

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

EUGENIO S. MATHIS, as Personal Representative
of the ESTATE OF SARIAH ARCHULETA, deceased,

Plaintiff,

Case assigned to Mathew, Francis J.

v.

No. D-101-CV-2022-01074

NEW MEXICO CORRECTIONS DEPARTMENT
(NMCD); WEXFORD HEALTH SOURCES, INC.;
DOES 1-10, and ENTITIES, CORPORATIONS,
PARTNERSHIPS 1-5, in their individual and
official capacities.

Defendants.

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO CONSTITUTION AND
NEW MEXICO TORT, CONTRACT, AND COMMON LAW**

COMES NOW, Plaintiff Eugenio S. Mathis, as Personal Representative of the
Estate of Sariah Archuleta, deceased, (“Plaintiff”), by and through his attorneys
Collins & Collins, P.C. (Parrish Collins & Elise C. Funke) and Guebert Gentile & Piazza, P.C.
(Elizabeth M. Piazza) and for his cause of action states as follows:

JURISDICTION AND VENUE

1. All acts complained of herein occurred in Cibola County, New Mexico at
Western New Mexico Correctional Facility (“WNMCF”).

2. A Notice of Tort Claims was sent on October 21, 2021, and an Amended
Notice of Tort Claims was sent on November 2, 2021, meeting the notice requirements under
both the New Mexico Tort Claims Act, NMSA 1978, § 41-4-16) and the
New Mexico Civil Rights Act, NMSA 1978, § 41-4A-13.

3. Ms. Archuleta is not imprisoned at the time of filing this Complaint, so 42 U.S.C.A. § 1997e and NMSA 1978, § 33-2-11 are inapplicable. It is not known if Ms. Archuleta filed medical grievances at the time of filing of this Complaint. However, New Mexico Corrections Department (“NMCD”) routinely ignores and or conceals medical grievances filed by inmates. In addition, NMCD inmates report retaliation for filing medical grievances. This systemic abuse of the medical grievance system plays a significant role in the ongoing persistent systemic extreme medical neglect leading to severe harm of death to inmates.

4. Jurisdiction and venue are proper over NMCD, Wexford, and their employees, staff, and agents pursuant to NMSA 1978, §§ 38-3-1 and 41-4-18; Article II, §§ 13 and 18 of the New Mexico Constitution; the New Mexico Civil Rights Act, NMSA 1978, §§ 41-4A-1 through 41-4A-13; and New Mexico tort, contract, and common law.

PARTIES

5. Ms. Archuleta, up to the time of her death, was at all relevant times incarcerated at Western New Mexico Correctional Facility (“WNMCF”), an NMCD prison facility located in Cibola County, New Mexico.

6. Defendant NMCD is an entity of the State of New Mexico that operates WNMCF, retaining ultimate authority and responsibility over WNMCF. WNMCF is operated in accordance with NMCD rules, policies, and procedures. NMCD governs WNMCF, while independent contractors carry out discrete duties at the discretion of NMCD. NMCD is responsible for contracting medical and mental health services for all NMCD facilities, including WNMCF. At all times relevant herein, NMCD was responsible for the custody, care, health, safety, and medical treatment of all prisoners in its facilities.

7. Defendant Wexford is a foreign corporation registered to do business in New Mexico whose registered agent is in Hobbs, New Mexico. Wexford, by the terms of Professional Services Contract # 20-770-1200-0043 (the “PSC”), was contracted by NMCD for the purposes of providing medical and mental health care to inmates in the NMCD prison system, including Ms. Archuleta. Upon information and belief, the PSC was executed in Santa Fe, New Mexico. The term of the PSC began on or about October 18, 2019 and was in effect at all times relevant to this Complaint.

8. Under the PSC, Wexford was acting as the apparent and actual agent, servant, and contractor of NMCD and was responsible for the care, health, safety, and proper medical treatment of all prisoners in NMCD’s facilities, including Ms. Archuleta. Pursuant to the PSC, NMCD adopted Wexford’s policies, practices, habits, customs, procedures, training, and supervision as its own, and Wexford adopted NMCD’s policies, practices, habits, customs, procedures, training, and supervision as its own. Wexford acted by and through its employees, staff, agents, and assigns who are named in their individual capacities. Under the terms of the PSC, § 9, Wexford and its agents and employees “are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico.

EMPLOYEES, STAFF, AND AGENTS OF PARTIES

9. Alisha Tafoya was at all times relevant to this Complaint the Secretary of Corrections for NMCD employed by and under the authority and control of NMCD. NMCD’s Secretary of Corrections is the “chief executive and administrative officer” of NMCD. NMSA 1978, § 9-3-4. Although “organizational units of [NMCD] and the officers of those units...have all of the powers and duties enumerated in the specific laws involved...the carrying out of those powers and duties [is] subject to the direction and supervision of the secretary, and

he shall retain the final decision-making authority and responsibility” as chief executive to that department. NMSA 1978, § 9-3-12.

10. At all times relevant to this Complaint, Wence Asonganyi was the NMCD Health Services Administrator employed by and under the authority and control of NMCD. New Mexico Corrections Department Health Services Bureau (HSB) proclaims that it is committed to providing quality healthcare that meets correctional healthcare standards and constitutional mandates. The stated goal of HSB is to assure the care, opportunities and education necessary for patients to improve their health.

11. Wendy Price was at all times relevant to this Complaint, the NMCD Psy.D. Behavioral Health Bureau Chief employed by and under the authority and control of NMCD HSB advertises that the services provided by NMCD Psy.D. Behavioral Health Bureau Chief are designed to assist offenders in attaining and/or maintaining their cognitive and emotional well-being in the sometimes-stressful environment that is associated with incarceration.

12. Upon information and belief, Ed Smith was at all times relevant to this Complaint, the NMCD Acting Director Administrative Services Division employed by and under the authority and control of NMCD. The Administrative Services Division states that, in its commitment to the safety and well-being of the people of New Mexico, by doing the right thing always, provides agency divisions and programs with direction, support, guidance and oversight over all fiscal and property management activities. Bureaus within the Division are required to ensure an internal control structure exist to enable compliance with statutory, regulatory and departmental administrative requirements while identifying opportunities to more efficiently and effectively operate the department.

