

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

SANDRA VASQUEZ-GARCIA,

Plaintiff,

Case assigned to Wilson, Matthew Justin

v.

No. D-101-CV-2021-01777

CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC; MHM HEALTH PROFESSIONALS, LLC; WEXFORD HEALTH SOURCES, INC.; SUMMIT FOOD SERVICES, LLC; STATE OF NEW MEXICO; NEW MEXICO CORRECTIONS DEPARTMENT; and JOHN DOES 1-10 in their individual and official capacities, (employees, staff, agents of CCH Correctional Healthcare of New Mexico, LLC, MHM Health Professionals, LLC, State of New Mexico, New Mexico Correctional Department, respectively).

Defendants.

**COMPLAINT FOR MEDICAL MALPRACTICE AND RELATED CLAIMS**

COMES NOW, the PLAINTIFF, SANDRA VASQUEZ-GARCIA, by and through her attorneys COLLINS & COLLINS, P.C. (Parrish Collins) and SANDOVAL FIRM (Richard A. Sandoval), and for her cause of action states as follows:

**I. PARTIES**

**A. *PLAINTIFF***

1. SANDRA VASQUEZ-GARCIA (“PLAINTIFF”) was at all times relevant to this complaint, a New Mexico Corrections Department (“NMCD”) inmate.

2. PLAINTIFF, at the time of the original incident as set forth below, was an inmate at WNMCF, a NMCD facility.

3. PLAINTIFF is currently residing in P.O. DRAWER 250 GRANTS, NEW MEXICO 87020.

***B. NEW MEXICO CORRECTIONS DEPARTMENT***

4. DEFENDANT NMCD and WNMCF are entities of the State of New Mexico.

5. WNMCF is operated by NMCD.

6. NMCD retains ultimate authority and responsibility over WNMCF, and WNMCF is operated in accordance with NMCD rules, policies, and procedures.

7. NMCD is responsible for contracting of medical services for all NMCD facilities including WNMCF.

8. At all material times, NMCD, CCH, MHM acted through their respective 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 and/or apparent agency.

9. NMCD DEFENDANTS have a duty to provide for the safety and security for those it incarcerates.

10. NMCD governs WNMCF, while independent contractors carry out discrete duties at the discretion of NMCD.

***C. CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC***

11. Centurion Correctional Healthcare Of New Mexico, LLC (“CCH”) entered a contract, General Services Contract #16-770-1300-0097 (“GSC”), with the State of New Mexico that commenced on June 1, 2016 and ended on or about November 2019.

12. CCH 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.

13. At all times material to this Complaint, CCH 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 and/or apparent agency.

14. During the term of the GSC, CCH provided a “comprehensive health care delivery system” to NMCD, which includes billing services, utilization management, general health care services administration, and on-site medical staff provided through an independent contractor, MHM Health Professionals, LLC.

15. CCH was not and is not a public body as evidenced their repeated assertions to that fact.

16. CCH is neither a local public body nor a state employee under NMSA §41-4-7(F).

17. CCH is not entitled to protections under the New Mexico Tort Claims Act.

18. CCH was not at times relevant to this Complaint licensed to practice medicine in New Mexico.

19. CCH, its John Doe named employees, staff and agents will be collectively referred to as CCH DEFENDANTS.

***D. MHM HEALTH PROFESSIONALS, LLC.***

20. MHM Health Professionals, LLC. (“MHM”) is under contract with CCH to provide medical providers to CCH.

21. MHM is a Delaware for profit corporation licensed to do business in New Mexico.

22. MHM provides medical personnel to CCH, including those medical personnel providing medical services at WNMCF during the term of the GSC.

23. MHM employees and staff provided on-site healthcare services to NMCD inmates pursuant to contract with CCH.

24. MHM was not a party to the GSC.

25. MHM is a third-party to the GSC.

26. MHM had no direct contractual relations with NMCD, the State of New Mexico or WNMCF for the provision of medical services during the term of the GSC.

27. MHM had no direct contractual relations with NMCD, the State of New Mexico or WNMCF for the provision of medical services from June 2016 to November 2019.

28. At all material times, MHM 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 and/or apparent agency.

29. MHM carried medical malpractice insurance for itself and the employees loaned to Centurion for the provision of medical care in NMCD facilities.

30. MHM is neither a local public body nor a state employee under NMSA §41-4-7(F).

31. MHM is not entitled to protections under the New Mexico Tort Claims Act.

32. MHM and its John Doe employees, staff and agents will be referred to herein collectively as MHM Defendants.

***E. CCH AND MHM PART OF INTEGRATED ENTERPRISE CENTENE CORPORATION***

33. Upon information and belief, Centene Corporation has annual revenues of over

\$70 billion.

34. Upon information and belief, in 2011, Centene Corporation formed a wholly owned subsidiary Centurion Group, Inc. for the sole purpose of forming a joint venture with MHM Services, Inc.

35. Upon information and belief, the joint venture was formed in anticipation of Centene Corporation acquiring MHM Services, Inc., which occurred in April 2018.

36. Upon information and belief, MHM Services, Inc. operates in 16 states, over 300 facilities with over 9000 employees.

37. In 2019, Centene had revenue in excess of \$70 billion.

38. Upon information and belief, the joint venture partners, Centurion Group, Inc. and MHM Services, Inc., formed a joint venture called Centurion, LLC.

39. Upon information and belief, upon formation, the board of directors of Centurion, LLC consisted of seven individuals; three board of directors from Centene Corporation and four board of directors from MHM Services, Inc.

40. Upon information and belief, the purpose of Centurion, LLC was to form wholly owned subsidiaries in different states for the sole purpose of holding and bidding on state-specific contracts.

41. Upon information and belief, to this end in July 2015, Centurion, LLC formed a wholly owned subsidiary called Centurion Correctional Healthcare of New Mexico, LLC (“CCH”) to bid on the correctional health care contract with the New Mexico Corrections Department.

42. Upon information and belief, at all material times hereto, CCH was a wholly owned subsidiary of Centurion, LLC, which was a joint venture between Centurion Group, Inc.

and MHM Services, Inc.

43. Upon information and belief, the seven board of directors of Centurion, LLC oversaw the operations of CCH.

44. Upon information and belief, MHM Health Professionals, LLC (MHM) is a wholly owned subsidiary of MHM Services, Inc.

45. Upon information and belief, at all material times, the health care providers and the managerial staff working in NMCD facilities under CCH were employed by MHM.

46. Upon information and belief, health care providers at WNMCF were employed by MHM.

47. Upon information and belief, at all materials times, personnel that provided human resources, payroll, financial and legal support for CCH were employed by MHM Services, Inc.

48. Upon information and belief, prior to the acquisition, and at all material times hereto, Centene Corporation, through CCH, was a fifty-one percent (51%) owner in the joint venture and was responsible for providing corporate support to CCH, including tax filings, claims processing for “outside the walls” claims and network contract negotiations.

49. Upon information and belief, prior to the acquisition, and at all material times hereto, MHM Services, Inc. was a forty-nine percent (49%) owner in the joint venture and was responsible for providing CCH with legal support, human resources, credentialing, payroll, benefit plans, finance, IT and office services, including marketing, proposal writing and pricing of requests for proposals.

50. Upon information and belief, at all materials times, the salaries of the John Doe named CCH Defendants, including individually named defendants, were funded fifty-one

percent (51%) by Centene Corporation, through Centurion Group, Inc. and/or Centurion, LLC, and forty-nine percent (49%) by MHM Services, Inc.

