

STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT

FILED
13th JUDICIAL DISTRICT COURT
Valencia County
10/2/2024 4:23 PM
PHILLIP ROMERO
CLERK OF THE COURT

IN THE MATTER OF THE WRONGFUL DEATH ESTATE OF MICHAEL GABALDON, deceased. No. D-1314-CV-2024-00914

**PETITION FOR APPOINTMENT OF PERSONAL REPRESENTATIVE
TO PURSUE WRONGFUL DEATH CLAIM IN ACCORDANCE
WITH NMSA 1978 § 41-2-1 et. seq.**

In conformity with NMSA 1978, § 41-2-1 to 4, Patricia Gabaldon petitions the Court for an Order appointing her as Personal Representative of the Estate of Michael Gabaldon for the purpose of investigating, pursuing, and/or resolving a wrongful-death action, and as grounds for said Order states:

- 1. This Court has jurisdiction over this matter pursuant to the New Mexico Wrongful Death Act, NMSA 1978, §§ 41-2-1 to 4, which grants original jurisdiction to the district courts for proceedings for the informal appointment of a personal representative.
- 2. Michael Gabaldon (“Decedent”) died on or about September 29, 2024, in Valencia County, NM.
- 3. Decedent left behind his wife, Petitioner, and three living children, Dylan Gabaldon, Joshua Gabaldon and Megan Carrasco, with no grandchildren.
- 4. The addresses of the potential statutory beneficiaries of the Decedent as known or ascertainable with reasonable diligence by the Petitioner are:

NAME	ADDRESS	RELATIONSHIP
Petitioner Patricia Gabaldon	c/o Ives & Flores P.A. 925 Luna Cir. NW Albuquerque, NM 87102	Wife
<div></div>	c/o Ives & Flores P.A. 925 Luna Cir. NW Albuquerque, NM 87102	Son

Joshua Gabaldon	Unknown	Son
Megan Carrasco	Unknown	Daughter

5. Notice reasonably calculated for receipt by the statutory beneficiaries will be delivered upon entry of an Order appointing Petitioner to serve as personal representative.

WHEREFORE, Petitioner prays that she be appointed Personal Representative of the Estate of Michael Gabaldon, deceased, for the purpose of investigating, pursuing, and/or resolving wrongful-death actions under the Wrongful Death Act, and for such other and further relief as may be proper.

Respectfully Submitted,

IVES & FLORES, PA

/s/ Adam C. Flores

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STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT

FILED
13th JUDICIAL DISTRICT COURT
Valencia County
11/12/2024 3:11 PM
PHILLIP ROMERO
CLERK OF THE COURT
Michael Garley

IN THE MATTER OF THE WRONGFUL
DEATH ESTATE OF MICHAEL GABALDON, deceased.

No. D-1314-CV-2024-00914

**ORDER APPOINTING PERSONAL REPRESENTATIVE FOR
MICHAEL GABALDON IN ACCORDANCE WITH NMSA 1978, § 41-2-1 et seq.**

This matter having come before the Court on Movant, Patricia Gabaldon's Petition for Appointment of Personal Representative to Pursue Wrongful Death Claim in Accordance with NMSA 1978, § 41-2-1 et seq. (Estate of Michael Gabaldon, deceased), and the Court being fully advised,

FINDS: That the Petition is well taken and should be granted.

IT IS therefore ORDERED that Patricia Gabaldon is appointed Personal Representative of the Estate of Michael Gabaldon for the purpose of investigating, pursuing and resolving a wrongful death action under NMSA 1978 Section 41-2-1 et seq.



HONORABLE JAMES LAWRENCE SANCHEZ
DISTRICT COURT JUDGE

Respectfully Submitted,

IVES & FLORES, PA

/s/ Adam C. Flores

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**STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT**

PATRICIA GABALDON, as *Personal Representative of the Wrongful Death Estate of Michael Gabaldon, and as Parent, Guardian, and Next Best Friend of D.G., a Minor Child,*

Plaintiff,

v.

No. D-1314-CV-2025-00588

**BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF VALENCIA,**

Defendant.

**COMPLAINT FOR VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT
AND THE NEW MEXICO CIVIL RIGHTS ACT**

Plaintiff Patricia Gabaldon, as personal representative of the Wrongful Death Estate of Michael Gabaldon, and as Parent, Guardian, and Next Best Friend of D.G., a minor child, through counsel, Ives & Flores, PA (Laura Schauer Ives, Adam C. Flores, and Andrew J. Pavlides), brings this Complaint for damages under the New Mexico Tort Claims Act and the New Mexico Civil Rights Act. In support of this Complaint, Plaintiff alleges as follows:

PARTIES, JURISDICTION, AND VENUE

1. Plaintiff Patricia Gabaldon has been duly appointed as the Personal Representative for the Wrongful Death Estate of Michael Gabaldon to investigate and bring claims against those agencies and individuals responsible for the wrongful death of Michael Gabaldon (“Michael”). Plaintiff is the parent, guardian, and next best friend of D.G., her minor son whom she shared with Michael.

2. Michael was a resident of Valencia County, New Mexico. He was killed by Valencia County Sheriff’s Deputies at his home in Valencia County.

3. Defendant Board of Commissioners of the County of Valencia (“Valencia County” or “Board”) is sued pursuant to NMSA 1978, Section 4-46-1 (1953). Valencia County’s principal offices are located within Valencia County, New Mexico. Valencia County is the employer of the public employees named in this Complaint. Valencia County is directly liable and vicariously liable for the acts and omissions of its employees, including law enforcement officers involved in the death of Michael at his home in Valencia County.

4. Defendant Board is a “local public body” within the meaning of the New Mexico Tort Claims Act, NMSA 1978 § 41-4-3(C) (2015), and a “public body” within the meaning of the New Mexico Civil Rights Act, NMSA 1978 § 41-4A-2 (2021).

5. All events alleged in this Complaint occurred in Valencia County, New Mexico.

6. Jurisdiction and venue in this Court are appropriate pursuant to NMSA 1978, Section 41-4-18 (1953) and NMSA 1978, Section 41-4A-3(B) (2021).

7. Plaintiff provided notice of these claims to Valencia County and the Valencia County Sheriff’s Office (“VCSO”).

FACTUAL ALLEGATIONS

8. Michael was a 51-year-old former sheriff’s deputy and military servicemember, who lived in Valencia County with his wife, Patricia, and their youngest son D.G., who is now 16.

