

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

JESSICA MELENDREZ,

Plaintiff,

v.

No. D-101-CV-2022-01177

Case assigned to Wilson, Matthew Justin

NEW MEXICO CORRECTIONS DEPARTMENT;  
WEXFORD HEALTH SOURCES, INC.; and  
DOE EMPLOYEES, STAFF AND AGENTS OF  
NMCD AND WEXFORD.

Defendants.

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

COMES NOW, Plaintiff, Jessica Melendrez (“Ms. Melendrez”), by and through her attorneys Collins & Collins, P.C. (Parrish Collins & Elise C. Funke) and DeLara | Supik | Odegard P.C. (Christopher J. DeLara, Christopher J. Supik, David C. Odegard, and Alisa Wigley-DeLara) for her cause of action states as follows:

**JURISDICTION AND VENUE**

1. All acts complained of herein occurred in Colfax County, New Mexico.
  2. A Notice of Claims was sent on 04/12/21 meeting the notice requirements under both the New Mexico Tort Claims Act (NMSA § 41-4-16) and the New Mexico Civil Rights Act (N.M. Stat. Ann. § 41-4A-13). (Ex. 1.)
  3. Ms. Melendrez exhausted administrative remedies as required by 42 U.S.C.A. § 1997e and NMSA § 33-2-11.<sup>1</sup>
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4. Jurisdiction and venue are proper over NMCD, Wexford, and their employees, staff, and agents pursuant to NMSA §§ 38-3-1 and 41-4-18; Article II, §§ 13 and 18 of the New Mexico Constitution; the New Mexico Civil Rights Act (NMSA §§ 41-4A-1 through 41-4A-13); and New Mexico tort, contract, and common law.

### **PARTIES AND POTENTIAL PARTIES**

5. Ms. Melendrez was at all relevant times incarcerated at Springer Correctional Center (“SCC”), an NMCD prison facility located in Springer, Colfax County, New Mexico. She remains in the custody of NMCD at SCC as of the filing of this complaint.

6. Defendant NMCD is an entity of the State of New Mexico that operates SCC, retaining ultimate authority and responsibility over SCC.

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

8. Alisha Tafoya was at all times relevant to this Complaint the Secretary of Corrections for NMCD. NMCD’s Secretary of Corrections is the “chief executive and administrative officer” of NMCD. NMSA § 9-3-4. Although “organizational units of [NMCD] and the officers of those units . . . have all of the powers and duties enumerated in the specific laws involved . . . the carrying out of those powers and duties [is] subject to the direction and supervision of the secretary, and he shall retain the final decision-making authority and responsibility” as chief executive to that department. NMSA § 9-3-12.

9. Wence Asonganyi was at all times relevant to this Complaint NMCD Health Services Administrator with oversight authority over medical care provided to NMCD inmates.

10. Wendy Price was at all times relevant to this Complaint NMCD Psy.D. Behavioral Health Bureau Chief with oversight authority over medical care provided to NMCD inmates.

11. Upon information and belief, Ed Smith was at all times relevant to this Complaint the Acting Director of NMCD Administrative Services Division with responsibility for compliance with statutory, regulatory and departmental administrative requirements.

12. Hope Salazar was at all times relevant to this Complaint the Director of NMCD Office of Inspector General with responsibility to assure services contractually required by the State of New Mexico are met qualitatively and quantitatively. The Office of the Inspector General oversees Internal Audits and Standards Compliance (IASC) which oversees private prison contract compliance, American Correctional Association compliance, quality assurance and conditions of confinement for the incarcerated. The bureau is also responsible for NMCD policy revisions and other compliance efforts related to the prevention of major prison litigation.

13. At all times relevant to this Complaint, the SCC Warden and SCC Health Services Administrator were NMCD employees, staff and/or agents with responsibility for overseeing the training, staffing, and supervision of employees, staff and agents operating the SCC.

