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

CHRISTOPHER PINO,

Case assigned to Mathew, Francis J.

Plaintiff,

v.

No. D-101-CV-2021-00477

CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC; MHM HEALTH PROFESSIONALS, LLC; JOSE ANDRADE, M.D, in his individual and official capacities; MICHELE COX, D.O. in her individual and official capacities; MATTHEW ROUNSEVILLE, D.O. in his individual and official capacities; STATE OF NEW MEXICO; NEW MEXICO CORRECTIONS DEPARTMENT; DAVID JABLONSKI in his individual and official capacities; ANTHONY ROMERO in his individual and official capacities; DAVID SELVAGE in his individual and official capacities; ORION STRADFORD in his individual and official capacities; STEVE MADRID in his individual and official capacities; and JOHN DOES 1-10 in their individual and official capacities, (employees, staff, agents of Centurion 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, Christopher Pino, by and through his attorneys COLLINS & COLLINS, P.C. (Parrish Collins) and GUEBERT GENTILE & PIAZZA, P.C. (Terry R. Guebert, Robert F. Gentile and David S. Ketai), and for his cause of action states as follows:

I. PARTIES

A. PLAINTIFF

1. Christopher Pino ("PLAINTIFF") was at all times relevant to this complaint, a New Mexico Corrections Department ("NMCD") inmate.

2. PLAINTIFF is currently residing in Albuquerque, Bernalillo County, New Mexico.

3. PLAINTIFF was first incarcerated at the Reception and Diagnostic Center (RDC) and Central New Mexico Correctional facility (CNMCF) on 08/23/2018.

4. On 10/10/2018, PLAINTIFF was transferred to Guadalupe County Correctional Facility (GCCF).

5. On 11/16/2018, PLAINTIFF was transferred to Central New Mexico Correctional Facility (CNMCF).

6. On 02/05/2019, PLAINTIFF was transferred to North West New Mexico Correctional Facility (NWNMCF).

7. On 03/18/2019, PLAINTIFF was transferred from NWNMCF to Cibola General Hospital Emergency Department.

8. On 03/21/2019, PLAINTIFF was transferred to University of New Mexico Hospital (UNMH) from Cibola County General Hospital.

9. On 03/29/2019, PLAINTIFF was released from UNMH back to CNMCF to the Long-Term Care Unit (LTCU).

10. On 05/08/2019, PLAINTIFF was transferred back to NWNMCF until his release from NMCD custody on January 17, 2021.

11. PLAINTIFF was an NMCD inmate at all times relevant to this Complaint.

B. NEW MEXICO CORRECTIONS DEPARTMENT

12. Defendants CNMCF, RDC, GCCF and NWNMCF are entities of the State of New Mexico.

13. CNMCF, RDC, GCCF and NWNMCF are operated by NMCD.

14. NMCD retains ultimate authority and responsibility over NMCD, CNMCF, RDC, GCCF and NWNMCF, and said facilities are operated in accordance with NMCD rules, policies and procedures.

15. NMCD is responsible for contracting of medical services for all NMCD facilities including NMCD, CNMCF, RDC, GCCF and NWNMCF.

16. Defendant State of New Mexico, by contract, authorized CENTURION CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC (CCH) to provide medical care to inmates housed at CNMCF, RDC, GCCF and NWNMCF for the period of June 2016 to November 2019.

17. At all material times, NMCD, CCH and 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.

18. Upon information and belief, David Jablonski was serving as the Secretary of Corrections at times relevant to this Complaint.

19. Upon information and belief, Alisha Tafoya Lucero served as Interim Secretary of Corrections in May 2019 and was appointed as Secretary of Corrections in June 2019 and serves to the present.

20. As the Secretary of Corrections, Mr. Jablonski oversaw prison operations, including NMCD's duty to provide a safe environment at CNMCF, RDC, GCCF and NWNMCF, and to ensure that inmates have access to adequate medical care.

21. Upon information and belief, Anthony Romero was serving as Deputy Secretary of Corrections at times relevant to the Complaint and served as Acting Secretary of Corrections after David Jablonski vacated that position prior to the appointment of current Secretary of Corrections.

22. Upon information and belief, the following individual NMCD employees and/or agents of NMCD are currently serving as Deputy Secretaries of Corrections:

a. John Gay – Director of Adult Prisons Division.

b. Gary Maciel – Deputy Director of Adult Prisons Division.

c. Anthony Romero – Deputy Director of Adult Prisons Division.

23. Serving Deputy Secretaries of Corrections oversee prison operations, including NMCD's duty to provide a safe environment at CNMCF, and to ensure that inmates have access to adequate medical care.

24. David Selvage is, and was at times relevant to this Complaint, serving as the Health Services Administrator ("HSA") for NMCD.

25. Serving HSAs maintain direct clinical oversight of independent contractors, ensuring that contractors are providing adequate care to NMCD inmates including those at CNMCF.

26. Orion Stradford is, and was at times relevant to this Complaint, serving as the NMCD Bureau Chief.

27. The NMCD Bureau Chiefs are responsible for monitoring the work of independent contractors, including CCH and MHM and acts as NMCD's supervisor of these independent contractors.

28. Steve Madrid was at times relevant to this Complaint the individual acting on behalf of NMCD in charge of the NMCD Grievance Process, including the appellate process.

29. Individuals in charge of NMCD's Grievance Process serve as the "gatekeeper" between inmates and their access to adequate healthcare.

30. As gatekeeper, if Mr. Madrid, or others overseeing the NMCD grievance process, do not responsibly manage the grievance process, inmates have no way of accessing necessary, proper and competent medical care from NMCD CCH and MHM.

31. The State of New Mexico, NMCD and their John Doe employees, staff and agents, including David Jablonski, Anthony Romero, David Selvage, Orion Stradford and Steve Madrid will be referred to herein collectively as "NMCD DEFENDANTS."

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

33. NMCD governs CNMCF, while independent contractors carry out discrete duties at the discretion of NMCD.

34. NMCD DEFENDANTS have a duty to reasonably and prudently operate the medical facility within CNMCF.

35. NMCD maintained authority over its contractors, including those named in this Complaint.

36. NMCD has the authority to terminate contracts with independent contractors with or without cause.

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

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

39. None of the above named NMCD DEFENDANTS interceded to protect inmates from gross and reckless medical negligence at CNMCF.