51. Upon information and belief, expenses and losses of CCH were funded fifty-one percent (51%) by Centene Corporation, through Centurion Group, Inc and/or Centurion, LLC., and forty-nine percent (49%) by MHM Services, Inc.

52. Upon information and belief, at all materials times, Centene Corporation, MHM Services, Inc. and Centurion, LLC had access to CCH's financial books and records.

53. Upon information and belief, all MHM employees serving under CCH are insured through MHM.

54. Upon information and belief, CCH and Centene Corporation are identified as "additional named insured" on insurance policies issued to MHM.

55. In its February 18, 2016, Technical Response to NMCD's request for proposals, CCH publicized their corporate structure with statements such as:

Centurion is a partnership between Centene Corporation, a Fortune 500 Medicaid managed care company with 32 years of managed care experience, and MHM Services, Inc., a national leader in providing healthcare services to correctional systems. Centurion brings together the ideal mix of MHM's long history of unparalleled client satisfaction and management expertise in the correctional environment with Centene's Medicaid managed care prowess, to provide a level of innovative service approaches never before seen in correctional healthcare.

Centurion, LLC was formed as a joint venture created and co-owned by two mature, strong parent companies that after each being in business over 30 years are experienced in maintaining a solid corporate structure most beneficial to their industries; MHM in correctional healthcare, and Centene in Medicaid managed care services. Centurion's corporate organization was strategically planned to meet the challenges and support the needs of statewide inmate healthcare delivery system like the NMCD.

56. The CCH, MHM, Centene Corporation, MHM Services, Inc. and Centurion, LLC are an integrated enterprise, agents of one another, alter egos of one another, and

instrumentalities of one another.

**F. WEXFORD HEALTH SOURCES, INC.**

57. The contract for prison medical services between Wexford Health Sources, Inc. (“WHS”) and the State of New Mexico, Professional Services Contract (“PSC”) # 20-770-1200-0043, was, upon information and belief, executed in Santa Fe, New Mexico.

58. WHS is foreign profit corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico.

59. WHS is neither a local public body nor a state employee under NMSA §41-4-7(F).

60. WHS is not entitled to protections under the New Mexico Tort Claims Act.

61. WHS, its John Doe named employees, staff and agents will be collectively referred to as WHS DEFENDANTS.

**G. CORECIVIC OF TENNESSEE, LLC**

62. CoreCivic of Tennessee, LLC (“CCT”) is under contract to manage and operate WNMCF.

63. CCT is a Foreign Limited Liability Company registered to do business in New Mexico and whose registered agent is in Albuquerque, New Mexico.

64. CCT is neither a local public body nor a state employee under NMSA §41-4-7(F).

65. CCT is not entitled to protections under the New Mexico Tort Claims Act.

66. CCT, its John Doe named employees, staff and agents will be collectively referred to as CCT DEFENDANTS.

**H. SUMMIT FOOD SERVICE, LLC**

67. Summit Food Service Management, LLC entered a contract with NMCD to



provide food services to NMCD facilities for the term November 1,2012 - October 31, 2020.

68. Summit Food Service Management, LLC voluntarily dissolved.

69. Summit Food Service, LLC upon information and belief was preceded by and is the legal successor to Summit Food Service Management, LLC is the food vendor for NMCD and served as the food vendor at all times relevant to this Complaint.

70. Summit Food Service, LLC is New Mexico Domestic Limited Liability Company.

71. Summit Food Service, LLC and/or its predecessor, Summit Food Service Management, LLC (hereinafter Summit Food), is currently and at all times relevant to this Complaint the food vendor for NMCD, including NWNMCF where PLAINTIFF was housed.

## **II. JURISDICTION AND VENUE**

72. All acts complained of herein occurred in CIBOLA COUNTY, New Mexico.

73. A Tort Claims Notice was timely sent on November 25, 2019.

74. PLAINTIFF asserts that PLAINTIFF exhausted all available administrative remedies as required by 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11.

75. Jurisdiction and venue are proper over CCH and its employees, staff and agents 1-10 pursuant to NMSA § 38-3-1 (A).

76. Jurisdiction over MHM is proper in New Mexico State District Court due to lack of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

77. Jurisdiction and venue are proper over MHM's employees, staff and agents 1-10 pursuant to NMSA § 38-3-1 (A) or due to lack of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

78. Jurisdiction over WHS is proper in New Mexico State District Court due to lack

of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

79. Jurisdiction and venue are proper over WHS' employees, staff and agents 1-10 pursuant to NMSA § 38-3-1 (A) or due to lack of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

80. Jurisdiction over CCT is proper in New Mexico State District Court due to lack of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

81. Jurisdiction and venue are proper over CCT's employees, staff and agents 1-10 pursuant to NMSA § 38-3-1 (A) and due to lack of complete diversity of named DEFENDANTS under 28 U.S.C.A. § 1332.

82. This Court has jurisdiction over the subject matter of PLAINTIFF's New Mexico Tort Claims Act claims against the State of New Mexico and New Mexico Corrections Department and John Doe employees, staff, and agents under NMSA § 41-4-18 and NMSA § 38-3-1 (A).

83. 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.

### **III. STATEMENT OF FACTS**

#### **A. MEDICAL FACTS**

84. At times relevant to this complaint, Ms. Vasquez-Garcia was a 45-year-old woman.

85. Ms. Vasquez-Garcia has had Type II diabetes since 2001.

86. Ms. Vasquez-Garcia's Type II diabetes was well known to NMCD and its medical providers, Centurion, Wexford and MHM.

87. Ms. Vasquez-Garcia's diabetes was largely uncontrolled beginning in September

2017.

88. Blood investigations conducted on following dates had elevated HbA1c which should ideally be less than 7 in case of good glyceemic control:

- a. 10/10/2017 - HbA1c 9.5
- b. 04/11/2018- HbA1c 10.5
- c. 11/07/2018- HbA1c 8.1
- d. 02/26/2019- HbA1c 7.5
- e. 05/01/2019-HbA1c 8.6
- f. 07/23/2019-HbA1c 7.3
- g. 10/09/2019-HbA1c 7.5
- h. 12/06/2019-HbA1c 7.7
- i. 03/14/2020 - HbA1c 8.4
- j. 09/16/2020 - HbA1c 7.6
- k. 12/25/2020 - HbA1c 7.7

89. Lab results showed uncontrolled blood glucose throughout the stay from 2017 to 2019.

90. Daily blood glucose in the form of random blood glucose (AM and PM) and 3 months average blood glucose (HBA1C) indicates glyceemic status of the individual.

91. Despite elevated random blood glucose and average blood glucose levels, blood glucose control measures were not taken and continued the insulin without adequate titration.

92. Most blood glucose readings were above 200 on the following dates:11/2017,12/2017,04/2018,05/2018,06/2018,07/2018,10/2018,11/2018,12/2018,01/2019,2/2

019,04/2019,06/2019,08/2019,09/2019, 04/2020, 05/2020, 06/2020, 07/2020, 11/2020.

93. When the individual blood glucose values are high in the presence of higher HbA1c, Insulin or oral drugs are to be up titrated adequately.

94. Even though frequent dose modifications were done those modifications were inadequate to bring the blood glucose under control (good control means FBG below 130mg/dl, PPG below 180 mg/dl and HbA1c below 7).

95. In people who have diabetic nephropathy and diabetic retinopathy uncontrolled hyperglycemia will lead to progression of both complications.

