ 1983, 1988, and 12101 *et seq.*; 29 U.S.C. § 701 *et seq.*; and 28 U.S.C. §§ 2201 and 2202, brings this action (the “Complaint”) to redress violations of his First, Eighth, and Fourteenth Amendment rights under the United States Constitution, the Americans with Disabilities Act (“ADA”), and the Rehabilitation Act, and alleges, based on personal knowledge as to his own experiences and otherwise on information and belief, as follows:

PRELIMINARY STATEMENT

1. The New Mexico Corrections Department (“NMCD”), Penitentiary of New Mexico (“PNM”), and Centurion Correctional Healthcare of New Mexico, LLC (“Centurion”), acting through their respective employees, staff, agents, and assigns named above in their individual and

official capacities (“Defendants”), knew that Mr. Miera was at high risk of osteomyelitis and that he was suffering from increasing and debilitating pain that was not ameliorated over time or through pain medication. Yet, Defendants deliberately and recklessly ignored an emergent infection and Mr. Miera’s high risk of osteomyelitis, which caused him to spend 36 days in the hospital, undergo multiple life-saving surgeries, and suffer permanent spinal cord damage. Defendants’ deliberate indifference caused Mr. Miera to suffer extended, severe pain and led to the permanent disability he now faces.

2. After Mr. Miera returned to prison from the hospital with his permanent disability, Defendants forced him to engage in hard labor and unjustifiably refused to accommodate his disability despite Mr. Miera’s repeated requests for accommodation. This caused him both physical and psychological anguish.

3. To make matters worse, Defendants then engaged in a campaign of severe retaliation against Mr. Miera for filing a complaint in New Mexico State court regarding his medical injuries, for communicating with his legal counsel, and for exercising his rights and duties under the Prison Litigation Reform Act.

4. Defendants’ actions and inactions violated Mr. Miera’s rights secured by 42 U.S.C. §§ 1983 and under the First, Eighth, and Fourteenth Amendments to the United States Constitution. The actions and inactions of Defendants also violated Mr. Miera’s rights under the Americans with Disabilities Act (42 U.S.C. § 12101 *et seq.*) and the Rehabilitation Act (29 U.S.C. § 701 *et seq.*).

JURISDICTION AND VENUE

5. This action arises under the First, Eighth, and Fourteenth Amendments to the United States Constitution; 42 U.S.C. §§ 1983 and 1988; the Americans with Disabilities Act (42

U.S.C. § 12101 *et seq.*); and the Rehabilitation Act (29 U.S.C. § 701 *et seq.*).

6. Subject matter jurisdiction is conferred by 28 U.S.C. §§ 1331 and 1343(a).

7. This Court has personal jurisdiction over each of the entity and individual Defendants because, upon information and belief, all Defendants are domiciled in the State of New Mexico (the “State”) and/or have substantial contacts in the State of New Mexico and purposefully availed themselves of conducting business in New Mexico.

8. Venue is proper here under 28 U.S.C. § 1391(b)(2), because, upon information and belief, a majority of Defendants reside in this judicial district and the events and omissions giving rise to Plaintiff’s claims occurred in this judicial district.

9. Plaintiff need not exhaust his administrative remedies under the Prison Litigation Reform Act, 42 U.S.C.A. § 1997e (“PLRA”), because he is not currently incarcerated. He was released from PNM on December 15, 2021. (Ex. 1).

PARTIES

10. Plaintiff Gabriel Miera is a citizen of the United States presently domiciled in Santa Fe, New Mexico and living with family. During the events giving rise to this action, Mr. Miera was physically located in New Mexico. During all relevant times, he was in the custody of the NMCD. At various relevant times, he was housed at Central New Mexico Correctional Facility (“CNMCF”) in Los Lunas, New Mexico and PNM in Santa Fe, New Mexico.

11. Defendant NMCD is a state agency organized and existing under the laws of the State of New Mexico. Defendant PNM is operated by NMCD. At all relevant times, NMCD was responsible for the policies, practices, supervision, implementation, and conduct of all PNM matters and for the appointment, training, supervision, and conduct of all NMCD and PNM

personnel, including the NMCD/PNM Defendants specifically named herein.

12. Defendant PNM is a state-run facility operated by New Mexico State agency NMCD and existing under the laws of the State of New Mexico. PNM is operated in accordance with NMCD rules, policies, and procedures. PNM is responsible for the policies, practices, supervision, implementation, and conduct of all PNM matters and for the appointment, training, supervision, and conduct of all PNM personnel, including the PNM Defendants specifically named herein.

13. NMCD and PNM acted by and through their respective employees, staff, agents and assigns who are named in their individual and official capacities.

14. Defendant 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. Centurion, by the terms of the General Services Contract, #16-770-1300-0097 (“GSC”), was contracted by NMCD for the purposes of providing medical care to inmates in the NMCD prison system, including Mr. Miera. The term of the GSC began on June 1, 2016 and ended on or about November 1, 2019. The GSC was to end on June 1, 2020 under a one year extension but ended prematurely. Centurion acted by and through its employees, staff, agents and assigns who are named in their individual capacities.

15. Defendant Mary Gallegos was an NMCD Corrections Officer in and around June 2021 and was responsible for the health, safety, and proper medical treatment of Mr. Miera. She was an agent of NMCD, acting within the scope of her employment at all times relevant to this lawsuit. She is sued herein in her individual capacity.

16. Defendant Jessica Herrera was a Unit Manager at PNM in and around the months

of August and September 2019 and was responsible for the health, safety, and proper medical treatment of Mr. Miera. She was an agent of NMCD, acting within the scope of her employment at all times relevant to this lawsuit. She is sued herein in her individual and official capacities.

17. Defendant PNM Deputy Warden was a deputy warden at PNM in and around the months of August and September 2019 and was responsible for the health, safety, and proper medical treatment of Mr. Miera. Upon information and belief, she was a decision maker responsible for training, supervising, and disciplining agents of the prison. She was an agent of NMCD, acting within the scope of her employment at all times relevant to this lawsuit. She is sued herein in her individual and official capacities.

18. Defendant Pat Lovato was a PNM Unit Manager in and around the months of August and September 2019 and was responsible for the health, safety, and proper medical treatment of Mr. Miera. He was an agent of NMCD, acting within the scope of his employment at all times relevant to this lawsuit. He is sued herein in his individual capacity.

19. Defendant PNM Captain Rios was a Captain at PNM in and around the months of August and September 2019 and was responsible for the health, safety, and proper medical treatment of Mr. Miera. She was an agent of NMCD, acting within the scope of her employment at all times relevant to this lawsuit. She is sued herein in her individual capacity.

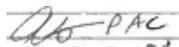
20. Defendant PNM Captain Baca was a Captain at PNM in and around the months of August and September 2019 and was responsible for the health, safety, and proper medical treatment of Mr. Miera. He was an agent of NMCD, acting within the scope of his employment at all times relevant to this lawsuit. He is sued herein in his individual capacity.

21. Defendant CNMCF Classification Officer was the classification officer at CNMCF

in and around June 2021 who was responsible for Mr. Miera's transfer from CNMCF to Lea County Correctional Facility (LCCF) at that time. She was responsible for the health, safety, and proper medical treatment of Mr. Miera and was an agent of NMCD, acting within the scope of her employment at all times relevant to this lawsuit. She is sued in her individual capacity.

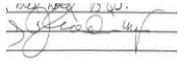
22. Defendant Dr. Gary French  was an attending doctor for Mr. Miera while he was in NMCD custody, and as such was acting within the scope of his employment as the apparent and actual agent, servant, and/or employee of Centurion. He was responsible for the care, health, safety, and proper medical treatment of Mr. Miera; and he is sued herein in his individual capacity.

23. Defendant Dr. Benjamin Huang was an attending doctor for Mr. Miera while he was in NMCD custody, and as such was acting within the scope of his employment as the apparent and actual agent, servant, and/or employee of Centurion. He was responsible for the care, health, safety, and proper medical treatment of Mr. Miera; and he is sued herein in his individual capacity.

24. Defendant Physician's Assistant ("PA") Ellen Whittman  was an attending physician's assistant for Mr. Miera while he was in NMCD custody, and as such was acting within the scope of her employment as the apparent and actual agent, servant, and/or employee of Centurion. She was responsible for the care, health, safety, and proper medical treatment of Mr. Miera; and she is sued herein in her individual capacity.

25. Defendant L.P.N. Kathy Bustos was an attending nurse for Mr. Miera while he was in NMCD custody, and as such was acting within the scope of her employment as the apparent and actual agent, servant, and/or employee of Centurion. She was responsible for the care, health, safety, and proper medical treatment of Mr. Miera; and she is sued herein in her individual

capacity.

26. Defendant Doe Doctor One  was an attending medical care provider for Mr. Miera while he was in NMCD custody and was responsible for the health, safety, and proper medical treatment of Mr. Miera. He/she was an agent of Centurion and/or NMCD/PNM, acting within the scope of his/her employment at all times relevant to this lawsuit. He/she is sued herein in his/her individual capacity.