14. At all times relevant to this Complaint, the following titled positions, the individual holders of which have yet to be identified, were each responsible for overseeing the training, staffing, and supervision of medical, psychiatric, mental health and behavioral health personnel operating the WNMCF facility:

- a) WNMCF Health Services Administrator,
- b) WNMCF Medical Director,

- c) Wexford Regional Medical Director,<sup>2</sup>
- d) Wexford Regional Manager,
- e) Wexford Regional Director of Nursing,
- f) Wexford Quality Improvement Coordinator,
- g) WNMCF Director of Nursing,
- h) Facility Health Services Administrator (HSA),
- i) Facility Medical Director,
- j) Responsible Health Authority and Psychiatrist(s),
- k) Wexford Prescribing Psychologist,
- l) Wexford Regional Psychiatric Director,
- m) Wexford Site Medical Director,

15. The following Wexford medical providers, some of whom can be identified only by illegible signatures, failed to intervene to protect Ms. Melendrez and some, as will be noted, actively obstructed Ms. Melendrez in attempts to obtain proper medical care. Many of the signatures are illegible, a breach of NMCD policy, but are believed to belong to the following individuals:

- a. Heather M Alderette, RN
- b. Kayla Burtram, LPN
- c. Chantel Davis, RN
- d. Donna Esquibel, LPN
- e. Whitney Fernandez, LPN
- f. Stephanie Hatfield, LPN
- g. Rachelle Johnson Maiga, MH PA NP
- h. Denise Martin, PA NP
- i. Vanessa Maxfield, LPN
- j. Natausha Ortega, LPN
- k. Michelle Paquin, PA NP
- l. Rene Ramirez, RN
- m. Riddick, Alfonzo LPN

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<sup>2</sup> References to “regional” personnel refer to whichever regional designation New Mexico falls under based on the employer’s organizational structure.

- n. Donna Rodarte, RN
- o. Jessica Rountree, RN
- p. Deanna Sharp, COVID Nurse
- q. Ann Vandiver, RN

16. Doe Medical Providers are as of yet unidentified Wexford medical providers who shared responsibility for the medical care of Ms. Melendrez.

17. Anthony Mccort was the Health Services Administrator at SCC during times relevant to this Complaint.

18. Jose Andrade, M.D upon information and belief was the presiding physician but does not appear from the medical records to have had any direct contact with Ms. Melendrez rather serving only to prescribe medications.

19. Physicians Assistants Paquin and Martin, upon information and belief, were the attending medical providers to Ms. Melendrez.

20. At all times alleged herein, Jose Andrade, M.D.; Heather M Alderette, RN; Kayla Burtram, LPN; Chantel Davis, RN; Donna Esquibel, LPN; Whitney Fernandez, LPN; Stephanie Hatfield, LPN; Rachelle Johnson Maiga, MH PA NP; Denise Martin, PA NP; Vanessa Maxfield, LPN; Natausha Ortega, LPN; Michelle Paquin, PA NP; Rene Ramirez, RN; Riddick, Alfonzo LPN; Donna Rodarte, RN; Jessica Rountree, RN; Deanna Sharp, COVID Nurse; Ann Vandiver, RN; Leziel Young, RN; and Anthony Mccort, Health Services Administrator were agents and/or employees of Wexford and NMCD, acting within the scope of their employment as such. They were all attending medical care providers for Ms. Melendrez while she was in NMCD custody (although not necessarily doctors) and, as such, they were all acting within the scope of their employment as the apparent and actual agents, servants, and/or employees of Wexford. They were each responsible for the care, health, safety, and proper medical treatment of Ms. Melendrez.

21. Doe Corrections Officers (“COs”) One through Ten were the unit officers and control officers assigned to Ms. Melendrez’s cell or pod unit at times relevant to this Complaint. These Doe Corrections Officers were each responsible for the care, health, safety, and proper medical treatment of Ms. Melendrez. They were each agents of NMCD and acting within the scope of their employment at all times relevant to this lawsuit. In violation of their duties, they failed to intervene to obtain necessary and proper medical care for Ms. Melendrez. They are sued herein in their individual capacities.

### **FACTUAL BACKGROUND**

22. Ms. Melendrez was 35 years old at the time ongoing medical neglect began in July 2020.

23. Ms. Melendrez had a history of infections, including ear infections and was also asthmatic.

24. Ms. Melendrez made multiple requests for medical care and was ignored for all of December 2020 and January of 2021. She also filed multiple informal complaints, none of which were answered with the exception of one guard telling her verbally that she had filed in an untimely manner. In the wake of not being provided medical attention for months, she finally was assessed by an audiologist on 03/01/2021 and they advised her that she had 100% hearing loss in her left ear.