C. CCH CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC

40. CCH CORRECTIONAL HEALTHCARE OF NEW MEXICO, LLC (hereinafter "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.

41. 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.

42. CCH and its John Doe employees, staff and agents will be referred to herein collectively as "CCH DEFENDANTS."

43. 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.

44. CCH provides 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 (MHM).

45. Upon information and belief, JOSE ANDRADE, M.D., MICHELE COX, D.O., and MATTHEW ROUNSEVILLE, D.O., were the authorized medical authorities in the medical care of PLAINTIFF at all times relevant to this complaint.

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

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

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

49. CCH was at times relevant to this Complaint licensed to practice medicine in New Mexico.

D. MHM HEALTH PROFESSIONALS, LLC.

50. MHM HEALTH PROFESSIONALS, LLC. (hereinafter "MHM") is under contract with CCH to provide medical providers to CCH.

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

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

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

54. MHM was not a party to the GSC.

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

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

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

58. 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.

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

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

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

62. MHM and it's 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

63. Upon information and belief, Centene Corporation has annual revenues of over $70 billion.

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

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

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

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

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

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

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

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

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

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

74. 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.

75. Upon information and belief, health care providers at NWNMCF, including individually named JOSE ANDRADE, M.D., MICHELE COX, D.O., and MATTHEW ROUNSEVILLE, D.O. were employed by MHM.

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

77. 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.

78. 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.

79. Upon information and belief, at all material times, the salaries of the individually and John Doe named CCH Defendants, including individually named defendants, were funded fifty-one percent (51%) by Centene Corporation, through CCH Group, Inc. and/or CCH, LLC, and forty-nine percent (49%) by MHM Services, Inc.

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

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

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

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

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

> CCH 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. CCH 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.
>
> CCH, 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. CCH's corporate organization was strategically planned to meet the challenges and support the needs of statewide inmate healthcare delivery system like the NMCD.

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

II. JURISDICTION AND VENUE

86. All acts complained of herein occurred in Cibola, Guadalupe and Torrance Counties, State of New Mexico.

87. A Tort Claims Notice was timely sent on 08/30/2019.

88. 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. PLAINTIFF is

not currently incarcerated so neither 42 U.S.C.A. § 1997e and N. M. S. A. 1978, § 33-2-11 apply.

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

90. 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.

91. Jurisdiction and venue are proper over MHM's John Doe 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.

92. 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).

93. 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

94. PLAINTIFF was, at the time relevant to this complaint, an inmate in the custody of NMCD.

95. PLAINTIFF had a past medical history with left knee septic arthritis in 2014 of which DEFENDANTS were aware.

96. PLAINTIFF had undergone two (2) prior left knee surgeries of which DEFENDANTS were aware.

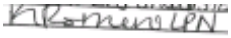
97. On 09/05/2018, while in the custody of NMCD at CNMCF RDC, PLAINTIFF began complaining to NMCD medical providers for knee pain.

98. By 10/08/2018, PLAINTIFF's pain had become more severe and he had decreased range of motion.

99. PLAINTIFF was transferred to GCCF on 10/10/2018.

100. By 10/16/2018, PLAINTIFF was unable to walk because of his knee pain. He stated that nothing worked for his leg pain and that he felt horrible. He stated that he was suffering terrible headaches and was unable to sleep. He stated that he would swing back and forth from sweating to freezing and shivering.

101. On 10/23/2018, PLAINTIFF complained of 8/10 pain which radiated to his legs. He also had weakness of legs. On examination, his left knee was swollen.

102. On 10/24/2018, PLAINTIFF was evaluated by  for severe pain to his left knee. His left knee was warm to touch and was visibly swollen. He ambulated with crutches. PLAINTIFF stated that he had not been seen by the doctor for his left knee pain.

103. On 10/26/2018, PLAINTIFF presented to  for Rocephin injection for left knee pain. His pain was rated as 10 on a 1-10 pain scale. His temperature was 99.3 F. He stated that the pain affected his sleep and meals. At that time, he was unable to walk and was in a wheelchair.

104. On 10/27/2018, PLAINTIFF rated his pain at 10/10. He was unable to bear weight. His knee was warm and swollen. He was diagnosed with left knee swelling, suspected deep vein thrombosis (DVT) and acute intraarticular tear with septic knee.

105. On 11/09/2018, PLAINTIFF underwent a CT of his lower left leg for cellulitis, septic knee versus intra articular tear and to rule out DVT. The report was interpreted by

Lawrence Zarian, M.D. This study was requested by Estevan Apodaca, M.D. The study showed a large fluid collection along the superficial medial aspect of the proximal medial gastrocnemius muscle. There was a suggestion that this connects to a proximal small Baker's cyst and may represent distal extravasation. There was moderately severe osteoarthritis in both the medial and lateral femoral-tibial compartments and patellofemoral compartment of the knee. There was a moderate sized joint effusion. Septic knee could not be excluded. Joint aspiration as well as aspiration of the fluid collection in the proximal medial gastrocnemius was considered, but not conducted.

106. On 11/16/2018, rather than refer PLAINTIFF for specialist care, PLAINTIFF was transferred to CNMCF LTCU.

107. On 11/27/2018, PLAINTIFF was evaluated by M. Rounseville, D.O., for Lovenox refill and review of CT. His temperature was 99.1 F. He was diagnosed with cysts on the knee and advised physical therapy evaluation for crutches, compression hose for both legs and Lovenox 80 mg subcutaneous for 7 days.

108. On 12/05/2018, PLAINTIFF requested for medical follow up due to the prior finding of cysts which were causing pain and had visibly increased in size.

109. On 12/20/2018, PLAINTIFF was evaluated by M. Rounseville, D.O., for left knee swelling. He stated that he was unable to stand or put any pressure on his knee. He had been walking with crutches, but at this the time of the visit with Rounseville, he was once again in a wheelchair due the inability to flex or extend his knee.