27. Defendant Doe Doctor Two  was an attending medical care provider for Mr. Miera while he was in NMCD custody and was responsible for the health, safety, and proper medical treatment of Mr. Miera. He/she was an agent of Centurion and/or NMCD/PNM, acting within the scope of his/her employment at all times relevant to this lawsuit. He/she is sued herein in his/her individual capacity.

28. Defendant Doe Doctor Three  was an attending medical care provider for Mr. Miera while he was in NMCD custody and was responsible for the health, safety, and proper medical treatment of Mr. Miera. He/she was an agent of Centurion and/or NMCD/PNM, acting within the scope of his/her employment at all times relevant to this lawsuit. He/she is sued herein in his/her individual capacity.

29. At all times relevant to this Complaint, each of the abovenamed Defendants was an employee and/or agent of a New Mexico state-run entity or a private medical service responsible for treating State prisoners, a task which was ultimately the responsibility of the State. Accordingly, all Defendants were acting under color of state law at all relevant times.

FACTUAL BACKGROUND

I. MR. MIERA DISPLAYED AND COMPLAINED OF SEVERE PAIN FOR A MONTH BEFORE FINALLY BEING TRANSFERRED TO A HOSPITAL FOR EMERGENCY SURGERY.

30. At the time that Mr. Miera began complaining of his medical injuries, he was 32 years old and imprisoned by NMCD.

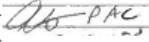
31. On December 3, 2018, Mr. Miera completed a medical Health Services Request form, writing: "I've had bad pain in my neck and an[d] can't move well." (Ex. 2 at 3). Defendant Kathy Bustos, L.P.N. reviewed this form and conducted a medical examination of Mr. Miera. (*Id.*)

32. Defendant Bustos noted that Mr. Miera "look[ed] in distress," and Doe Doctor One () noted that Mr. Miera's pain was at a 9 out of 10 and only worsening, yet Mr. Miera was only provided with Ibuprofen and muscle rub in response. (Ex. 2 at 4). After conducting a musculoskeletal examination, Doe Doctor One concluded that Mr. Miera was merely experiencing muscle strain and spasms. (*Id.*)

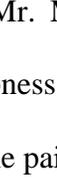
33. Later that day, Doe Doctor Two () learned that Mr. Miera was "sitting in medical on [a] wheel chair" because of his continuing, severe neck pain. (*Id.* at 2). Mr. Miera had already taken all of his Ibuprofen due to the severity of his pain, but Doe Doctor Two did not provide him with any additional medical care or pain relief. (*Id.*)

34. The next day, on December 4, 2021, Mr. Miera again sought medical attention because his severe pain had escalated and spread to both his neck and upper back. (*Id.* at 2). After being transferred to the medical unit and received by Defendant Bustos, Mr. Miera informed Doe Doctor One that "he had not received [his] prescribed muscle relaxant" and was "unable to sleep" due to the pain. (*Id.* at 1-2). Despite Mr. Miera's escalating and expanding severe pain, Doe Doctor

One again concluded that Mr. Miera was merely suffering from a muscle spasm. (*Id.*). Doe Doctor One only provided Mr. Miera with a few pain pills and a hot pack. (*Id.*).

35. On December 11, 2018, Mr. Miera reported to Physician's Assistant ("PA") Ellen Whittman () that he could not feel his hands, it hurt to swallow, and he could not sleep due to his pain. (Ex. 3). He also told PA Whittman that he was forced to resort to seeking chiropractic help from fellow prisoners due to his persistent pain. (*Id.*). In response, PA Whittman merely continued Mr. Miera on Ibuprofen and similar pain relievers. (*Id.*).

36. On December 12, 2018, Dr. Benjamin Huang took an X-ray of Mr. Miera's cervical and thoracic spine and concluded that Mr. Miera's spine appeared normal. (Ex. 19).

37. On December 17, 2018, Mr. Miera told Dr. Gary French () that he continued to experience "significant" neck and shoulder pain and paresthesia (prickling sensations) on his left side. (Ex. 4 at 6). He also reported that he continued to seek chiropractic care from his fellow prisoners due to the lack of medical care and pain management provided by the prison. (*Id.*). Despite Mr. Miera's growing and persistent pain, Dr. French simply concluded that Mr. Miera had a pinched nerve in his neck (a.k.a. cervical radiculopathy), and he prescribed anti-inflammatory and pain medications. (*Id.*).

38. On December 20, 2018, Mr. Miera was seen again by Dr. French due to his persistent neck pain and the onset of numbness in his left arm. (*Id.* at 5). Mr. Miera was placed on a 5-day steroid regimen and given the same pain medications that had already proven ineffective. (*Id.*). Upon information and belief, Dr. French did not refer Mr. Miera for diagnostic imaging, an MRI, or to see a specialist due to the costs associated with such referrals.

39. On December 26, 2018, Mr. Miera submitted another medical Health Services

Request form, pleading to see a doctor. He wrote: “My pains in my neck are getting worse & my right side of my body is numb. I am really in pain. Please set me up to[] see the doctor, please.” (*Id.* at 4). He specifically requested medical attention “A.S.A.P.” (*Id.*).

40. Although Mr. Miera’s Health Services Request form noted that he was referred by Doe Doctor Three () to nursing on December 27, 2018 (*id.*), upon information and belief, he has no corresponding medical records from this time, and Mr. Miera’s subsequent Health Request Form indicates that he was never seen by medical staff, despite his urgent request and severe, growing pain. (*Id.* at 3).

41. On December 30, 2018, Mr. Miera submitted a third medical Health Services Request form, again begging to receive medical attention. (*Id.*) He explained: “For weeks, I’ve been trying to get medical help about my neck. The Eight[th] Amendment protects my rights to medical care. The Constitution guarantees me this right, even though it does not guarantee medical care to people outside of prison. . . . I feel that my right to adequate medical care has been violated. Please take this into consideration.” (*Id.*).

42. Despite the fact that NMCD received this form and placed it in Mr. Miera’s medical records folder, no one at the prison reviewed it to make a referral. (*Id.*) Upon information and belief, Doe Doctor Three was responsible for triaging Health Services Request forms at this time, yet he/she failed to carry out this vital task even though the form was properly placed in Mr. Miera’s medical file. Mr. Miera’s pleas for medical attention to alleviate his severe anguish were completely ignored.

43. On December 31, 2018, prison medical staff created a Musculoskeletal Documentation Report that was patently false and, upon information and belief, drafted in order

to absolve the prison and medical staff of their obligations to provide Mr. Miera with constitutionally adequate medical care. (*Id.* at 2).

44. For example, the report falsely stated that Mr. Miera's neck injury had no "impact on [his] participation in sports and recreation." (*Id.*). However, Mr. Miera had been confined to a wheelchair and was unable to walk.

45. Additionally, the report wrongly stated that Mr. Miera experienced no "[t]ingling or numbness in . . . [any] extremity below [his] injury" despite his repeated complaints of numbness, which had been previously documented. (*Id.*).

46. Finally, the report incorrectly indicated that there were no issues with Mr. Miera's gait, when prior documentation confirmed that he was restricted to a wheelchair at times and had major mobility issues. (*Id.*).

47. Notably, the report revealed that Mr. Miera's pain was so intense that he categorized it as being 9 out of 10 in severity. (*Id.*).

48. But remarkably, even after medical providers knew that Mr. Encinias had been suffering from escalating and severe pain for weeks and had displayed obvious signs of infection, these medical providers assessed Mr. Miera as merely having an "alteration in comfort" and "strains, sprains and minor trauma." (*Id.*).

49. At 9:35 A.M. on January 2, 2019, without having conducted any diagnostic imaging, Dr. French assessed Mr. Miera as merely having an "acute or chronic" pinched nerve, but he noted that "over [the] past 24 hours, [Mr. Miera's] symptoms have significantly worsened after [he] fell in the day room [the day prior]." (*Id.* at 1). Dr. French observed that Mr. Miera's gait was "abnormal" and "unsteady," and that Mr. Miera experienced only a "minimal response" to the

medications he was previously given. (*Id.*). Notwithstanding his incorrect and minor diagnosis, Dr. French wrote that he would refer Mr. Miera to a hospital “for imaging and emergent neurologic evaluation.” (*Id.*).

50. Alarming, Mr. Miera presented seven times to the prison infirmary with neck pain, but he was given no diagnostic, imaging, no neurological examination, and only inadequate physical examinations. (Ex. 13 at 2-3). Consequently, the prison medical providers breached the “national standard of care and treatment that a reasonably competent and skilled health care professional with similar training would provide under similar circumstances.” (*Id.* at 3). These medical providers “performed inadequate history and physical examinations on Mr. Miera,” “failed to obtain [or] review his [relevant] prior records,” and did not sufficiently question Mr. Miera about his symptoms. (*Id.*).

51. Mr. Miera displayed all the hallmarks of spinal epidural abscess by December 11, 2018 at the latest, and “[i]t was imperative that he be imaged as soon as neurological symptoms were present to prevent any further neurological deficits from developing.” (*Id.* at 4).

