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KATHLEEN VIGIL CLERK OF THE COURT
Veronica Romero-Padilla

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

GREG ROYBAL,

Plaintiff,

v.

No. D-101-CV-2022-01631

Case assigned to Sanchez-Gagne, Maria

NEW MEXICO CORRECTIONS DEPARTMENT; THE GEO GROUP, INC.; WEXFORD HEALTH SOURCES, INC.; ALISHA TAFOYA, Secretary of Corrections; WENCE ASONGANYI, Health Services Administrator; HOPE SALAZAR; AISTE CHAMBLIN, CNP; CHIRAG ACHARYA, MD; and DOE EMPLOYEES, STAFF AND AGENTS OF NMCD, THE GEO GROUP, AND WEXFORD.

Defendants.

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

COMES NOW, Plaintiff, Greg Roybal ("Mr. Roybal" or "Plaintiff"), by and through his attorneys Collins & Collins, P.C. (Parrish Collins) and DeLara | Supik | Odegard P.C. (Christopher J. DeLara, Christopher J. Supik, David C. Odegard, and Alisa Wigley-DeLara) for his cause of action states as follows:

**JURISDICTION AND VENUE**

1. All acts complained of herein occurred in Lea County, New Mexico.

2. A Notice of Claims was sent on December 22, 2021, pursuant to the New Mexico Tort Claims Act (NMSA § 41-4-16). Additionally, Plaintiff, through counsel, submitted three grievances dated December 22, 2021, detailing ongoing complaints about Mr. Roybal's lack of medical care to include issues with his mobility, pain management, and lack of physical therapy.

3. Defendants had actual notice of the claims as Plaintiff submitted two grievances detailing his complaints about the delays in his diagnosis which led to a serious spinal surgery, as

well as complaints about deficient care he received upon his return to the facility. His first grievance (submitted sometime between September 12, 2020 and December 30, 2020) cannot be located as it was ignored by the Defendants. His second grievance was submitted on December 30, 2020 and expressly states it is his "second" informal complaint. Mr. Roybal appealed this latter grievance, and his complaints were not addressed by Defendants in any meaningful way.

4. Mr. Roybal exhausted administrative remedies as required by 42 U.S.C.A. § 1997e and NMSA § 33-2-11.

5. Jurisdiction and venue are proper over the New Mexico Corrections Department ("NMCD"), The Geo Group, Inc. ("GEO"), Wexford Health Sources, Inc. ("Wexford"), and these entities respective employees, staff, and agents pursuant to NMSA §§ 38-3-1 and 41-4-18; and New Mexico tort, contract, and common law.

## PARTIES AND CULPABLE ACTORS

6. Mr. Roybal was at all relevant times incarcerated at the Lea County Correctional Facility ("LCCF"), an NMCD prison facility located in Hobbs, Lea County, New Mexico. He remains in the custody of NMCD at LCCF as of the filing of this complaint.

7. Defendant NMCD is an entity of the State of New Mexico that retains ultimate authority and responsibility over the conditions of confinement and access to medical care of all NMCD inmates, including Mr. Roybal.

8. 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 Mr. Roybal. 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.

9. Defendant GEO is a foreign corporation registered to do business in New Mexico whose registered agent is in Roswell, New Mexico. At all relevant times and currently, GEO Group operated the LCCF through a contract with Lea County in which NMCD is a third-party beneficiary. In turn, Lea County contracted with NMCD to house NMCD inmates. The terms of the contracts require GEO to follow all NMCD policies and procedures.

10. Defendant 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.

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

12. Defendant 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. Upon information and belief, Defendant Aiste Chamblin, CNP was employed by or contracted by Defendant Wexford to provide medical services to NMCD inmates, including Plaintiff Roybal.

14. Upon information and belief, Defendant Chirag Acharya, MD was employed by or contracted by Defendant Wexford to provide medical services to NMCD inmates, including Plaintiff Roybal.

15. 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 LCCF facility:

a) LCCF Health Services Administrator,

b) LCCF Medical Director,

c) Wexford Statewide Medical Director,

d) Wexford Statewide Director of Nursing,

e) Wexford Regional Medical Director,[1]

f) Wexford Regional Manager,

g) Wexford Regional Director of Nursing,

h) Wexford Quality Improvement Coordinator,

i) LCCF Director of Nursing,

j) Responsible Health Authority and Psychiatrist(s),

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

k) All Wexford personnel involved in Utilization Management/Review, and

l) Wexford Site Medical Director.