96. Preemptive screening of eyes might have helped to pick up early retinopathy.

97. Progression of nephropathy was confirmed by stage IV nephropathy on 02/22/2021.

98. On 08/12/2019, she was diagnosed to have right eye vitreous hemorrhage secondary to Proliferative Diabetic Retinopathy (PDR) and left eye proliferative diabetic retinopathy with macular edema and was mentioned that she was symptomatic for 2 months.

99. Plaintiff was treated by inadequate insulin titration, diet and physical activity and no timely retinal examination.

100. All these deviations and negligence led to worsening of retinopathy, drop in vision, and need for vitreoretinal surgery.

101. Ms. Vasquez-Garcia was also noted to have worsening of chronic kidney diseases due to diabetic nephropathy from stage II to IV on 02/22/2021.

102. Throughout her confinement with NMCD, PLAINTIFF was forced to endure toxic food provided by Summit Food.

103. The “diabetic tray” that was provided to PLAINTIFF was no different than the regular toxic tray fed to NMCD inmates.

104. The only difference between the diabetic tray and a regular tray was the color of the tray, the inmate’s name labelled on the tray and the substitution of a fruit cup with fructose syrup for the regular dessert.

105. The fructose syrup laden fruit cup was as bad or worse for PLAINTIFF’s health as the regular dessert.

106. Since release from NMCD custody, PLAINTIFF has been diagnosed with Stage V Renal Failure.

107. As of the filing of the Complaint, she has in-office dialysis treatments three times per week.

108. Once her medication port is healed, she will conduct dialysis herself at home.

109. Her kidney failure is permanent and will suffer a lifetime of dialysis.

110. Her diabetic retinopathy and consequent blindness are permanent.

***B. FACTS SPECIFIC TO NMCD DEFENDANTS***

111. NMCD DEFENDANTS have a duty to reasonably and prudently operate the medical facility within WNMCF.

112. NMCD maintained authority over its contractors, including those named in this COMPLAINT.

113. NMCD has the authority to terminate contracts with independent contractors with

or without cause.

114. Any of the named NMCD Defendants can intercede on behalf of NMCD if independent contractors are not appropriately caring for NMCD inmates.

115. Any of the named NMCD Defendants can intercede on behalf of an inmate to act on a medical grievance.

116. None of the above named NMCD Defendants interceded to protect inmates from gross and reckless medical negligence at WNMCF.

117. NMCD is solely responsible for the medical grievance process.

118. NMCD is supposed to work with its CCH, MHM in addressing and/or resolving inmate medical grievances.

119. NMCD routinely ignores medical grievances.

120. NMCD routinely destroys medical grievances.

121. NMCD routinely fails to process medical grievances correctly.

122. When medical grievances are addressed, NMCD routinely and without medical justification, finds against inmates filing medical grievances.

123. NMCD in reckless disregard and deliberate indifference to the rights of inmates failed to act on medical grievances filed by inmates at WNMCF.

124. During the term of the GSC, NMCD did not find in favor of a single NMCD inmate housed at WNMCF.

125. NMCD does not consult with objective medical experts in the review of medical grievances.

126. The decision of whether to substantiate a medical grievance is made by non-medical NMCD personnel.

127. NMCD's medical grievance abuses outlined above lead directly to the gross and reckless medical neglect of inmates, including PLAINTIFF.

128. NMCD's medical grievance abuses outlined above are a proximate cause of injuries related thereto.

129. NMCD's medical grievance abuses create an unsafe environment at NMCD facilities including WNMCF under NMSA §41-4-6 and constitutes negligent operation of a medical facility under NMSA §41-4-9.

130. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of RETINOPATHY, DIABETES and with wanton, willful and deliberate indifference ignored PLAINTIFF's medical grievances, ignored National Commission on Correctional Health Care ("NCCHC") emergent medical condition, failed to take action within its authority to protect the health of PLAINTIFF.

131. NMCD understands and recognizes that failure to treat RETINOPATHY, DIABETES constitutes recklessness under New Mexico law.

132. NMCD understands and recognizes that failure to treat RETINOPATHY, DIABETES constitutes deliberate indifference under federal law.

133. NMCD had full authority to enforce the GSC.

134. NMCD had at all times relevant to this COMPLAINT the authority to compel its CCH, MHM to treat RETINOPATHY, DIABETES.

135. NMCD has obtained substantial budgets for treatment of RETINOPATHY, DIABETES.

136. NMCD had full authority over the medical grievance process.

137. NMCD through the grievance process can control the manner in which its

contractors, CCH and MHM, perform their duties.

138. NMCD through the terms of the GSC can control the manner in which its contractors, CCH and MHM, perform their duties.

139. NMCD through NMCD policies and regulations can control the manner in which its contractors, CCH and MHM, perform their duties.

140. NMCD had the authority to terminate the GSC at will as indicated by the GSC:

**6. Termination. A. Grounds.** The Agency may terminate this Agreement for convenience or cause.

141. NMCD has the authority to terminate at will the Professional Services Contract # 20-770-1200-0043 (PSC) with WHS as indicated by the terms of the PSC:

**6. Termination. A. Grounds.** The Agency may terminate this Agreement for convenience or cause.

142. NMCD recklessly chose not to exercise any control over the manner in which its CCH, MHM performed their duties leading to the RETINOPATHY, DIABETES.

143. NMCD through the terms of the GSC can control the manner in which its contractors can perform their duties.

144. NMCD through NMCD policies and regulations can control the manner in which its contractors can perform their duties.

145. NMCD recklessly chose not to exercise any control over the manner in which its CCH, MHM performed their duties leading to PLAINTIFF's injuries.

146. NMCD DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of RETINOPATHY, DIABETES and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.



**C.    *FACTS SPECIFIC TO CCH DEFENDANTS***

147.    The GSC was executed by NMCD and CCH on or about June 2016.
148.    CCH submitted its Technical Response to Request for Proposal No. 60-770-15-05163 (CCH TechResponse) for Inmate Medical Services dated February 18, 2016.
149.    CCH Tech Response was over 1200 pages long.
150.    CCH’s Tech Response did not mention the Tort Claims Act.
151.    CCH’s Tech Response did not mention the word “tort.”
152.    CCH’s Tech Response did not mention punitive damages.
153.    CCH’s Tech Response did not mention or request Tort Claims Act protection for CCH, MHM or their respective employees, staff and agents.
154.    The GSC was 80 pages in length.
155.    The GSC did not mention the Tort Claims Act.
156.    The GSC did not mention the word “tort.”
157.    The GSC did not mention punitive damages.
158.    The GSC did not provide for Tort Claims Act protection for CCH or its respective employees, staff, agents, staffing agencies or other vendors.
159.    Tort Claims Act protection for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
160.    Protection from punitive damages for CCH, MHM and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.
161.    The GSC was freely entered into by CCH on or about June 2016.
162.    The GSC was in effect from June 2016 to November 2019.
163.    CCH had the legal capacity to enter the GSC.

164. CCH was legally competent to enter the GSC.

165. There was mutual assent on the part of CCH and NMCD in the negotiation and execution of the GSC.

166. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the GSC.

167. The GSC was not vague.

168. The GSC was not oppressive to CCH.

169. The GSC was not void as a matter of public policy.

170. CCH is and was at all relevant times bound by the terms of the GSC.

171. The GSC is fully enforceable against CCH as written.

172. The GSC states:

**8. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing general services for the Agency and are not employees of the State of New Mexico. The Contractor and its agents and employees shall not accrue leave, retirement, insurance, bonding, use of state vehicles, or any other benefits afforded to employees of the State of New Mexico as a result of this Agreement.