13. Hope Salazar was at all times relevant to this Complaint, the Director of Office of Inspector General employed by and under the authority and control of NMCD. The Office of the Inspector General maintains a professional and constructive liaison between contractors and the various Department Divisions and Bureaus to assure that services contractually required by the State of New Mexico are met qualitatively and quantitatively. The Office of the Inspector General oversees Internal Audits and Standards Compliance (IASC) IASC Bureau is private prison contract compliance, American Correctional Association compliance, quality assurance and conditions of confinement for the incarcerated. The Bureau is also responsible for NMCD policy revisions and other compliance efforts related to the prevention of major prison litigation.

14. The following titled positions, the individual holders of which have yet to be identified, were each responsible for overseeing the training, staffing, and supervision of psychiatric, mental health and behavioral health personnel operating the WNMCF facility, including medical and/or security personnel, from at least June through Ms. Archuleta's death on October 19, 2021. During all relevant times, they were agents and/or employees of NMCD and/or Wexford, acting within the scope of their employment as such. Because their training, staffing, and supervision directly contributed to the larger overall dangerous conditions at WNMCF, they are sued in their individual capacities for their supervisory acts.

- a. WNMCF Health Services Administrator,
- b. WNMCF Medical Director,
- c. Wexford Regional Medical Director,¹
- d. Wexford Regional Manager,
- e. Wexford Regional Director of Nursing,

¹ References to "regional" personnel refer to whichever regional designation New Mexico falls under based on the employer's organizational structure.

- f. Wexford Quality Improvement Coordinator,
- g. WNMCF Director of Nursing,
- h. Facility Health Services Administrator (HSA),
- i. Facility Medical Director,
- j. Responsible Health Authority and Psychiatrist(s),
- k. Wexford Prescribing Psychologist,
- l. Wexford Regional Psychiatric Director,
- m. Wexford Site Medical Director,

15. R. Yazzie, Lt. Gifford, Denise Apodaca, J. Betonie, Anthony Johnson and CO Romero were all correctional officers employed by and under the authority and control of NMCD. Each had direct contact with Ms. Archuleta and were all knowledgeable of her mental health issues. However, they never intervened to ensure that Ms. Archuleta received necessary medical and mental health care. Instead, they enlisted medical personnel purely for disciplinary purposes in identifying crushed-up psychotropic drugs for which Ms. Archuleta was indeed disciplined. In failing to intervene, they violated NMCD policies on psychotropic drugs and Ms. Archuleta's rights to constitutionally adequate medical and mental health care.

16. Hobart Sharpton, DO was employed by and under the authority and control of Wexford. Dr. Sharpton was involved in the medical care of Ms. Archuleta and ignored her deteriorating mental health condition, failed to provide proper treatment, and failed to properly refer her for mental health services either within or outside of WNMCF

17. Robert Rosales, RN was employed by and under the authority and control of Wexford. RN Rosales was involved in the medical care of Ms. Archuleta and ignored her deteriorating mental health condition, failed to provide proper treatment, and failed to properly refer her for mental health services either within or outside of WNMCF

18. Patricia London, LPN was employed by and under the authority and control of Wexford. LPN London was involved in the medical care of Ms. Archuleta and ignored her deteriorating mental health condition, failed to provide proper treatment, and failed to properly refer her for mental health services either within or outside of WNMCF

19. Martina Martinez, LPN, employed by and under the authority and control of Wexford. LPN Martinez was involved in the medical care of Ms. Archuleta and ignored her deteriorating mental health condition, failed to provide proper treatment, and failed to properly refer her for mental health services either within or outside of WNMCF

20. Shelly Campbell, FNP-C, employed by and under the authority and control of Wexford. FNP-C Campbell was involved in the medical care of Ms. Archuleta and ignored her deteriorating mental health condition, failed to provide proper treatment, and failed to properly refer her for mental health services either within or outside of WNMCF.

21. Other Wexford employees could not be identified due to illegible signatures and lack of printed names.

FACTUAL BACKGROUND

I. PLAINTIFF'S INMATE FILE SUMMARY OF RELEVANT FACTS

22. Prior to her transfer to NMCD, Ms. Archuleta had been on suicide watch at San Juan County Adult Detention Center while incarcerated there for the offenses leading to her sentence to NMCD.

23. The 12/23/2020 Receiving and Diagnostics Center ("RDC") Intake reveals numerous mental health issues indicative of suicide risk:

- a. Ms. Archuleta reported sexual abuse at the hands of her father from age 7 to 12 years old.

b. Ms. Archuleta's first contact with law enforcement was at age 10 when she ran away from home.

c. Ms. Archuleta was placed in foster care in 5th grade, which was her last completed year of school.

d. Ms. Archuleta reported that she did not get along with her family and had no contact with family either by phone, letters or visits.

e. Ms. Archuleta reported that she obtained her GED in Colorado in 2017.

f. Ms. Archuleta indicated that while incarcerated, she wanted to get involved in work training, education programming and counseling. She reported that she enjoyed singing and drawing.

g. Ms. Archuleta admitted prior addictions to meth and heroin, and abuse of alcohol which she attributed to the assault on jail employee: "I got arrested when I was drunk and I hit one of the CO's at the county jail. "

h. Based upon the RDC intake, RDC intake officer Adam Nez recommended:

Sariah become involved in a general work assignment which might enhance any marketable job skills; receive educational programs as needed, and be provided with therapy and counseling as recommended by Mental Health Services.

24. During her incarceration, it does not appear from a review of her inmate file and NMCD medical records that Ms. Archuleta was ever enrolled in work training, education programming or mental health counselling, as recommended following RDC Intake recommendations, nor based upon her desire to make her time in NMCD custody more productive.