16. The following Wexford medical providers, some of whom cannot be identified due to illegible signatures, failed to provide adequate medical care to Mr. Roybal and actively ignored his ongoing requests for medical treatment for ongoing and extreme pain caused by an untreated infection. Many of the signatures are illegible, a breach of NMCD policy, but are believed to belong to the following individuals, including those of the named medical provider Defendants:

a. Aiste Chamblin, CNP
b. Chirag Acharya, MD
c. D. Varl or D. Viech, RN
d. __ Smith, MD
e. M. Lewig, RN
f. CMA Rios.

Several providers could not be identified due to their illegible signatures.

17. Doe Medical Providers are as of yet unidentified Wexford medical providers who shared responsibility for the medical care and treatment of Mr. Roybal.

18. Upon information and belief, Defendants Aiste Chamblin and Chirag Acharya, and unidentified provider D. Varl or D. Viech were the attending medical providers to Mr. Roybal.

19. At all times alleged herein, the Defendant medical providers, the providers identified in paragraph 16, and the Doe Medical Providers were agents and/or employees of Wexford, NMCD and/or GEO, acting within the scope of their employment and/or agency as such. They were all medical care providers for Mr. Roybal while he 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 Mr. Roybal. They are sued herein in their individual capacities.

20. Upon information and belief, Defendant Alisha Tofoya as the Secretary of Corrections for NMCD, Defendant Wence Asonganyi as the Health Services Administrator of NMCD, and Defendant Hope Salazar as the Director of NMCD Office of Inspector General has the authority and responsibility to oversee the medical care provided in NMCD facilities, including LCCF, and such oversight responsibilities included the proper implementation of and adherence to NMCD policies by its employees and contractors. They are sued in their individual capacities.

21. Doe Corrections Officers ("COs") were the unit officers, pod officers and control officers assigned to Mr. Roybal'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 Mr. Roybal. They were each employees of GEO and/or 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 Mr. Roybal. They are sued herein in their individual capacities.

## FACTUAL BACKGROUND

22. Mr. Roybal was 50 years old at the time the ongoing medical neglect began in September of 2020.

23. Mr. Roybal had a known history of intravenous drug use.

24. On September 12, 2020, Mr. Roybal had an acute onset of severe back pain with a progressive worsening of the pain through December 7, 2020. During this time, Mr. Roybal's pain complaints and pleas for medical help were ignored such that he was left to suffer in excruciating pain. Additionally, medical personnel chose to ignore significant medical findings made during physical examinations, and in doing so, failed to refer Mr. Roybal for medically necessary testing,

delaying the diagnosis of a bone infection, prolonging his pain, and causing Mr. Roybal to undergo a T6-T12 posterior fusion/fixation of his spine.

25. On September 12, 2020, Mr. Roybal presented to a Wexford medical provider _____ with complaints of pain to the left side of his ribs into his lower back. The pain was rated as a 10 out of 10 with limited range of motion.

26. Three days later on September 15, 2020, Mr. Roybal presented to _____ with complaints of pain in the lower spine rated at a 10 out of 10 with a weak grasp and an inability to move his legs due to pain. On the same day, he was seen by either Defendant Chamblin or Defendant Acharya with continued complaints of pain to his mid back, which were described as sharp with radiation to other body parts, and pain to his lower back. He was diagnosed with low back pain and an x-ray of his lumbar spine was recommended.

27. The x-ray of the lumbar spine was ordered by Defendant Chamblin. It was completed on September 23, 2020, at Lea County Medical Center and was normal.

28. The September 15, 2020, charting does not list osteomyelitis, nor any type of infection, as a cause of Mr. Roybal's pain complaints, while at the same time, the provider prescribed a course of oral antibiotics, suggesting an infection was at least suspected. The prescribed antibiotics, however, were not appropriate to treat bone infections.

29. No diagnostic recommendations were made on September 15, 2020, to determine whether Mr. Roybal had an infection and what type of infection he might have.

30. No diagnostic treatment recommendations were made on September 15, 2020, to address Mr. Roybal's thoracic spine complaints.