110. On 12/27/2018, PLAINTIFF was evaluated by M. Rounseville, D.O., for left knee swelling. His knee was still swollen, and he winces upon palpation of swelling in left knee. He was treated by New Mexico Orthopedics, to which he would like to return to for treatment. He

said that when his knee was last drained, the fluid was cultured and tested positive for Staphylococcus. He was assessed with acute probable recurrence of Staphylococcus infection in left knee and changed his antibiotics to Augmentin 875 mg orally twice daily for 14 days from Clindamycin. X-ray left knee was ordered to be performed on December 28, 2018. He was advised to follow-up on December 31, 2018 and to continue Lovenox 80 mg IM every morning for 30 days. If his left knee condition was not improved, he will be referred to the Orthopedic.

111. On 12/31/2018, PLAINTIFF was evaluated by the [redacted] for left knee pain and intermittent nausea. His knee was swollen and warm to touch. Was unable to locate left popliteal pulse. His left dorsalis pedal pulse +2, strong and regular.

112. On 01/01/2019, at 1000 hours, PLAINTIFF was evaluated by nursing staff for left knee pain and intermittent fever/nausea. His left lower extremity and ankle skin was red. He rated his left leg pain as 4/10 without movement and 10/10 with movement. The nurse was not able to locate left popliteal pulse.

113. On 01/08/2019, PLAINTIFF was evaluated by M. Rounseville, D.O., to review a 01/03/2019 X-ray of his left knee. He was using crutches to walk. On examination, his vital signs were stable. His X-ray left knee results conclude there was an accumulation of fluid in the knee, but there was no infection at this time. He was assessed with chronic recurrent infection left knee with Staphylococcus aureus. He was planned to see about getting to visit Dr. Allen and Dr. Striker for his knee.

114. On 01/22/2019, at 2045 hours, PLAINTIFF was evaluated by [redacted]. During rounds, he reported that he was having increased pain and swelling to left lower extremity after doing more activity than usual. On examination, moderate swelling was noted in left knee. His skin was warm and dry with pedal pulses, capillary refill less than 2 seconds. Left knee skin was

noted to be slightly darker. Notified Dr. Rounseville of findings and no new order was received. Instructed him to elevate extremity, limit strenuous activity and follow-up sick call if no improvement in 2 days.

115. On 01/24/2019, PLAINTIFF requested [illegible] for medical evaluation. He complained of pain in knee and it was swollen and felt terrible. He stated that his leg was discolored even above the knee. He was scared that he may lose his leg and felt like he needs surgery.

116. On 01/29/2019, PLAINTIFF was evaluated by M. Rounseville, D.O., for left knee pain and swelling. PLAINTIFF stated that he noticed the redness which started and moved up the knee. The left knee area was hot to touch and at the medial meniscus area he felt pain upon palpation. There was obvious deformity of knee with erythema and pain on medial and lateral aspect of knee with palpation. He was assessed with acute and chronic infection of the left knee. He was advised to continue Lovenox 80 mg 1 orally for 180 days, Doppler left knee, Tylenol 325 2 tablets twice daily for 180 days. A consultation with UNH Ortho was ordered.

117. PLAINTIFF was returned to NWNMCF on 02/05/2019.

118. On 02/06/2019, PLAINTIFF requested [illegible] for medical evaluation. At RDC Dr. Rounseville set him up with a referral with UNM Orthopedics for his knee and he did not want to miss that, and he was unable to walk. He was evaluated by nursing, and PLAINTIFF was notified that Dr. Rounseville started writing a referral, but did not complete it and he had ordered a few tests which needed to be completed. He was notified that he will have follow-up in approximately 14 days.

119. He would not be sent to UNMH until 03/19/2019 when he was transferred directly from Cibola County Hospital Emergency Department.

120. On 02/20/2019, PLAINTIFF was evaluated by  for follow-up X-ray result. His labs and X-ray showed osteoarthritis and he was referred to physical therapy and Dr. Cox for potential joint injections.

121. On 02/21/2019, PLAINTIFF had chronic disease clinic follow-up with Michele Cox, D.O., for severe pain due to left knee osteoarthritis. He was on Lovenox from past 5 months. Positive PFS on left.

122. On 03/01/2019, PLAINTIFF was evaluated by  for left knee pain. His pain was improved after cortisone injection, which was done on February 21, 2019, but he fell on February 26, 2019 and re-injured his knee. On examination, his left knee demonstrated warmth, erythema, pain, but mostly reduced than previous assessment. He was assessed with knee pain acute on chronic. Advised to use crutches x 1 week.

123. On 03/12/2019, PLAINTIFF requested by Jill Casias, RN, for medical evaluation for knee pain. He stated that his knee pain was beyond his ability to explain or tolerate. His knee was swollen 10x times. He stated that his pain was so bad that he was struggling to breathe and needs to be hospitalized. He felt like he was dying.

124. On 03/18/2019, PLAINTIFF presented to Cibola General Hospital ER and was evaluated by Ratchnee France, M.D., for left knee pain. He was with history of DVT and he was treated with Lovenox shot 3 weeks ago and finished the Lovenox approximately 1 week he has a gradual onset of the left knee swelling for a week and increased pain. His left knee appeared to be in a contracted position and unable to move either due to pain or from the previous infection. The doctor from the facility called the ED to have the knee tapped to remove the fluid. In the ED found that he has very large left knee effusion. And the X-ray showed solid material likely will be clot. The knees appeared warm but with no erythema but significant edema from effusion.

125. Left knee arthrocentesis was done for pain relief. 10-20 ml of bloody fluid returned. At the lateral dorsal area of left knee found to have a very thick blood partially clocked and the remaining of the fluid was in the knee appeared to be clot which was unable to aspirate father. A total of 15 cc fluid was aspirated with a thick blood. Father injection with 100 unit of the Heparin diluted with 5 ml of normal saline to dissolve the clot.

126. He had an X-ray of left knee for swelling x 2 weeks status post fall which showed marked inflammatory arthropathy with large joint effusion and erosive change in the lateral femoral condyle, lateral tibial plateau, and the articular surface of the patella. The presence of an active joint infection cannot be excluded. Norco 5 mg-325 mg 1 tablet orally was administered for pain. He was diagnosed with hemarthrosis left knee with clot and was discharged to the jail with prescription for Tramadol 50 mg 2 tablets orally every 8 hours as needed for pain.