9. Michael was proud to have served his community and remained a steadfast supporter of law enforcement. He proudly displayed a thin-blue-line flag in front of his family’s home.

10. In 2022, Thomas Rodriguez moved in with his mother, becoming immediate neighbors with Michael, Patricia, and D.G.

11. Rodriguez is a felon, schizophrenic, and suffered from serious substance abuse disorder.

12. For three years, Rodriguez terrorized the neighborhood.

13. Among other things, Rodriguez intermittently shot at homes and in the air, shattered neighbors' windows and "popped off rounds" through their walls, screamed at neighbors and broke into their homes, shot out the neighborhood electrical transformer twice (a felony and a federal offense), depriving the neighborhood of electricity until fixed, and repeatedly told his mother that he was going to shoot people outside who he could not see.

14. The situation Rodriguez's presence posed to the neighborhood was so dangerous and volatile that parents in the neighborhood instructed their children not to play outside.

15. VCSO was keenly aware that Rodriguez was a dangerous individual engaged in ongoing criminal activity in the neighborhood.

16. Rodriguez's neighbors repeatedly called VCSO seeking assistance and protection from the danger posed by him.

17. For example, since 2023, neighbors called VCSO to report: that Rodriguez was trespassing on their property and refusing to leave; that Rodriguez was driving recklessly through the neighborhood, endangering lives; that Rodriguez was outside displaying a rifle and pounding on neighbors' doors; that Rodriguez was firing shots into the neighborhood, where children lived; that Rodriguez was throwing rocks at Michael's dogs; that Rodriguez was shooting into a neighbor's home; that Rodriguez was shooting into the street; that Rodriguez shot out a neighbor's window with a BB gun; that Rodriguez was firing his gun at a neighbor while she hid behind her chicken coop; that Rodriguez was firing shots at a neighbor's propane tank; that Rodriguez broke into a neighbor's house; that Rodriguez was frightening a neighbor, banging on her door and

screaming about a baby inside her home; that Rodriguez was firing his gun at the neighborhood's electrical transformer, shutting off power to the neighborhood; that Rodriguez was involved in a shootout with his brother in his own home; and that Rodriguez was behaving erratically, outside, apparently on drugs.

18. VCSO, though aware of the danger posed by Rodriguez, shirked its responsibility to Rodriguez, his neighbors, and the residents of Valencia County.

19. Because of VCSO's apathy and inaction, Rodriguez was emboldened to terrorize his neighbors, and he did so without being subject to criminal charges, mental health assessment or treatment.

20. Some of Rodriguez's neighbors, frustrated and dispirited by VCSO's non-response, did not bother to call VCSO anymore, resigned to the fact that they had to live in fear that Rodriguez might engage in dangerous activity at any time without consequence.

21. On the weekend beginning September 27, 2024, Michael and Patricia still had some faith in law enforcement to address Rodriguez's dangerous criminal behavior.

22. Noting the telltale signs Rodriguez was using drugs and experiencing active psychosis, Patricia called 911 on September 27, 2024, reporting that Rodriguez was unwell and driving dangerously back and forth down their shared dirt road that ran along the neighbors' properties.

23. Nobody from VCSO responded to the neighborhood, though a sheriff's deputy called Patricia back.

24. Patricia described her frustration to the sheriff's deputy, advising him that she, Michael, and their neighbors had called 911 about Rodriguez more times than she could count.

25. The sheriff's deputy told Patricia that VCSO knew Rodriguez had access to an arsenal and that they were going to take action to take his weapons.

26. The sheriff's deputy also told Patricia that she and Michael had every right to do what they needed to do to protect their family.

27. In the early morning on September 29, 2024, a neighbor called 911 to report hearing gunshots from Rodriguez's house. This was only the beginning.

28. For the rest of that day, Rodriguez committed crimes throughout the neighborhood while neighbors cowered in their homes and sheriff's deputies failed to uphold their statutory duties to apprehend him.

29. Patricia called 911 eleven times on September 29, 2024, starting at 3:10 p.m., prompting three separate responses by VCSO.

30. Michael called 911 once on that day, as did other neighbors, including Rodriguez's mother, for a total of at least sixteen desperate calls for help from the neighborhood.

31. Neighbors reported a volatile situation and described hearing and seeing shooting from Rodriguez's yard.

32. One neighbor collected a bullet that Rodriguez fired into her home.

33. In her first calls, Patricia reported that Rodriguez was outside, shooting weapons.

34. Emergency dispatch immediately relayed that Rodriguez was the offender, he was mentally unstable, had access to weapons, was known to discharge those weapons, and that no fewer than two officers should respond to the call.

35. During the first response and while sheriff's deputies were talking to another neighbor, VCSO observed Rodriguez with a gun in hand, running into his house.

36. A sheriff's deputy told Rodriguez to stop before he went inside.

37. Rodriguez did not comply with the order but later emerged without a weapon.
38. VCSO sheriff's deputies spoke to Rodriguez, who was clearly delusional.
39. Sheriff's deputies also spoke with Rodriguez's mother, who confirmed that Rodriguez was extremely mentally ill, had been awake and on drugs for days, that he shoots his guns while in this state outside the home, and that he had been doing so that day.
40. Rodriguez's mother informed VCSO that Rodriguez's guns had previously been "taken away," but that officers had given the guns to Rodriguez's wife who gave them back to Rodriguez.
41. Rodriguez's mother showed deputies where Rodriguez had been shooting and alerted them that Rodriguez had several guns and was wielding an AR-style rifle.
42. A sheriff's deputy discussed New Mexico's red flag law with Rodriguez's mother and removed her and Rodriguez's brother from the house.
43. Thereafter, VCSO learned that Rodriguez had two warrants for "Invalid Suspended" out of Bosque Farms, New Mexico.
44. VCSO established a perimeter around Rodriguez's mother's home and did call outs for an hour, but Rodriguez ignored all police commands.
45. Deputies requested the SWAT team, and when their request was inexplicably denied, they left the scene without making contact with Rodriguez.
46. Shortly after VCSO left, Patricia called 911 again and reported that Rodriguez was back outside, shooting into the air.
47. Rodriguez's mother confirmed over the phone with another individual that Rodriguez was outside shooting again.
48. VCSO then learned that Rodriguez had left the property in a grey truck.