173. By the terms of the GSC, CCH is an independent contractor performing general services for the Agency.

174. By the terms of Paragraph 8 of the Paragraph 8 above of the GSC, CCH and is not an employee of the State of New Mexico.

175. By the terms of Paragraph 8 of the GSC, CCH employees and agents are independent contractors.

176. By the terms of the Paragraph 8 of the GSC, CCH employees and agents are not employees of the State of New Mexico.

177. CCH has repeatedly taken the position as recently as March 6, 2020, and March 9, 2020, that it is not a public entity subject to IPRA.

178. CCH has claimed that it is a public body to gain New Mexico Tort Claims Act protection.

179. In CCH's TechResponse, the proposed contract for New Mexico Department of Corrections would be part of the insurance program that is *currently in place* for CCH." (*emphasis added*).

180. CCH medical staff working in NMCD under the GSC were provided malpractice and general liability insurance through MHM.

181. CCH was a named insured on the insurance policy in place for MHM and MHM employees, staff and agents.

182. Upon information and belief, CCH also carried its own private medical malpractice insurance during the term of the GSC.

183. As part of its CCH TechResponse, CCH provided audits and proof of its "financial stability."

184. In support of its "financial stability," CCH submitted documents with its CCH TechResponse showing that its co-parents generated over \$16.29 billion in fiscal revenue for the 2015 fiscal year.

185. The GSC states:

**22. Indemnification.** The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceeding, claims, demands, costs, damages, attorneys' fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the

time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.

186. The GSC expressly states that there shall be no third-party beneficiary status for any other individuals or entities not parties to the GSC stating:

**D. *No Third Party Beneficiaries.*** The Parties do not intend to create in any other individual or entity, including but not limited to any inmate or patient, the status of third party beneficiary, and this Agreement shall not be construed so as to create such status. The rights, duties and obligations contained in this Agreement shall operate only between the Parties to this Agreement and shall inure solely to the benefit of such Parties....

187. CCH was not licensed to practice medicine in New Mexico during the term of the GSC.

188. WNMCF is not now and was not during times relevant to this COMPLAINT covered by the New Mexico Public Liability Fund.

189. Centurion was the medical provider at WNMCF during the term of the GSC.

190. CCH was not covered by the New Mexico Public Liability Fund during the term of the GSC for medical care provided at WNMCF.

191. The employees and staff of CCH were not covered by the New Mexico Public Liability Fund during the term of the GSC.

192. Under the terms of the CCH contract, CCH was required to pay a penalty to New Mexico for non-performance, including filling vacancies in healthcare staffing needs.

193. As of November 2019, CCH had accumulated approximately \$3,880,719.60 in staffing penalties owed to the State of New Mexico for failure to meet healthcare staffing requirements of the New Mexico prison facilities.

194. Upon transfer of an NMCD inmate during the term of the GSC, Medicaid paid for all inmate hospital bills for inmates that were in the hospital for 24 hours or more.

195. Upon transfer of an NMCD inmate during the term of the GSC, CCH paid no inmate hospital medical bills for inmate hospital stays over 24 hours.

196. The total costs of hospitalizations for PLAINTIFF due to the gross negligence, reckless and deliberately indifferent failure to provide medical care was HOSPITAL BILLS for TREATING HOSPITAL.

197. CCH paid CONTRACTOR HOSPITAL PAYMENTS for the hospital stays in excess of 24 hours for PLAINTIFF's medical care.

198. CCH paid CONTRACTOR PROVIDER PAYMENTS for provider medical related to PLAINTIFF's hospital stays in excess of 24 hours.

199. Upon information and belief, CCH delays transport of critically ill inmates to outside hospitals until such time that it is highly probable that the inmate will remain in the hospital for 24 hours or more.

200. CCH through said delays in treatment deliberately shifts the costs of medical care for critically ill inmates to Medicaid.

201. CCH was paid over \$150 million during the term of the GSC.

202. CCH DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of RETINOPATHY, DIABETES and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.

203. CCH DEFENDANTS had a contractual obligation under the terms of the GSC to develop, monitor and manage medical diets for those suffering from diabetes.

204. CCH DEFENDANTS failed to properly develop, monitor and manage PLAINTIFF's medical diet.

205. CCH DEFENDANTS knew that the food tray served to PLAINTIFF was toxic

given her uncontrolled diabetes.

206. Despite knowledge of the toxic food provided to PLAINTIFF while under the care of CCH, CCH DEFENDANTS failed to intervene or otherwise manage PLAINTIFF's diet.

***D. FACTS SPECIFIC TO MHM DEFENDANTS***

207. MHM provides malpractice and general liability insurance to its medical practitioner employees working in NMCD facilities under CCH during the term of the GSC.

208. MHM was not licensed to practice medicine in New Mexico during the term of the GSC.

209. WNMCF is not now and was not during times relevant to this COMPLAINT covered by the New Mexico Public Liability Fund.

210. MHM provided medical personnel for the provision of medical services at WNMCF via Centurion during the term of the GSC.

211. MHM was not covered by the New Mexico Public Liability Fund during the term of the GSC for medical care provided at WNMCF.

212. The employees and staff of MHM were not covered by the New Mexico Public Liability Fund during the term of the GSC.

213. MHM was not a party to the GSC.

214. MHM is a third party to the GSC.

215. MHM DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of RETINOPATHY, DIABETES and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.

***E. FACTS SPECIFIC TO WEXFORD DEFENDANTS***

216. WEXFORD HEALTH SOURCES, INC. (herein after "WHS") submitted a

TECHNICAL PROPOSAL FOR RFP #20-770-19-06067 (“WHS TechProp”) for Inmate Medical Services dated August 21, 2019.

217. WHS TechProp was over 830 pages long.

218. WHS TechProp did not mention the Tort Claims Act.

219. WHS TechProp did not mention the word “tort.”

220. WHS TechProp did not mention punitive damages.

221. WHS TechProp did not mention or request Tort Claims Act protection for WEXFORD or its employees, staff and agents.

222. Professional Services Contract (“PSC”) # 20-770-1200-0043 was executed by NMCD and WHS on or about October 18, 2019.

223. The PSC was 65 pages in length.

224. The PSC did not mention the Tort Claims Act.

225. The PSC did not mention the word “tort.”

226. The PSC did not mention punitive damages.

227. The PSC did not provide for Tort Claims Act protection for WHS, MHM or their respective employees, staff and agents.

228. Tort Claims Act protection for WHS and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.

229. Protection from punitive damages for WHS, and/or their respective employees, staff and agents was not negotiated, bargained for or agreed upon.

230. The PSC was entered freely by WHS on or about October 18, 2019.

231. The PSC was in effect at times relevant to this Complaint.

232. WHS had the legal capacity to enter the PSC.

233. WHS was legally competent to enter the PSC.

234. There was mutual assent on the part of WHS and NMCD in the negotiation and execution of the PSC.

235. No duress or force was exercised by the State of New Mexico or NMCD in the negotiation and execution of the PSC.

236. The PSC was not vague.

237. The PSC was not oppressive to WHS.

238. The PSC was not void as a matter of public policy.

239. WHS is and was at all relevant times bound by the terms of the PSC.

240. The PSC is fully enforceable against WHS as written and executed.

241. By the terms of the PSC, WHS is an independent contractor performing professional services for the Agency.

242. By the terms of the PSC, Wexford, its employees and agents, are not employees of the state of New Mexico:

**9. Status of Contractor.**

The Contractor and its agents and employees are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico.

243. By the terms of Paragraph 9 of the PSC, WHS is an independent contractor performing general services for the Agency.