25. On 07/12/2020, Ms. Melendrez filed a sick call form to see a provider. She requested to get her right ear checked as she had some kind of infection which was causing throbbing pain in her ear and was instead advised to go for sick call. Jessica Kountze RW .

26. On 07/14/2020, it was reported that she refused the sick call nurse appointment. However, the refusal form does not appear to have been signed by Ms. Melendrez and shows an “X” on the signature line.

**NEW MEXICO CORRECTIONS DEPARTMENT**  
REFUSAL FORM

COPY

FACILITY: SWCF

REFUSAL OF TREATMENT, PROCEDURE, OR EXAM

This is to certify that I, Melendrez, Jessica #69986 NMCD# \_\_\_\_\_  
DOB: 07/30/77

an inmate of the New Mexico Corrections Department, \_\_\_\_\_ do have the proposed:  
**Failure to show for Requested/Scheduled appt. Sick Call**

Name of procedure, operation or treatment

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recommended by the following physician, dentist or their designee:  
**Sick Call Nurse**

Name of physician, dentist or provider

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I acknowledge that I have been informed of the risks and possible consequences involved, such as:  
The non-availability to assess, maintain, or diagnose. Alteration in health maintenance and/or death.

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List risks and possible consequences

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and hereby release the attending physician/dentist or designated representative and the New Mexico Corrections Department from all responsibility for any ill effects which may result from such refusal.

X 69986 7-14-20  
Patient Signature NMCD# Date

27. On 07/27/2020, Ms. Melendrez made another request to be seen for her right ear pain. By that time, her ear infection had been ongoing for 2 weeks. She was scheduled for a routine nursing visit on 07/29/2020. Jessica Roultier RW. There was no medical record corresponding to the scheduled 07/29/2020 so it is presumed no such visit occurred.

28. On 08/19/2020, Ms. Melendrez was evaluated for boils on the inside of her left thigh. She was instructed to use warm and moist compresses to that area. Jessica Roultier RW

29. There is no indication in the 08/19/2020 medical record that her ear infection was examined or addressed.

30. On 09/13/2020, Ms. Melendrez requested a medical visit for nasal congestion, a sore throat and ear pain which reportedly had been ongoing for 3 days. She was scheduled for a routine nursing visit on 09/14/2020. : Debra K

31. On 09/14/2020, Ms. Melendrez was seen for nasal congestion, green bloody drainage associated with a sore throat, itchy ears and sinus tenderness for 4 days. On examination, her left ear revealed external canal tenderness. She was diagnosed with nasal drainage and sinus congestion and was advised to increase fluid intake. Janae Vanduser, RN.

32. There is no indication in the medical records that she was prescribed any medication for her ongoing ear infection and apparent sinus infection at the 09/14/2020 nursing visit. Instead, Dr. Andrade prescribed her Claritin.

33. On 09/29/2020, Ms. Melendrez complained of muscle pain, sinus pressure with green mucus, cough, nasal pressure, and dry skin on feet. She was diagnosed with hypothyroidism, muscle pain, sinus upper respiratory infection (URI). She was scheduled for a routine pap. Since Mobic was not working for her muscle pain, Ibuprofen was prescribed to her. dymartin' owl. There is no indication in the medical records that she was prescribed any medication for her ongoing ear infection, sinus infection or newly diagnosed URI.

34. On 10/02/2020, Ms. Melendrez requested a medical visit for vaginal discharge. She complained of pain in her uterus and cramping around her cervix. She was scheduled for a sick call appointment on 10/05/2020. : Janae R II.

35. On 10/05/2020, it was reported that Ms. Melendrez refused the sick call nurse appointment. Again, no signed refusal was found in the medical records provided by NMCD.

36. On 11/18/2020, Ms. Melendrez presented for right foot and heel pain. She was assessed with exercise-induced asthma. . FZ



A ADJUNA EDICION JORDAN  
 MACIELLETTI RT  
 Joint RT Heel Pain  
 Joint LT Bunion Pain

P- JORDAN for ADJUNA  
 & Rev. M. Melendrez

37. Again, it does not appear from the medical records that Ms. Melendrez was examined for an ear infection or complications therefrom.

38. On 12/18/2020, Ms. Melendrez complained that she could not hear in her left ear since she was found positive for the COVID-19 virus. She also complained of dizziness, shortness of breath, intermittent chest pain and wanted a prescription for allergy medication. She was scheduled for an appointment with a provider on 12/22/2020. *J. Melendrez*

39. There is no record of when or if Ms. Melendrez was diagnosed with COVID in the medical records. However, Ms. Melendrez reports that she was informed that she had COVID on 12/06/2020.