49. Dispatch issued an alert to other agencies that, if they saw the truck and Rodriguez, they should hold him for VCSO.

50. Most significantly, safe and having been taken from her home to a grocery store parking lot, Rodriguez's mother signed an affidavit for an emergency petition to seize Rodriguez's many weapons from him.

51. Deputy Noah Odell expressed hope that Rodriguez "gets his guns taken away for good."

52. Deputy Craig Meo agreed that "he needs to not have guns."

53. Upon information and belief, no one bothered to take any additional steps to enforce New Mexico's red flag law that day.

54. VCSO returned to the neighborhood for the second time that day between 7:00 and 8:00 p.m. in response to 911 calls reporting that Rodriguez had returned and was pointing a gun at neighbors.

55. Michael reported that Rodriguez had sped toward him in the truck and tried to run him over until Michael fired a gun into the air.

56. Patricia also called 911 in a panic because "this man is threatening my husband" and "he's pointing a gun at us!"

57. When sheriff's deputies arrived and Rodriguez again retreated into his home, VCSO Sergeant Porfie Baca discussed SWAT activation with Sheriff's Lieutenant Gary Hall.

58. However, Baca relayed misinformation to Hall, incorrectly stating that Rodriguez may not meet the requirements for a SWAT callout because nobody had reported anything about firearms, no firearms had actually been used, and Rodriguez did not have a violent history.

59. At around 9:30 p.m., sheriff's deputies were given orders to leave the scene for the second time that day.

60. One sheriff's deputy told Patricia that they had requested SWAT twice that day "and been shot down both times."

61. Less than an hour after VSCO refused SWAT and abandoned Michael and his family a second time that day, Patricia called dispatch to report that Rodriguez was shooting his gun, again.

62. A few minutes later, she called 911 to advise that Rodriguez was firing his gun at Michael, who had armed himself to defend his home and family: "Please, please, please get out here now!" Patricia pleaded as gunfire rang out in the background during the call, "He's firing shots at my husband again!" Patricia stated that Rodriguez had fired three shots directly at her husband and that her husband was armed but not shooting back.

63. Sheriff's deputies returned to the neighborhood for the third time that day a few moments later.

64. Two sheriff's deputies reported that Michael and Rodriguez were "exchanging gunfire" and that Michael was defending his property when deputies arrived.

65. Deputy Chavez ordered Michael to drop his weapon, but Michael was standing on his own property near the fence line, actively defending himself from Rodriguez at the time.

66. At no point did Michael present a threat to sheriff's deputies.

67. Michael's actions were reasonable and consistent with self-defense during an exchange of gunfire with the volatile Rodriguez.

68. Deputy Chavez fired a single shot into Michael's back.

69. Deputy Chavez shot Michael approximately 30 seconds after Patricia's final call to 911 ended and approximately one minute after she initiated the call.

70. Deputies failed to provide immediate CPR after Rodriguez retreated into his home.

71. Patricia and D.G. cried out in agony as Michael bled out on the ground in front of them.

72. Michael died from his injuries.

**COUNT I – VIOLATIONS OF ARTICLE II, SECTION 10 OF
THE NEW MEXICO CONSTITUTION**

73. All previous paragraphs are incorporated by reference as if set forth fully herein.

74. The New Mexico Civil Rights Act provides that “no public body or person acting on behalf of, under color of or within the course and scope of the authority of a public body shall enjoy the defense of qualified immunity for causing the deprivation of any rights, privileges or immunities secured by the bill of rights of the constitution of New Mexico.” § 41-4A-4.

75. Article II, Section 10 of the New Mexico Constitution provides for individuals' security in their persons and protection against unreasonable seizure.

76. The New Mexico Constitution provides greater protections against unreasonable seizures than does its federal counterpart. *State v. Leyva*, 2011-NMSC-009, ¶ 3, 250 P.3d 861.

77. In the Fourth Amendment excessive-force context, in situations where the police create the dangerous situation that precedes their use of force, they are liable for the resulting harm. *See Allen v. Muskogee*, 119 F.3d 837, 840 (10th Cir. 1997).

78. VCSO Deputies created the situation that preceded the use of force against Michael, including when they:

- (a) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had

knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

(b) took no action to confiscate Rodriguez's guns under New Mexico's red flag law, including after his mother signed an affidavit supporting an emergency petition for removal;

(c) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez; and

(d) informed Patricia and Michael that they could do anything they needed to do to protect their home and their family.

79. As a result of these actions, Michael was left without choice but to arm himself against Rodriguez, who was actively shooting at him, to protect himself, his family, and his home.

80. These actions, considered separately and in tandem, created the situation that led to Deputy Chavez fatally shooting Michael in the back while Michael was defending himself and others and posed no threat to sheriff's deputies on scene.

81. The acts and omissions of VCSO caused Michael to suffer injuries, including death.

**COUNT II – VIOLATIONS OF ARTICLE II, SECTION 18 OF
THE NEW MEXICO CONSTITUTION**

82. All previous paragraphs are incorporated by reference as if set forth fully herein.

83. Article II, Section 18 of the New Mexico Constitution provides that individuals may not be deprived of life, liberty or property without due process of law.

84. The New Mexico Constitution also provides greater due process protections than does its federal counterpart. *Montoya v. Ulibarri*, 2007-NMSC-035, ¶ 22, 142 N.M. 89.

85. While the Fourteenth Amendment's due process clause does not impose an affirmative duty on the state to aid citizens, an exception exists when government actors create the danger to which the citizen is exposed. *DeShaney v. Winnebago Cty. Dep't of Soc. Servs.*, 489 U.S. 189, 196 (1989); *Armijo v. Wagon Mound Pub. Schs.*, 159 F.3d 1253, 1260 (10th Cir. 1998).

86. Danger is created by state actors when they force citizens to take a law enforcement function into their own hands, because such is an affirmative act. *See Okin v. Village of Cornwall-On-Hudson Police Dep't*, 577 F.3d 415, 429 (2d Cir. 2009) ("The affirmative conduct of a government official may give rise to an actionable due process violation if it communicates, explicitly or implicitly, official sanction of private violence.").