127. On 03/19/2019 at 1420 hours, PLAINTIFF was seen for hospital follow-up for osteoarthritis of left knee. He was seen in emergency department at Cibola General Hospital on March 18, 2019 and the report was reviewed. His pain was worse with large effusion associated with clot down his leg. Remaining examination was unremarkable. He was advised to go to Orthopedics UNMH and asked to continue Naproxen 500 mg 1 tablet orally once. At 1610 hours he was accepted and was on the way to the ER for sepsis concern of left knee.

128. PLAINTIFF was transferred directly from Cibola General Hospital to UNMH on 03/19/2019 where he would remain until 03/29/2019.

129. On March 19, 2019, at 1940 hours PLAINTIFF presented to ER and evaluated by Sarah Murphy, P.A.-C. and Ashley Keiler-Green, M.D., for left knee pain and swelling. He reported that he had progressively worsened pain and was unable to move the left knee without excruciating pain. He also started with nausea/vomiting and reported feverish when he tried to

stand or walk. He went to Grants Hospital and had his left knee tapped and was sent to this hospital for further evaluation.

130. His review of systems was positive for fever, chills, and joint pain. On examination, his temperature was 102.02, pulse 106, RR 16 and BP 136/87, SaO2 91-92%. His left knee was large, erythematous, and hot very tender to palpation and was unable to range secondary to pain. The differential diagnosis included was deep vein thrombosis, cellulitis, arthritis, hematoma, and septic arthritis. Started on antibiotics (Vancomycin and Ceftriaxone)

131. The X-ray of left knee showed large knee joint effusion with septic arthritis sequelae and posterior subluxation of the knee. The Doppler of left leg showed large complex mass in LLE, extended from popliteal fossa to mid-calf, Ortho informed. He was diagnosed with septic left knee, septicemia. He was admitted to Medicine team for osteomyelitis and planned to OR the next day morning.

132. On 03/19/2019, PLAINTIFF was assessed with septic arthritis, posterior leg abscess, osseous sequela of chronic septic arthritis and large fluid collection within the medial compartment.

133. PLAINTIFF was admitted to UNMH for severe sepsis secondary to left knee septic arthritis.

134. UNMH initiated SIRS criteria finding a temperature of 104 F, heart rate of 106 beats per minute, respiratory rate 26 breaths per minute and WBC of 13.9 with suspected infectious source being left knee septic arthritis.

135. On 03/19/2019, it was found that PLAINTIFF had suffered end organ damage with acute kidney injury.

136. On 03/20/2019, PLAINTIFF underwent left knee open irrigation and debridement by Dr. Chafey for left knee septic arthritis.

137. There were notable arthritic tricompartmental changes. There was purulence in all compartments in the knee as well as inflamed synovium.

138. On 03/21/2019, an MRI showed septic arthritis with large abscess deep to fascia of posterior compartment of lower leg.

139. On 03/22/2019, PLAINTIFF underwent a second surgery with incision and drainage of left calf abscess, excisional debridement of left knee. The knee was extensively debrided of any nonviable tissues to include skin, fat, fascia, periosteum, and synovium. Sharp debridement was performed using scissors, scalpel and rongeurs. The soft tissue defects in both the knee and the calf abscess were backfilled with Stimulant beads.

140. At 1426 hours, PLAINTIFF was seen by David Clanon, M.D., for left leg pain below knee. Pain medications were not helpful in pain control. He was with some nausea and vomiting and with mild cough. With small amount of serosanguineous fluid. His follow-up blood cultures were negative. His pain medications were switched to Dilaudid from Morphine.

141. On 03/29/2019, upon resolution of his sepsis, PLAINTIFF was discharged to CNMCF with Cefazolin prescribed for 4 weeks status post last washout.

142. On 06/17/2019, an X-ray left knee which showed redemonstration of significant arthritis to his knee joint secondary to his multiple infections in this area.

143. On 08/06/2019, PLAINTIFF had MRI of the left knee which showed sequela of left knee septic arthritis with broad tricompartmental cartilage loss, subchondral erosions, and reactive marrow edema with insufficient ACL.

144. At no time during the period from 09/05/2018 until transfer to UNMH on 03/19/2019 was PLAINTIFF ever sent to a specialist or other outside medical provider for treatment of his emergent sepsis in his knee despite severe pain and obvious signs of infection.

145. At no time during the period from 09/05/2018 until transfer to UNMH on 03/19/2019 was a proper differential diagnosis conducted.

146. In fact, CCH acting through its employees, staff and agents, never conducted a differential diagnosis.

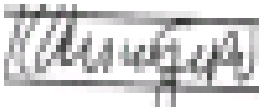
147. Had DEFENDANTS properly diagnosed and treated PLAINTIFF or in the alternative referred PLAINTIFF to a medical provider competent to diagnose and treat his knee infection, sepsis could have been avoided along with the 10 day stay at UNMH.

148. Had DEFENDANTS properly diagnosed and treated PLAINTIFF, or in the alternative referred PLAINTIFF to a medical provider competent to diagnose and treat his knee infection, the damages set forth below could have been avoided.

149. The following medical providers breached the standard of care under New Mexico law:

a. 

b. Dr. Andrade

c. 

d. 

e. 

f. 

g. Rounseville, D.O.

h. 

i. 

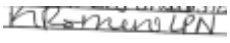
j. 

k. 

l. Michele Cox, D.O.

m. 

150. There were numerous significant deviations from the standard of care by the above identified medical providers in the treatment offered to PLAINTIFF, including but not limited to, the following breaches of the standard of care:

151. On 10/24/2018, under the care of Dr. Rounseville, PLAINTIFF was evaluated by  for severe pain to left knee. His left knee was warm to touch and was visibly swollen. He ambulated with crutches. He stated that he was not able to see the doctor for left knee pain. Ice pack was given to him and instructed to keep his leg elevated. He was instructed to return to clinic with worsening symptoms.

152. As per the AAFP guidelines, the acute onset of monoarticular joint pain, erythema, heat, and immobility should raise suspicion of septic arthritis. Prompt diagnosis and treatment of infectious arthritis can help prevent significant morbidity and mortality.