40. On 12/22/2020, Ms. Melendrez was seen for left ear pain, decreased hearing, and foot pain. She wanted Zyrtec to be removed from her prescribed medications. It was noted that she had obvious scarring on her bilateral tympanic membranes. There was no bulging. She was assessed with bilateral otitis media (OM). She was simply prescribed a substitute antihistamine for Zyrtec (Chlor-Trimeton) to be taken twice a day for 5 days.

*Melendrez*

41. Again, no antibiotics were prescribed nor was Ms. Melendrez referred to a specialist either at Wexford or with any third-party medical provider to address the hearing loss she suffered as a result of the ongoing ear infection.

42. On 12/27/2020, Ms. Melendrez was seen by medical. She stated that she pulled her shoulder muscles, and it was noted that she had a raised area on the middle of her back. She was given an ice pack to alleviate her pain. *[Signature]*

43. There is no indication in the records that the ongoing issues with her ears were addressed.

44. On 01/04/2021, Ms. Melendrez was seen for muscle pain by her right scapula. At the time, she complained of left ear pain which had been ongoing for several weeks. Upon examination, her right ear canal was clear, and the tympanic membrane was intact. Her left ear canal was clear with distal redness without exudate. The tympanic membrane in her left ear was red and bulging but intact. She was diagnosed with left otitis media. She was advised to increase fluid intake and to continue taking the antihistamine Chlor-Trimeton.

*[Signature]*

45. On 01/09/2021, Ms. Melendrez again requested a provider appointment, reporting that she was completely deaf in her left ear. She was referred to a provider on 01/11/2021.

*Janae Vandewer, RN.*

46. From 07/12/2020 to 01/04/2021, despite clear indications of severe ear infection and loss of hearing, none of the medical providers prescribed anything other than ear drops, ibuprofen and antihistamines. It was not until 01/04/2021 that Ms. Melendrez was finally prescribed a 5-day course of Amoxicillin. Despite its ineffectiveness, Ms. Melendrez was neither prescribed additional antibiotics nor referred for a higher level of care to address her ear infection and consequent loss of hearing.

47. On 01/11/2021, Ms. Melendrez complained of left ear hearing loss that had been ongoing for 1 month. She was status post antibiotics for otitis media. On exam, there was right

external canal redness and left external canal redness near the tympanic membrane as well as bilateral postauricular tenderness. She was diagnosed with left ear hearing loss. Her hearing was so deteriorated that she was unable to hear someone whisper. Ms. Melendrez was referred to the provider for follow-up and was advised not to put anything in her ear. Janae Vandewer, RN.

48. On 01/13/2021, Ms. Melendrez was seen in response to her 01/09/2021 medical request. She complained of persistent hearing loss in her left ear despite the recent round of Amoxicillin. On examination, her left tympanic membrane was retracted and there was minimum redness in canal. Her right tympanic membrane had no exudate, but scarring was noted. Rather than refer Ms. Melendrez to a higher level of care, she was assessed with persistent otitis and was prescribed ear drops (polymyxin/neomycin otic drops) to be used 3 times daily for 5 days. She was advised to follow up in 1 week. Michele Paquin, MD.

49. On 02/08/2021, (Health service request form), Ms. Melendrez requested a provider appointment for her hearing loss. She wanted to see Dr. Paquin for a follow up on her left ear infection and hearing loss. She reported that there had been hearing loss since 12/06/2020.

50. On 02/10/2021, Ms. Melendrez had a follow up visit for her left ear infection/ruptured tympanic membrane. She was diagnosed with left otitis media/otitis externa(resolved). Michele Paquin, MD.

51. On 02/19/2021, an audiologist referral was ordered for persistent otitis media/otitis externa. Michele Paquin, MD.

52. The medical records do not include an Audiologist and it is presumed that no audiology exam was conducted, and no report was created.

53. Transient subjective hearing loss can occur in the affected ear during an episode of AOM due to the presence of fluid in the middle ear. However, subjective hearing loss that persists

for more than one to two weeks following resolution of the infection and effusion is abnormal and should be followed up with an audiogram and otolaryngologic consultation

54. On review of available medical records, we note that the patient had persistent hearing loss for more than 1 month as noted below. However, Ms. Melendrez was not appropriately referred for further evaluation for persistent otitis media and left sided hearing loss until 02/19/2021.