52. The fact that Mr. Miera’s infection was allowed to envelop his entire cervical spine under the care of NMCD, PNM, and Centurion and their agents speaks for itself. NMCD, PNM, and Centurion and their agents clearly lacked the necessary training and supervision to manage infections and properly address medical emergencies.

53. They also refused to refer Mr. Miera for outside care so that he could be seen by medical professionals who did have the proper training and supervision to properly care for his infection.

54. This lack of training, supervision, and proper treatment protocols for infection

control led to Mr. Miera contracting osteomyelitis and spinal sepsis and put other inmates susceptible to infections at risk of grave health complications while in the care of NMCD, PNM, and Centurion and their agents.

55. NMCD, PNM, and Centurion, by and through their agents, knew or should have known that lack of infection control or proper emergency response would create an unreasonable risk of injury to prisoners under their care, including Mr. Miera.

56. According to Christopher Shields, a fellow prisoner and eyewitness to Mr. Miera's continued suffering, Mr. Miera would cry night and day, begging the PNM staff for medical assistance; and in response, the PNM staff would laugh at him, make fun of him, and accuse him of faking his pain. (Ex. 12 at 1). Mr. Miera's severe pain persisted for the entire month of December, and he eventually required other prisoners "to assist him in his personal daily functions, [such as] urinating, [defecating], shaving, showering," walking, and even buttoning his clothes. (*Id.*). Mr. Shields observed: "I've never in all my time seen someone go through so much physical pain and be treated as badly as I witnessed these PNM staff members treat Mr. Miera." (*Id.*).

57. Similarly, Michael Lueras, another fellow prisoner and eyewitness to Mr. Miera's suffering, affirmed: "Not only was [Mr. Miera] being deprived of sleep, he was in excruciating pain. He'd moan every time he moved and late at night when it was super quiet (besides snoring) you could hear Gabriel softly crying. After watching him suffer (day after day), I tried to help him by going and telling the nurse and C.O. [corrections officer] how bad it really was. . . . I told the officers on every shift how much pain he was in. I even told three different nurses who were passing out medication in the evening. . . . [but] the medical staff kept ignoring the pour [sic] guy. One day, I was in medical waiting . . . and he came in begging for them to give him something for

the pain. Their response was for him to put in a sick call slip. They made him leave, threatening to write him up if he didn't. . . . The nurses in the back of the room were talking about how they knew he was faking it, calling him a hypochondriac.” (Ex. 14).

II. MR. MIERA UNDERWENT MULTIPLE MAJOR SURGERIES AND HIS SURGEON NOTED THAT HE WAS “SEVERELY IMPAIRED” ON ARRIVAL AND SUFFERED FROM A “DELAYED DIAGNOSIS” THAT “WENT LARGELY UNCHECKED GIVEN HIS INCARCERATION STATUS.” (Ex. 7-8).

58. At approximately 10:58 A.M. on January 2, 2019, Mr. Miera arrived at the Emergency Room of the Christus St. Vincent Regional Medical Center at 455 Saint Michael’s Drive in Santa Fe, New Mexico. (Ex. 5 at 1).

59. At the hospital, Mr. Miera had an MRA of his neck, two MRIs (of his cervical and thoracic spine), a CT scan of his cervical spine, X-rays of his right hip, chest, and pelvis, and an echocardiogram.” (*Id.* at 3).

60. He was diagnosed with, *inter alia*, “cervical osteomyelitis and epidural abscess.” (*Id.*). Upon information and belief, cervical osteomyelitis is an infection in the cervical bone that requires surgery and strong intravenous antibiotics, and an epidural abscess is an infection between the spinal bones and lining membrane of the spinal cord which requires immediate antibiotics and often surgery to remove or drain the abscess.

61. After assessing Mr. Miera, hospital doctors noted that “[c]ritical care was necessary to treat or prevent imminent or life-threatening deterioration of . . . Spinal epidural abscess[,] Acute.” (*Id.* at 5). Mr. Miera was suffering from “severe spinal cord compression and significant spinal cord injury/central cord syndrome related to osteomyelitis and bone destruction from infection” and that “[t]here [was] not a role for nonsurgical care”—surgery was necessary. (Ex. 6 at 1). The surgeon warned: “He may have a poor prognosis for significant neurologic recovery,

and may need more than one surgery in the long-term based on bone quality and healing potential.”
(*Id.*).

62. Accordingly, Mr. Miera underwent a “C5-C6 anterior dis[c]ectomy and fusion with partial corpectomy.” (Ex. 5 at 3). Upon information and belief, a discectomy removes damaged intervertebral discs and bone spurs, and a corpectomy removes the discs, bone spurs, and damaged vertebrae.

63. He also underwent a “C5-C6 laminectomy and arthrodesis with placement of lateral mass screws bilaterally with connecting rods.” (*Id.*). Upon information and belief, a laminectomy removes parts of the vertebrae, and arthrodesis is a major surgery involving the fusion of the spine using rods and screws to hold the vertebrae together.

64. Finally, he had a “PICC placement”—a peripherally inserted central catheter line.
(*Id.*).

65. Upon information and belief and available medical records, Mr. Miera was never provided with diagnostic testing from the onset of his formal complaints on December 3, 2018 until he was transferred to the hospital on January 2, 2018—an unreasonably long delay which caused his condition to worsen and require more extensive and invasive medical procedures than would have been required otherwise.

66. According to Mr. Miera’s surgeon, Dr. Philip Smucker, Mr. Miera’s “cervical osteomyelitis [] went largely unchecked given his incarceration status.” (Ex. 7 at 2). The surgeon further emphasized that Mr. Miera “was severely impaired prior to [his] surgery on admission to the emergency room.” (*Id.*). Finally, Doctor Smucker also noted that Mr. Miera suffered from a “delayed diagnosis” of his “severe osteomyelitis.” (Ex. 8 at 1).

67. Upon information and belief, Dr. Smucker was so angry at the prison and its medical staff about Mr. Miera's condition that he refused to even speak with Dr. French, the warden, and the deputy warden. (Ex. 15 at 55-57).

68. On January 15, 2019, after Mr. Miera's final therapy session while in emergency care, his therapist assessed him as "demonstrating profound deficits in [the] functional use of [his] BUE [bilateral upper extremity], ADL [activities of daily living], activity tolerance, and functional mobility from baseline and will benefit from maximal therapeutic intervention to maximize functional independence and reduce the burden of care." (Ex. 9 at 2-3).

69. On January 16, 2019, after spending two weeks in emergency care, Mr. Miera was discharged to the "St. Vincent Hospital In-patient Rehabilitation Unit." (Ex. 5 at 4). He was prescribed ten different medications which were each to be administered between one and six times per day. (*Id.*).

70. On January 17, 2019, Mr. Miera's new therapist noted that his "high pain levels [] appear[ed] to be impacting [his] problem solving, memory, and social interactions." (Ex. 10 at 2). His therapist also noted that "[p]ain appear[ed] to be [the] primary limiting factor" of his "delayed motor movements, decreased coordination, and diminished sensation." (*Id.* at 2).

71. On February 5, 2019, two days before Mr. Miera was re-imprisoned, his doctor noted that Mr. Miera "continue[d] to complain of neck pain and [] made little progress with regard to upper extremity movement of his hands and arms." (Ex. 11 at 1).

72. On February 7, 2019, after spending 36 days in the hospital, Mr. Miera was transferred from Christus St. Vincent to the Long Term Care Unit (LTCU) at CNMCF. Mr. Miera remained in the LTCU from February 7, 2019 to March 7, 2019, when he was transferred back to

PNM.

III. MR. MIERA ENDURED SERIOUS PERMANENT INJURIES BECAUSE OF THE GROSSLY INADEQUATE MEDICAL CARE HE RECEIVED AT THE PRISON.

73. As a result of the medical maltreatment that Mr. Miera received from Defendants, he developed a spinal epidural abscess and cervical osteomyelitis.

74. Because of this, Mr. Miera experiences significant motor and sensory deficits that negatively impact his activities of daily living that require bodily movement, including lifting, which affects his earning capacity.

75. These activities are impacted because Mr. Miera is unable to move with the ease and speed that he would have but for the residual problems he is experiencing. Mr. Miera also has difficulty walking and experiences a numb burning sensation in his hands and neck.

76. Mr. Miera cannot lift anything now, so most jobs in the fields of construction, office cleaning, moving, and landscaping are no longer viable employment options for him.

77. Mr. Miera was recently working in irrigation, which required him to shovel, among other activities. He could not shovel for long periods of time because of the pain, so he was forced to stop working.

78. Similarly, he cannot participate in recreational sporting activities. Even when he is walking, he will fall to the side after losing his balance. He cannot stand up comfortably for more than 10 minutes, and his legs go completely numb if he stands up for 20 minutes.

79. Mr. Miera is unable to sleep because of the pain he endures. He also cannot simply get out of bed. Instead, he must stretch his legs before standing or they will cramp up. His legs are not strong enough for him to stand up immediately; his knees will buckle.

80. Commonly, his head will become very heavy, which forces him to lay down. He

cannot sit on surfaces that do not provide neck support. Without neck support, he experiences a sharp pain down his entire spine.