25. While in custody, Ms. Archuleta received a number of adverse disciplinary actions including offenses some of which were suggestive of drug and mental health issues:

- a. 01/28/2021 incident, Report Log 21-01-041, A (17) Refusal to Submit to a Drug Test charge(s) per policy CD-090100.
- b. 03/24/202 incident, Report Log #: 21-03-1651, Presence in Unauthorized or Restricted Area, involving entering another inmate's cell.
- c. 04/30/2021 incident, Log 21-04-252, Presence in Unauthorized or Restricted Area involving entering another inmate's cell.
- d. 06/10/2021 incident, Report Log 21-06-403 charges for possession of contraband (tattoo equipment).
- e. 06/23/2021 incident, Report Log#: 21-06-464, involving charges of fighting with another inmate.
- f. 06/29/2021, Report Log 21-06-468, charged with abuse of medications. Specifically, she was charged with grinding up Quetiapine (Seroquel) and Buspirone (Buspar). Buspar is FDA approved for the treatment of anxiety. Seroquel is FDA approved for schizophrenia, acute manic episodes, and adjunctive treatment for major depressive disorder. Buspirone is primarily used in the treatment of generalized anxiety disorder. Based upon a review of the medical records provided by NMCD, this incident was not entered into Ms. Archuleta's medical records by LPN Martina Martinez. Instead, LPN Martina Martinez limited her involvement to examination and identification of the crushed pills for purposes of disciplinary action.

g. 07/10/2021 incident, Log 21-07-507 charges for abuse of medication alleging she was attempting to give her medication to another inmate and then swallowing the pills.

h. 07/13/2021 incident, Report Log 21-07-524 charges of possession of contraband, sock with lock and soap which Ms. Archuleta stated she possessed due to fear of attack because she had been accused of being a snitch.

26. For these various disciplinary actions, Ms. Archuleta lost any phone, visitation, and commissary privileges. The loss of the privileges extended well past her date of death on 10/19/2021. She also lost earned good time.

27. Ms. Archuleta did not receive any mental health evaluations, counseling or programming with medical personnel. Instead, she was only disciplined.

II. PLAINTIFF'S MEDICAL HISTORY

46. Ms. Archuleta was 23-years old with a significant medical and mental health history putting her at risk of suicide.

47. From December 23, 2020, to the date of her death on October 19, 2021, Ms. Archuleta was prescribed Buspirone (Buspar) and Quetiapine (Seroquel). Buspirone is FDA approved for the treatment of anxiety. Quetiapine is FDA approved for schizophrenia, acute manic episodes, and adjunctive treatment for major depressive disorder. Although she was treated with Buspar and Seroquel, there does not appear from the medical records to be any mental health diagnosis.

48. Neither does it appear from the medical records provided by NMCD that there was any treatment or monitoring of Ms. Archuleta's medical and mental health conditions, putting her at further risk of suicide.

49. Both Buspirone and Quetiapine (Seroquel) are psychotropic medications that carry risk of suicide. Close monitoring of both Buspirone and Quetiapine (Seroquel) is medically indicated.

50. Despite Ms. Archuleta's long history of severe mental health issues and the fact that NMCD and Wexford personnel were clearly aware of her mental health issues as evidenced by the long-term prescription of Buspirone and Quetiapine, NMCD and Wexford acting by and through their employees, staff, and agents, failed to conduct any mental health evaluations or assessments.

51. Despite the numerous indicators of suicide risk and a history of severe mental health issues, it appears from the absence of medical records that Ms. Archuleta received no mental health or behavioral health services during her incarceration at WNMCF.

52. Neither NMCD nor Wexford personnel provided any mental or behavioral health services to Ms. Archuleta. Additionally, Ms. Archuleta was not monitored for side effects from her medications.

III. NMCD AND WEXFORD, BY AND THROUGH THEIR RESPECTIVE EMPLOYEES STAFF AND AGENTS IGNORED MS. ARCHULETA'S SEVERE MENTAL HEALTH ISSUES AND CONSEQUENT RISKS OF SUICIDE

53. Ms. Archuleta exhibited severe and life-long mental health issues presumably beginning with the sexual abuse suffered at the hands of her father from age 7-to 12 years old.

54. Ms. Archuleta had been on suicide watch at San Juan County Adult Detention Center while incarcerated there for the offenses leading to her sentence to NMCD.

55. The RDC intake clearly identifies the need for mental health services and appropriate programming to meet her mental health needs.

56. Despite a cutting incident on August 31, 2021, reported to Shelly Campbell, FNP-C, no mental or behavioral health services or evaluations were ordered, and no evaluation

of her medications was conducted. Ms. Archuleta also reported to Shelly Campbell, FNP-C that she had been cutting herself from the age of 9. She stated that she cut herself in the legs on the previous day. On examination, she had several cuts present on her right and left inner leg. No further medical or mental health evaluation was conducted, and no mental health services were ordered or provided.

57. Not only were mental health services and programming not provided, NMCD and Wexford, acting by and through their respective employees, staff, and agents, ignored ongoing risk indicators for suicide including self-mutilation.

IV. NMCD AND WEXFORD, BY AND THROUGH THEIR RESPECTIVE EMPLOYEES STAFF AND AGENTS MEDICALLY IGNORED MS. ARCHULETA'S ABUSE OF PRESCRIBED MEDICATIONS, SEROQUEL AND BUSPAR

58. On June 29, 2021, Ms. Archuleta was discovered to have ground up her Seroquel and Buspar, which clearly indicated abuse of serious psychotropic medications.

59. Both Seroquel and Buspar carry risk of suicide. Both Seroquel and Buspar are prescribed for very serious psychiatric and mental health conditions.

60. Despite the clear abuse of her psychotropic drugs, Seroquel and Buspar, the abuse was not even entered into the medical record and was shown only in Ms. Archuleta's disciplinary file. Seroquel carries a label risk for heightened risk of suicide.

61. LPN Martina Martinez failed to properly note the incident in the medical record. LPN Martina Martinez failed to properly refer Ms. Archuleta for a mental health evaluation or review of medications. Instead, LPN Martina Martinez limited her involvement to examining and identifying the crushed substances as Seroquel and Buspar for purposes of assistance with the disciplinary charges and processes thereon.

62. LPN Martina Martinez's actions and inactions were grossly negligent, reckless and deliberately indifferent to the serious mental health needs of Ms. Archuleta.