55. On 03/01/2021, an IR hearing aid was issued to Ms. Melendrez by Chavez. Still there had been no referral to a specialist either with Wexford or a third-party medical provider. Rather than provide or arrange for proper medical care, she was simply given a hearing aid.

56. On 04/12/2021, Ms. Melendrez signed the consent for COVID 19 vaccine, and she was administered COVID 19 vaccine.

57. On 05/23/2021, Ms. Melendrez requested to see a doctor about getting a bottom bunk pass. She was having trouble getting up and down reportedly due to hearing loss in left ear. She was seen by a provider on 05/25/2021. DOB M.D.

58. Despite the reported difficulties in getting to the top bunk because of “hearing loss”, it does not appear that her ears were examined to determine if the infection had caused additional damage to the ears and thereby affecting her balance.

59. On 05/25/2021, Ms. Melendrez presented to discuss getting a bottom bunk pass for hearing loss. She stated that she was given a hearing aid, but she had balance issues and she could not climb up on the top bunk. On examination, despite self-reporting and clear damage to her ears from the untreated infection, it was noted that there were no balance issues. Consequently, her request for bottom bunk pass was denied. clmactinic.

60. On 06/04/2021, Ms. Melendrez requested to see the doctor to check her left ear. She was having pain which felt like she was getting another ear infection. (100)1410

61. On 06/07/2021, Ms. Melendrez presented with left ear pain. She also stated that her blood pressure (BP) was elevated and that she was out of medication. She also had urinary problems. She was assessed with clear left ear. Keflex was prescribed for left ear infection. ~~clmactinca~~. Other than the 5 day course of Amoxicillin from 01/04/2021 to 01/09/2021, this is the only oral antibiotic prescribed to Ms. Melendrez. Unfortunately, this was provided well beyond any opportunity to avoid hearing loss.

62. On 06/23/2021, Ms. Melendrez presented with burning and frequent urination. She was prescribed Cipro 500 mg twice a day for 10 days. ~~clmactinca~~

63. Dr. Paquin, Dr. Andrade, Dr. Martin, Anna Rodarte, RN, J. Vandlwin, RN were all aware that Ms. Melendrez had a severe ear infection resulting in total hearing loss. They each had multiple opportunities to refer Ms. Melendrez to a higher level of care yet failed to do so. Instead, they simply sat by as Ms. Melendrez's condition worsened providing only ibuprofen (the apparent cure-all illnesses suffered by inmates) and antihistamines. The result of the reckless disregard and deliberate indifference to Ms. Melendrez's serious medical condition was total and apparent permanent hearing loss.

64. Upon information and belief, none of these medical professionals took any action to ensure that Ms. Melendrez was sent to an off-site medical provider or otherwise provided with necessary care between 12/22/2020 and 02/19/2021 despite knowing that Ms. Melendrez required additional services in order to safeguard her health and wellbeing.

65. Ms. Melendrez had suffered complete hearing loss. Yet, NMCD and Wexford, acting through their employees, contractors, and agents, deliberately and cruelly failed to provide

Ms. Melendrez with proper medical care to treat her ear infection despite countless opportunities to do so.

66. The terms of the PSC were clearly meant to benefit the prisoners in NMCD's custody, making Ms. Melendrez an intended third-party beneficiary of the PSC contract. NMCD and Wexford breached their contractual duties to provide necessary and proper medical care to Ms. Melendrez.

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

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

68. Under the PSC, Wexford was acting as the apparent and actual agent, servant, and contractor of NMCD and was responsible for the care, health, safety, and proper medical treatment of all prisoners in NMCD's facilities, including Ms. Melendrez. Pursuant to the PSC, NMCD adopted Wexford's policies, practices, habits, customs, procedures, training, and supervision as its own, and Wexford adopted NMCD's policies, practices, habits, customs, procedures, training, and supervision as its own. Wexford acted by and through its employees, staff, agents and assigns who are named in their individual capacities.