87. Danger is created by state actors when they contribute to the vulnerability of the injured party. *Id.* at 428.

88. VCSO Deputies created the dangerous situation to which Michael (and his neighbors) were exposed, including when they:

- (a) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

- (b) took no action to confiscate Rodriguez's guns under New Mexico's red flag law, including after his mother signed an affidavit supporting an emergency petition for removal;

(c) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez; and

(d) informed Patricia and Michael that they could do anything they needed to do to protect their home and their family.

89. As a result of these actions, Michael was left without a choice but to arm himself against Rodriguez, who was actively shooting at him, to protect himself, his family, and his home.

90. These conscience-shocking actions, considered separately and in tandem, created the dangerous situation that led to Deputy Chavez fatally shooting Michael.

91. The acts and omissions of VCSO caused Michael to suffer injuries, including death.

**COUNT III – VIOLATIONS OF ARTICLE II, SECTION 6 OF
THE NEW MEXICO CONSITUTION**

92. All previous paragraphs are incorporated by reference as if set forth fully herein.

93. Article II, Section 6 of the New Mexico Constitution provides: “No law shall abridge the right of the citizen to keep and bear arms for security and defense, for lawful hunting and recreational use and for other lawful purposes. . . . No municipality or county shall regulate, in any way, an incident of the right to keep and bear arms.”

94. The New Mexico Constitution offers a stronger guarantee than does its Second Amendment counterpart. *State v. Gutierrez*, 2004-NMCA-081, ¶ 13, 136 N.M. 18.

95. The Second Amendment “elevates above all other interests the right of law-abiding, responsible citizens to use arms in defense of hearth and home.” *District of Columbia v. Heller*, 554 U.S. 570, 635 (2008).

96. The Second Amendment “guarantee[s] the individual right to possess and carry weapons in case of confrontation.” *Id.* at 592.

97. The New Mexico Constitution guarantees a right to “defend life,” and a “right to safety,” which our Supreme Court has treated as an overarching basis for expanding other state constitutional guarantees beyond their federal limits. *See* N.M. Const., Art. II § 4; *Morris v. Brandenburg*, 2016-NMSC-027, ¶ 49, 376 P.3d 836.

98. In New Mexico, “a person has the right to use lethal force against an intruder when such force is necessary to prevent the commission of a felony in his or her home.” *State v. Boyett*, 2008-NMSC-030, ¶ 15, 185 P.3d 355.

99. Entry into an individual’s home is not required to justify the use of lethal force; lethal force is justified against an intruder who is outside an individual’s home. *Id.* ¶ 16.

100. “The home is one of the most important institutions of the state, and has ever been regarded as a place where a person has a right to stand his or her ground and repel, force by force, to the extent necessary for its protection.” *Id.* ¶ 15 (alteration, internal quotation marks, and citation omitted).

101. At the time he was shot by Deputy Chavez, Michael was lawfully in possession of a firearm.

102. At the time he was shot by Deputy Chavez, Michael was exercising his constitutional and lawful guarantees, including the right to defend himself, his home, and his family with a firearm, and to use lethal force, if necessary, against Rodriguez, an intruder firing bullets, outside Michael’s home.

103. VCSO deputies violated Michael’s constitutional right to protect himself, his home, and his family with a firearm, secured by Article II, Section 6 of the New Mexico Constitution, including when Deputy Chavez fatally shot Michael, who was legally armed with a firearm and engaged in defense of hearth and home.

104. The actions of VCSO deputies, including Deputy Chavez, prevented Michael from exercising his constitutional right to protect himself, his home, and his family.

105. The actions of VCSO deputies, including Deputy Chavez, caused Michael to suffer injuries, including death.

**COUNT IV – VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT:
NEGLIGENCE RESULTING IN ASSAULT AND BATTERY**

106. All preceding paragraphs are incorporated by reference as if set forth fully herein.

107. The New Mexico Tort Claims Act waives immunity for personal injury and bodily injury “resulting from assault [and] battery . . . when caused by law enforcement officers while acting in the scope of their duties.” § 41-4-12.

108. VCSO deputies acted negligently, including when they:

(a) developed policies and training practices that conflicted with law enforcement duties to apprehend violent suspects and foreseeably put the public at risk;

(b) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

(c) took no action to confiscate Rodriguez’s guns under New Mexico’s red flag law, including after his mother signed an affidavit supporting an emergency petition for removal;

(d) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez ; and

(e) informed Patricia and Michael that they could do anything they needed to do to protect their home and their family.

109. These negligent acts and omissions necessitated Michael's use of a firearm to protect himself, his home, and his family.

110. These negligent acts and omissions left Michael vulnerable to personal and bodily injury, including assault battery.

111. Deputy Chavez assaulted and battered Michael when he pointed a firearm at Michael and shot and killed him.

**COUNT V – VIOLATIONS OF THE NEW MEXICO TORT CLAIMS ACT:
FAILURE TO COMPLY WITH STATUTORY DUTIES RESULTING IN PERSONAL
INJURIES AND WRONGFUL DEATH**

112. All previous paragraphs are incorporated by reference as if set forth fully herein.

113. NMSA 1978 § 29-1-1 (1979) states that it is “the duty of every sheriff, deputy sheriff, constable and every other peace officer to investigate all violations of the criminal laws of the state which are called to the attention of any such officer or of which he is aware, and it is also declared the duty of every such officer to diligently file a complaint or information, if the circumstances are such as to indicate to a reasonably prudent person that such action should be taken.”

114. NMSA 1978 § 41-4-3(D) (2015) states that law enforcement officers’ “principal duties under law are to hold in custody any person accused of a criminal offense, to maintain public order or to make arrests for crimes.”

115. Failure to comply with these statutes creates a cause of action under Section 41-4-12. *Blea v. City of Espanola*, 1994-NMCA-008, ¶¶ 17-18, 117 N.M. 217.

116. VCSO deputies failed to comply with these statutes, including when they:

- (a) developed policies and training practices that conflicted with law enforcement duties to apprehend violent suspects and foreseeably put the public at risk;

- (b) repeatedly refused to take action against Rodriguez, including through arrest and/or involuntary mental health commitment, though they had knowledge over the course of years of his dangerous criminal behavior and the threat of harm he posed to his neighbors and the broader community, including Michael;

- (c) took no action to confiscate Rodriguez's guns under New Mexico's red flag law, including after his mother signed an affidavit supporting an emergency petition for removal; and

- (d) repeatedly abandoned the dangerous scene created by Rodriguez on September 29, 2024, emboldening Rodriguez and leaving Michael and his neighbors at risk of harm from Rodriguez.