81. Mr. Miera's motor skills have also deteriorated. He has almost no grip strength, and he can only hold objects for a few seconds before letting go due to hand cramps. He can only shovel 2-3 scoops at a time. And he cannot lift weights due to his lack of grip. He is fearful of dropping the weights and injuring himself.

82. Mr. Miera also suffers from depression, anxiety, and PTSD related to his physical pain and the neglect he faced despite pleading for help from prison and medical staff. He feared for his life throughout the month leading up to his emergency surgeries, and he continues to live in mortal fear. Mr. Miera is afraid of breaking his neck and becoming paralyzed, and he is afraid of not being able to find work, as his prior work experience was related to landscaping and construction, which he can no longer do.

83. Mr. Miera has nightmares about hitting his head and breaking his neck or getting knocked down, hitting his head, and becoming paralyzed for life.

84. "If Mr. Miera had undergone appropriate imaging of his spine at the first sign of neurological signs and symptoms, he would be without the permanent deficits that he now suffers from." (Ex. 13 at 3).

85. In light of these facts, it is clear that, together, NMCD, PNM, Centurion, and their agents: Failed to properly monitor Mr. Miera's medical conditions, failed to perform adequate physical examinations, failed to refer Mr. Miera for higher/specialty care in a timely manner, and caused significant and inexcusable delay in the diagnosis of Mr. Miera's acute lumbar diskitis and possible epidural abscess.

86. Overall, the medical care provided to Mr. Miera was so grossly deficient as to amount to no medical care at all.

IV. MR. MIERA WAS DISCRIMINATED AGAINST BY PRISON PERSONNEL DUE TO HIS MEDICAL CONDITION IN VIOLATION OF BOTH THE ADA AND REHABILITATION ACT.

87. At the time that Mr. Miera was in the custody of NMCD, he faced substantial impairments of major life activities due to his medical conditions, which were confirmed through various diagnoses, including his diagnosis of severe osteomyelitis.

88. NMCD and PNM were both on notice of Mr. Miera's disability, because his diagnoses and emergency surgeries were heavily documented in his prison file, and he was either confined to a wheelchair or otherwise unable to complete basic life functions due to the pain and debilitation from his disability. In short, Mr. Miera's disability was obvious simply by observing his physical condition after his emergency surgeries.

89. At the time, Mr. Miera was clearly eligible to participate in NMCD's work program, because he was immediately given a hard labor work assignment after his emergency surgeries. Because Mr. Miera was eligible to participate in NMCD's work program, he was entitled to receive meaningful access to the work program without being stripped of those benefits because of his disability. He was entitled to obtain full and equal enjoyment of the program compared to those prisoners without disabilities.

90. While facing substantial impairments to his daily activities, Mr. Miera sought the reasonable accommodation of being given a work assignment that did not involve hard labor, because he did not have the physical ability to complete hard labor, and it caused him immense pain in attempting to complete hard labor tasks.

91. Because Mr. Miera suffered from severe osteomyelitis, he could not participate in, or receive the benefits of, NMCD's work program if he was assigned to do hard labor. As such, his requested accommodation was necessary.

92. On August 6, 2019, while at PNM, Mr. Miera was visited by legal counsel regarding a medical malpractice claim. At the time, he informed counsel that he was in substantial pain because he had been placed on hard labor duty shoveling the PNM grounds. Mr. Miera informed counsel that he had requested that his work duty be changed so that he was not forced to do hard labor with his disability, but the PNM staff would not change his work assignment.

93. Accordingly, Mr. Miera's counsel spoke with the PNM Deputy Warden and requested that Mr. Miera be placed on light work duty to accommodate his spinal injuries and ongoing recovery from spinal surgery. The PNM Deputy Warden did nothing to ensure that Mr. Miera's disability was accommodated in his work assignments despite being a supervisor with the authority to do so.

94. In response to Mr. Miera's requests for accommodation, Mr. Miera was told by PNM Unit Manager Jessica Herrera that he had to "earn his way" off of hard labor duty. (Ex. 16 at 1). Unit Manager Herrera then threatened to "write up" Mr. Miera if he refused to participate in the hard labor to which he was assigned. (*Id.*).

95. Upon information and belief, Unit Manager Herrera possessed final decision-making authority to give Mr. Miera a particular work assignment.

96. Upon information and belief, Mr. Miera was eligible for, and should have been able to participate in, non-hard labor work assignments. To illustrate, immediately before being hospitalized, Mr. Miera worked for the fire and safety unit handing out supplies, which did not

involve hard labor. Upon information and belief, Mr. Miera had been assigned to work for fire and safety because of his good conduct and lack of any serious infraction within the last 8-10 years.

97. Accordingly, Mr. Miera's requested accommodation to receive a work assignment that did not involve hard labor was reasonable and would not have fundamentally altered the nature of the prison's services, programs, or activities or created an undue burden on the prison staff. This simple accommodation suggested by Mr. Miera was already available and widely utilized by other individuals in the prison without issue. There are numerous prison jobs that do not involve hard labor.

98. So, there was no true security or institutional concern regarding Mr. Miera's requested accommodations. On the contrary, analogous accommodations are commonplace and cause little to no burden on the prison.

99. Upon information and belief, if NMCD and PNM would have provided Mr. Miera with a work assignment that did not involve hard labor, he would have been able to receive the full benefit of NMCD's and PNM's employment opportunities. However, because of NMCD's and PNM's refusal to accommodate Mr. Miera's disability, he was denied meaningful access to NMCD's and PNM's work programming.

100. NMCD and PNM knew that Mr. Miera required further accommodations in order to participate in the prison's work opportunities because of his repeated requests for non-hard labor employment and his repeated complaints of suffering through severe pain during his hard-labor work assignment.

101. Both NMCD and PNM, through their employees and agents, acted with deliberate indifference to the strong likelihood that their practices of denying Mr. Miera his requested labor

accommodations would likely result in a violation of Mr. Miera's federally protected right not to be discriminated against because of his disability. Despite this knowledge, NMCD and PNM failed to provide Mr. Miera with any meaningful work assignment modifications.

102. Upon information and belief, NMCD and PNM had no rational reason to deny Mr. Miera access to non-hard labor work assignments. In fact, Mr. Miera was one of the prisoners with arguably the most need for such an accommodation.

103. Upon information and belief, PNM Deputy Warden's and Unit Manager Jessica Herrera's irrational and harmful actions in denying Mr. Miera an accommodation in the face of an easy, safe way to ameliorate his substantial pain constitutes evidence of their discriminatory animus or, minimally, of their deliberate indifference to the strong likelihood that Mr. Miera's federal rights would be violated because they refused to take action.

104. Because NMCD and PNM failed to provide Mr. Miera with a reasonable accommodation, Mr. Miera was made to suffer more pain and punishment than non-disabled prisoners, and he was thereby discriminated against solely because of his disability. He was forced to choose between enduring severe pain while working in his hard labor job or getting written up by prison staff for failing to participate in his work assignment.

105. In addition to these harms, the fact that Mr. Miera was made to endure intentional discrimination by NMCD and PNM was intrinsically harmful by its very nature, thereby further compounding his injuries and suffering.

106. Mr. Miera's initial placement into hard labor—and his continued placement in hard labor by the PNM Deputy Warden and Unit Manager Jessica Herrera—denied him the full benefit of participating in the prison's work program solely because of his disability.

107. However, after Mr. Miera filed grievances concerning his hard labor placement, and after his counsel subsequently sent NMCD and PNM a letter concerning possible legal action, Mr. Miera was forced to continue working in hard labor in retaliation for seeking legal redress.

108. Accordingly, Mr. Miera was initially forced to complete hard labor in violation of the ADA and Rehabilitation Act, and subsequently forced to continue working in hard labor as retaliation for exercising his First Amendment rights concerning the maltreatment he suffered regarding his medical injuries.

V. PRISON STAFF UNLAWFULLY RETALIATED AGAINST MR. MIERA FOR EXERCISING HIS RIGHT TO ACCESS THE COURTS REGARDING THE MEDICAL ABUSES HE SUFFERED.

109. In February or March of 2019, Mr. Miera first contacted legal counsel to assess a potential legal claim concerning the inadequate medical care that he had received.

110. On April 11, 2019, Mr. Miera's counsel filed a civil Complaint for Medical Malpractice and Related Claims in New Mexico state court.

111. On August 6, 2019, Mr. Miera's legal counsel found out that he had been assigned to hard labor and instructed Mr. Miera to file a grievance, as required by the PLRA, requesting that his disability be accommodated through a non-hard labor work assignment, which he did shortly thereafter.

112. Upon information and belief, PNM Captain Rios and Captain Baca received and reviewed Mr. Miera's grievances regarding his hard labor work assignment, but they did nothing to ensure that Mr. Miera received an appropriate work assignment, despite having the knowledge and power to do so.

113. Upon information and belief, PNM Captains Rios and Baca refused to change Mr.

Miera's work assignment in retaliation, because Mr. Miera filed grievances about his work assignment and because he had retained a lawyer and filed a legal claim against the prison and prison staff.