31. Following the normal findings of the lumbar spine x-ray, Defendant Chamblin failed to make any additional recommendations to ascertain the cause of Mr. Roybal's ongoing severe back pain.

32. On October 1, 2020, Mr. Roybal completed a health service request form and referred to it as an "EMERGENCY." In his request to seek immediate health care, he noted that he had been "hurting really bad" for the last two days after he stopped taking the antibiotics and that he was "having a hard time standing up," and that "the pain is getting worse every day."

33. He was evaluated the same day and diagnosed with acute low back pain. A CT scan of his lumbar spine was recommended, and he was prescribed another course of oral antibiotics.

34. Again, no diagnostic treatment recommendations were made on October 1, 2020, to address Mr. Roybal's thoracic spine complaints.

35. The CT scan of the lumbar spine was completed on October 29, 2020, ordered by Defendant Chamblin, and a disk bulge at the L5 level was noted. There were no other significant findings.

36. On November 9, 2020, Mr. Roybal was seen for continued complaints of back pain. It was described as pain mostly to the right mid-back and rated as a 9 out of 10 with difficulty walking. On examination, the mid-thoracic area to the right side was painful to the touch. He was diagnosed with acute mid-back pain. At that time, the provider, believed to be Defendant Chamblin or Defendant Acharya, noted that the CT of the lumbar spine was within normal limits and expressed concern that the issue did not resolve.

37. Despite these concerns, no diagnostic treatment recommendations were made to address Mr. Roybal's ongoing thoracic spine complaints.

38. On November 23, 2020, Mr. Roybal was seen for continued complaints of middle back pain which was noted as being ongoing for many months. At that time, no diagnostic treatment recommendations were made to address Mr. Roybal's ongoing thoracic spine complaints.

39. On November 30, 2020, Mr. Roybal submitted a health service request form addressed specifically to "Provider Chamblin" for "undiagnosed back pain." Mr. Roybal complained that he still had "bad pain on my back" and asked if he could have an MRI or a "shot" because "we need to find out what it is."

40. In response to this request, Mr. Roybal's complaints were not treated as an emergency. Rather, he was scheduled to be seen almost two weeks later on December 11, 2020.

41. After complaints and requests for help to address nearly four months of severe thoracic back pain rated at or near a level of 10 out of 10, on December 7, 2020, Mr. Roybal was finally recommended and approved to have an MRI of his thoracic and lumbar spine. This was the first time any diagnostic test had been recommended to include the thoracic spine.

42. The MRIs were ordered by Defendant Acharya. The MRIs were completed at Lea Regional Medical Center on December 11, 2020. The MRI of the lumbar spine revealed a small disk bulge at the L5 level consistent with the CT scan of the lumbar spine. The MRI of the thoracic spine revealed a diffuse abnormal signal in the T9 and T10 vertebrae crossing the disk space extending anteriorly and laterally most consistent with acute osteomyelitis of the T9 and T10 vertebrae.

43. On December 12, 2020, Mr. Roybal was transferred to UNM Hospital for osteomyelitis. A repeat MRI of the thoracic spine was completed and revealed unchanged findings of T9-T10 osteomyelitis discitis with confluent ventral and lateral epidural phlegmon, which

resulted in moderate to severe spinal canal stenosis and severe bilateral neural foraminal narrowing at T9-T10. Superior spread to the T8 vertebral body level and epidural phlegmon extending to T7-T8 and T10-T11 were also noted.

44. Mr. Roybal was started on an antibiotic regimen, which included injections and IV medications to address the spine infection.

45. On December 13, 2020, Mr. Roybal underwent pedicle screw placements at T6, T7, T8, T11 and T12 for segmental fixation; left transpedicular approach for biopsy of T9-T10 disk space; posterolateral fusion from T6-T12 with autograft and allograft; and correction of the kyphotic deformity.

46. Prior to his surgery, Mr. Roybal presented with red flag symptoms suggestive of a vertebral infection, which warranted an immediate radiological investigation of the thoracic spine to determine the appropriate diagnosis.

47. There was an unwarranted four month delay in the diagnosis of Mr. Roybal's spine infection due to the failure to recommend appropriate evaluation and diagnostic testing, which caused him injury and harm to include the need for a T6-T12 posterior fusion/fixation.