153. In this case, the first clinical suspicion was septic arthritis as early as 10/24/2018 yet no differential diagnosis was conducted. The LPN did nothing to diagnose, manage or treat PLAINTIFF with appropriate medical care. The diagnosis of septic arthritis should have been

made and an Ortho opinion should have been sought immediately for urgent arthrocentesis and antibiotic therapy.

154. Failure to diagnosis of septic arthritis in setting of painful mono-articular swelling with warmth and tenderness was a deviation from the standard of care. Failure to refer to Orthopedic consultation to rule out septic arthritis knee was a breach of standard of care.

155. On 10/25/2018, while under the care of Dr. Andrade, PLAINTIFF was evaluated by [redacted] for left knee pain. He was using crutches. On examination, his left knee was swollen and warm with positive pedal pulses and he had a temperature of 101.4 F. The nurse called Dr. Andrade and received telephonic order for Rocephin 1 gm IM daily for 3 days and Bactrim DS 2 tablets orally twice daily for 10 days, Tylenol 325 mg thrice daily. He was instructed to use ice pack all the night and not to exceed 15 minutes at a time and instructed to return to clinic if symptoms worsened.

156. The AAFP guidelines suggest that suspicion of septic arthritis should be pursued with arthrocentesis, and synovial fluid should be sent for white blood cell count, crystal analysis, Gram stain, and culture. As per the available medical records, Dr. Andrade failed to examine PLAINTIFF and started antibiotics without physical examination on a telephonic conversation with [redacted].

157. Failure to suspect septic arthritis of the left knee, failure to obtain an Ortho opinion for evaluation with diagnostic knee aspiration were deviations from the standard of care.

158. On 10/26/2018, PLAINTIFF presented to [redacted] for Rocephin injection for left knee pain. On examination, his left knee was warm to touch and slight swelling area to left knee and calf area. His pain was rated as 10 on a 1-10 pain scale. His temperature was 99.3 F. He

stated that the pain affected his sleep and meals. He was wheelchair bound. Rocephin was administered for left hip injection.

159. Constitutional symptoms such as fever, chills, and rigors are indicative of septic arthritis. In this case, during the review, PLAINTIFF had a fever with clinical evidence of septic arthritis in his left knee. However, the care provider ignored the clinical signs and did not evaluate PLAINTIFF with diagnostic knee aspiration.

160. Failure to diagnose septic arthritis left knee in setting of monoarticular pain – warmth, swelling of the left knee and failure to refer to Orthopedic consultation for a surgical emergency like septic arthritis knee is a breach of standard of care.

161. On 10/27/2018, PLAINTIFF complained to [illegible] of continuing and severe left knee pain. The care provider simply provided PLAINTIFF with a new ice pack and told to visit the clinic in the morning if symptoms continued. PLAINTIFF was evaluated by nurse for left knee pain. His pain was persisted despite 3 days of Rocephin and oral antibiotics. He rated pain as 10 on a 1-10 pain scale. He was not able to bear weight. His knee was warm to palpation, jolt and tenderness, positive varus/valgus and swollen. He was diagnosed with left knee swelling and suspected DVT and acute intraarticular tear with septic knee. He was started on antibiotic therapy and pain medications. An MRI was ordered, and he was advised to continue antibiotics. He was started on Lovenox and ordered ultrasound to rule out DVT.

162. With the diagnosis of septic knee, the care provider failed to proceed with diagnostic aspiration as per the AAFP guidelines. Instead, deep venous thrombosis was suspected, and PLAINTIFF was started on Lovenox without confirmation with Doppler.

163. Failure to evaluate for septic arthritis left knee despite suspicion of septic knee was a deviation from the standard of care.

164. On 11/09/2018, PLAINTIFF was seen by [illegible]. PLAINTIFF had a CT lower extremity left with contrast for cellulitis, septic knee versus intra articular tear and to rule out DVT done by Lawrence Zarian, M.D. This study was requested by Estevan Apodaca, M.D. the study showed a large fluid collection along the superficial medial aspect of the proximal medial gastrocnemius muscle. There was a suggestion that this connects to a proximal small Baker's cyst and may represent distal extravasation. Abscess cannot be entirely excluded. *On November 16, 2018,* PLAINTIFF was put on Enoxaparin 80 mg for blood clot in left knee by [illegible].

165. The CT left knee was suspicious of a large abscess along the proximal medial gastrocnemius. However, PLAINTIFF was not evaluated further. The abscess was neither aspirated nor drained.

166. The failure to evaluate and treat the left knee collection was a deviation from the standard of care.

167. As of 11/19/2018, PLAINTIFF was put on Enoxaparin 80 mg by [illegible] .

168. Failure to obtain an Orthopedic consultation for evaluation and management of left knee collection was a deviation from the standard of care.

169. *On 11/20/2018,* PLAINTIFF was evaluated by M. Rounseville, D.O., for blood clots in left knee. He reported to Dr. Rounseville that 4 years prior he had trouble with his meniscus which resulted in blood clots and infections.

170. On examination by Dr. Rounseville, his left knee was extremely painful with palpation and stretches. He was on antibiotics twice daily which had done nothing to alleviate the infection of his pain.

171. PLAINTIFF reported to Dr. Rounseville that he had undergone a CT, but not an ultrasound. Dr. Rounseville, with no differential diagnosis and no diagnostic testing, diagnosed DVT with probable reoccurrences. Dr. Rounseville reported to PLAINTIFF that he was waiting to see if Doppler studies were approved. He was advised to continue with Lovenox 80 mg. No Doppler studies were ever approved or conducted.

172. Rounseville, D.O., should have suspected the diagnosis of septic arthritis and left knee abscess and he should have conducted arthrocentesis with an urgent referral for orthopedic intervention. Failure to diagnosis of septic arthritis in setting of monoarticular pain left knee/antibiotics and failure to refer to Orthopedic consultation was a breach of standard of care.

173. On 11/27/2018, PLAINTIFF was evaluated by M. Rounseville, D.O., for Lovenox refill and review of CT. His temperature was 99.1 F. He was diagnosed, again with no differential diagnosis and no diagnostic testing, with cysts on the knee and advised physical therapy evaluation for crutches, compression hose for both legs and Lovenox 80 mg subcutaneous for 7 days.