63. None of the NMCD employees and personnel involved in the disciplinary action listed below did anything to address Ms. Archuleta's abuse of her psychiatric medications, instead just as LPN Martinez, focusing solely on disciplinary issues:

- a. Denise Apodaca, Hearing Officer and Disciplinary Officer
- b. R. Yazzie, reporting officer, found pill packs with ground up pills
- c. CO J. Betonie – allegedly saw Ms. Archuleta passing meds to Varela-Casaus
- d. Disciplinary Officer Anthony Johnson
- e. Supervisor Lt. Gifford
- f. Doe Deputy Warden, Illegible

64. The medical records provided by NMCD do not have any mention of the abuse. Rather the abuse shows only in relation to disciplinary matters.

65. No medication review was ever undertaken despite the abuse of her medications and her self-mutilation.

66. Instead, Ms. Archuleta suffered numerous disciplinary penalties most of which were to end well after her death on October 19, 2021.

67. Both NMCD and Wexford, by and through their respective employees, staff and agents, violated numerous provisions of the PSC related to psychotropic medication and psychiatric services.

68. Both NMCD and Wexford, by and through their respective employees, staff, and agents, violated numerous provisions of NMCD Policies CD-171000, CD-172700, CD-172701

regarding Psychotropic medications including issues related to dispensing, abuse, crushing, non-compliance and chronic care clinic for those on psychotropic medications.

A. BOTH WEXFORD AND NMCD PERSONNEL VIOLATED NUMEROUS CONTRACTUAL PROVISIONS, AND NMCD, RULES, POLICIES, AND PROCEDURES

69. WNMCF is operated in accordance with NMCD rules, policies, and procedures. NMCD governs WNMCF, while independent contractors carry out discrete duties at the discretion of NMCD. NMCD is responsible for contracting medical services for all NMCD facilities, including WNMCF. At all times relevant herein, NMCD was responsible for the custody, care, health, safety, and medical treatment of all detainees in its facilities.

70. Under the terms of the PSC, § 9, Wexford and its agents and employees “are independent contractors performing professional services for the Agency and are not employees of the State of New Mexico.

71. By contracting with NMCD, Wexford agreed to provide a level of care consistent with NMCD’s own rules, policies and procedures. Similarly, per the “applicability” specifications in the NMCD policies themselves, NMCD and contracted personnel were required to follow NMCD’s rules, policies, and procedures while acting within the scope of their employment and/or contract.

72. The explicit terms of the PSC required Wexford to comply with NMCD’s rules, policies, and procedures, which were frequently referenced in the PSC. Accordingly, both Wexford and NMCD knew of these policies and knew that they were not being followed by Wexford and NMCD personnel.

73. Wexford routinely violated NMCD rules, policies and procedures in the provision of medical and mental health care to NMCD inmates.

74. Not only did NMCD not intervene to correct the violations, NMCD both acquiesced and colluded in the violations, and actively violated its own rules, policies and procedures.

75. As a result of the violations of NMCD rules, policies and procedures by both NMCD and Wexford, Ms. Archuleta received constitutionally inadequate medical services, leading to her suicide.

B. WEXFORD'S WIDESPREAD PATTERNS AND PRACTICES OF PROVIDING UNCONSTITUTIONAL MEDICAL AND MENTAL HEALTH CARE WERE THE MOVING FORCES BEHIND MS. ARCHULETA'S INJURIES.

76. Wexford maintained various widespread patterns and practices, de facto standard operating procedures both in New Mexico and throughout the United States, which violated Ms. Archuleta's state constitutional rights and contributed to her severe injuries, including:

- a) Failing to report, diagnose, and properly examine and treat prisoners with serious medical and/or mental health conditions;
- b) Delaying or denying patient referrals to necessary emergency or other offsite medical and / or mental health services;
- c) Severely understaffing its medical and mental health facilities;
- d) Failing to provide adequate medical documentation or communicate changes in patient conditions to the appropriate correctional officers and/or medical or mental health staff;
- e) Alteration, concealment, and destruction of medical records.

- f) Failing adequately to hire, retain, and train and supervise its employees and agents on procedures necessary to protect patients' health.
- g) Failure to reprimand, provide additional training, retrain or take any other corrective action against Wexford medical providers engaging in cruel, callous and unconstitutional denial of medical and mental health care to inmates. Instead, Wexford corporate and supervisory personnel actively collaborate with and direct Wexford medical providers in a manner resulting in the routine denial of medical and mental health care to NMCD inmates thus ratifying the behavior.
- h) Wexford had a pattern and practice of failing to report, diagnose, and treat warning signs of serious mental health conditions, and of delaying or denying patients access to critical off-site medical and/or mental health services, which were contributing factors to Ms. Archuleta's death.
- i) As in the instant case, numerous medical providers' signatures are illegible with no printed names making the identification of these medical providers from the medical records impossible. Due to the persistent nature, and the fact that legible medical records, signatures and titles of the medical provider are mandated by NMCD policy CD-170801, this upon information and belief is deliberate.

77. Both NMCDS and Wexford had a longstanding policy and practice, which was directed, supervised, and/or ratified by NMCD and Wexford supervisory personnel under which employees and agents of Wexford and NMCD, including correctional officers and medical personnel, failed or refused to: (1) report, diagnose, and properly examine, monitor, 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; (5) timely refer prisoners for emergency or other offsite medical services, or (6) intervene in any way to protect the health and safety of inmates.

78. These practices, amounting to standard operating procedures (“SOP”), are clearly illustrated in court cases spanning decades and states throughout the United States. In addition, the practices/SOP have been extensively and expansively covered by the media including New Mexico media.

79. The practices/SOP were present under a past contract with NMCD and were the basis for termination of the contract with Wexford in 2007. At the time, one New Mexico legislator likened the practices to torture and murder. Yet, NMCD saw fit to bring Wexford back in 2019, despite the obvious risks to NMCD inmate lives and health.

80. NMCD had knowledge, through its own institutional experience, with Wexford’s pervasive and persistent constitutionally deficient medical and mental health care. In addition, NMCD can be imputed knowledge from all the cases and media reports documenting the same.