117. The failure of VCSO deputies to comply with their statutory duties caused Michael to suffer personal and bodily injuries, including death.

LOSS OF CONSORTIUM ALLEGATIONS

118. All previous paragraphs are incorporated by reference as if set forth fully herein.

119. Michael and his youngest son, D.G., who was 16 years old at the time of Michael's death, had a mutually dependent relationship while Michael was alive.

120. Michael and D.G. relied on this relationship, and D.G. cannot enjoy life in the same way after Michael's untimely death.

121. As a result of the acts and omissions of VCSO, D.G. is now forced to continue without the companionship, guidance, love, enjoyment, and support of his father.

122. It was foreseeable that D.G. would be harmed by the injuries sustained and by the death of his father.

123. As a direct and proximate result of the acts and omissions stated herein, D.G. has suffered damages.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests the Court:

- A. Award damages to make Plaintiff whole;
- B. Award attorneys' fees as permitted by law;
- C. Award costs for maintaining this suit;
- D. Award interest as permitted by law; and
- E. Award all other relief the Court deems just and proper.

Respectfully submitted,

IVES & FLORES, PA

/s/ Laura Schauer Ives

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Attorneys for Plaintiff

**STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT**

PATRICIA GABALDON, as *Personal Representative of the Wrongful Death Estate of Michael Gabaldon, and as Parent, Guardian, and Next Best Friend of D.G., a Minor Child,*

Plaintiff,

v.

No. D-1314-CV-2025-00588

**BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF VALENCIA,**

Defendant.

**JOINT MOTION TO SEAL REPORT OF THE GUARDIAN AD LITEM,
ORDER APPROVING SETTLEMENT, AND TRANSCRIPT OF
PROCEEDINGS TO APPROVE SETTLEMENT BENEFITING MINOR CHILD**

Plaintiff and Defendant move this Court for an Order sealing the Guardian ad Litem's report, the Joint Motion for Approval of Settlement and Request for Expedited Hearing, the Order Approving Settlement, and transcript of proceedings to approve settlement. As grounds therefore, Plaintiff and Defendant state:

1. This matter involves a settlement of a claim brought on behalf of a minor child whose father was shot and killed by Valencia County Sheriff's Department deputies on September 24, 2024. See Complaint filed with the Court on May 12, 2025.

2. The minor child and Defendant Board of County Commissioners of the County of Valencia have reached a proposed settlement but require this Court's approval of that settlement before finalizing the agreement. Consistent with the Court's duties under *Garcia v. Middle Rio Grande Conservancy Dist.*, 99 N.M. 802, 808, 664 P.2d at 106 (Ct. App. 1983), overruled on other

grounds by *Montoya v. AKAL Sec., Inc.*, 114 N.M. 354, 838 P.2d 971 (1992) : “[a] trial court in an action involving minor children has a special obligation to see that they are properly represented, not only by their own representatives, but also by the court itself.”

3. The Court appointed Ms. Rachel Higgins as *Guardian ad Litem* to aid in its consideration of matters relating to the proposed settlement on August 5, 2025.

4. To fulfil her duty to the Court, the *Guardian ad Litem* is required to disclose to this Court intimate details and facts about the minor child and his family.

5. The intimate details of the minor child and his family are not matters of public concern, are only before the Court so it can fulfill its duty under the law to review the facts and circumstances of the settlement, and disclosure of such facts and details to the public would cause the minor child serious and significant injury. Although the minor child has pursued his claims pseudonymously, disclosure of the intimate details of the minor child and his family risk that the minor child is identifiable.

6. Further, in order to provide the Court with information necessary to support an informed discussion of the issues before the Court, the *Guardian ad litem* will also include specific facts relating to the child’s past and future psychological harms in her report.

7. The minor child’s past and future psychological harms are not matters of public concern, are only before the Court so it can fulfill its duty under the law to review the facts and circumstances of the settlement, and disclosure of his psychological harms to the public would cause the minor child serious and significant injury.

8. In addition, the *Guardian ad litem* is required to openly discuss with Plaintiff’s counsel the relative merits, strengths and weaknesses of all claims and defenses so as to properly inform this Court as to the sufficiency and effect of the settlement.

9. Plaintiff's counsel's thoughts on the strengths and weaknesses of Plaintiff's claims would generally be protected by the work-product privilege, are only before the Court so it can fulfill its duty under the law to review the facts and circumstances of the settlement, and are not matters of public concern.

10. To fulfill her duties, the *Guardian ad Litem* will also offer her opinions and observations of the case facts, and disputed issues of fact, that were not proven, but were merely alleged.

11. The *Guardian ad Litem*'s opinions and observations of the cases facts that were merely alleged are not matters of public concern, are only before the Court so it can fulfill its duty under the law to review the facts and circumstances of the settlement, and disclosure could harm the reputations of both involved minors.

12. All of these interests individually would substantially override the public's interest in accessing these records. But, combined, the parties' overriding interests in the privacy of the contents of the Report of the *Guardian ad Litem*, any order entered by this court approving the terms and conditions of the settlement, as well as the hearing to approve the settlement are overwhelming. Those overwhelming, overriding interests overcome the right of public access to those portions of the court record that contain such information.

13. Likewise, any order entered by this Court approving the terms and conditions of the settlement, as well as the hearing to approve the settlement, will result in disclosure of the same facts and opinions that the public does not have an interest in accessing.

14. A substantial probability exists that the parties' overriding interest will be prejudiced if the court record is not sealed.

15. Because the entire substance of *Guardian ad Litem*'s report and any Order this Court may enter contains information regarding the minor child that would otherwise be protected but for these proceedings, the entire *Guardian ad Litem*'s report, and all attachments, together with the transcript of proceedings wherein the Court considered the *Guardian ad Litem*'s report, and any orders entered by this Court to approve the settlement benefiting the minor child must be sealed. Thus, this request is narrowly tailored and there are no less restrictive means available to the Court.

16. The Plaintiff's and Defendant's overriding interests will not dissipate in time, and the Court should order that the entire *Guardian ad Litem*'s report, and all attachments, together with the transcript of proceedings wherein the Court considered the *Guardian ad Litem*'s report, and any orders entered by this Court to approve the settlement benefiting the minor child be sealed until and unless the Court were to order otherwise.