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

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

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

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

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

74. NMCD has a longstanding policy of routine near universal denial of medical grievances. When medical grievances are addressed, NMCD routinely and without medical justification, finds against inmates filing medical grievances. Based upon American Correctional Association audits provided to counsel for Plaintiff by NMCD in response to IPRA requests, of the 917 male inmate grievances noted in the ACA audits (believed to be appeals), 4 were found in favor of an inmate. This means .00436 were found in favor of an inmate rendering the grievance appeals process a sham. Steve Madrid was the NMCD Grievance Appeals Manager for times

relevant to this complaint and perpetuated the sham appeals process. Based upon recent IPRA responses, the policy for routine denial of medical grievances is ongoing.

75. Even worse than the sham appeals process, NMCD employees, staff and agents routinely, ignore, destroy and/or conceal grievances and retaliate against NMCD inmates for filing legally required grievances. For those that are actually processed, the decisions from the facility level to the Central Office Grievance Appeals Manager, the decision(s) of whether to substantiate and take necessary medical action are made by non-medical personnel. In short, medical decisions are made by NMCD personnel who have no relevant medical experience or training.

76. The medical grievance procedure ostensibly has the purpose of protecting inmates against medical neglect. NMCD's policies defeat that purpose instead ratifying the extreme medical neglect provided by its medical contractors, including that of Wexford.

77. As a result of the violations of NMCD rules, policies and procedures by both NMCD and Wexford, Ms. Melendrez received constitutionally inadequate medical services, her physical condition deteriorated severely with complete and permanent hearing loss in her left ear.

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

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

- a) Failing to report, diagnose, and properly examine and treat prisoners with serious medical and/or mental health conditions;
- b) Delaying or denying patient referrals to necessary emergency or other offsite medical services;



- c) Severely understaffing its medical and mental health facilities;
- d) Failing to provide adequate medical documentation or communicate changes in patient conditions to the appropriate correctional officers and/or medical or mental health staff;
- e) Alteration, concealment and destruction of medical records.
- f) Failing to adequately hire, retain, train, and supervise its employees and agents on procedures necessary to protect patients' health.
- g) Failure to reprimand, provide additional training, retrain or take any other corrective action against Wexford medical providers engaging in cruel, callous and unconstitutional denial of medical care to inmates. Instead, Wexford corporate and supervisory personnel actively collaborate with and direct Wexford medical providers in a manner resulting in the routine denial of medical care to NMCD inmates thus ratifying the behavior.
- h) Wexford had a pattern and practice of failing to report, diagnose, and treat warning signs of serious medical and mental health conditions, and of delaying or denying patients access to critical off-site medical services, which were contributing factors to Ms. Melendrez's injuries.
- i) As in the instant case, Wexford medical providers' signatures are largely illegible making the identification of medical providers from the medical records impossible. Due to the persistent nature, and the fact that legible medical records, signatures and title of the medical provider are mandated by NMCD policy CD-170801, this upon information and belief is deliberate.
- j) Routine failure to conduct differential diagnoses on inmate patients.

79. Both NMCD and Wexford have a longstanding policy and practice, directed, supervised and/or ratified by NMCD and Wexford supervisory personnel under which employees and agents of Wexford and NMCD, including correctional officers and medical personnel, failed or refused to: (1) report, diagnose, and properly examine, monitor, and treat prisoners with serious medical and/or mental health conditions, including failing to provide proper medications to prisoners with serious medical and/or mental health conditions; (2) respond to prisoners who requested medical and/or mental health services; (3) respond to prisoners who exhibited clear signs of a medical and/or mental health need or illness; (4) adequately document and communicate the medical and mental health needs of prisoners to the appropriate correctional officers and/or medical or mental health staff; (5) timely refer prisoners for emergency or other offsite medical services, or (6) intervene in any way to protect the health and safety of inmates.

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

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

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

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

84. In essence, Wexford's medical care of NMCD prisoners effectively amounted to no medical care at all, a fact of which NMCD is well aware.

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

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

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

88. As a result of Defendants' unlawful conduct, Ms. Melendrez suffered compensatory and punitive damages including permanent loss of hearing, emotional and physical pain and suffering, loss of enjoyment of life, future lost income, future medical expense and future rehabilitation expense.

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

C. MS. MELENDREZ FACES LIFELONG PHYSICAL AND EMOTIONAL PAIN DUE TO DEFENDANTS' UNLAWFUL CONDUCT.

90. As a result of Defendants' unlawful conduct, Ms. Melendrez endured serious and permanent physical injuries, including permanent loss of hearing, severe psychological and emotional distress, mental anguish, lost wage-earning capacity, loss of enjoyment of life, and future medical and rehabilitation expenses.