114. On August 13, 2019, Mr. Miera's counsel emailed, mailed, and faxed a deliberate indifference letter to NMCD and PNM addressing Mr. Miera's continued placement doing hard labor in retaliation for filing a lawsuit regarding his spinal infection. (*Id.*). Counsel again requested that Mr. Miera's spinal injuries be accommodated with lighter job duties. (*Id.*).

115. But rather than accommodate Mr. Miera's spinal injuries as required under the ADA and Rehabilitation Act, NMCD placed him in solitary confinement at CNMCF from August 16, 2019 to September 10, 2019 under the pretense of a medical evaluation. (Ex. 17).

116. Upon information and belief, there were no documented disciplinary issues justifying his placement in segregation, and he never received a hearing of any kind related to his placement in segregation.

117. Upon information and belief, PNM Unit Manager Pat Lovato transferred Mr. Miera into solitary confinement after Mr. Miera filed grievances and sent a legal letter requesting that he be reassigned from hard labor duty, which constitutes further retaliation against Mr. Miera's right to access the courts.

118. Upon information and belief, Defendants Lovato, Herrera, Rios, Baca, Gallegos, PNM Deputy Warden, CNMCF Classification Officer, and likely others conspired to ensure that Mr. Miera was sent to solitary confinement in retaliation for exercising his First Amendment rights.

119. Despite being sent into solitary confinement under the pretense of needing a

medical evaluation, while in solitary confinement, Mr. Miera was not seen by a medical provider until on or around September 10, 2019, after which he was immediately released back to PNM by the medical provider.

120. Mr. Miera was in solitary confinement for 25 days under the pretense of a medical evaluation without ever undergoing a medical evaluation or even seeing a medical provider.

121. This retaliatory segregation placement prevented Mr. Miera from speaking with his counsel for 25 days despite numerous attempts by counsel to establish contact. The segregation effectively cut off Mr. Miera from his attorney when he was most in need of legal counsel.

122. Upon information and belief, these actions were intended to prevent Mr. Miera from speaking with his attorney and thereby delay and hinder his medical malpractice claim. Defendants' actions succeeded in delaying and hindering his lawsuit.

123. After Mr. Miera returned to PNM, he was placed on retaliatory hard labor by Defendant Herrera. He continued to be assigned to very demanding physical labor after his subsequent transfer to CNMCF as well. As expected, this intensive physical labor caused Mr. Miera enormous physical pain due to his permanently injured spine. (Ex. 18 at 2).

124. Defendants again unlawfully retaliated against Mr. Miera for exercising his right to access the courts in June 2021. Immediately following an attorney visit on June 16, 2021 at CNMCF, Mr. Miera was transferred to a different facility by the CNMCF Classification Officer, on information and belief, in order to prevent him from speaking with his attorney and in retaliation for seeking legal redress. (*Id.*).

125. On June 18, 2021, Mr. Miera was transferred to LCCF in Hobbs, New Mexico. After this transfer, Mr. Miera was again prevented from speaking with his attorney until July 8,

2021 despite his repeated requests for attorney calls and his counsel's requests to speak with him. (*Id.*).

126. During this interval, Mr. Miera was falsely written up based on untrue allegations that he had threatened another inmate. Mr. Miera filed an informal complaint about the false allegations. And in response, he was laughed at and told "good luck" by C.O. Mary Gallegos, who served as both the disciplinary officer and grievance officer in violation of NMCD policy. (*Id.*).

127. Upon information and belief, Defendant Gallegos knew that the allegations against Mr. Miera were false and retaliatory, yet she did nothing to correct these errors because she herself was engaging in retaliation against Mr. Miera due to his attempts to seek legal redress against the prison and prison staff.

128. Upon information and belief, Mr. Miera's placement in solitary confinement, his continued assignment to hard labor, and the false allegations made against him were done in retaliation for seeking legal redress and were intended to inflict severe emotional and physical pain on Mr. Miera, and they succeeded in doing so.

VI. CENTURION DEMONSTRATED A PERSISTENT AND WIDESPREAD PATTERN AND PRACTICE OF FAILING TO MEET THE STANDARDS OF CARE IN TREATING PATIENTS IN THE MEDICAL UNIT, EFFECTIVELY DENYING THEM MEDICAL CARE, AND THIS PRACTICE CAUSED MR. MIERA'S INJURIES.

129. Centurion maintained various widespread patterns and practices which violated Mr. Miera's constitutional rights and contributed to his injuries and permanent disability, including: (1) failing to report, diagnose, and properly examine and treat prisoners with serious medical and/or mental health conditions; (2) delaying or denying patient referrals to necessary emergency or other offsite medical services; (3) severely understaffing its medical and mental health facilities;

(4) failing to provide adequate medical documentation or communicate changes in patient conditions to the appropriate correctional officers and/or medical or mental health staff; and (5) failing adequately to train and supervise its employees and agents on procedures necessary to protect patients' health.

130. In essence, Centurion's medical care of NMCD prisoners effectively amounted to no medical care at all. *Kikumura v. Osagie*, 461 F.3d 1269, 1295 (10th Cir 2006) (finding sufficient deliberate indifference allegations where "the medical treatment [plaintiff] received was merely a façade . . . [and] so cursory as to amount to no treatment at all") (internal cites and quotes omitted); *Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980) ("[D]eliberate indifference to inmates' health needs may be shown by . . . proving there are such systemic and gross deficiencies in staffing, facilities, equipment, or procedures that the inmate population is effectively denied access to adequate medical care.").

A. Centurion had a pattern and practice of failing to report, diagnose, and treat warning signs of serious medical and mental health conditions, and of delaying or denying patients access to critical off-site medical services, which were contributing factors to Mr. Miera's injuries.

131. Centurion failed to report, diagnose, and treat the warning signs of serious conditions for many other patients in circumstances similar to those of Mr. Miera. For example:

- In *Jerry Sisneros v. Centurion et al.*, No. D-101-CV-2019-00598 (N.M. 1st Dist. Ct.), Centurion failed to timely report, diagnose, and treat signs of diskitis and osteomyelitis, which resulted in the patient's needlessly extended suffering and over a month of avoidable off-site care.
- In *Gerald Wilson v. Centurion et al.*, No. D-101-CV-2019-00691 (N.M. 1st Dist. Ct.), Centurion failed to timely report, diagnose, and treat signs of discitis and osteomyelitis, which resulted in the patient developing severe sepsis and lifelong spinal disabilities, and being hospitalized for 35 days.
- In *George Yribe v. Centurion et al.*, No. D-101-CV-2019-00633 (N.M. 1st Dist. Ct.),

Centurion failed to timely report, diagnose, and treat signs of diskitis and osteomyelitis, which resulted in the patient developing serious and permanent injury.

- In *George Parra v. Centurion et al.*, No. D-101-CV-2018-01188 (N.M. 1st Dist. Ct.), Centurion failed to timely report, diagnose, and treat signs of advanced muscular dystrophy and severe spinal infection, which resulted in the patient being sent to the emergency room.
- In *Dominick Mora-Solis v. Centurion et al.*, No. D-101-CV-2019-00627 (N.M. 1st Dist. Ct.), Centurion failed to timely report, diagnose, and treat signs of a severe pressure ulcer, sepsis, and acute chronic osteomyelitis, which resulted in permanent injuries to the patient.
- In *Jade Hetes v. Centurion et al.*, No. D-101-CV-2019-00113 (N.M. 1st Dist. Ct.), Centurion failed to timely report, diagnose, and treat signs of severe mental illness, which resulted in the patient's death from suicide.
- In *Manuela Vigil v. Centurion et al.*, No. D-101-CV-2018-00033 (N.M. 1st Dist. Ct.), Centurion failed to timely report, diagnose, and treat signs of abscesses, which resulted in the patient's death.
- In *Michael Wilder v. Centurion et al.*, No. D-101-2018-00608 (N.M. 1st Dist. Ct.), Centurion failed to timely report, diagnose, and treat sign of a broken collarbone, which resulted in the patient suffering lengthy, extended pain.

132. The preceding cases and others also illustrate Centurion's persistent refusal to refer inmate patients out to third-party medical providers for the provision of care unavailable through Centurion within NMCD's facilities, including diagnostic imaging.

133. Upon information and belief, Centurion's widespread failure to refer prisoners for off-site medical care was, in large part, financially motivated, as Centurion was contractually obligated to pay \$0.00 for any hospitalization lasting 24 hours or more. (Ex. 20).

134. Upon information and belief, Centurion paid \$0.00 for numerous prisoners' medical bills even though their hospitalizations were extensive. Evidently, this fee structure incentivized Centurion to refrain from referring prisoners for off-site care unless and until there was a substantial certainty that the prisoners would require more extensive hospital stays.

135. The preceding cases, among others, establish that Centurion was on notice of these widespread unconstitutional practices prior to Mr. Miera's injuries and thereby knew or should have known that additional safeguards should have been put in place to address patients' signs of serious medical and mental health conditions.

136. Accordingly, it can be inferred that Centurion intentionally failed to report, diagnose, and treat these serious warning signs despite the known and obvious risk to patient safety.