81. Rather than take corrective action or intervene in any meaningful way, NMCD was complicit, acquiesced in, and actively aided in each of the Wexford practices set forth above.

82. In essence, Wexford’s medical and mental health care of NMCD prisoners effectively amounted to no medical or mental health care at all. NMCD was acutely aware of this practice.

83. Wexford and NMCD knew of the substantial risk of serious or fatal consequences that the policies and practices above caused in the past, as well as the ongoing harm to NMCD inmates, yet they colluded and conspired to maintain those policies and practices.

84. Upon information and belief, Wexford maintained these policies and practices in order to maximize profit and without regard to its constitutional and medical obligations to NMCD prisoners, including Ms. Archuleta, who was entrusted to Wexford's care.

85. The policies and practices set forth throughout this complaint were the moving forces behind the specific misconduct at issue in the instant case.

86. As a result of Defendants' unlawful conduct, Ms. Archuleta suffered wrongful death, hedonic damages, pain and suffering, and lost income.

87. Punitive damages or exemplary damages are appropriate against the Defendants as the actions and inactions of the individual Defendants were intentional, malicious, callous, cruel and wanton with deliberate indifference to Ms. Archuleta's health and safety and were adopted and ratified by Wexford and NMCD.

COUNT I: WRONGFUL DEATH (ALL DEFENDANTS)

88. Each of the Paragraphs of this Complaint is incorporated as if fully stated herein.

89. In the manner more fully described above, the actions of the Defendants breached the duty of care owed to prisoners in their care including Ms. Archuleta.

90. The actions and inactions of the Defendants were willful and wanton in that they demonstrated an utter indifference to the safety of inmate patients. Defendants were conscious that an injury and death would probably result from the above-described facts and recklessly disregarded the consequences of those actions.

91. As a direct and proximate result of Defendants' negligence and/or willful and wanton conduct, Ms. Archuleta suffered injuries, including death.

92. Defendants' actions were undertaken willfully, wantonly, and with reckless indifference or conscious disregard for the safety of others.

93. Defendants' actions proximately caused Ms. Archuleta's wrongful death, hedonic damages, pain and suffering and lost income.

**COUNT II: VIOLATION OF INHERENT AND INALIENABLE RIGHT TO
LIFE AND SAFETY OF ARTICLE II, § 4 OF THE NEW MEXICO STATE
CONSTITUTION (ALL DEFENDANTS)**

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

95. The New Mexico Constitution decrees that the government may deprive no person of life "without due process of law." N.M. Const. art. II, § 18). Moreover, the New Mexico Constitution guarantees that the enjoyment of "life and liberty" is a "natural, inherent and inalienable" right. N.M. Const. art. II, § 4.

96. The New Mexico Courts view Article II, Section 4 as a prism through which we view due process and equal protection guarantees. Article II, Section 4 as a central component of our due process analysis.

97. Article II, Section 4 under the New Mexico constitution provides more expansive guarantees of life and safety than those under the United States Constitution.

98. The facts set forth above plainly violated Ms. Archuleta's inherent inalienable rights to life and safety.

99. The entire Complaint and all Counts set forth below should be viewed through this prism.

**COUNT III: DENIAL OF MEDICAL AND MENTAL HEALTH CARE – IN
VIOLATION OF ARTICLE II, §§ 13 and 18 OF THE NEW MEXICO STATE
CONSTITUTION (ALL DEFENDANTS)**

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

101. In the manner described more fully above, Defendants were aware that Ms. Archuleta's medical and/or mental health condition caused her to face a substantial risk of serious harm without appropriate action.

102. Despite that knowledge, Defendants failed to provide Ms. Archuleta with proper medical/mental health care, access to medical and mental health care and/or failed to intervene in order to obtain necessary medical and mental health care for Ms. Archuleta in violation of the Article II, §13 of the New Mexico Constitution.

103. Prior to the events giving rise to Plaintiff's Complaint, Defendants NMCD and Wexford were on notice of the above-noted policies and practices of denial of necessary and proper medical and mental health care to inmates.

104. Defendants NMCD, Wexford and their respective supervisory personnel maintained and ratified the unconstitutional practices noted above directly resulting in the violation of Ms. Archuleta's rights to constitutionally adequate medical and mental health care.

105. Defendants NMCD, Wexford, and their respective employees, staff and agents colluded and conspired to deny Ms. Archuleta's rights to constitutionally minimally acceptable medical and mental health care.

106. Defendants' actions and failures to act were unreasonable and undertaken intentionally, with malice, recklessly and/or with deliberate indifference to Ms. Archuleta's serious medical needs.

107. Defendants' unconstitutional actions and inactions were the proximate cause of Ms. Archuleta's wrongful death, hedonic damages, pain and suffering, and lost income.

COUNT IV: POLICY AND PRACTICE OF DENIAL OF MEDICAL AND MENTAL HEALTH CARE IN VIOLATION OF ARTICLE II, §§ 13, 18 AND OF THE NEW MEXICO STATE CONSTITUTION
(Against NMCD and Wexford)

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

109. The actions and inactions of Defendants NMCD, Wexford, and their respective employees, staff, and agents constitute long-standing unconstitutional policies and practices of NMCD and Wexford. The policies and practices amount to standard operating procedures for both NMCD and Wexford.

110. Under NMSA § 41-4A-3(C), NMCD and Wexford were responsible for the creation, implementation, oversight, and supervision of all policies and procedures followed by employees and agents of Wexford and WNMCF/NMCD.

111. Wexford's policies and practices set forth above were adopted by and are imputed to NMCD. NMCD colluded with, encouraged, ratified and/or actively conspired in Wexford's policies and practices.

112. NMCD and Wexford are liable for their own policies and practices as well as the very well-documented policies and practices of Wexford. Both NMCD and Wexford were on notice and had knowledge of the unconstitutional policies and practices of the other and colluded and conspired to in those policies and practices to deny NMCD inmates, including Ms. Archuleta the right to constitutionally protected medical and mental health care.

113. Both NMCD and Wexford were acting under the color of law resulting in cruel and unusual punishment against Ms. Archuleta.