174. On 12/20/2018, PLAINTIFF was evaluated again by M. Rounseville, D.O., for left knee swelling. He stated that he was unable to stand or put any pressure on his knee. On examination, he had significant fluid in the medial inferior aspect of his left knee. His left knee was discolored and very swollen. PLAINTIFF was wheelchair bound at the time of this examination. PLAINTIFF was unable to flex or extend the knee. He was advised to use Rocephin 1 gm IM every day for 3 days in combination with the oral antibiotics that he was currently on. He was advised to follow-up on December 27, 2018.

175. PLAINTIFF had fluid accumulation and severe swelling of the left knee that had persisted despite antibiotic treatment and physical therapy. However, Rounseville, D.O., did not

consider the diagnosis of left knee infection and did not contemplate Orthopedic referral for diagnostic aspiration.

176. The repeated failure to suspect septic arthritis and refer PLAINTIFF for appropriate management was a significant deviation from the standard of care.

177. On 12/27/2018, PLAINTIFF was evaluated by M. Rounseville, D.O., for left knee swelling. His knee was still swollen, and he winced with pain upon palpation of the swelling in left knee. His left knee was warm to the touch and his temperature was elevated to 99.8 F. He was assessed with acute probable recurrence of Staphylococcus infection in left knee and d his antibiotics were changed to Augmentin 875 mg orally twice daily for 14 days from Clindamycin. X-ray left knee was ordered to be performed on December 28, 2018. He was advised to follow-up on December 31, 2018 and to continue Lovenox 80 mg IM every morning for 30 days. Rounseville advised that if PLAINTIFF's left knee condition had not improved he would be referred to the Orthopedic.

178. Failure to evaluate the left knee infection with aspiration as per AAFP protocol and delayed Orthopedic referral constitutes significant deviation from the standard of care by Rounseville, D.O.

179. On 02/06/2019, PLAINTIFF requested  for medical evaluation. At RDC Dr. Rounseville set him up with a referral with UNM Orthopedics. Although Dr. Rounseville started writing a referral, he *did not complete* it stating that he had ordered a few tests which need to be completed prior to referral. No such additional tests were conducted, and no referral was made to Orthopedics.

180. The failure to refer PLAINTIFF to Orthopedic by Rounseville, D.O. on an emergency basis for septic arthritis knee was a deviation from the standard of care.

181. On 12/31/2018, PLAINTIFF was evaluated by [illegible] for left knee pain and intermittent nausea. His knee was swollen and warm to the touch. The medical provider was unable to locate left popliteal pulse. Dr. Rounseville was notified and Phenergan 25 mg orally was ordered as needed for nausea every 6 hours.

182. Despite clinical features suggestive of left knee infection, the care provider's failure to obtain an Orthopedic consultation was a breach of standard of care.

183. On 01/03/2019, PLAINTIFF requested [illegible] for medical service. He stated that he did not have X-ray of his knee and it was getting worse.

184. Despite clinical features suggestive of left knee infection, the care provider's persistent failure to obtain an Orthopedic consultation was a breach of standard of care.

185. On 01/24/2019, PLAINTIFF requested [illegible] for medical evaluation. He complained of pain and swelling in his left knee further reporting that he felt terrible. He stated that his leg was discolored even above the knee. PLAINTIFF reported that he was afraid that he might lose his leg and felt like he needs surgery.

186. Despite clinical features suggestive of left knee infection, the care provider's failure to obtain an Orthopedic consultation was a breach of standard of care.

187. On 02/21/2019, PLAINTIFF had chronic disease clinic follow-up with Michele Cox, D.O., for severe pain due to left knee osteoarthritis. He was on Lovenox for the past 5 months. Positive PFS on left.

188. Despite previous suspicion of septic arthritis and CT left knee suggesting left knee abscess, Michele Cox diagnosed PLAINTIFF with left osteoarthritis and Kenalog injection was planned.

189. Steroid should not be given in suspected infection. Steroid injection in suspected septic arthritis was a deviation from the standard of care.

190. The failure to diagnose the left knee septic arthritis on time by the care provider was a deviation from the standard of care.

191. There were multiple opportunities and clear indications for a referral to Orthopedics by the above referenced medical providers.

192. There were multiple opportunities and clear indications for differential diagnosis by the above referenced medical providers.

193. There were multiple opportunities and clear indications for basic diagnostic testing by the above referenced medical providers.

194. At no time during the period 09/05/2018 to 03/19/2019 was PLAINTIFF referred to Orthopedics.

195. As a result, the gross breaches in the standard of care, reckless disregard of and deliberate indifference to PLAINTIFF's emergent sepsis, PLAINTIFF suffered the following damages:

a. End organ damage with acute kidney injury – Hyponatremia, Hypokalemia
b. Multiple surgeries (March 20, 2019 & March 22, 2019)
c. Nausea and vomiting and with mild cough.
d. MSSA bacteremia
e. Chronic metabolic alkalosis with nocturnal hypoxia
f. Severe pain,
g. Suicidal ideation
h. Severe Adjustment disorder with depressed mood,
i. Osseous sequela of chronic septic arthritis
j. Chronic component of bone erosion associated to the septic arthritis.
k. Osteomyelitis component associated with the septic arthritis.
l. Arthritic changes tricompartmental.
m. Purulence in all compartments in the knee as well as inflamed synovium

n. Significant arthritis to his knee joint secondary to his multiple infections in this area
o. Depression of the lateral tibial plateau, mild swelling, and joint narrowing
p. Sequela of left knee septic arthritis with broad tricompartmental cartilage loss, subchondral erosions, and reactive marrow edema with insufficient ACL
q. Inability to bear weight and limited range of motion.
r. Unable to perform a straight leg raise. With some assistance, he was able to get to about 5 degrees shy of full extension.