244. By the terms of Paragraph 9 of the PSC, WHS is not an employee of the State of New Mexico.

245. By the terms of Paragraph 9 of the PSC, WHS employees and agents are independent contractors.

246. By the terms of Paragraph 9 of the PSC, WHS employees and agents are not



employees of the State of New Mexico.

247. In its WHS TechProp, which culminated in the PSC, WHS stated:

### **E.A.I.G. Insurance and Taxes**

Wexford Health agrees to act as an Independent Contractor in our performance of the services required by the Agreement. Upon contract award, we will comply with all of the following insurance and tax requirements.

- **Professional Liability insurance:** As shown by our COI, we carry professional liability (medical malpractice) insurance on all Wexford Health-employed medical professionals. Our policy not only meets, but also exceeds the RFP-required minimums of \$1,000,000 limit per occurrence and \$3,000,000 in the aggregate annually. Our standards for independently contracted firms and clinicians require them to maintain similar insurance coverage.

248. The PSC states the same insurance coverage for WHS:

Professional Liability - “Occurrence” type, if available; if not “Claims Made” type with an acceptable “tail”; Medicare malpractice covering professional staff - \$1,000,000 limit per occurrence and \$3,000,000 in the aggregate annually.

249. The PSC requires WHS to indemnify NMCD and the State of New Mexico as

follows:

### **23. Indemnification.**

The Contractor shall defend, indemnify and hold harmless the Agency and the State of New Mexico from all actions, proceedings, claims, demands, costs, damages, attorneys’ fees and all other liabilities and expenses of any kind from any source which may arise out of the performance of this Agreement, caused by the negligent act or failure to act of the Contractor, its officers, employees, servants, subcontractors or agents, or if caused by the actions of any client of the Contractor resulting in injury or damage to persons or property during the time when the Contractor or any officer, agent, employee, servant or subcontractor thereof has or is performing services pursuant to this Agreement.

250. Upon information and belief, WHS is not licensed and was not licensed at times relevant to this Complaint to practice medicine in New Mexico.

251. Upon information and belief, WHS is not and was not at times relevant to this

Complaint covered by the New Mexico Public Liability Fund.

252. Upon information and belief, the employees and staff of WHS were not covered by the New Mexico Public Liability Fund during the term of the GSC.

253. WHS was paid over fifty-eight million dollars \$58,000,000.00 in the first year of the PSC.

254. The PSC as executed called for payments of \$60,768,709.90 in the second year and \$62,591,771.20 for the third year.

255. WHS DEFENDANTS, by and through its employees, staff and agents, knew of PLAINTIFF's history of RETINOPATHY, DIABETES and failed to provide necessary and proper medical care to protect PLAINTIFF's health and safety.

256. CCH DEFENDANTS had a contractual obligation under the terms of the GSC to develop, monitor and manage medical diets for those suffering from diabetes.

257. CCH DEFENDANTS failed to properly develop, monitor and manage PLAINTIFF's medical diet.

258. CCH DEFENDANTS knew that the food tray served to PLAINTIFF was toxic given her uncontrolled diabetes.

259. Despite knowledge of the toxic food provided to PLAINTIFF while under the care of CCH, CCH DEFENDANTS failed to intervene or otherwise manage PLAINTIFF's diet.

***F. FACTS SPECIFIC TO SUMMIT FOOD SERVICES, LLC***

260. On 2/1/2019, orders were given to start a diabetic diet.

261. Summit Foods was to provide the diabetic diet.

262. The diabetic diet provided by Summit Food was essentially the same as the regular diet.

263. The difference between the diabetic diet is limited to the color of the tray it is served on and the substitution of a can of fruit in fructose syrup for the regular dessert.

264. Both the regular diet and the diabetic diet are toxic for even a healthy individual.

265. The diabetic diet served to PLAINTIFF was toxic to her health, contributed to her out of control diabetes which has ultimately ended with diabetic retinopathy, near total blindness in one eye, partial blindness in the other, and Stage V renal failure.

***G. FACTS COMMON TO ALL DEFENDANTS***

266. DEFENDANTS' DOCTORS knew of PLAINTIFF's history of RETINOPATHY, DIABETES and with wanton, willful and deliberate indifference ignored PLAINTIFF's medical grievances and deliberately refused to provide necessary and proper medical care.

267. ALL DEFENDANTS collectively knew of PLAINTIFF's history of RETINOPATHY, DIABETES and with wanton, willful and deliberate indifference ignored PLAINTIFF's medical grievances and deliberately refused to provide necessary and proper medical care.

268. ALL DEFENDANTS, including as of yet unidentified JOHN DOE DEFENDANTS, individually knew of PLAINTIFF's history of RETINOPATHY, DIABETES and with wanton, willful and deliberate indifference ignored PLAINTIFF's medical grievances and deliberately refused to provide necessary and proper medical care.

269. ALL DEFENDANTS knew that PLAINTIFF was in need of immediate treatment to control PLAINTIFF's chronic RETINOPATHY, DIABETES.

270. ALL DEFENDANTS knew that PLAINTIFF's chronic RETINOPATHY, DIABETES was worsening.

271. ALL DEFENDANTS knew that untreated chronic RETINOPATHY, DIABETES

could lead to cirrhosis could lead to liver damage to untreated RETINOPATHY, DIABETES positive inmates.

272. ALL DEFENDANTS knew that the failure to treat chronic RETINOPATHY, DIABETES constitutes recklessness under New Mexico law.

273. ALL DEFENDANTS knew that the failure to treat chronic RETINOPATHY, DIABETES constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

274. ALL DEFENDANTS knew that the failure to treat chronic RETINOPATHY, DIABETES constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

275. ALL DEFENDANTS were complicit and acquiesced in the denial of proper medical care to PLAINTIFF.

276. ALL DEFENDANTS conspired together to deny PLAINTIFF necessary and proper medical care leading to the physical pain, severe emotional and psychological pain and suffering, severe and permanent physical injuries from complications from untreated and improperly treated PLAINTIFF's chronic RETINOPATHY, DIABETES which resulted in Cirrhosis of the liver.

**COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE  
(CCH, MHM)**

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

278. In undertaking the diagnosis, care and treatment of PLAINTIFF, DEFENDANT DOCTORS, its employees, staff, and agents were under a duty to possess and apply the

knowledge, skill, and care that is used by reasonably well-qualified healthcare providers in the local community.

279. CCH, MHM, their employees, staff and agents breached their duties and were negligent in the management of PLAINTIFF's health and well-being.

280. The negligence, errors, acts and omissions of CCH, MHM, include, but are not limited to:

a. Failure to establish, maintain and enforce evaluation, diagnosis and treatment guidelines and standards:

b. Failure to evaluate, treat and manage PLAINTIFF's medical condition:

c. Failure to take the reasonable steps to acquire proper treatment of PLAINTIFF;

d. Failure to refer PLAINTIFF to appropriate specialists;

e. Failure to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of RETINOPATHY, DIABETES;

f. Failure to provide PLAINTIFF with necessary and proper pain management; and

g. Failure to protect and preserve the health of PLAINTIFF.

281. As a direct and proximate result of the negligent acts and omissions CCH, MHM, their employees, staff and agents, PLAINTIFF suffered a rapid and significant deterioration in PLAINTIFF's health, along with physical, emotional, and psychological pain and suffering not presently determinable, but to be proven at the time of trial.