17. If this Motion is granted, the Plaintiff and Defendant should be entitled to notice of any future motion to unseal the record or modify the sealing order.

WHEREFORE, Plaintiff and Defendant request the Court enter an order that seals from the record and public view the *Guardian ad Litem*'s report, and all attachments, together with the transcript of proceedings wherein the Court considered the *Guardian ad Litem*'s report, and any orders entered by this Court to approve the settlement benefiting the minor child.

Submitted by:

IVES & FLORES, PA

/s/ Laura Schauer Ives

Laura Schauer Ives

Adam C. Flores

Alyssa D. Quijano

Henry A. Jones

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(505) 364-3858
Attorneys for Plaintiff

Approved by:

NM LOCAL GOVERNMENT LAW, LLC

Approved via electronic mail 09-16-25
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Attorneys for Valencia County

**STATE OF NEW MEXICO
COUNTY OF VALENCIA
THIRTEENTH JUDICIAL DISTRICT COURT**

**PATRICIA GABALDON, as *Personal Representative of
the Wrongful Death Estate of Michael Gabaldon, and as
Parent, Guardian, and Next Best Friend of D.G.,
a Minor Child,***

Plaintiff,

v.

No. D-1314-CV-2025-00588

**BOARD OF COUNTY COMMISSIONERS OF THE
COUNTY OF VALENCIA,**

Defendant.

**ORDER TO SEAL REPORT OF THE GUARDIAN AD LITEM, ORDER
APPROVING SETTLEMENT, AND TRANSCRIPT OF PROCEEDINGS
TO APPROVE SETTLEMENT BENEFITING MINOR CHILD**

THIS MATTER having come before the Court upon Plaintiff's and Defendant's motion, the Court having reviewed the Joint Motion to Seal Report of The *Guardian ad Litem*, Order Approving Settlement, And Transcript Of Proceedings To Approve Settlement Benefiting A Minor and being fully advised hereby finds the motion is well-taken. The Court further finds that:

1. This matter involves a settlement of a claim brought on behalf of a minor child and involves issues of a highly sensitive nature.
2. This matter is before the Court because the beneficiaries of the proposed settlement is a minor child.
3. But for the Court's duty to review and consider the terms of the proposed settlement, all matters related to these transactions and agreements would be confidential and outside the public view.

4. In order to provide the Court with information necessary to support an informed discussion of the issues before the Court, the report of the *Guardian ad Litem*:

- a. will include specific facts relating to the child's past and future psychological and/or physical concerns in her report;
- b. will openly discuss with counsel the relative merits, strengths and weaknesses of all claims and defenses so as to properly inform this Court as to the sufficiency and effect of the settlement; and
- c. will discuss and disclose intimate details and facts about the minor child, which are not matters of public concern.

5. Disclosure of the facts of the child's claims, condition, status and needs to the public would cause the minor child unwarranted embarrassment and other serious and significant injury.

6. In preparing her opinions and observations of the case facts, the *Guardian ad Litem* will discuss disputed issues of fact, which were not proven, but were merely alleged. Reputation and business interests could be harmed by the release to the public of such opinions, which are for the Court's consideration only in its duty under the law to review the facts and circumstances of the settlement.

7. Likewise, any order entered by this Court approving the terms and conditions of the settlement, as well as the hearing to approve the settlement, will result in disclosure of intimate details of the settlement and/or the minor child, which are not matters of public concern.

8. The child whose claims are before this Court has a compelling interest in maintaining the confidentiality of discussions between his attorney, his mother, and the

Guardian ad Litem. That interest overcomes and overrides the right of public access to those portions of the court record that contain such information.

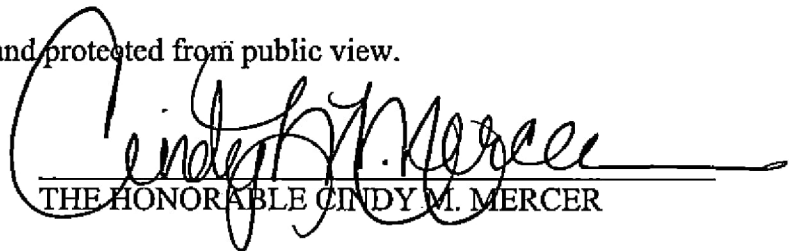
9. The child's overriding interests support sealing the court record.

10. A substantial probability exists that the child's interests will be prejudiced if the court record is not sealed.

11. There is no less restrictive means available to protect the parties' interests than the Court sealing from public view the Report of the *Guardian ad Litem*, any order entered by this Court approving the settlement, and the transcript of proceedings for the hearing to approve the settlement benefiting the minor, in this matter.

IT IS THEREFORE HEREBY ORDERED that the report of the *Guardian ad Litem*, and all attachments, together with the transcript of proceedings where the Court considers the *Guardian ad Litem* report and terms of settlement, as well as any orders entered by this Court approving the settlement, shall be sealed and protected from public view.

By:


THE HONORABLE CINDY M. MERCER

ALL PARTIES ENTITLED TO NOTICE

IVES & FLORES, PA

/s/ Laura Schauer Ives

Laura Schauer Ives

Adam C. Flores

Alyssa D. Quijano

Henry A. Jones

Andrew J. Pavlides

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Attorneys for Plaintiff

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Approved via electronic mail 09-16-25

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Attorneys for Valencia County

**FULL AND FINAL RELEASE OF ALL
CLAIMS AND INDEMNITY AGREEMENT**

In exchange for payments of cash and periodic payments totaling ONE MILLION FIVE HUNDRED THOUSAND DOLLARS AND NO CENTS (\$1,500,000.00) as further outlined in the attached Addendum to Full and Final Release of All Claims and Indemnity Agreement (“Addendum”), the receipt and sufficiency of which are hereby acknowledged, Patricia Gabaldon, as the Personal Representative of the Estate of Michael Gabaldon (hereinafter referred to as “**Releasor**”), does hereby forever release, acquit and discharge the Board of County Commissioners of the County of Valencia, NM Counties, the NM County Insurance Authority, and the present, future, and former principals, partners, stockholders, agents, servants, employees, employers, successors, assigns, and insurers of each (hereinafter referred to as “**Releasees**”), of and from any and all claims of whatever kind or nature that **Releasor** has, had, or might have to date against **Releasees**, arising out of, resulting from, occurring in connection to, or in any way attributable in whole or in part to, any incident(s) or act(s) related to or based on the events that gave rise to the matter, hereinafter referred to as the “Lawsuit,” entitled *Patricia Gabaldon, as Personal Representative of the Wrongful Death Estate of Michael Gabaldon, and as Parent, Guardian, and Next Best Friend of D.G., a Minor Child v. Board of County Commissioners of the County of Valencia*, Case No. D-1314-CV-2025-00588 (hereinafter referred to as the “Incidents”), including any entitlement to attorneys’ fees and costs pursuant to federal or state law, involving injuries to person or property, or both, whether known or unknown and whether developed or undeveloped, arising from the Incidents. **Releasor** further agrees that **Releasor** will dismiss any and all of the claims that **Releasor** brought against some or all **Releasees** in the above-entitled and numbered cause of action with prejudice.