114. Ms. Archuleta's injuries resulted from NMCD and Wexford policies and practices of routine denial of medical and mental health care to NMCD inmates.

**COUNT V: VIOLATION OF DUE PROCESS IN VIOLATION OF ARTICLE II,
§ 18 OF THE NEW MEXICO STATE CONSTITUTION**
(Against NMCD and Wexford)

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

116. Ms. Archuleta has a fundamental right to bodily integrity, personal safety, privacy, and freedom from unlawful invasion and violation of her person, and not to be subjected to an unsafe environment in which she was vulnerable to physical and emotional injury.

117. The abovenamed entities' and individuals' actions and inactions were intentional, conscience-shocking, wanton, arbitrary and capricious, and in gross and reckless disregard of, and deliberately indifferent to, Ms. Archuleta's constitutional rights.

118. Defendants' conduct was especially egregious because it involved circumstances where they had time to deliberate rather than make quick decisions. They chose to subject Ms. Archuleta to these terrifying, degrading, and life-threatening circumstances—repeatedly, over time, and after deliberation.

119. Such treatment approximates torture, and its severity implicates Ms. Archuleta's substantive due process rights, particularly in the context of the state constitution, which provides broader protections than the federal constitution. These government actors were abusing their power to the highest degree and wielding it as an instrument of oppression in violation of Ms. Archuleta's substantive due process rights.

120. There is no qualified immunity or Tort Claims Act immunity for NMCD or Wexford under the New Mexico Civil Rights Act.

COUNT VI: FAILURE TO INTERVENE IN VIOLATION OF ARTICLE II, §§ 4, 13, 17 AND 18 OF THE NEW MEXICO STATE CONSTITUTION (ALL INDIVIDUAL DEFENDANTS)

121. Each of the Paragraphs of this Complaint is incorporated as if fully stated herein.

122. In the manner more fully described above, each of the Defendants had a reasonable opportunity to prevent the violation of Ms. Archuleta's constitutional rights as set forth above had they been so inclined but failed to do so.

123. Defendants' failures to act were intentional, malicious, reckless and/or deliberately indifferent to Ms. Archuleta's rights.

124. The unlawful failure to intervene by Defendants was the proximate cause of Ms. Archuleta's wrongful death, hedonic damages, pain and suffering and lost income.

COUNT VII: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN VIOLATION OF NEW MEXICO COMMON LAW AND ARTICLE II, § 13 OF THE NEW MEXICO STATE CONSTITUTION (ALL DEFENDANTS)

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

126. The deliberate denial of proper and necessary medical and mental health care to protect the health and safety of Ms. Archuleta was extreme, outrageous, socially reprehensible, and beyond the bounds of common decency.

127. Ms. Archuleta was totally reliant upon Defendants for the provision of necessary and proper medical and mental health care. Ms. Archuleta had no other source of medical and mental health care. As such, Defendants had a special relationship with Ms. Archuleta which gave them extraordinary, unilateral authority over the provision of necessary and proper medical.

128. Defendants' conduct was extreme and outrageous undertaken with the intent to cause Ms. Archuleta severe emotional distress in violation of Ms. Archuleta's rights under Article II, §13 of the New Mexico Constitution.

129. Ms. Archuleta did suffer severe emotional distress.

130. The conduct of NMCD, Wexford, and their respective employees, staff, and agents was the proximate cause of Ms. Archuleta's severe emotional distress.

**COUNT VIII: NEGLIGENT OPERATION OF A PUBLIC BUILDING UNDER
NEW MEXICO TORT LAW AND THE TORT CLAIMS ACT (NMSA § 41-4-6)
(ALL DEFENDANTS)**

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

132. In operating the WNMCF, NMCD, NMCD's agent medical contractor Wexford, and the individual medical providers, were all under a duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

133. NMCD has authority and control over all NMCD correctional facilities, including WNMCF, along with a consequent duty to operate the facility so as not to endanger the health and safety of those utilizing the facility, including inmates.

134. NMCD did not enforce the PSC, or any other standards of care related to the medical and mental health care of NMCD inmates. Instead, NMCD colluded with, conspired with, and ratified dangerous policies and practices of Wexford set forth throughout this Complaint leading to extreme medical neglect of NMCD inmates, including Ms. Archuleta, under the care of Wexford/NMCD. Moreover, NMCD maintained its own policies and practices of routine and extreme medical neglect of its inmates.

135. NMCD's and Wexford's customs, policies, and practices created a general condition of unreasonable risk to NMCD's prisoners due to negligent safety practices concerning identifying and addressing medical emergencies and serious medical conditions.

136. NMCD's policy and practice of breaching its duty in the operation of NMCD facilities caused a foreseeable risk of injury to all inmates. The actions and inactions of NMCD outlined above created a specific foreseeable risk to Ms. Archuleta and were the proximate cause of Ms. Archuleta's injuries.

137. Immunity for any "public employee" is waived for these Defendants' negligence under NMSA 1978, § 41-4-9, as all public employee Defendants were acting within the scope of their duties in the operation of WNMCF's medical facility/clinic.

138. Defendants wholly failed to exercise reasonable care to prevent and correct these dangerous conditions at WNMCF. Defendants ignored the threats to prisoners' health and safety.

139. At all relevant times, the abovenamed Defendants were acting within the scope of their duties in the operation and/or maintenance of the WNMCF, as they were acting in relation to safety policies necessary to protect those who used this public building.

140. Immunity for any "public employee" is waived for Defendants' negligence under NMSA 1978, § 41-4-6, as PLAINTIFF's injuries arose from an unsafe, dangerous, and defective condition on property owned and operated by the government.

**COUNT IX: NEGLIGENT OPERATION OF A MEDICAL FACILITY
UNDER NEW MEXICO TORT LAW AND THE NEW MEXICO TORT CLAIMS ACT
(NMSA § 41-4-9)
(ALL DEFENDANTS)**

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

142. In operating the WNMCF medical facility, NMCD, NMCD's agent medical contractor Wexford, and the individual medical providers, were all under a duty to use ordinary care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

143. NMCD has authority and control over all NMCD correctional facilities and the medical units within those correctional facilities, including WNMCF.