282. CCH, MHM, its employees, staff and agent's failures to assess, treat and manage

PLAINTIFF's medical condition was reckless and wanton with utter disregard for and deliberate indifference to the safety and welfare of PLAINTIFF for which PLAINTIFF is entitled to punitive damages.

**COUNT II: NEGLIGENCE  
(NMCD DEFENDANTS)**

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

284. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

285. NMCD is solely responsible for the medical grievance process.

286. NMCD's routine destruction of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.

287. NMCD's routine denial of medical grievances is a direct and proximate cause of injuries to PLAINTIFF.

288. NMCD is in charge of enforcement of the terms of the GSC which creates standards and obligations for CCH's delivery of medical services.

289. NMCD has failed to enforce important provisions of the GSC which led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to PLAINTIFF.

290. NMCD is solely responsible for the administration and enforcement of medical care standards in NMCD facilities.

291. NMCD determined not to enforce the NCCHC standards.

292. NMCD determined not to seek NCCHC accreditation for its facilities while CCH was the medical provider.

293. NMCD determined not to enforce the American Correctional Association

(“ACA”) standards.

294. NMCD allowed ACA accreditation for its facilities to lapse under the medical care of CCH.

295. NMCD’s indifference to national standards for the constitutionally acceptable medical care of inmates and NMCD’s allowance of CCH to provide services far below constitutional standards led directly to the gross medical neglect, intentional and deliberate withholding of medical care and the consequent harm to PLAINTIFF.

296. NMCD is responsible for providing adequate health care to those it incarcerates, and to protect those inmates from risks associated with increased risks of infection or other medical emergencies.

297. With this elevated risk of harm, NMCD has an increased duty of care to these vulnerable inmates, including PLAINTIFF.

298. NMCD maintains clinical oversight of its contractor’s medical decision-making and health services operation.

299. NMCD must enforce the GSC and/or terminate independent contractors if the care provided does not meet NMCD, ACA or NCCHC standards or constitutional definitions of adequate health care.

300. NMCD did not enforce the GSC or take proper enforcement actions against CCH, resulting in inadequate healthcare to its inmates.

301. NMCD’s action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of PLAINTIFF.

302. As a result of the foregoing, PLAINTIFF has suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress, for which

PLAINTIFF is entitled to damages.

**COUNT III: NEGLIGENCE  
(ALL DEFENDANTS)**

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

304. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

305. NMCD DEFENDANTS negligently failed to oversee CCH, MHM in the provision of medical care to NMCD inmates, which contributed to PLAINTIFF's injuries.

306. NMCD DEFENDANTS failed to take corrective action against CCH, MHM in clear face of recurrent and consistent negligent and reckless medical care to NMCD inmates, which contributed to PLAINTIFF's injuries.

307. NMCD and CCH, MHM are entrusted with the medical care of New Mexico inmates who have no other source of medical care.

308. CCH's medical staff at WNMCF lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

309. CCH, MHM has a duty under the GSC, ACA and NCCHC to properly refer PLAINTIFF to be seen by a physician who could effectively treat PLAINTIFF.

310. NMCD DEFENDANTS negligently failed to enforce critical terms of the GSC, including but not limited to, failure to compel WNMCF and/or CCH to obtain accreditation by the ACA and NCCHC, which contributed to PLAINTIFF's injuries.

311. NMCD DEFENDANTS negligently failed to ensure that CCH, MHM hire, train and supervise its medical providers, staff, employees and agents.

312. NMCD DEFENDANTS negligently failed to ensure that CCH, MHM hire competent medical providers, employees, staff and agents.



313. NMCD DEFENDANTS negligently and recklessly failed to ensure that inmates, including PLAINTIFF, were receiving proper medical care, including proper referral to specialists.

314. NMCD knew, and knows, that all referrals for specialist care are made by CCH, MHM administrators outside of NMCD medical facilities.

315. NMCD knew, and knows, that referrals for specialist care are not made by inmates', including PLAINTIFFS', on-site medical providers, but by corporate administrative personnel.

316. NMCD knew and knows that referrals for specialist care are routinely denied by CCH, MHM non-medical administrative personnel on the basis of costs to CCH, MHM for said referrals.

317. NMCD DEFENDANTS negligently, intentionally and knowingly interfered in the inmate grievance process with a pattern and practice of routine denial of medical grievances without due consideration of the facts and circumstances of the grievances, which contributed to PLAINTIFF's injuries.

318. NMCD DEFENDANTS negligently, recklessly and deliberately failed to hold CCH, MHM to standards and guidelines of the ACA or NCCHC.

319. NMCD DEFENDANTS negligently, recklessly and deliberately failed to hold CCH, MHM to the medical standard of care established under New Mexico law, which contributed to PLAINTIFF's injuries.

320. NMCD DEFENDANTS negligently, recklessly and deliberately failed to establish or enforce any standards at all for CCH, MHM's provision of proper, necessary and competent medical care to NMCD inmates.

321. NMCD has a duty to operate CNMCF, GCCF and WNMCF in a safe and reasonably prudent manner.

322. This duty includes following and enforcing NMCD procedures in place to protect inmates' health and their access to healthcare.

323. Due to the epidemic of MRSA, osteomyelitis and other infection disease in NMCD facilities state-wide, including WNMCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of PLAINTIFF.

324. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including PLAINTIFF.

325. NMCD has not addressed this increased risk of harm, even though NMCD policies and procedures explicitly provide for the care of inmates in need of medical treatment.

326. As such, NMCD has negligently operated WNMCF, a public facility in which it incarcerated PLAINTIFF.

327. NMCD has created a risk to all inmates including PLAINTIFF at WNMCF, as all inmates are owed adequate healthcare.

328. NMCD's action and inactions were reckless, wanton, and deliberately indifferent to the medical needs of PLAINTIFF.

329. As a result of the foregoing, PLAINTIFF has suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress, for which PLAINTIFF is entitled to damages.

**COUNT IV: NEGLIGENT OPERATION OF A MEDICAL FACILITY  
(CCH, MHM DEFENDANTS)**

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

331. CCH, MHM is entrusted with the medical care of inmates who have no other source of medical care by contract with the State of New Mexico and NMCD.

332. CCH, MHM employees, staff and agents were unqualified to care for PLAINTIFF, and yet refused to refer PLAINTIFF to specialists.

333. CCH, MHM employees, staff and agents were unqualified and delayed proper treatment for PLAINTIFF from September 5, 2018 to March 19, 2019 when he/she was finally sent to UNMH for treatment.

334. CCH, MHM DEFENDANTS' actions and inactions in failing to properly assess, treat and manage PLAINTIFF's RETINOPATHY, DIABETES and related health conditions were negligent, reckless, wanton and in deliberate disregard for the health of PLAINTIFF.

335. CCH, MHM DEFENDANTS' actions and inactions in failing to properly refer PLAINTIFF to be seen by a physician who could effectively treat PLAINTIFF were negligent, reckless, wanton and in deliberate disregard for the health of PLAINTIFF.

336. By failing to either: (1) properly treat PLAINTIFF's medical conditions, or (2) properly refer PLAINTIFF to be seen by a physician who could effectively treat PLAINTIFF, CCH, MHM DEFENDANTS breached their duty to medically treat PLAINTIFF in a reasonably prudent manner.

337. Decisions for referral of inmates to specialists are made by CCH, MHM corporate administrators rather than inmate medical providers.

338. No referral to a specialist may be made without first gaining approval from CCH, MHM corporate administrators.

339. On-site medical providers do not have the authority to directly refer an inmate to a specialist without approval of CCH, MHM corporate administrators.

340. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by CCH, MHM administrators to approve referrals to specialists.