48. Mr. Roybal was at UNM Hospital from December 12, 2020 to December 17, 2020 for chronic thoracic osteomyelitis. Upon discharge, he was prescribed high dosage oral antibiotic ciprofloxacin with the recommendation that he be monitored with an EKG after (5) doses and be followed by UNMH OPAT within 2 to 3 weeks after discharge. Additionally, it was recommended that the "prison provider" check Mr. Roybal's WBC, ESR, and CRP weekly for six weeks following discharge during his oral antibiotic therapy. He was prescribed a pain regimen of acetaminophen, ibuprofen, and oxycodone.

49. Mr. Roybal was scheduled by the UNM providers with UNMH neurosurgery for staple removal to be completed on January 14, 2021.

50. Mr. Roybal was recommended to complete skilled physical therapy to assist in pain management, positioning, bracing techniques, and to help strengthen and stabilize the spine through therapeutic exercise as well as to improve overall strength and functional mobility.

51. Following his discharge, Mr. Roybal was returned to LCCF. Upon his return, he was monitored by medical personnel for two days on December 18 and 19, 2020. After December 19, 2020, the monitoring ended.

52. Mr. Roybal did not receive skilled physical therapy, or any type of physical therapy, upon his return to LCCF against the recommendations made by UNM providers.

53. Upon information and belief, Mr. Roybal did not receive the recommended EKG as recommended by UNM providers.

54. Upon information and belief, Mr. Roybal did not have his staples removed in accordance with the recommendations made by UNM providers.

55. Upon information and belief, Mr. Roybal was not scheduled for his follow up visit with UNMH OPAT.

56. Upon information and belief, Mr. Roybal was not administered his full course of oral antibiotics as recommended by UNM providers.

57. Upon information and belief, Mr. Roybal was not provided with an appropriate pain medication regimen to address his ongoing post-surgical pain.

38. Instead, Mr. Roybal submitted multiple health service request forms (December 23, 2020, December 30, 2020, January 10, 2021, January 12, 2021, January 19, 2021, and January 25,

2021) seeking medical help for ongoing severe pain, wound care, and problems with mobility issues. These requests were ignored by medical personnel.

58. The Wexford Defendants' failure to adhere to the treatment recommendations made by the UNM providers caused Mr. Roybal additional harm, increased Mr. Roybal's pain and suffering, and upon information and belief, adversely impacted his overall prognosis and healing.

59. Defendants Wexford, Chamblin, Acharya, and the Doe Medical providers were all aware that Mr. Roybal was suffering with severe thoracic back pain for at least four months with a history of intravenous drug use, but took no meaningful action to address those complaints. Instead, the records suggest that these Defendants suspected that Mr. Roybal had an infection, but took no action to refer Mr. Roybal for a higher level of care and/or diagnostic testing to appropriately diagnose and treat the infection.

60. Despite multiple opportunities to refer Mr. Roybal for a higher level of care, Defendants Wexford, Chamblin, Acharya, and the Doe Medical providers were deliberately indifferent to Mr. Roybal's serious medical needs. The result of the reckless disregard and deliberate indifference to Mr. Roybal's serious medical condition caused him significant harm, prolonged pain and suffering, and life-long disability.

61. None of these medical professionals took any action to ensure that Mr. Roybal was sent to an off-site medical provider or otherwise provided with necessary care between September 12, 2020 and December 7, 2020 despite knowing that he required additional medical services in order to safeguard his health and wellbeing.

62. Upon information and belief, Doe Corrections Officers made observations of and received complaints from Mr. Roybal regarding his ongoing severe and extreme pain from

September 12, 2020 through December 7, 2020 and no action was taken to ensure Mr. Roybal received medical care to treat his medical emergency.

63. Upon information and belief, none of the Doe Corrections Officers requested or insisted that Mr. Roybal be evaluated medically and/or transported to an off-site medical facility to address his medical emergency. Due to Mr. Roybal's ongoing complaints of severe pain, the need for medical attention was obvious even to a lay person.

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

64. LCCF is operated in accordance with all NMCD rules, policies, and procedures.

65. NMCD is responsible for contracting medical services for all NMCD facilities, including LCCF, and contracted with Defendant Wexford to provide medical services to all NMCD inmates in accordance with the terms of the PSC. NMCD maintained its responsibility for the care, health, safety, and medical treatment of all detainees in its facilities, including LCCF.

66. 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 Mr. Roybal. 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.

67. 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.

68. 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.