196. The following injuries were life threatening:

a. End organ damage with acute kidney injury – Hyponatremia, Hypokalemia
b. Multiple surgeries (March 20, 2019 & March 22, 2019)
c. Nausea and vomiting and with mild cough.
d. MSSA bacteremia
e. Chronic metabolic alkalosis with nocturnal hypoxia
f. Pain medications were not helpful in pain control.
g. Suicidal ideation
h. Adjustment disorder with depressed mood, severe

197. The following injuries are permanent and debilitating due to septic arthritis sequelae:

a. Osseous sequela of chronic septic arthritis
b. Chronic component of bone erosion associated to the septic arthritis.
c. Osteomyelitis component associated to the septic arthritis.
d. Arthritic changes tricompartmental. Purulence in all compartments in the knee as well as inflamed synovium
e. Significant arthritis to his knee joint secondary to his multiple infections in this area
f. Depression of the lateral tibial plateau, mild swelling, and joint narrowing
g. Sequela of left knee septic arthritis with broad tricompartmental cartilage loss, subchondral erosions, and reactive marrow edema with insufficient ACL
h. Non-weightbearing in a splint with limited range of motion
i. Unable to perform a straight leg raise. With some assistance, he was able to get to about 5 degrees shy of full extension.

B. FACTS SPECIFIC TO NMCD DEFENDANTS

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

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

200. NMCD routinely ignores medical grievances.

201. NMCD routinely destroys medical grievances.

202. NMCD routinely fails to process medical grievances correctly.

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

204. Medical grievance decisions are made by NMCD administrators none.

205. The medical administrators making medical grievance decisions have no relevant medical training.

206. Medical grievance decisions are not made by medical personnel.

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

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

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

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

211. DEFENDANT MADRID is instrumental in the denial of medical grievances.

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

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

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

215. NMCD DEFENDANTS, by and through its employees, staff, and agents, knew of PLAINTIFF's history of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and with wanton, willful and deliberate indifference ignored his medical grievances, ignored his emergent medical condition, failed to act within its authority to protect the health of PLAINTIFF.

216. DEFENDANT MADRID knew of PLAINTIFF's history of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and with wanton, willful and deliberate indifference ignored his medical grievances.

217. CCH DEFENDANTS, by and through its employees, staff, and agents, knew of PLAINTIFF's history of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

218. MHM DEFENDANTS, by and through its employees, staff, and agents, knew of PLAINTIFF's history of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

219. JOSE ANDRADE, M.D., MICHELE COX, D.O. and MATTHEW ROUNSEVILLE, D.O., knew of PLAINTIFF's history of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and with wanton, willful and deliberate

indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

220. ALL DEFENDANTS collectively knew of PLAINTIFF's history of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

221. ALL DEFENDANTS, including as yet unidentified JOHN DOE DEFENDANTS, individually knew of PLAINTIFF's history of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and with wanton, willful and deliberate indifference ignored his medical grievances and deliberately refused to provide necessary and proper medical care.

222. NMCD understands and recognizes that failure to treat septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis constitutes recklessness under New Mexico law.

223. NMCD understands and recognizes that failure to treat septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis constitutes deliberate indifference under federal law.

224. NMCD had full authority to enforce the GSC.

225. NMCD had at all times relevant to this Complaint the authority to compel its CCH and MHM to treat septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

226. NMCD has obtained substantial budgets for treatment of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

227. NMCD pays millions of dollars to its CCH and MHM for treatment of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

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

229. NMCD through the grievance process can control the manner in which its CCH and MHM can perform their duties.

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

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

232. 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.

233. NMCD recklessly chose not to exercise any control over the manner in which CCH and MHM performed their duties leading to the uncontrolled septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis, diabetic peripheral neuropathy, GERD, foot infections, deformities and ulcerations and amputation.

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

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

236. NMCD recklessly chose not to exercise any control over the manner in which CCH and MHM performed their duties leading to the uncontrolled septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis, diabetic peripheral neuropathy, GERD, foot infections, deformities and ulcerations and amputation.

C. FACTS SPECIFIC TO CCH DEFENDANTS

237. General Services Contract (GSC) #16-770-1300-0097 was executed by NMCD and CCH on or about June 2016.

238. CCH submitted its Technical Response to Request for Proposal No. 60-770-15-05163 (CCH TechResponse) for Inmate Medical Services dated February 18, 2016.

239. CCH Tech Response was over 1200 pages long.

240. CCH's Tech Response did not mention the Tort Claims Act.

241. CCH's Tech Response did not mention the word "tort."

242. CCH's Tech Response did not mention punitive damages.

243. CCH's Tech Response did not mention or request Tort Claims Act protection for CCH, MHM or their respective employees, staff, and agents.

244. The GSC was 80 pages in length.

245. The GSC did not mention the Tort Claims Act.

246. The GSC did not mention the word "tort."

247. The GSC did not mention punitive damages.

248. The GSC did not provide for Tort Claims Act protection for CCH or its respective employees, staff, agents, staffing agencies or other vendors.

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

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

251. The GSC was freely entered into by CCH on or about June 2016.

252. The GSC was in effect from June 2016 to November 2019.

253. CCH had the legal capacity to enter the GSC.

254. CCH was legally competent to enter the GSC.

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

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

257. The GSC was not vague.

258. The GSC was not oppressive to CCH.

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

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

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

262. 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.

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

264. 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.

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

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

267. 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.

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

269. 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).

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

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

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

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

274. 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.

275. 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.

276. 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….

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

278. CNMCF is not now and was not during times relevant to this Complaint covered by the New Mexico Public Liability Fund.

279. CCH was the medical provider at CNMCF during the term of the GSC.

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

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

282. 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.

283. 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.

284. 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.

285. 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.

286. The total costs of hospitalizations for PLAINTIFF due to the gross negligence, reckless and deliberately indifferent failure to provide medical care was $57,911.60. CCH paid $0.00.

287. 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.

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

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

D. FACTS SPECIFIC TO MHM DEFENDANTS

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

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

292. CNMCF is not now and was not during times relevant to this Complaint covered by the New Mexico Public Liability Fund.

293. MHM provided medical personnel for the provision of medical services at CNMCF via CCH during the term of the GSC.

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

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

296. MHM was not a party to the GSC.

297. MHM is a third party to the GSC.

E. FACTS COMMON TO ALL DEFENDANTS

298. ALL DEFENDANTS knew that PLAINTIFF needed immediate treatment to control his chronic septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

299. ALL DEFENDANTS knew that PLAINTIFF's chronic septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis was worsening.