341. CCH, MHM DEFENDANTS failed to properly address PLAINTIFF's medical condition.

342. Such conduct amounts to negligence in running a prison medical facility.

343. Such conduct amounts to negligence in the treatment of PLAINTIFF.

344. CCH, MHM had a duty to properly screen, supervise, educate, and train its employees regarding PLAINTIFF and inmates with similar health conditions within the facility.

345. CCH, MHM had a duty to allow PLAINTIFF's on-site medical providers make referrals to specialists.

346. CCH, MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering RETINOPATHY, DIABETES.

347. On information and belief, CCH, MHM failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage PLAINTIFF's multiple medical conditions, including RETINOPATHY, DIABETES and related health conditions.

348. CCH, MHM is bound by the GSC to obtain and maintain ACA and NCCHC accreditation under the terms of the GSC.

349. CCH, MHM do not comply with ACA, NCCHC or New Mexico standards of healthcare.

350. As a result of the foregoing, PLAINTIFF has suffered damages and injuries including, but not limited to, physical injuries, pain and suffering, and severe psychological and

emotional distress, for which she is entitled to damages.

351. The actions and inactions of CCH, MHM DEFENDANTS were negligent, willful, wanton, and in gross and reckless disregard for PLAINTIFF's well-being, entitling PLAINTIFF to punitive damages thereon.

**COUNT V: NEGLIGENT OPERATION OF A MEDICAL FACILITY  
(NMCD DEFENDANTS)**

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

353. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

354. NMCD has authority over all NMCD correctional facilities, including WNMCF.

355. NMCD has authority and control over the operation of all medical facilities within NMCD correctional facilities, including those within WNMCF.

356. NMCD is the contracting party to the GSC entered into between NMCD and CCH on June 1, 2016.

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

358. NMCD has allowed numerous serious breaches and violations of the GSC, ACA and NCCHC that led to the medical neglect of PLAINTIFF.

359. NMCD and CCH, MHM are entrusted with the medical care of New Mexico inmates who have no other source of medical care.

360. CCH, MHM's medical staff at WNMCF lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

361. CCH, MHM has a duty under the GSC, ACA and NCCHC to properly refer PLAINTIFF to be seen by a physician who could effectively treat PLAINTIFF.

362. NMCD DEFENDANTS refused or otherwise failed to enforce these provisions of the GSC, ACA and NCCHC.

363. NMCD DEFENDANTS knew that CCH, MHM was not abiding by the terms of the GSC, ACA and NCCHC.

364. NMCD DEFENDANTS knew that CCH, MHM was not properly and adequately treating PLAINTIFF's medical condition.

365. NMCD DEFENDANTS knew that CCH, MHM was not referring PLAINTIFF to outside medical healthcare providers who could effectively and prudently treat PLAINTIFF.

366. NMCD knew that CCH, MHM corporate administrators were making costs rather than medically based decisions on referrals of inmates, including PLAINTIFF, to proper specialists.

367. NMCD knew that CCH, MHM corporate administrators were routinely denying referrals of inmates to specialists on costs rather than medical grounds.

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

369. Such conduct amounts to negligence in the treatment of PLAINTIFF.

370. The actions of NMCD were negligent, reckless, willful, wanton, and deliberately indifferent to the health of PLAINTIFF.

371. NMCD DEFENDANTS have knowingly allowed, aided and abetted in CCH's failure to obtain and maintain ACA and NCCHC accreditation.

372. CCH has violated numerous provisions of ACA and NCCHC.

373. NMCD DEFENDANTS have taken no action to correct these violations or otherwise hold CCH to ACA, NCCHC or New Mexico medical standards of care.

374. NMCD DEFENDANTS have been complicit in the failure to adhere to the basic

constitutional correctional healthcare set forth by the NCCHC through NMCD's failure to enforce the GSC.

375. NMCD DEFENDANTS have knowingly allowed and been complicit in the violation of the ACA and NCCHC minimum mandatory standards.

376. NMCD DEFENDANTS have failed to properly maintain oversight and enforcement of the GSC.

377. NMCD DEFENDANTS have failed to enforce the following provisions of the GSC:

- a. The establishment of an electronic medical records system which is in fact required by both the contract and is in fact required under federal law;
- b. All provisions related to ACA and NCCHC accreditation and compliance;  
and
- c. Referral of inmates to specialists when necessary for inmate health.

378. NMCD is ultimately responsible for providing adequate health care to those it incarcerates, and to protect those inmates from risks associated with increased risks of infection or other medical emergencies.

379. Due to the epidemic of MRSA, osteomyelitis and other infection disease in NMCD facilities state-wide, including WNMCF, NMCD had a heightened duty of care for the protection of inmate health, including the health of PLAINTIFF.

380. Specifically, with elevated risk of harm, NMCD has an increased duty of care to vulnerable inmates, including PLAINTIFF.

381. NMCD has clinical oversight of its contractor's medical decision-making and health services operation.

382. NMCD must enforce the GSC and/or terminate independent contractors if the care provided does not meet NMCD, ACA or NCCHC standards or constitutional definitions of adequate health care.

383. NMCD did not enforce the GSC or take proper enforcement actions against CCH, MHM, resulting in inadequate healthcare to its inmates, including PLAINTIFF.

384. The failures of NMCD DEFENDANTS led to serious and permanent harm to PLAINTIFF.

385. As a result of the foregoing, PLAINTIFF suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress for which PLAINTIFF is entitled to damages.

**COUNT VI: NEGLIGENT HIRING, TRAINING AND SUPERVISION  
(CCH, MHM)**

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

387. CCH, MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering RETINOPATHY, DIABETES.

388. On information and belief, CCH, MHM failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage PLAINTIFF's RETINOPATHY, DIABETES.

389. CCH, MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of diabetic patients.

390. CCH, MHM are bound by the GSC to obtain and maintain ACA and NCCHC accreditation under the terms of the GSC.

391. CCH, MHM have not established any standards for medical care.



392. NMCD routinely violates NMCD and the GSC medical treatment and care policies and provisions.

393. CCH, MHM have not trained or supervised its employees, staff and agents in any standards of medical care.

394. CCH, MHM's negligent hiring, training and supervision were the proximate cause of PLAINTIFF's injuries and damages for which PLAINTIFF is entitled to damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

395. CCH, MHM's negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of PLAINTIFF.

396. CCH, MHM had a duty to allow PLAINTIFF's medical providers to make referrals to specialist.

397. CCH, MHM breached this duty with decisions for referral of inmates made by CCH, MHM corporate administrators rather than inmate medical providers.

398. No referral to a specialist may be made without first gaining approval from CCH, MHM corporate administrators.

399. On-site medical providers do not have the authority to directly refer an inmate to a specialist without approval of CCH, MHM corporate administrators.

400. Approval of referrals by CCH, MHM corporate administrators are made on costs rather than medical grounds.

401. This process and policy is reckless and dangerous and leads to severe harm to inmates due to refusal on costs grounds by CCH, MHM administrators to approve referrals to specialists.

402. PLAINTIFF is entitled to recovery for PLAINTIFF's injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

403. PLAINTIFF is entitled to punitive damages against CCH, MHM.

404. Waivers of immunity apply to this Count under NMSA 41-4-6, NMSA 41-4-9 and NMSA 41-4-10.

**COUNT VII: NEGLIGENT HIRING, TRAINING AND SUPERVISION  
(NMCD DEFENDANTS)**

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

406. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

407. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of RETINOPATHY, DIABETES.