69. 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.

70. Upon information and belief, Defendants Tafoya, Asonganyi, and Salazar had oversight responsibility over Wexford and its employees and agents to ensure compliance with the terms of the PSC and to ensure compliance with NMCD rules, policies, and procedures.

71. Upon information and belief, Defendant GEO had oversight responsibility over Wexford and its employees and agents to ensure compliance with NMCD rules, policies, and procedures and the operating procedures of LCCF.

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

73. Defendants Chamblin and Acharya and the Doe Medical Provider Defendants violated NMCD rules, policies, and procedures with respect to the medical care provided to Mr. Tafoya.

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

75. Upon information and belief, GEO did not intervene to correct the violations, and GEO both acquiesced and colluded in the violations, and actively violated NMCD policies and procedures.

76. As a result of the violations of NMCD rules, policies and procedures by all Defendants, Mr. Roybal received constitutionally inadequate medical services, his physical condition deteriorated severely, and he now suffers from a life-long disability.

77. In failing to address Mr. Roybal's medical concerns, Wexford and NMCD personnel violated the following NMCD policies, among others:

- CD-032200(G): "Inmates shall be protected from personal abuse, corporal or unusual punishment, humiliation, mental abuse, personal injury, disease, property damage, harassment or punitive interference with the daily functions of living, such as eating and sleeping."
- CD-170100(E-F): "Inmates who need health care beyond the resources available in the facility, as determined by the responsible health care practitioner, are transferred under appropriate security provisions to a facility where such care is available. . . . A transportation system that assures timely access to services that are only available outside the correctional facility is required."
- CD-170100(G): "A written individual treatment plan is required for inmates requiring close medical supervision, including chronic and convalescent care."

- CD-170100(T): "Medical or dental adaptive devices (eyeglasses, hearing aids, dentures, wheelchairs, or other prosthetic devices) are provided when medically necessary as determined by the responsible health care practitioner."
- CD-170100(DD): "The contract with the healthcare vendor shall ensure that levels of care and operations meet the standards of ACA [American Corrections Association] and NCCHC [National Commission on Correctional Health Care] as well as the policies and directives of the NMCD and its Medical Authority."
- CD-170100(FF): "All state and private facilities that house state inmates shall follow procedures and practices that are in compliance with Corrections Department policy, ACA, and NCCHC standards."
- CD-170100(GG): "Inmates with disabilities shall be housed in a manner that provides for their safety and security."
- CD-170101(A)(2-4): "When necessary services are not available on-site, provisions shall be made for transfer of the inmate to another facility within the NMCD or to a community provider where such services are available. . . .It shall be the responsibility of custody staff to provide for adequate and timely transportation of inmates for off-site medical services."
- CD-170101(J)(4): "Urgent or emergency transports will be conducted immediately upon the determination by the medical staff that it is necessary."
- CD-170101(R)(3-4): "Procedures which cannot be accomplished at the facility shall be scheduled at an off-site facility. Scheduled medical procedures will not be delayed because of fiscal constraints when the following conditions exist: a. When pain is a manifestation of the medical condition and the treatment of choice for the potential alleviation of the pain is a scheduled procedure. b. When the deterioration of a person's health status associated

with the progression in a chronic disease can be halted or significantly slowed by the scheduled procedure or c. When a disabling malady poses a life threatening or permanently disabling situation or a significant constraint to the person's rehabilitation and the scheduled procedures is the treatment of choice."

- CD-173100(A)(1): "When qualified health personnel, the local health care authority, the Warden, or the Shift Commander identifies an emergency medical situation that could result in the loss of life or serious harm to an inmate, he or she will immediately call 911 and request ambulance transport for the inmate to the nearest appropriate health care facility."
- CD-176100(A)(1): "The NMCD Health Services Bureau and the Behavioral Health Services Bureau shall ensure that all inmates are treated with dignity and respect and in a manner that recognizes their basic human rights."

78. Because the Defendants violated the above policies, Mr. Roybal received constitutionally inadequate medical services, and his physical condition deteriorated severely. The actions of Defendants caused Mr. Roybal severe and permanent harm.

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

## B. WEXFORD'S WIDESPREAD PATTERNS AND PRACTICES OF PROVIDING UNCONSTITUTIONAL MEDICAL CARE WERE KNOWN TO NMCD.

80. Wexford maintained various widespread patterns, practices and de facto standard operating procedures both in New Mexico and throughout the United States, which contributed to his 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 Mr. Roybal'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.

81. NMCD and Wexford have a longstanding policy and practice, directed, supervised and/or ratified by NMCD supervisory personnel, the NMCD Individual Defendants, and/or 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.

82. 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.

83. The practices/SOP were present under a past contract with NMCD and were the basis for termination of the contract with Wexford in 2007. Yet, NMCD saw fit to bring Wexford back in 2019 despite the obvious risks to NMCD inmate lives and health.

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

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

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

87. Wexford and the NMCD Defendants knew of the substantial risk of serious or fatal consequences that the 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.

88. Upon information and belief, Wexford maintained their constitutionally deficient practices in order to maximize profit and without regard to its constitutional and medical obligations to NMCD prisoners, including Mr. Roybal, who were entrusted to Wexford's care.

89. The practices set forth throughout this complaint were the moving forces behind the misconduct at issue in the instant case.

90. As a result of Defendants' unlawful conduct, Mr. Roybal suffered serious and permanent personal injuries to include a T6-T12 posterior fusion, permanent disability, emotional and physical pain and suffering, loss of enjoyment of life, future medical expenses and future rehabilitation expenses entitling him to an award of compensatory and punitive damages.

91. 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 and undertaken with deliberate indifference to Mr. Roybal's health and safety and were adopted and ratified by Wexford, NMCD, and GEO.

92. NMCD, GEO, and Wexford are liable for damages caused by their respective employees and other agents while working within the scope of their employment under the doctrines of *respondeat superior* and agency.

**COUNT I: NEGLIGENT OPERATION OF A PUBLIC BUILDING UNDER NEW MEXICO TORT LAW AND THE TORT CLAIMS ACT, NMSA § 41-4-6 (AGAINST DEFENDANTS NMCD AND NMCD INDIVIDUAL DEFENDANTS)**

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

94. In operating the LCCF and providing medical services at the LCCF, NMCD and the Individual NMCD Defendants 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.

95. NMCD has authority and control over all NMCD correctional facilities, including LCCF, 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.

96. 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 patterns 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 Mr. Roybal. Moreover, NMCD maintained its own policies and practices of routine and extreme medical neglect of its inmates.

97. Defendants' 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.

98. The NMCD Defendants' policy and practice of breaching their duty in the operation of NMCD facilities caused a foreseeable risk of injury to all inmates. The actions and inactions of the NMCD Defendants outlined above created a specific foreseeable risk to Mr. Roybal and was the cause of Mr. Roybal's injuries.

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

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

101. The actions or inactions of Defendants caused injury to Mr. Roybal.

102. 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 the LCCF medical facility/clinic.

103. Immunity for any "public employee" is waived for these Defendants' negligence under NMSA § 41-4-9, as Mr. Roybal's injuries arose from an unsafe, dangerous, and defective condition on property owned and operated by the government.

**COUNT II: NEGLIGENT OPERATION OF A MEDICAL FACILITY UNDER NEW MEXICO TORT LAW AND THE NEW MEXICO TORT CLAIMS ACT – NMSA § 41-4-9 (AGAINST DEFENDANTS NMCD AND NMCD INDIVIDUAL DEFENDANTS)**

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

105. In operating the LCCF medical facility, NMCD and the NMCD individual Defendants 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.

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

107. NMCD and the individual NMCD Defendants did not enforce the PSC, or any other standards of care related to the medical care of NMCD inmates generally or specifically at LCCF. Instead, the NMCD Defendants colluded with, and ratified dangerous patterns and practices of Wexford set forth throughout this Complaint leading to extreme medical neglect of NMCD inmates under the care of Wexford, including Mr. Roybal. Moreover, NMCD and the individual NMCD Defendants maintained its own policies and practices of routine and extreme medical neglect of its inmates.

108. NMCD and the individual NMCD Defendants operated the LCCF medical facility.

109. The NMCD Defendants had authority and control over the medical unit at LCCF, which included oversight and control over of NMCD's medical contractors.

110. NMCD and the Individual NMCD Defendants were required to enforce the PSC and take action against Wexford if the care provided did not meet appropriate standards and NMCD policies and procedures, such that NMCD and the individual NMCD Defendants

were involved in the clinical decision-making and supervision of medical units inside NMCD facilities.

111. The actions and inactions of Defendants in the operation of the medical unit at LCCF caused injury to Mr. Roybal.

112. 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 LCCF's medical facility/clinic.

**COUNT III: INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS IN VIOLATION OF NEW MEXICO COMMON LAW (AGAINST DEFENDANTS GEO AND WEXFORD)**

113. Each Paragraph of his Complaint is incorporated as if fully stated herein.

114. GEO did not enforce standards of care related to the medical care of NMCD inmates at LCCF. Instead, GEO colluded with, conspired with, and ratified dangerous patterns and practices of Wexford set forth throughout this Complaint leading to extreme medical neglect of NMCD inmates under the care of Defendant Wexford, including Mr. Roybal.

115. NMCD did not enforce the standards of care related to the medical care of NMCD inmates at LCCF. Instead, NMCD colluded with, conspired with, and ratified dangerous patterns and practices of Wexford set forth throughout this Complaint leading to extreme medical neglect of NMCD inmates under the care of Defendant Wexford, including Mr. Roybal.

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

117. Mr. Roybal was totally reliant upon Defendants for the provision of necessary and proper medical care.

118. Mr. Roybal had no other source of medical care.

119. Defendants had a special relationship with Mr. Roybal which gave them extraordinary, unilateral authority over the provision of necessary and proper medical.

120. Defendants' conduct was extreme and outrageous undertaken with the intent to cause Mr. Roybal severe emotional distress.

121. Mr. Roybal suffered severe emotional distress.

122. The conduct of these Defendants and their respective employees, staff and agents was the cause of Mr. Roybal's severe emotional distress, entitling him to compensatory and punitive damages.

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

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

124. At all relevant times, the above Defendants were each healthcare providers providing health services to Mr. Roybal and other NMCD prisoners.

125. In undertaking the diagnosis, care, and treatment of Mr. Roybal, these 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.

126. Wexford and its employees, staff, and agents (including all individually named Wexford Defendants and Doe medical providers) breached their duties and were negligent in the management of Mr. Roybal's health and well-being.

127. 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 LCCF to care for inmates such as Mr. Roybal, with the full knowledge that such inadequate staffing practices would place inmates such as Mr. Roybal at risk of injury;

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

c) Failing to provide proper prevention planning for emergent and worsening infection, infection prevention, and infection-prevention training such that Mr. Roybal's infection was permitted to worsen causing severe pain and permanent disability;

d) Failing to provide and implement proper care plans that would adequately meet Mr. Roybal's needs, including his risk for severe infection;

e) Failing to timely assess, diagnose, and treat Mr. Roybal's medical condition;

f) Failing to provide a safe environment;

g) Failing to have adequate and effective policies, procedures, staff and equipment to adequately assess, diagnose, monitor, treat and manage Mr. Roybal's medical condition; and

h) Failing to recognize Mr. Roybal's emergent need for a higher level of care that could not be provided at LCCF.

128. Defendants breached their duties and were, at minimum, negligent in the evaluation, diagnosis, treatment and management of Mr. Roybal's health and safety.

129. Based on the above, the Defendants' conduct foreseeably created a broader zone of risk to Mr. Roybal and other similarly situated prisoners with a heightened risk of infection and/or other medical vulnerabilities.

130. These acts and failures to act by the Wexford Defendants 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 Mr. Roybal.

131. At all relevant times, the 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 Wexford Defendants within the scope of those Defendants' employment, contract, agency and/or apparent agency.

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

133. As a result of the acts or omissions of the Wexford Defendants, Mr. Roybal suffered injuries, including a T6-T12 posterior fusion, severe pain and suffering, and severe emotional distress.

134. To the extent any Wexford Defendant claims coverage under the New Mexico Tort Claims Act, Immunity is waived for any "public employee" Defendant's negligence under NMSA § 41-4-10, as the Wexford 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 V: NEGLIGENT TRAINING, STAFFING, AND SUPERVISION UNDER NEW MEXICO COMMON LAW(AGAINST DEFENDANTS GEO AND WEXFORD)**

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

136. At all times relevant to this Complaint, the above-named Defendants were each

responsible for training, staffing, and supervising personnel operating LCCF, including personnel responsible for the medical-access gatekeeping and/or medical wellbeing of LCCF prisoner patients. These personnel were employed by GEO, and/or Wexford.