Releasor hereby acknowledges full settlement and satisfaction of any and all claims of whatever kind and character that **Releasor** had, or may have, against any or all **Releasees**, by reason of the above-mentioned damages, losses, or injuries arising from the Incidents. **Releasor** further understands and agrees that **Releasees**, by agreeing to this compromise and settlement, do not admit any liability of any kind, that liability has at all times been denied, and that the settlement evidenced by this Release is a compromise to avoid further expense of litigation and to terminate all controversy and/or claims against **Releasees**, of whatever nature, known or unknown, including further developments thereof in any way growing out of or connected with the Incidents. Thus, **Releasor** further understands and agrees that this settlement is not and cannot be construed as an admission of liability or as evidence of liability, of any nature whatsoever, on the part of any or all **Releasees**.

Releasor understands and agrees that **Releasor** will indemnify **Releasees** from and against any and all claims made by any and all healthcare providers, Medicaid, Medicare, and other persons and entities, for any and all medical expenses arising from, connected with, and/or related to, the medical care and treatment of Michael Gabaldon related to the Incidents. **Releasor** will also indemnify **Releasees** from and against any and all claims for subrogation, reimbursement, medical liens, hospital liens and other similar claims that may be made by any and all health maintenance organizations, preferred provider organizations, insurance carriers, insurance underwriters, Medicare, Medicaid, or other such public or private entities, for medical examinations, care and/or treatment, and other similar expenses, to the extent to which such claims arise out of, are related to, and/or are connected with, the medical care and treatment of Michael Gabaldon related to the Incidents. **Releasor** further states that during the course of this litigation, inquiry and investigation was made as to whether **Releasor** has ever received Medicare benefits

in connection with the Incidents. **Releasor** has been unable to find any information indicating that **Releasor** has such Medicare benefits or that **Releasor** will be entitled to any such Medicare benefits in the future. Based on this investigation and the information available, **Releasor** states that there is no need for a Medicare set-aside.

Releasor further understands that no representation of fact or opinion has been made by **Releasees** or by anyone on their behalf to induce this settlement, and that **Releasees** have made no agreement or promise of any kind to do, or to refrain from doing, any act or thing not herein set forth.

Releasor expressly represents and declares that, notwithstanding the damages or injuries known at this time or that may be subsequently discovered by **Releasor**, or any changes in the law or interpretations of the law that may occur, compensation for all unknown damages sustained by **Releasor** as a result of the aforesaid Incidents is included in the compensation paid to resolve the claims set forth in the Lawsuit, including any entitlement to attorneys' fees and costs pursuant to federal or state law, and that no further claims of any kind that have accrued to date as a result of the aforesaid Incidents can or will be made against any or all **Releasees**. **Releasor** hereby declares and represents that in making this Full and Final Release of All Claims and Indemnification Agreement (hereinafter referred to as this "Release"), it is understood and agreed that **Releasor** relied wholly on **Releasor's** own judgment, and on the advice and counsel of her attorneys, considering the damages allegedly suffered in this matter, as well as the liability questions involved, and that **Releasor** has not been influenced to any extent whatsoever in making this Full and Final Release of All Claims and Indemnity Agreement by any representations or statements by the **Releasees**, or by the persons, firms and corporations hereby released, or by any person

representing or acting for the **Releasees**, regarding any of the claims for damages raised in the Lawsuit and released herein.

Releasor further understands and agrees that the claims herein released specifically include, but are not limited to, all claims asserted in the Lawsuit, and include any and all claims for physical and psychological/emotional injury, loss of property, and attorneys' fees and costs pursuant to federal and state law arising from the Incidents. In consideration of the payment of the sum recited herein, it is agreed that **Releasor** will cause said actions and all claims therein asserted on her behalf to be dismissed with prejudice in accordance with this Agreement.

Releasor further understands and agrees that this instrument will constitute a complete and final discharge of any and all claims that **Releasor** had or may have against **Releasees** for damages to her person or property arising from the Incidents, including, but not limited to, damages for personal injury, for past, present and/or future mental and physical anguish, lost consortium, pain and suffering, if any; for past, present and/or future loss of earnings and earning capacity, if any; for past, present and/or future physical and mental impairment or disability, if any; loss of property, if any; for punitive or exemplary damages; for interest, costs, and attorneys' fees; and for any other claims that **Releasor** has, had, or may have, resulting from or arising out of the Incidents.

Releasor further understands and agrees to indemnify and hold **Releasees** harmless against loss, including, but not limited to, attorneys' fees, from any and every claim or demand of every kind and character, including claims for contribution, subrogation, and/or indemnity that may be asserted by or through **Releasor** by reason of the matters alleged in the Lawsuit.

Releasor understands and agrees that **Releasor** alone is responsible for any and all past or outstanding bills or debts of whatever nature arising out of the Incidents. **Releasor** further agrees to indemnify and hold the **Releasees** harmless from any claims, causes of action, known or

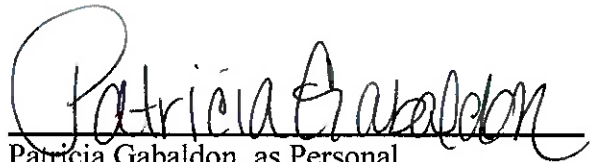
unknown, that could be asserted against **Releasees** by or through **Releasor**, including any action based on subrogation, as a result of the Incidents giving rise to the Lawsuit.