137. Centurion's widespread practice of failing to report, diagnose, and treat the warning signs of serious medical and mental health conditions shares a close factual relationship with the events in Mr. Miera's case, and accordingly, the widespread practice was the moving force behind his injuries.

138. Significantly, Centurion personnel failed to conduct diagnostic testing, neurological examinations, and adequate physical examinations six to seven times in Mr. Miera's case alone, which establishes a pattern and practice of insufficient reporting, diagnoses, and treatment of serious medical conditions.

139. As such, Centurion's policy and practice of failing to report, diagnose, and treat warning signs of serious medical and mental health conditions proximately caused Mr. Miera's injuries.

B. Centurion had a pattern and practice of severely understaffing its medical and mental health facilities, which was a moving force behind Mr. Miera's injuries.

140. The fact of Centurion's chronic understaffing of medical positions during the time period leading up to Mr. Miera's injuries is indisputable. It is widely known and documented. As emphasized in the October 23, 2018 New Mexico Legislative Finance Committee program

evaluation of NMCD (the “Committee Report”): “Both state and contractor medical positions are frequently understaffed, threatening the quality of care provided. The Corrections Department’s Office of the Medical Director, state employees who are responsible for overseeing the care, opportunities, and education necessary for patients to improve their health, including medical provider contract oversight, had a 25 percent vacancy rate as of October 2018”—two months before Mr. Miera’s emergency surgeries. (Ex. 22 at 20-21).

141. In particular, the Committee Report noted that “Centurion . . . struggled to recruit and retain staff, incurring fines of \$1.1 million in each of the last two fiscal years for critical vacancies including dentists, licensed nurse practitioners, pharmacists, and medical directors.” (*Id.* at 21).

142. Centurion’s pattern and practice of severe understaffing is a primary cause of the Constitutional violations concerning Mr. Miera’s medical treatment.

143. Upon information and belief, Mr. Miera was unable to receive adequate medical treatment due to the severe shortage of healthcare providers at the prison. Numerous important health protocols were violated, critical assessments and evaluations foregone, and reports missing in Mr. Miera’s file due to this severe staffing shortage, including the unfilled positions dedicated to oversight of medical services contract compliance. It was this lack of medical care and contract oversight that exacerbated Mr. Miera’s medical issues and eventually caused his injuries.

144. Simply put, Mr. Miera received little to no healthcare services largely because there were very few healthcare providers working in NMCD prisons in the months leading up to his injuries.

145. Through the Committee Report and its own records of vacancies, Centurion was

put on notice that this severe understaffing was substantially certain to cause Constitutional violations regarding its patients' medical treatment, yet it chose to disregard that risk and, for years, continued to display a pattern and practice of severe shortages in medical staff and mental healthcare providers.

146. In this way, Centurion acted with deliberate indifference to prisoners' healthcare needs. *See, e.g., Ramos v. Lamm*, 639 F.2d 559, 575 (10th Cir. 1980) (finding deliberate indifference to prisoners' healthcare needs where "gross deficiencies in staffing" and procedures cause the prisoner population to be "effectively denied access to adequate medical care").

C. Centurion also had a pattern and practice of failing to provide adequate medical documentation and failing to communicate changes in patient conditions, both of which contributed to Mr. Miera's injuries.

147. Centurion failed to provide adequate medical documentation and failed to communicate changes in patient conditions for many other patients in circumstances similar to those of Mr. Miera. For example, in *Jerry Sisneros v. Centurion et al.*, No. D-101-CV-2019-00598 (N.M. 1st Dist. Ct.), Centurion failed to adequately record vitals, which contributed to the patient's delayed diagnoses and treatment for diskitis and osteomyelitis.

148. Additionally, Centurion has a pattern and practice of misplacing or otherwise failing to provide medical records for critical time periods leading up to the hospitalizations of its patients. For example:

- In *Calvin Finch v. Centurion et al.*, No. D-101-CV-2019-00778 (N.M. 1st Dist. Ct.), Centurion failed to provide medical records for the critical month leading up to Mr. Finch's hospitalization.
- In *Norman DeHerrera v. Centurion et al.*, No. D-101-CV-2020-02549 (N.M. 1st Dist. Ct.), Centurion failed to provide medical records for the 76 days immediately preceding Mr. DeHerrera's toe amputation.

- In *Delores Rascon ex. rel. Estate of Efrain Martinez v. Centurion et al.*, No. D-101-CV-2020-00488 (N.M. 1st Dist. Ct.), Centurion failed to provide medical records for the six weeks preceding Mr. Martinez’s hospitalization and death.

149. Notably, the Committee Report referenced an audit of Centurion released in June 2018 that put Centurion on notice that its charts fell short of industry best practices, and some charts were “illegible or inaccurate, not filled out and submitted timely, and not used consistently.” (Ex. 22 at 22). The Committee Report also emphasized that documentation of certain test results was missing, and intake forms were not completed for all prisoners as required. (*Id.*).

150. The preceding cases and report, among others, establish that Centurion was on notice of these widespread unconstitutional practices prior to Mr. Miera’s injuries and thereby knew or should have known that additional safeguards should have been put in place to address the inadequate medical documentation and communication of changes in patient conditions.

151. Accordingly, it can be inferred that Centurion intentionally failed to adequately document patient conditions and failed to adequately communicate changes in those conditions despite the known and obvious risk to patient safety.

152. Centurion’s widespread practice of failing to provide adequate medical documentation and communicate changes in patient conditions shares a close factual relationship with the events in Mr. Miera’s case, and accordingly, the widespread practice was the moving force behind his injuries.

153. Notably, Mr. Miera’s case alone reveals sufficient evidence of Centurion’s widespread practice of providing inadequate medical documentation and communication about patient conditions. For example, in the month leading up to Mr. Miera’s hospitalization, medical staff failed to perform sufficient medical examinations and accompanying documentation at least

six times.

154. Because Centurion personnel did not adequately document or otherwise communicate Mr. Miera's rapidly deteriorating medical condition to the appropriate personnel, he was not provided with the medical treatment that he clearly needed, which caused him to sustain his injuries.

155. Accordingly, Centurion's policy and practice of providing inadequate medical documentation and failing to communicate changes in patient conditions to appropriate personnel proximately caused Mr. Miera's injuries.

D. Centurion failed to adequately train or supervise its individuals despite knowing that such training and discipline was necessary to protect patient health, and this failure was a moving force behind Mr. Miera's injuries.

156. As outlined in the Committee Report, in 2018, the New Mexico Medical Review Association conducted an audit of Centurion's medical services in prisons and recommended that staff be better educated by both Centurion and NMCD on chart documentation standards and consistency and in completing prisoner intake forms correctly. (*Id.*). According to Centurion's auditors, the need for additional training and supervision was apparent and should have been prioritized.

157. Similarly, the extensive violations of proper protocol in Mr. Miera's case provide compelling evidence that Centurion had a widespread pattern and practice of failing to adequately train and supervise its personnel. As discussed in more detail above, Centurion medical staff failed to conduct necessary neurological and physical examinations in six to seven instances over the course of one month as Mr. Miera's medical condition worsened. In addition, Centurion medical staff and other agents refused to refer Mr. Miera for diagnostic testing and imaging.

158. As such, Centurion's widespread failures to train and supervise its personnel were a primary cause of the Constitutional violations suffered by Mr. Miera. Each of Centurion's failures to conduct necessary examinations deprived Mr. Miera of the opportunity to be evaluated, diagnosed, and to be prioritized in receiving the medical treatment that he so desperately needed. Because medical personnel were not adequately trained or supervised to ensure that the proper medical procedures were followed, Mr. Miera never received the opportunity to obtain additional medical services until his medical condition had become life threatening. Consequently, he sustained the injuries that resulted in his extensive hospital stay and major surgeries.

159. Training and supervision regarding proper medical treatment protocol and documentation was required because, as Centurion knew or should have known to a moral certainty, Centurion's personnel would commonly confront situations where they would need to assess the severity and emergency nature of patients' medical conditions. This is the one of the primary tasks that these personnel were hired to do.

160. Additionally, documenting and assessing the next steps in a patient's medical treatment is precisely the type of complex and important decision that requires training and supervision, as making the wrong choice in these instances will frequently cause the deprivation of prisoners' constitutional rights.

161. As evinced by Mr. Miera's situation and the others cited in subsection A of this section, Centurion's widespread pattern of deficient training and supervision presents an obvious potential to violate patients' Constitutional rights, because there has been a growing history where prisoners are denied serious medical care to which they are entitled, and they suffer from long-term disability or death as a result.

162. Centurion was alerted to an obvious deficiency in its training and supervision through the many prior lawsuits against it alleging unconstitutional medical care. It was also put on notice of these deficiencies through the 2018 audit results requiring that it provide better training and oversight of its personnel.

163. Centurion's failure to do so is further evidence of its deliberate indifference to the Constitutional violations caused by its widespread deficiencies in training and supervising.

VII. DAMAGES SOUGHT

164. As a direct result of Defendants' unlawful conduct, Mr. Miera endured tremendous pain, injuries, anguish, and suffering, which entitles him to general and special compensatory damages.

165. Further, Plaintiff is entitled to attorney's fees and costs pursuant to 42 U.S.C. §§ 1988 and 12205, and 29 U.S.C. § 794a, in addition to pre-judgment interest and costs as allowed by federal law.

166. Plaintiff is also entitled to punitive damages against each of the Defendants, as their actions were done with malice or, minimally, with reckless indifference to Mr. Miera's federally protected rights.

CLAIMS FOR RELIEF

FIRST CLAIM FOR RELIEF:

**8th and 14th Amendments to the U.S. Constitution
Deliberate Indifference to Serious Medical Need (42 U.S.C. § 1983)
(against Centurion, Dr. Gary French, Dr. Benjamin Huang, PA Ellen Whittman,
LPN Kathy Bustos, and Doe Doctors 1-3 in their individual capacities)**

167. Each paragraph of this Complaint is incorporated as if fully restated herein.

168. The abovenamed Defendants each possessed responsibility for the decisions that

resulted in the violation of Mr. Miera's constitutional right to be free from cruel and unusual punishment regarding the deliberate indifference to his serious medical needs while in NMCD custody, as described more fully above.

169. These Defendants were aware of and deliberately disregarded the substantial risk of harm to Mr. Miera that would ensue because of their failures to provide him with constitutionally adequate medical care, as described more fully above.

170. Notably, each of the abovenamed Defendants was aware of Mr. Miera's severe and escalating pain yet took essentially no action to address this anguish, which constitutes deliberate indifference to his pain and deteriorating medical condition.

171. The deliberate indifference of the abovenamed Defendants caused Mr. Miera to experience worsening severe, prolonged pain and debilitation (first harm) and to develop severe osteomyelitis (second harm), which ultimately required emergency surgeries due to its severity and led to Mr. Miera's long-term disability and chronic pain.

172. Mr. Miera's harms were both sufficiently serious injuries that a reasonable doctor or patient would find them important and worthy of immediate treatment. Without treatment, Mr. Miera's worsening severe pain caused him to lose the ability to take care of his most basic needs and restricted him to a wheelchair at times. Without emergency surgeries, Mr. Miera's severe osteomyelitis would have caused him to die.

173. Moreover, Mr. Miera's severe pain and osteomyelitis significantly affected his daily activities, as he lost the ability to care for even his most basic needs and still struggles through pain while completing basic tasks like standing up, walking, and lying down.

174. The abovenamed Defendants are not shielded by qualified immunity for their

deliberate indifference to Mr. Miera's serious medical needs because of the well-documented 10th Circuit precedent notifying medical and prison personnel that the Eighth Amendment is violated when such personnel fail to take reasonable measures to provide a patient with access to medical attention and/or deny medical care to a patient with serious medical needs, as occurred in Mr. Miera's case with each of the Defendants named herein.

SECOND CLAIM FOR RELIEF:
8th and 14th Amendments to the U.S. Constitution
Policy & Practice of Denial of Medical Care (42 U.S.C. § 1983)
(against Centurion)

175. Each paragraph of this Complaint is incorporated as if fully restated herein.

176. As a private corporation acting pursuant to its agreement with NMCD to provide medical services to New Mexico State prisoners, Centurion was at all times relevant to the events described in this Complaint acting under color of law and, as the provider of healthcare services to prisoners incarcerated at PNM, was responsible for the creation, implementation, oversight, and supervision of all policies and procedures followed by employees and agents of Centurion and PNM/NMCD.

177. Mr. Miera's injuries were proximately caused by Centurion's policies and practices.

178. Centurion maintains a policy, practice, and custom of under-reporting the severity of medical and mental health emergencies and denying appropriate medical and mental health care to prisoners. On information and belief, Centurion medical staff working in NMCD facilities are trained to ignore or under-report symptoms of medical and mental health emergencies, which amounts to deliberate indifference to the serious medical needs of prisoners presenting symptoms of such emergencies, including Mr. Miera.

179. On information and belief, Centurion supervises its employees to ignore or under-report symptoms of medical and mental health emergencies, which amounts to deliberate indifference to the serious medical needs of prisoners presenting symptoms of such emergencies, including Mr. Miera.

180. On information and belief, Centurion ratifies the conduct of its employees who ignore or under-report symptoms of medical and mental health emergencies through review and approval of these employees' performance, and through the decision to continue the employment of such individuals who ignore and under-report medical and mental health emergencies of NMCD prisoners, which amounts to deliberate indifference to the serious medical needs of prisoners presenting symptoms of such emergencies, including Mr. Miera.

181. At all times relevant to this Complaint, Centurion had notice of a widespread practice by its employees and agents at PNM and NMCD facilities under which prisoners with serious medical conditions, such as Mr. Miera, were routinely denied access to proper or sufficient medication and medical attention. Upon information and belief, it was common to observe prisoners of PNM and NMCD with clear symptoms of serious medical and/or mental concerns whose requests for medical care were routinely denied or completely ignored. Upon information and belief, a significant portion of these denials of medical and mental health care resulted in substantial injury or death.

182. More specifically, there was a widespread practice under which employees and agents of Centurion and NMCD, including correctional officers and medical personnel, failed or refused to: (1) report, diagnose, and properly examine and treat prisoners with serious medical and/or mental health conditions, including failing to provide proper medications to prisoners with

serious medical and/or mental health conditions; (2) respond to prisoners who requested medical and/or mental health services; (3) respond to prisoners who exhibited clear signs of medical and/or mental health need or illness; (4) adequately document and communicate the medical and mental health needs of prisoners to the appropriate correctional officers and/or medical or mental health staff; or (5) timely refer prisoners for emergency or other offsite medical services.

183. Additionally, there was a widespread practice under which Centurion personnel severely understaffed its medical and mental health facilities and failed adequately to train and supervise its personnel on necessary medical and mental health procedures.

184. These widespread practices were allowed to proliferate because Centurion directly encouraged, and was the moving force behind, the specific misconduct at issue. Centurion also failed to adequately train, supervise, and control correctional officers and medical personnel by failing to adequately punish and discipline prior instances of similar misconduct, thereby directly encouraging future abuses like those which harmed Mr. Miera.

185. Centurion knew of the substantial risk of serious or fatal consequences that could be caused by its unconstitutional policies, practices, customs, failures to train, and failures to supervise, as occurred in Mr. Miera's case.

186. Centurion is sued herein for maintaining these policies, practices, and customs; for failing to train and supervise; and for ratifying its employees' and agents' misconduct, all of which amounts to deliberate indifference to prisoners' serious medical and/or mental health needs.

187. These policies and conduct were the moving force behind the violations of Mr. Miera's constitutional rights and his injuries. Mr. Miera's injuries were caused by employees and contractors of NMCD and Centurion, including but not limited to the individually named

Defendants, who acted pursuant to the policies and practices of Centurion while engaging in the misconduct described in this Complaint.

188. Upon information and belief, Centurion maintained these policies and practices in order to maximize profit and without regard to its constitutional and medical obligations to NMCD prisoners who were entrusted to Centurion's care.

189. Centurion is not shielded by qualified immunity for its unconstitutional policies and practices, because private companies and their private employees are never entitled to qualified immunity, even when employed doing correctional work. *See, e.g., Phillips v. Tiona*, 508 Fed. Appx. 737, 751-52 (10th Cir. 2013).

THIRD CLAIM FOR RELIEF:

**1st and 14th Amendments to the U.S. Constitution
Retaliation for Engaging in Right to Access the Courts (42 U.S.C. § 1983)
(against Mary Gallegos, Jessica Herrera, Pat Lovato,
PNM Captain Rios, PNM Captain Baca, PNM Deputy Warden
and CNMCF Classification Officer in their individual capacities)**

190. Each paragraph of this Complaint is incorporated as if fully restated herein.

191. Under the First and Fourteenth Amendments of the U.S. Constitution and 42 U.S.C. § 1983, Mr. Miera has the right to be free from retaliation for exercising his First Amendment rights to access the courts and/or otherwise seek legal redress by petitioning the government for redress of grievances.

192. Each of the abovenamed Defendants violated Mr. Miera's right to access the courts and engage in the grievance process without facing retaliation by causing him injury sufficient to chill an ordinary person from pursuing legal action and/or filing grievances.

193. In retaliation for filing suit, engaging with legal counsel, and filing grievances, the abovenamed Defendants: (1) caused Mr. Miera to be continually placed on hard labor work

assignments, (2) transferred him to correctional facilities much farther away from his legal counsel, (3) unjustifiably restricted him to solitary confinement, and (4) wrote him up on false allegations and then refused to investigate the veracity those allegations, adopting them as true while knowing them to be false (together, the “Punishments”).

194. In taking these actions, each of the abovenamed Defendants was substantially motivated by the fact that Mr. Miera was exercising his First Amendment rights to seek legal redress through his lawsuit regarding medical injuries, his counsel’s deliberate indifference letter regarding his work placement, and his utilization of the grievance process.

195. Upon information and belief, at the time that each of the abovenamed Defendants carried out the Punishments, each of them was aware that: (1) Mr. Miera had filed a lawsuit against the prison and certain agents of the prison regarding his medical injuries, (2) Mr. Miera’s counsel was taking legal steps to ensure that his legal rights were being protected, and (3) Mr. Miera was diligently pursuing redress through the prison’s grievance process.