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

138. These Defendants failed to ensure that LCCF 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, procedures, and related contract provisions regarding prisoners with medical issues, which they were each responsible for overseeing.

139. More specifically, Wexford had a duty to properly screen, supervise, educate, and train its employees regarding proper treatment of prisoners with obvious signs of infection and/or increased risk of infection.

140. GEO had a duty to properly screen, supervise, educate and train its employees regarding the identification of prisoners with obvious signs of infection and/or obvious signs of an emergent medical condition.

141. Given NMCD's history of inmates who have suffered from severe infection, particularly in prisoners with heightened risk of severe infection, GEO and Wexford and their respective employees, staff and agents knew of the heightened risk of severe infection to its inmates including Mr. Roybal.

142. Upon information and belief, these Defendants and their supervisory agents failed to properly screen, supervise, educate and train its employees, contractors, and agents regarding

how to appropriately and adequately identify, assess, treat, and manage, Mr. Roybal's medical condition.

143. 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 Mr. Roybal.

144. These failures along with Defendants' refusal to implement safety protocols to protect inmates such as Mr. Roybal created dangerous conditions arising from the operation of the LCCF

145. The above-named Defendants, in the exercise of reasonable care, should have been aware of the risks of severe infection to inmates such as Mr. Roybal and should have protected against injuries caused by undiagnosed and untreated infection by controlling the conduct of the GEO and Wexford personnel over which they had supervisory authority, including the individual Wexford Defendants, the individual Doe Medical Providers, and the individual Doe Corrections Officers named in this Complaint.

146. These Defendants failed to use ordinary care in their training, staffing, and supervising practices and had knowledge that their practices regarding training, staffing, and supervising GEO and Wexford personnel created an unreasonable risk of injury to Mr. Roybal and similarly situated NMCD prisoners.

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

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

149. The above Defendants' negligent training, staffing, and supervision were the cause of Mr. Roybal's injuries and damages.

**COUNT VI: BREACH OF CONTRACT, THIRD-PARTY BENEFICIARY (AGAINST DEFENDANTS NMCD AND WEXFORD)**

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

151. As an NMCD prisoner in the custody of NMCD, Mr. Roybal was an intended 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 Mr. Roybal adequate medical care.

152. The scope of services identified in the PSC includes an expansive explanation of requirements for Wexford's "medical services program," "inpatient infirmary: medical care services," "tertiary health care services," nutrition and therapeutic diets," "emergency preparedness/medical disaster plan," and "safety, sanitation, and infection control," among many others.

153. Each of these sections almost exclusively concerns NMCD prisoners and is meant to benefit them.

154. Additionally, provision 4 of the PSC required Wexford to "abide by any and all rules and regulations set for by the Agency [NMCD] so as not to…jeopardize the health and safety of any employees, inmates, or the general public" – a clear and unequivocal statement indicating that NMCD prisoners are intended to benefit through the protections and terms provided in the PSC.

155. As an intended beneficiary to the contract for medical services between NMCD and Wexford, Mr. Roybal has standing to enforce the terms of the contract.

156. During the timeframe relevant to this Complaint, NMCD, Wexford and their employees and agents materially breached multiple provisions of PSC, and these violations were a cause of Mr. Roybal's injuries.

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

158. As a result of breach of contract, Mr. Roybal suffered injuries and damages, including consequential damages.

**COUNT VII: RES IPSA LOQUITUR UNDER NEW MEXICO TORT LAW AND THE NEW MEXICO TORT CLAIMS ACT (AGAINST ALL DEFENDANTS)**

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

160. The injuries and damages suffered by Mr. Roybal were caused by the wanton, willful, and reckless actions and inactions of all Defendants.

161. It was the responsibility of NMCD, GEO, and Wexford to manage and control their security and medical staff regarding the care and treatment of Mr. Roybal.

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

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

**JURY DEMAND**

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

## RELIEF REQUESTED

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 Mr. Roybal under the New Mexico Tort Claims Act, and New Mexico tort, contract, and common law, including compensation for the intentional infliction of emotional distress;

B. Punitive damages in an undetermined amount against Defendants' GEO and Wexford;

C. Costs incurred by Mr. Roybal, including pre-judgment and post-judgment interest; and

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

Respectfully Submitted:

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