144. NMCD did not enforce the PSC, or any other standards of care related to the medical and mental health care of NMCD inmates. Instead, NMCD colluded with, conspired with and ratified dangerous policies and practices of Wexford set forth throughout this Complaint leading to extreme medical neglect of NMCD inmates, including Ms. Archuleta, under the care of Wexford. Moreover, NMCD maintained its own policies and practices of routine and extreme medical neglect of its inmates.

145. Immunity for any “public employee” is waived for these Defendants’ negligence under NMSA 1978, § 41-4-9, as all public employee Defendants were acting within the scope of their duties in the operation of WNMCF’s medical facility/clinic.

**COUNT XIV: MEDICAL MALPRACTICE AND NEGLIGENT PROVISION OF
HEALTHCARE SERVICES
(ALL WEXFORD DEFENDANTS)**

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

147. At all relevant times, the above Defendants were each healthcare providers providing health services to Ms. Archuleta and other NMCD prisoners.

148. In undertaking the diagnosis, care, and treatment of Ms. Archuleta, the abovenamed Defendants had a duty to possess and apply the knowledge, skill, and care that was ordinarily used by reasonably well-operated medical facilities and well-qualified healthcare providers under similar circumstances, giving due consideration to the locality involved. Wexford and its employees, staff, and agents (including the abovenamed Defendants) breached their duties and were negligent in the management of Ms. Archuleta’s health and well-being.

149. The negligence, errors, and other acts and omissions of Wexford and its agents include, but are not limited to:

- a) Failing to provide adequate staff, adequately paid staff, and adequately trained staff at WNMCF to care for inmates such as Ms. Archuleta, with the full knowledge that such inadequate staffing practices would place inmates such as Ms. Archuleta at risk of injury;
- b) Negligently hiring, retaining, training, and supervising staff at WNMCF, with the full knowledge that such negligent staffing practices would place inmates such as Ms. Archuleta at risk of injury;
- c) Failing to provide proper prevention planning for emergent and worsening risks of suicide, risks of suicide prevention training, policies and procedures so that Ms. Archuleta's risks of suicide was permitted to worsen to the point where it became life threatening;
- d) Failing to provide and implement proper care plans that would adequately meet Ms. Archuleta's needs, including his risk for risks of suicide;
- e) Failing to provide a safe environment for inmates, including Ms. Archuleta;
- f) Failing to have adequate and effective policies, procedures, staff and equipment to adequately diagnose, monitor, treat and manage Ms. Archuleta's risks of suicide;
- g) Failing to recognize Ms. Archuleta's emergent need for a higher level of care that could not be provided at WNMCF.

150. Defendants breached their duties and were, at minimum, negligent in the diagnosis, treatment and management of Ms. Archuleta's health and safety in the following ways, *inter alia*:

- a) Failing to evaluate, treat, and manage Ms. Archuleta's risks of suicide;
- b) Failing to develop, employ, and follow appropriate policies and procedures with regard to the assessment, treatment, and management of Ms. Archuleta's risks of suicide;
- c) Failing to create an appropriate treatment plan;
- d) Failing to implement an appropriate treatment plan;
- e) Failing to take the reasonable steps to acquire proper treatment of Ms. Archuleta;
- f) Failing to refer Ms. Archuleta to appropriate specialists or other appropriate provider;
- g) Failing to protect and preserve the health of Ms. Archuleta.

151. Based on the above, the Defendants' conduct foreseeably created a broader zone of risk to Ms. Archuleta and other similarly situated prisoners with a heightened risk of risks of suicide or other medical vulnerabilities.

152. These acts and failures to act by Wexford and its employees, agents, apparent agents and contractors were at minimum, negligent, and upon information and belief, willful, wanton and in reckless disregard for the safety and well-being of Ms. Archuleta.

153. At all relevant times, the abovenamed Wexford Defendants were employees and entities acting within the scope of their duties, as permitted by law, to provide healthcare services to NMCD prisoners. The acts and omissions complained of here were undertaken by the abovenamed Defendants within the scope of those Defendants' employment, contract, agency and/or apparent agency.

154. All acts complained of herein were authorized, participated in, or ratified by NMCD and Wexford, or their administrators, managers, officers or directors or shareholders.

155. As a result of the acts or omissions of the abovenamed Defendants, Ms. Archuleta died.

156. Immunity is waived for any “public employee” Defendant’s negligence under NMSA 1978, § 41-4-10, as the abovenamed Defendants were each directly charged with making clinical decisions and providing health care services related to the curing or prevention of impairments to the body.

**COUNT X: NEGLIGENT TRAINING, STAFFING, AND SUPERVISION
UNDER NEW MEXICO TORT LAW AND THE TORT CLAIMS ACT (NMSA §§ 41-4-6
AND 41-4-9)
(NMCD and Wexford)**

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

158. At all times relevant to this Complaint, the abovenamed Defendants were each responsible for training, staffing, and supervising personnel operating WNMCF, including personnel responsible for the medical-access gatekeeping and/or medical wellbeing of WNMCF prisoner patients. These personnel were employed by NMCD and/or Wexford.

159. Upon information and belief, the abovenamed Defendants were each responsible for supervising NMCD and/or Wexford personnel in the actual day-to-day operation and maintenance of WNMCF.

160. These Defendants failed to ensure that WNMCF was adequately staffed with medical and security personnel who were sufficiently trained to render aid to prisoners with medical conditions. Upon information and belief, these Defendants also failed to follow through with or otherwise enforce NMCD’s policies and related contract provisions regarding prisoners with medical issues, which they were each responsible for overseeing.

161. More specifically, Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of prisoners with risks of suicide and/or increased risk of risks of suicide.

162. Given WNMCF's history of risks of suicide, particularly in prisoners with heightened risks of suicide, NMCD and Wexford and their respective employees, staff and agents knew of the heightened risk of risks of suicide to its inmates including Ms. Archuleta. On information and belief, Wexford and its supervisory agents failed to properly screen, supervise, educate and train its employees, contractors, and agents regarding how to appropriately and adequately assess, treat, and manage Ms. Archuleta's risks of suicide.