91. Punitive damages or exemplary damages are also appropriate against the Defendants to punish and deter these types of acts and omissions from occurring in the future, as the actions of the individual Defendants were undertaken with malice or, minimally, with reckless indifference to Ms. Melendrez's rights, and these actions were adopted and ratified by Wexford and NMCD.

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

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

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

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

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

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

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

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

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

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

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

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

102. Defendants NMCD, Wexford and their respective supervisory personnel maintained and ratified the unconstitutional practices noted above directly resulting in the violation of Ms. Melendrez's right to constitutionally adequate medical care.

103. Defendants NMCD, Wexford and their respective employees, staff and agents colluded and conspired to deny Ms. Melendrez of her right to constitutionally minimally acceptable medical care.

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

105. Defendants' unconstitutional actions and inactions were the cause of Ms. Melendrez's injuries entitling her to compensatory and punitive damages, emotional and physical pain and suffering, loss of enjoyment of life, future lost income, future medical expense and future rehabilitation expense.

**COUNT III: IN VIOLATION OF ARTICLE II, §§ 13, 18 AND OF THE  
NEW MEXICO STATE CONSTITUTION  
(Against NMCD and Wexford)**

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

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

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

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

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

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

112. Ms. Melendrez's injuries resulted from NMCD and Wexford policies and practices of routine denial of medical care to NMCD inmates.

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

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

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

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

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

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

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

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

119. Each Paragraph of this Complaint is incorporated as if fully stated herein.

120. In the manner more fully described above, each of the Defendants had a reasonable opportunity to prevent the violation of Ms. Melendrez's constitutional rights, but failed to do so.

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

122. The unlawful failure to intervene by Defendants was the cause of Ms. Melendrez's injuries entitling her to compensatory and punitive damages, emotional and physical pain and suffering, loss of enjoyment of life, future lost income, future medical expense and future rehabilitation expense.

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

123. Each paragraph of this complaint is incorporated as if fully restated herein.

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

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



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

127. Ms. Melendrez did suffer severe emotional distress.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

140. In operating the SCC medical facility, NMCD, NMCD's agent and medical contractor Wexford, and the individual medical providers, were all under a duty to use ordinary

care to avoid or prevent what a reasonably prudent person would foresee as an unreasonable risk of injury to another.

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

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

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

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

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

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

146. In undertaking the diagnosis, care, and treatment of Ms. Melendrez, the above-named Defendants had a duty to possess and apply the knowledge, skill, and care that was ordinarily used by reasonably well-operated medical facilities and well-qualified healthcare providers under similar circumstances, giving due consideration to the locality involved. Wexford

and its employees, staff, and agents (including the above-named Defendants) breached their duties and were negligent in the management of Ms. Melendrez's health and well-being.

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

a) Failing to provide adequate staff and adequately trained staff at SCC to care for inmates such as Ms. Melendrez, with the full knowledge that such inadequate staffing practices would place inmates such as Ms. Melendrez at risk of injury;

b) Negligently hiring, retaining, training, and supervising staff at SCC, with the full knowledge that such negligent staffing practices would place inmates such as Ms. Melendrez at risk of injury;

c) Failing to provide proper prevention planning for emergent and worsening loss of hearing, loss of hearing prevention training, policies and procedures so that Ms. Melendrez's loss of hearing was permitted to worsen to the point where it became life threatening;

d) Failing to provide and implement proper care plans that would adequately meet Ms. Melendrez's needs, including her risk for loss of hearing;

e) Failing to provide a safe environment for inmates, including Ms. Melendrez;

f) Failing to have adequate and effective policies, procedures, staff and equipment to adequately diagnose, monitor, treat and manage Ms. Melendrez's loss of hearing;

g) Failing to recognize Ms. Melendrez's emergent need for a higher level of care that could not be provided at SCC.

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

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

163. Based on the above, the Defendants' conduct foreseeably created a broader zone of risk to Ms. Melendrez and other similarly situated prisoners with a heightened risk of loss of hearing or other medical vulnerabilities.