300. ALL DEFENDANTS knew that untreated chronic septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis could lead to very serious injuries and even death if untreated..

301. ALL DEFENDANTS knew that the failure to treat chronic septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis constitutes recklessness under New Mexico law.

302. ALL DEFENDANTS knew that the failure to treat chronic septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis constitutes reckless disregard of the serious medical needs of inmates under New Mexico law.

303. ALL DEFENDANTS knew that the failure to treat chronic septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis constitutes deliberate indifference to the medical needs of inmates under New Mexico law.

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

305. 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 septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis resulting to severe and permanent physical and emotional injuries and severe pain and suffering.

COUNT I: MEDICAL MALPRACTICE AND NEGLIGENCE
(CCH and MHM DEFENDANTS)

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

307. In undertaking the diagnosis, care and treatment of PLAINTIFF, CCH and MHM, 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.

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

309. The negligence, errors, acts and omissions of CCH and 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 septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis;

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

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

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

311. CCH and 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)

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

313. NMSA §41–4–6, NMSA §41–4–9 and NMSA §41–4–10.

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

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

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

317. NMCD is in charge of enforcement of the terms of the GENERAL SERVICES CONTRACT #16-770-1300-0097 (GSC) which creates standards and obligations for CCH's delivery of medical services.

318. 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.

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

320. NMCD determined not to enforce the NCCHC standards.

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

322. NMCD determined not to enforce the ACA standards.

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

324. 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.

325. 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.

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

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

328. 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.

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

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

331. 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)

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

333. NMSA §41–4–6, NMSA §41–4–9 and NMSA §41–4–10.

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

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

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

337. CCH's medical staff at CNMCF, GCCF and NWNMCF lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

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

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

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

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

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

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

344. 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.

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

346. 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.

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

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

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

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

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

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

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

354. 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.

355. As such, NMCD has negligently operated CNMCF, GCCF and NWNMCF, a public facility in which it incarcerated PLAINTIFF .

356. NMCD has created a risk to all inmates including PLAINTIFF at CNMCF, GCCF and NWNMCF, as all inmates are owed adequate healthcare.

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

358. 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 DEFENDANTS)

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

360. CCH 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.

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

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

363. CCH DEFENDANTS' actions and inactions in failing to properly assess, treat and manage PLAINTIFF's septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and related health conditions were negligent, reckless, wanton and in deliberate disregard for the health of PLAINTIFF.

364. CCH 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.

365. 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 DEFENDANTS breached their duty to medically treat PLAINTIFF in a reasonably prudent manner.

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

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

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

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

370. CCH DEFENDANTS failed to properly address PLAINTIFF's medical condition.

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

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

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

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

375. CCH had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering emergent infections to prevent the onset of sepsis.

376. On information and belief, CCH 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 septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and related health conditions.

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

378. CCH has never sought, obtained or maintained either ACA or NCCHC accreditation for the medical facilities and services at CNMCF, GCCF and NWNMCF as required by the GSC.

379. CCH does not comply with ACA, NCCHC or New Mexico standards of healthcare.

380. 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 he is entitled to damages.

381. The actions and inactions of CCH 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)

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

383. NMSA §41–4–6, NMSA §41–4–9 and NMSA §41–4–10.

384. NMCD has authority over all NMCD correctional facilities, including CNMCF, GCCF and NWNMCF.

385. NMCD has authority and control over the operation of all medical facilities within NMCD correctional facilities, including those within CNMCF, GCCF and NWNMCF.

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

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

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

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

390. CCH's medical staff at CNMCF, GCCF and NWNMCF lacked sufficient expertise to assess, treat and manage PLAINTIFF's health conditions.

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

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

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

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

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

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

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

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

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

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

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

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

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

404. 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.

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

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

407. 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.

408. 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.

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

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

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

412. 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.

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

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

415. 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 and MHM)

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

417. CCH and MHM had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of inmates suffering infections to prevent the onset of sepsis.

418. On information and belief, CCH and 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 septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and related health conditions.

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

420. CCH and MHM are bound by the GSC to obtain and maintain American Correctional Association (ACA) and National Commission on Correctional Health Care (NCCHC) accreditation under the terms of the GSC.

421. CCH and MHM have not established any standards for medical care.

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

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

424. CCH and 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.

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

426. CCH had a duty to allow PLAINTIFF's medical providers to make referrals to specialist.

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

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

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

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

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

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

433. PLAINTIFF is entitled to punitive damages against CCH and MHM.

434. 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)

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 had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

438. 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 septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis and related health conditions.

439. NMCD had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

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

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

442. NMCD failed to enforce the GSC.

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

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

445. 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.

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

447. PLAINTIFF is entitled to recovery for his 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 and MHM)

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

449. CCH and MHM DEFENDANTS intentionally denied PLAINTIFF proper and necessary medical care for his septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis.

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

451. CCH and MHM DEFENDANTS retaliated against PLAINTIFF by taking away his admission in the Echo Project for treatment of his septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis knowing his septic arthritis, posterior leg abscess and osseous sequela of chronic septic arthritis was worsening his health conditions, because of a disciplinary action.

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

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

454. 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 and MHM)

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

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

457. 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 DEFENDANTS and MHM DEFENDANTS.

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

459. PLAINITFF is entitled to damages, including punitive damages, against CCH, MHM and MHM DEFENDANTS.

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

461. PLAINTIFF is entitled to punitive damages against CCH and MHM

DEFENDANTS.

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

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

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

464. CCH and 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)

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

466. NMSA §41–4–6, NMSA §41–4–9 and NMSA §41–4–10.

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

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

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

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

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

471. It was the responsibility of CCH and MHM to manage and control their medical

staff and the care and treatment of PLAINTIFF.

472. 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 and MHM DEFENDANTS.

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

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

475. PLAINTIFF is entitled to punitive damages against CCH and MHM DEFENDANTS.

COUNT XIII: PUNITIVE DAMAGES
(CCH and MHM)

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

477. 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 MHM and CCH DEFENDANTS' intentional infliction of emotional distress;

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

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:

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