196. Upon information and belief, the abovenamed Defendants were put on notice of Mr. Miera’s lawsuit because he mentioned it on multiple occasions and because he would frequently receive legal calls and legal visits from counsel concerning the lawsuit. Upon information and belief, these legal calls and visits were documented in both Mr. Miera’s prison file and in multiple, widely utilized documents such as logbooks.

197. Upon information and belief, the abovenamed Defendants were also aware that Mr. Miera was engaging in the grievance process because he openly informed prison staff that he was using the grievance procedures to challenge certain decisions made by prison staff.

198. Proof of the abovenamed Defendants’ retaliatory motives is evidenced by the

following, *inter alia*: (1) The close temporal proximity between the Punishments and Mr. Miera's legal filings, grievance filings, and communications with counsel; (2) the lack of any legitimate penological interest for the Defendants to have carried out the Punishments; (3) the ease by which the Punishments and the subsequent pain inflicted could have been avoided, and (4) the increase in hostility displayed by these Defendants toward Mr. Miera upon learning of the ways in which he was exercising his First Amendment Rights.

199. Mr. Miera's injuries caused by the Punishments were sufficiently serious to dissuade an ordinary person from continuing to seek legal redress for the wrongs he suffered while incarcerated. Mr. Miera's injuries include, *inter alia*: (1) The physical and psychological hardships of solitary confinement; (2) the severe physical pain of doing hard labor while disabled; (3) the psychological pain of knowing that, if he did not endure the pain of hard labor, he would be written up and face further punishment and lengthened incarceration as a result; (4) the physical punishments associated with being written up for acts of violence and the lengthened incarceration and loss of privileges that results; (5) the psychological pain of knowing that his captors were lying about him and trying to have him wrongfully punished; and (6) the legal and psychological consequences of being denied access to his counsel through prison transfers, whereby his lawsuit was delayed and he risked having his counsel disengage due to the inability of counsel to access his client to move forward with litigation.

200. The abovenamed Defendants are not shielded by qualified immunity for their retaliation because "it is well established that prison officials must provide inmates access to the courts and prison officials may not harass or retaliate against an inmate for exercising his right of access to the courts. . . . [Similarly,] [t]he jurisprudence prohibiting retaliatory acts against

prisoners for reporting grievances is well-established” and has been in this Circuit since at least the late 1990s. *Penrod v. Zavaras*, 94 F.3d 1399, 1404-05 (10th Cir. 1996) (internal cites and quotes omitted).

FOURTH CLAIM FOR RELIEF:
Americans with Disabilities Act Violations (42 U.S.C. § 12101 *et seq.*)
(against NMCD, PNM, and Jessica Herrera and
PNM Deputy Warden in their official capacities)

201. Each paragraph of this Complaint is incorporated as if fully restated herein.

202. At the times relevant to this Complaint, Mr. Miera had a disability within the meaning of the Americans with Disabilities Act, as he had been diagnosed with various medical conditions, including severe osteomyelitis.

203. Aside from his disability, Mr. Miera was otherwise qualified to participate in, and receive the benefits of, the work programs, services, and activities offered by NMCD and PNM, which are described in this Complaint.

204. NMCD and PNM are both public entities as defined in 42 U.S.C. § 12131(1), as both are instrumentalities of the State of New Mexico.

205. Under Title II of the ADA, NMCD and PNM, through Defendant Herrera, the PNM Deputy Warden and others, are responsible for ensuring that individuals in their custody with known disabilities are provided with reasonable accommodations to prevent discrimination on the basis of disability and are not, on the basis of disability, excluded from participation in or denied the benefits of their services, programs, or activities because of their disabilities.

206. Despite Mr. Miera’s known and obvious disability, NMCD and PNM, through Defendant Herrera, the PNM Deputy Warden and others, failed to reasonably accommodate his disability and discriminated against him, as described herein.

207. Through Defendant Herrera, the PNM Deputy Warden and others, NMCD and PNM knew that Mr. Miera was disabled and that he required an accommodation, yet they did not provide him with an accommodation.

208. Solely because of Mr. Miera's disability, NMCD and PNM—through the actions and inactions of Defendant Herrera, the PNM Deputy Warden, and others—excluded and denied him access to, and the benefits of, each program, service, and activity described herein. Thus, Mr. Miera has been subjected to discrimination in each program, service, or activity as a result of his disability.

209. NMCD and PNM, through Defendant Herrera, the PNM Deputy Warden and others, engaged in this discriminatory practice with malice or, minimally, with reckless indifference to Mr. Miera's federally protected rights.

210. Mr. Miera has been injured as a result of this discrimination, as described elsewhere in this Complaint.

211. Finally, NMCD, PNM, Defendant Herrera, and the PNM Deputy Warden are not shielded by qualified immunity for their violations of the Americans with Disabilities Act, as qualified immunity is not available for such claims.

FIFTH CLAIM FOR RELIEF:
Rehabilitation Act Violations (29 U.S.C. § 701 *et seq.*)
(against NMCD, PNM, and Jessica Herrera and
PNM Deputy Warden in their official capacities)

212. Each paragraph of this Complaint is incorporated as if fully restated herein.

213. At the times relevant to this Complaint, Mr. Miera was handicapped within the meaning of the Rehabilitation Act, as he had been previously diagnosed with various with various medical conditions, including severe osteomyelitis.

214. Aside from his handicap, Mr. Miera was otherwise qualified to participate in, and receive the benefits of, the work programs, services, and activities offered by NMCD and PNM, which are described in this Complaint.

215. Both NMCD and PNM receive federal financial assistance. (Ex. 21).

216. Under the Rehabilitation Act, NMCD and PNM, through Defendant Herrera, the PNM Deputy Warden and others, are responsible for ensuring that individuals in their custody with known handicaps are provided with reasonable accommodations to prevent discrimination on the basis of handicap and are not, on the basis of handicap, excluded from participation in or denied the benefits of their services, programs, or activities because of their handicaps.

217. Despite Mr. Miera's known and obvious handicap, NMCD and PNM, through Defendant Herrera, the PNM Deputy Warden and others, failed to reasonably accommodate his handicap and discriminated against him, as described herein.

218. Through Defendant Herrera, the PNM Deputy Warden and others, NMCD and PNM knew that Mr. Miera was handicapped and that he required an accommodation, yet they did not provide him with an accommodation.

219. Solely because of Mr. Miera's handicap, NMCD and PNM, through Defendant Herrera, the PNM Deputy Warden and others, excluded and denied him access to, and the benefits of, each program, service, and activity described herein. Thus, Mr. Miera has been subjected to discrimination in each program, service, or activity as a result of his handicap.

220. NMCD and PNM, through Defendant Herrera, the PNM Deputy Warden and others, engaged in this discriminatory practice with malice or, minimally, with reckless indifference to Mr. Miera's federally protected rights.

221. Mr. Miera has been injured as a result of this discrimination, as described elsewhere in this Complaint.

222. Finally, NMCD, PNM, Defendant Herrera, and the PNM Deputy Warden are not shielded by qualified immunity for their violations of the Rehabilitation Act, as qualified immunity is not available for such claims.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court grant the following relief against Defendants, jointly and severally:

- (a) Monetary damages against Centurion and individual Defendants sued under 42 U.S.C. § 1983 in their individual capacities in an amount to be determined at trial to compensate Plaintiff for the injuries he sustained as a result of the events and conduct alleged herein;
- (b) Monetary damages against Defendants sued under 42 U.S.C. § 12132 *et seq.* and 29 U.S.C. § 701 *et seq.* in an amount to be determined at trial to compensate Plaintiff for the injuries he sustained as a result of the events and conduct alleged herein;
- (c) Punitive damages against all Defendants in an amount to be determined at trial;
- (d) Statutory interest on any and all damages awarded to Plaintiff;
- (e) Reasonable attorneys' fees and costs under 42 U.S.C. §§ 1988 and 12205, and 29 U.S.C. § 794a; and
- (f) Such other and further relief as the Court may deem just and proper, including injunctive and declaratory relief.

JURY DEMAND

Plaintiff hereby demands a trial by jury pursuant to Federal Rule of Civil Procedure 38(b) on all issues in this case so triable.

Dated: Albuquerque, New Mexico
December 29, 2021

Respectfully submitted,

COLLINS & COLLINS, P.C.

By: /s/ Parrish Collins
Parrish Collins
P.O. Box 506
Albuquerque, NM 87103
(505) 242-5958
parrish@collinsattorneys.com

AND

GUEBERT GENTILE & PIAZZA P.C.

By: /s/ Robert F. Gentile
Terry R. Guebert
Robert F. Gentile
Elizabeth M. Piazza
Julia H. Purdy
P.O. Box 93880
Albuquerque, NM 87199
(505) 823-2300
tguebert@guebertlaw.com
rgentile@guebertlaw.com
epiazza@guebertlaw.com
jpurdy@guebertlaw.com

Attorneys for Plaintiff