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

165. At all relevant times, the above-named Wexford Defendants were employees and entities acting within the scope of their duties, as permitted by law, to provide healthcare services to NMCD prisoners. The acts and omissions complained of here were undertaken by the above-

named Defendants within the scope of those Defendants' employment, contract, agency and/or apparent agency.

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

167. As a result of the acts or omissions of the abovenamed Defendants, Ms. Melendrez suffered injuries, including permanent hearing loss, emotional distress, and pain and suffering.

168. Immunity is waived for any "public employee" Defendant's negligence under NMSA § 41-4-10, as the above-named Defendants were each directly charged with making clinical decisions and providing health care services related to the curing or prevention of impairments to the body.

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

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

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

171. Upon information and belief, the above-named Defendants were each responsible for supervising NMCD and/or Wexford personnel in the actual day-to-day operation and maintenance of SCC.

172. These Defendants failed to ensure that SCC was adequately staffed with medical and security personnel who were sufficiently trained to render aid to prisoners with ongoing and emergent medical conditions. Upon information and belief, these Defendants also failed to follow

through with or otherwise enforce NMCD's policies and related contract provisions regarding prisoners with medical issues, which they were each responsible for overseeing.

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

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

175. Defendants failed to properly screen, supervise, educate and train its employees, contractors, and agents in the symptoms, diagnosis, treatment, referral or intervention for medical conditions of inmates and specifically the medical condition of Ms. Melendrez. These failures along with Defendants refusal to implement safety protocols to protect inmates such as Ms. Melendrez created dangerous conditions arising from the operation of the SCC.

176. The above-named Defendants, in the exercise of reasonable care, should have been aware of the risks of loss of hearing to inmates such as Ms. Melendrez and should have protected against loss of hearing by controlling the conduct of the NMCD and Wexford personnel over which they had supervisory authority, including the individual Doe Medical Providers and Corrections Officers named in this Complaint.

177. These supervisory Defendants failed to use ordinary care in their training, staffing, and supervising practices and had knowledge that their practices regarding training, staffing, and

supervising NMCD and Wexford personnel created an unreasonable risk of injury to Ms. Melendrez and similarly situated NMCD prisoners.

178. These dangerous conditions were severe and foreseeable, so the above-named Defendants had a heightened duty of care to oversee, discover, and prevent SCC personnel's dangerous responses to the ongoing management of prisoner medical care and medical emergencies.

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

180. The above Defendants' negligent training, staffing, and supervision were the proximate cause of Ms. Melendrez's injuries, including permanent loss of hearing.

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

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

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

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

184. As an NMCD prisoner in the custody of NMCD, Ms. Melendrez was a third-party beneficiary to NMCD's contract with Wexford that was in place at all times relevant to this



Complaint and through which Wexford was obligated to provide Ms. Melendrez adequate medical care.

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

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

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

188. As a result of breach of contract, Ms. Melendrez suffered injuries and damages.

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

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

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

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

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

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

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

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

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

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

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

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

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

199. These Defendants engaged in a collective concerted action to prevent Ms. Melendrez from receiving the necessary and proper medical care with each actively obstructing medical care, acquiescing to the denial of medical care and failing to intervene to obtain medical care despite their duties to do so.

200. As a result of this conspiracy and the above-named Defendants' conduct during the conspiracy, Ms. Melendrez suffered injuries entitling her to compensatory and punitive damages, emotional and physical pain and suffering, loss of enjoyment of life, future lost income, future medical expense and future rehabilitation expense.

**JURY DEMAND**

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

**RELIEF REQUESTED**

WHEREFORE, Plaintiff requests judgment as follows:

- A. The statutory damages legally allowable under the New Mexico Civil Rights Act against both NMCD and Wexford separately as distinct public bodies each individually liable for up to “the maximum recovery limit” outlined in NMSA § 41-4A-6;
- B. Compensatory damages against all Defendants, jointly and severally, in an amount to be determined by this Court as adequate for pain, suffering, and injuries to Ms. Melendrez under the New Mexico Tort Claims Act, and New Mexico tort, contract, and common law, including compensation for Wexford Defendants’ intentional infliction of emotional distress;
- C. Punitive damages in an undetermined amount against Wexford;
- D. Costs incurred by Ms. Melendrez, including pre-judgment and post-judgment interest;
- E. Reasonable attorneys’ fees; and
- F. Such other and further relief as the Court deems just and proper.

Respectfully Submitted:

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