163. Defendants' properly screen, supervise, educate and train its employees, contractors, and agents in the symptoms, diagnosis, treatment, referral or intervention or to otherwise implement safety protocols to protect inmates such as Ms. Archuleta created dangerous conditions arising from the operation of the WNMCF and were negligent at best.

164. The abovenamed Defendants, in the exercise of reasonable care, should have been alert to the risks of risks of suicide to inmates such as Ms. Archuleta and should have protected against risks of suicide by controlling the conduct of the NMCD and Wexford personnel over which they had supervisory authority, including the individual Doe Medical Providers and Corrections Officers named in this Complaint.

165. These supervisory Defendants failed to use ordinary care in their training, staffing, and supervising practices. And they knew that their practices regarding training, staffing, and supervising NMCD and Wexford personnel created an unreasonable risk of injury to Ms. Archuleta and similarly situated NMCD prisoners.

166. These dangerous conditions were severe and foreseeable, so the abovenamed

Defendants had a heightened duty of care to oversee, discover, and prevent WNMCF personnel's dangerous responses to prisoner medical emergencies.

167. Defendants violated their duties of care and failed to provide services necessary to safely operate a public prison facility and medical facility.

168. The above Defendants' negligent training, staffing, and supervision were the proximate cause of Ms. Archuleta's risks of suicide.

169. Immunity is waived for any abovenamed "public employee" Defendants' supervisory negligence under NMSA 1978, §§ 41-4-9 because Defendants' negligent decisions, actions, and inactions constitute clinical decisions and occurred in the operation of a medical facility.

170. Immunity is also independently waived for any abovenamed "public employee" Defendants under NMSA 1978, § 41-4-6 because these Defendants' negligent training, staffing, and supervision were directly tied to the operation of the WNMCF building. WNMCF was ordinarily dangerous even in the absence of these Defendants' inadequate supervision, and these dangerous conditions required supervision and were known or should have been known to Defendants.

**COUNT XI: BREACH OF CONTRACT, THIRD PARTY BENEFICIARY
IN VIOLATION OF NEW MEXICO CONTRACT LAW
(Against NMCD and Wexford)**

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

172. As an NMCD prisoner in the custody of NMCD, Ms. Archuleta was a third party beneficiary to NMCD's contract with Wexford that was in place at all times relevant to this Complaint and through which Wexford was obligated to provide Ms. Archuleta adequate medical and mental health care.

173. As an intended beneficiary to the contract for medical services between NMCD and Wexford, Ms. Archuleta has standing to enforce the terms of the contract.

174. During the timeframe relevant to this Complaint, Wexford and its agents materially breached multiple provisions of Wexford's contract with NMCD, and these violations were a cause of Ms. Archuleta's injuries.

175. Ms. Archuleta's and his family's repeated complaints that WNMCF personnel were ignoring Ms. Archuleta's serious medical condition were more than sufficient to provide NMCD and Wexford with notice of the abovementioned contractual violations, and Wexford had multiple subsequent opportunities to cure them.

176. NMCD and Wexford are liable for damages caused by their employees and other agents for these failures and breaches.

177. As a result of breach of contract, Ms. Archuleta suffered injuries and damages.

**COUNT XII: *RESPONDEAT SUPERIOR* AND AGENCY
UNDER NEW MEXICO TORT LAW AND THE NEW MEXICO TORT CLAIMS ACT
(Against NMCD and Wexford)**

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

179. NMCD and Wexford are responsible to Ms. Archuleta under the doctrine of *respondeat superior* for the conduct of their respective employees, staff, and agents previously identified.

180. As such, NMCD and Wexford are liable for damages caused by their employees and other agents while working within the scope of their employment under the doctrines of *respondeat superior* and agency, in an amount to be determined at trial.

COUNT XIII: RES IPSA LOQUITUR
UNDER NEW MEXICO TORT LAW AND THE NEW MEXICO TORT CLAIMS ACT
(All Defendants)

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

182. The injuries and damages suffered by Ms. Archuleta were caused by the wanton, willful, and reckless actions and inactions of all Defendants.

183. It was the responsibility of NMCD and Wexford to manage and control their security and medical staff regarding the care and treatment of Ms. Archuleta.

184. The events causing the injuries and damages to Ms. Archuleta were of a kind which would not ordinarily occur in the absence of negligence on the part of NMCD, Wexford, and their agents.

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

COUNT XIV: CIVIL CONSPIRACY TO DENY MEDICAL AND MENTAL
HEALTH CARE IN VIOLATION OF ARTICLE II, § 13 OF THE NEW MEXICO
STATE CONSTITUTION AND NEW MEXICO TORT LAW
(All Defendants)

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

187. The facts illustrated above show a conspiracy on the part of NMCD, Wexford, and respective employees, staff and agents to deny Ms. Archuleta necessary, proper, and constitutionally minimal medical and mental health care under the state constitution and under New Mexico tort law.

188. These Defendants engaged in a collective concerted action to prevent Ms. Archuleta from receiving the necessary and proper medical and mental health care with each actively obstructing medical and mental health care, acquiescing to the denial of medical and

mental health care and failing to intervene to obtain medical and mental health care despite their duties to do so.

189. As a result of this conspiracy and the abovenamed Defendants' conduct during the conspiracy, Ms. Archuleta suffered wrongful death, hedonic damages, pain and suffering and lost income.

JURY DEMAND

190. Plaintiff respectfully demands a six-person jury on all issues so triable.

RELIEF REQUESTED

WHEREFORE, Plaintiff requests judgment as follows:

A. The statutory damages legally allowable under the New Mexico Civil Rights Act against both NMCD and Wexford separately as distinct public bodies each individually liable for up to "the maximum recovery limit" outlined in NMSA § 41-4A-6;

B. 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 under the New Mexico Tort Claims Act, and New Mexico tort, contract, and common law, including compensation for Wexford Defendants' intentional infliction of emotional distress;

C. Punitive damages in an undetermined amount against Wexford;

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

E. Reasonable attorneys' fees; and

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

Respectfully Submitted:

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