408. On information and belief, NMCD failed to properly train and supervise its employees, contractors, or agents in such a manner to properly and adequately assess, treat and manage PLAINTIFF's RETINOPATHY, DIABETES and related health conditions.

409. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of RETINOPATHY, DIABETES.

410. Waivers of immunity apply to this Count under NMSA 41-4-6, NMSA 41-4-9 and NMSA 41-4-10

411. NMCD established, but failed to enforce, any standards for medical care.

412. NMCD failed to enforce the GSC.

413. NMCD failed to exercise supervisory authority inherent in the grievance system.

414. NMCD has not trained or supervised its employees, staff and agents in any standards of medical care.

415. NMCD's negligent hiring, training and supervision were the proximate cause of PLAINTIFF's injuries and damages for which PLAINTIFF is entitled to injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

416. NMCD's negligent hiring, training and supervision was willful, deliberate and in wanton disregard for the health and safety of PLAINTIFF.

417. PLAINTIFF is entitled to recovery for PLAINTIFF's injuries and damages including, but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

**COUNT VIII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS  
(CCH, MHM)**

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

419. CCH, MHM DEFENDANTS intentionally denied PLAINTIFF proper and necessary medical care for PLAINTIFF's RETINOPATHY, DIABETES.

420. CCH, MHM DEFENDANTS failed to take action to provide proper medical care despite numerous sick calls and/or grievances thereon.

421. CCH, MHM DEFENDANTS retaliated against PLAINTIFF by taking away PLAINTIFF's admission in the Echo Project for treatment of PLAINTIFF's RETINOPATHY, DIABETES knowing PLAINTIFF's RETINOPATHY, DIABETES was worsening PLAINTIFF's health conditions, because of a disciplinary action.

422. The conduct of CCH, MHM DEFENDANTS was extreme, outrageous, and intentional and in deliberate disregard for PLAINTIFF's mental health.

423. PLAINTIFF suffered severe emotional distress as a result of the conduct of DEFENDANTS.

424. As a result of the foregoing, PLAINTIFF has suffered serious and permanent physical injuries, pain and suffering, and severe psychological and emotional distress, for which PLAINTIFF is entitled to damages, including punitive damages.

**COUNT IX: CIVIL CONSPIRACY TO DENY PLAINTIFF MEDICAL CARE  
(CCH, MHM)**

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

426. The facts illustrated above show a conspiracy on the part of NMCD DEFENDANTS, CCH, MHM to deny PLAINTIFF necessary, proper and constitutionally minimal medical care.

427. As a result of said conspiracy, PLAINTIFF suffered, and continues to suffer, severe physical and emotional distress as a result of the conduct of NMCD DEFENDANTS, CCH, MHM.

428. PLAINTIFF is entitled to recovery for PLAINTIFF's injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

429. PLAINTIFF is entitled to damages, including punitive damages, against CCH, MHM.

430. There is no Tort Claims Act waiver for civil conspiracy for NMCD.

431. PLAINTIFF is entitled to punitive damages against CCH, MHM DEFENDANTS.

**COUNT X: RESPONDEAT SUPERIOR AND AGENCY  
(CCH, MHM)**

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

433. CCH, MHM are responsible to PLAINTIFF under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

434. CCH, MHM are responsible to PLAINTIFF under the doctrine of agency for the conduct of its employees, staff and agents.

**COUNT XI: RESPONDEAT SUPERIOR AND AGENCY  
(NMCD)**

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

436. NMSA §41-4-6, NMSA §41-4-9 and NMSA §41-4-10.

437. NMCD is responsible to PLAINTIFF under the doctrine of *respondeat superior* for the conduct of its employees, staff and agents.

438. NMCD is responsible to PLAINTIFF under the doctrine of agency for the conduct of its employees, staff and agents.

**COUNT IX: BREACH OF CONTRACT TO PROVIDE PROPER MEDICAL DIETS  
(SUMMIT FOOD SERVICES, LLC)**

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

440. By contract with NMCD, Summit Food was to provide medical diets appropriate to those with chronic illnesses.

441. By contract with NMCD, Summit Food provide medical diets appropriate to those suffering diabetes.

442. Summit failed to provide PLAINTIFF with a proper medical diet instead feeding her what amounted to poison for one suffering chronic and poorly controlled diabetes.

443. PLAINTIFF is entitled to recovery for PLAINTIFF's injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

444. PLAINTIFF is entitled to damages, including punitive damages, against Summit Foods.

**COUNT IX: CIVIL CONSPIRACY TO DENY DIABETICALLY SAFE DIET  
(SUMMIT FOOD, NMCD, CENTURION)**

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

446. Summit Food conspired with NMCD and Centurion to deny PLAINTIFF a proper medical diet.

447. NMCD was aware of both Summit Food's contractual obligation to provide a proper diabetic diet and its failure to do so.

448. Centurion was aware of both Summit Food's contractual obligation to provide a proper diabetic diet and its failure to do so.

449. Centurion, by contract under the terms of the GSC, was charged with developing, monitoring and managing medical diets for its patients.

450. Centurion failed to do so.

451. Despite the detectable harm the food provided by Summit Food was causing PLAINTIFF neither NMCD nor Centurion intervened to protect the health of PLAINTIFF.

452. PLAINTIFF is entitled to recovery for PLAINTIFF's injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and

emotional distress.

453. PLAINTIFF is entitled to damages, including punitive damages, against Summit Foods.

**COUNT XII: *RES IPSA LOQUITUR***  
**(ALL DEFENDANTS)**

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

455. The injuries and damages suffered by PLAINTIFF were proximately caused by wanton, willful and reckless actions and inactions ALL DEFENDANTS.

456. It was the responsibility of CCH, MHM to manage and control their medical staff and the care and treatment of PLAINTIFF.

457. The events causing the injuries and damages to PLAINTIFF were of a kind which would not ordinarily occur in the absence of negligence on the part of CCH, MHM DEFENDANTS.

458. The doctrine of *res ipsa loquitur* is applicable as a theory of negligence, causation and damages in this case and appropriately pled herein.

459. PLAINTIFF is entitled to recovery for PLAINTIFF's injuries and damages, including but not limited to, physical injuries, pain and suffering, and severe psychological and emotional distress.

460. PLAINTIFF is entitled to punitive damages against CCH, MHM DEFENDANTS.

**COUNT XIII: PUNITIVE DAMAGES**  
**(CCH, MHM)**

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

462. The acts and omissions complained of in the causes of action stated above, upon information and belief, are believed to be of such an egregious nature, in reckless, wanton, willful, deliberate and total disregard to the health of PLAINTIFF, that in addition to the actual damages ascertained and demonstrated by a preponderance of the evidence, that punitive damages or exemplary damages to punish and deter these types of acts and omissions from occurring in the future, may well be appropriate.

**WHEREFORE**, PLAINTIFF requests judgment as follows:

A. Compensatory damages against all DEFENDANTS, jointly and severally, in an amount to be determined by this Court as adequate for pain, suffering, and injuries to PLAINTIFF;

B. Compensatory damages against all DEFENDANTS, jointly and severally, in an amount to be determined by this Court as adequate for CCH, MHM DEFENDANTS' intentional infliction of emotional distress;

C. Punitive damages in an undetermined amount against CCH, MHM;

D. Costs incurred by PLAINTIFF, including pre-judgment and post-judgment interest; and

E. Such other and further relief as the Court deems just and proper.

Respectfully submitted,

COLLINS & COLLINS, P.C.

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-and-

SANDOVAL FIRM

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