All sums paid pursuant to this Release and as further outlined in the Addendum constitute damages on account of personal injuries or physical sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended, arising from any physical injuries that allegedly resulted from the claims and allegations made in the Lawsuit, and no portion of the proceeds paid under this Agreement and Release represent any exemplary, punitive or mental-anguish damages, prejudgment or post-judgment interest, or non-physical injuries.

Releasor further certifies that **Releasor** was informed of the provisions of NMSA 1978, § 41-1-1 (1978) and that **Releasor** is relying on **Releasor's** own judgment in signing this Agreement and Release.

The remainder of this page is intentionally left blank.

PATRICIA GABALDON, AS PERSONAL REPRESENTATIVE OF THE ESTATE OF MICHAEL GABALDON, HAS READ, AND FULLY UNDERSTANDS, THE FOREGOING FULL AND FINAL RELEASE OF ALL CLAIMS AND INDEMNITY AGREEMENT.



Patricia Gabaldon, as Personal
Representative of the Estate of Michael
Gabaldon

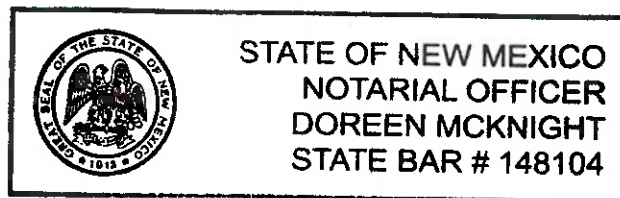
STATE OF NEW MEXICO)
) ss.
COUNTY OF Bernalillo)

This Full and Final Release of All Claims and Indemnity Agreement was acknowledged before me this 8th day of October, 2025 by Patricia Gabaldon, as Personal Representative of the Estate of Michael Gabaldon.


Notary Public

My Commission Expires:

N/A



**ADDENDUM TO FULL AND FINAL RELEASE OF ALL CLAIMS
AND INDEMNITY AGREEMENT**

The present value of the settlement of this matter is \$1,500,000.00 to be paid in cash and periodic payments as outlined below:

1. \$1,266,810.49 paid to Ives & Flores PA.
2. The sum of \$233,189.61 payable to New York Life Insurance Company to fund the periodic payments as outlined below Periodic Payments made according to the schedule as follows:

Payee: [REDACTED]

\$25,000.00 payable at age 18 on May 18, 2026
\$50,000.00 payable at age 20 on May 18, 2028
\$100,000.00 payable at age 25 on May 18, 2033
\$167,462.87 payable at age 30 on May 18, 2038

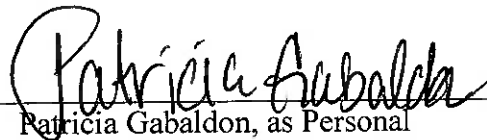
The future payment amounts outlined above are guaranteed based upon a projected annuity purchase date of November 9, 2025. Any delay in funding the annuity may result in a delay of the payment dates or change in payment amounts that shall be recorded in the settlement agreement and release, qualified assignment document and annuity contract without the need of obtaining an amended Petition/Court Order/Compromise Order up to 180 days after original purchase date.

All sums set forth herein constitute damages on account of personal injuries and sickness in a case involving physical injury or physical sickness within the meaning of Section 104(a)(2) of the Internal Revenue Code of 1986, as amended.

- (1) Claimant acknowledges that the Periodic Payments cannot be accelerated, deferred, increased or decreased by the Claimant or any payee; nor shall the Claimant or any payee have the power to sell, mortgage, encumber, or anticipate the Periodic Payments, or any part thereof, by assignment or otherwise.
- (2) Any payments to be made after the death of the Payee pursuant to the terms of this Settlement Agreement and Release shall be made to the Estate of the Payee. Payee may submit a change of beneficiary in writing to the Assignee. The designation must be in a form acceptable to the Assignee.
- (3) Claimant acknowledges and agrees that the Insurer may make a "qualified assignment", within the meaning of Section 130(c) of the Internal Revenue Code of 1986, as amended, of the Insurer's liability to make the Periodic Payments set forth in Payment Section above to New York Life Insurance & Annuity Corp. (the "Assignee"). The Assignee's obligation for payment of the Periodic Payments shall

be no greater than that of the Insurer (whether by judgment or agreement) immediately preceding the assignment of the Periodic Payments obligation.

- (4) Any such assignment shall be accepted by Claimant without right of rejection and shall completely release and discharge Defendants and Insurer from the Periodic Payments obligation assigned to the Assignee. Claimant recognizes that, in the event of such an assignment, the Assignee shall be the sole obligor with respect to the Periodic Payments obligation, and that all other releases with respect to the Periodic Payments obligation that pertain to the liability of Defendants and Insurer shall thereupon become final, irrevocable and absolute.
- (5) Insurer itself or through its Assignee, reserves the right to fund the liability to make the Periodic Payments through the purchase of an annuity policy from New York Life Insurance Company. Insurer, or its Assignee, shall be the sole owner of the annuity policy and shall have all rights of ownership. Insurer, or its Assignee, may have New York Life Insurance Company mail payments directly to Payee. Payee shall be responsible for maintaining a current mailing address with New York Life Insurance & Annuity Corp.
- (6) The obligation of Insurer, or its Assignee, to make each Periodic Payment shall be discharged upon the mailing on or before the due date of a valid check in the amount specified to the address of record or upon completion of an electronic funds transfer in the amount of such payment to the deposit account of such Payee.

A handwritten signature in black ink, reading "Patricia Gabaldon", is written over a horizontal line.

Patricia Gabaldon, as Personal
Representative of the Estate of Michael
Gabaldon

Addendum No. 1

Description of Periodic Payments

Payee (1):

Payee Address:

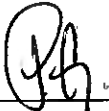
Beneficiary: Payee's estate.

Benefit(s):

1. **Guaranteed Lump Sum** - \$25,000.00 paid as a lump sum on 05/18/2026 guaranteed.
2. **Guaranteed Lump Sum** - \$50,000.00 paid as a lump sum on 05/18/2028 guaranteed.
3. **Guaranteed Lump Sum** - \$100,000.00 paid as a lump sum on 05/18/2033 guaranteed.
4. **Guaranteed Lump Sum** - \$167,462.87 paid as a lump sum on 05/18/2038 guaranteed.

Initials

Claimant:



Assignor:

Assignee: