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**IN THE UNITED STATES DISTRICT COURT
 FOR THE DISTRICT OF ARIZONA
 PRESCOTT DIVISION**

Kaori Stearney, Plenary Guardian of the Estate of)
 R.H., a minor, for the Wrongful Death of her father,)
 Tomohiro Hirayama, deceased; Kaori Stearney,)
 Plenary Guardian of the Estate of R.H., a minor, for)
 the Wrongful Death of her mother, Sachiyo Hirayama,)
 deceased; Kaori Stearney, Plenary Guardian of the)
 Estate of R.H., a minor, on behalf of R.H., a minor;)
 and Kaori Stearney, Independent Administrator of the)
 Estate of Yuki Hirayama, a deceased minor, for the)
 Wrongful Death of Yuki Hirayama,)
)
 Plaintiffs,)
)
 vs.)
)
 UNITED STATES OF AMERICA,)
)
 Defendant.)
 _____)

No.: 3:16-cv-08060-DGC

**AMENDED COMPLAINT FOR
 DAMAGES UNDER THE
 FEDERAL TORT CLAIMS ACT**

NOW COME Plaintiffs, KAORI STEARNEY, Plenary Guardian of the Estate of
 R.H., a minor, for the Wrongful Death of her father, Tomohiro Hirayama, deceased; Kaori
 Stearney, Plenary Guardian of the Estate of R.H., a minor, for the Wrongful Death of her
 mother, Sachiyo Hirayama, deceased; Kaori Stearney, Plenary Guardian of the Estate of
 R.H., a minor, on behalf of R.H., a minor; and Kaori Stearney, Independent Administrator

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1 of the Estate of Yuki Hirayama, a deceased minor, for the Wrongful Death of Yuki
2 Hirayama by and through their attorneys, DENNIS T. SCHOEN, P.C. and RICHARD D.
3 LYONS, PLC., and complains of the Defendant, the UNITED STATES OF AMERICA,
4 as follows:

5 JURISDICTION AND VENUE

6 1. This action is filed under the Federal Tort Claims Act ("FTCA"), 28 U.S.C.
7 §§ 1346(b), 2671 *et seq.*, against the United States of America, which vests exclusive
8 subject matter jurisdiction of Federal Tort Claims Act litigation in the Federal District
9 Court.

10 2. Venue is proper in that the causes of action set forth herein arise out of an
11 incident that occurred at a location within the Prescott Division of the Federal District
12 Court for the District of Arizona.

13 3. Plaintiffs have fully complied with the provisions of 28 U.S.C. § 2675 of the
14 Federal Tort Claims Act.

15 4. On September 21, 2015, before this action was instituted, notice of the
16 claims set forth herein were delivered to the Acting Safety and Occupational Health
17 Manager of the United States Department of Interior, Bureau of Indian Affairs, Navajo
18 Regional Offices, Post Office Box 1060, Gallup, New Mexico 87305 via U.S. Postal
19 Service Certified Mail, return receipt requested. Copies of the Notices of Claims and
20 executed receipts evidencing delivery on September 21, 2015 are attached hereto and
21 incorporated herein as Exhibit A.

22 5. By March 21, 2016, the six month anniversary of the receipt of the Notices
23 of Claims set forth in Exhibit A, the Defendant United States of America and the
24 Department of the Interior, Bureau of Indian Affairs had neither accepted nor rejected said
25 claims.

26 6. Accordingly, the Plaintiffs elect to consider the Defendant's aforesaid
27 failure to act as a final denial of Plaintiff's claims pursuant to 28 U.S.C. 2675(a).

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1 7. Plaintiffs now file this Complaint pursuant to 28 U.S.C. § 2401(b) with six
2 months having passed since service of notice of their claims on the Acting Safety and
3 Occupational Health Manager of the United States Department of Interior, Bureau of
4 Indian Affairs.

5 8. This suit is commenced within six months of the Defendant, United States
6 of America's constructive denial of the claims set forth in Exhibit A.

7 **PARTIES, FACTS, AND EVENTS FORMING THE BASIS OF THE CLAIMS**

8 9. At all times mentioned herein, Plaintiff's Decedents Tomohiro Hirayama,
9 Sachiyo Hirayama, and Yuki Hirayama and Plaintiff, R.H., a minor, resided in Illinois.

10 10. At all times mentioned herein, Plaintiff's Decedents Tomohiro Hirayama,
11 Sachiyo Hirayama, and Yuki Hirayama, and Plaintiff R.H., a minor, were on a family
12 vacation in Arizona.

13 11. Kaori Stearney is the Plenary Guardian of the Estate of R.H., a minor and
14 brings these wrongful death actions for the wrongful deaths of her father Tomohiro
15 Hirayama and her mother, Sachiyo Hirayama.

16 12. Kaori Stearney hereby represents that other than R.H., a minor, there are no
17 other statutory beneficiaries of Tomohiro Hirayama and Sachiyo Hirayama pursuant to
18 A.R. S. §§12-611 et seq, *See Wilmot v. Wilmot*, 203 Ariz. 565, 58, P.2d 507 (2002).

19 13. Kaori Stearney is Plenary Guardian of R.H., a minor for and brings this
20 action on behalf of R.H., a minor.

21 14. Kaori Stearney is Independent Administrator of the Estate of Yuki
22 Hirayama, deceased, and brings this action for the wrongful death of Yuki Hirayama on
23 behalf of the Estate of Yuki Hirayama, a deceased minor.

24 15. At all times mentioned herein, Defendant United States of America
25 provided federal funds to the Navajo Nation to perform law enforcement patrol services
26 pursuant to a contract authorized under the Indian Self-Determination and Education
27 Assistance Act of 1978, under Public Law 93 – 638, 25 U.S.C. §450 et seq, and the Indian
28 Law Reform Act of 1990, P.L. 101 – 379 ("93 – 638 Contract").

1 16. There was a 93-638 Contract for law enforcement patrol services entered
2 into by the Navajo Nation and the United States Department of the Interior Bureau of
3 Indian Affairs in effect at the time of the incident described in this Complaint (hereinafter
4 “the Contract”).

5 17. In 1990, Congress extended the FTCA waiver of sovereign immunity to
6 allow the United States to be sued for tortious conduct of tribal employees that occurred in
7 the performance of a 93–638 contract under the Indian Self-Determination and Education
8 Assistance Act (“ISDEAA” codified as amended at 25 U.S.C. § 450 *et seq.*).

9 18. At all times mentioned herein, the Navajo Nation was operating its Police
10 Department under a Self-Determination Act 93-638 Contract.

11 19. At all times mentioned herein the officers, agents and/or employees of the
12 Navajo Nation involved in the incident described in this Complaint were acting pursuant
13 to the 93-638 Contract, and the activities they were engaged in were performed pursuant
14 to that contract.

15 20. At all times mentioned herein, Sergeant David Butler was an employee,
16 agent, and/or officer of the Navajo Nation Police under the Navajo Division of Public
17 Safety, and was acting within the course and scope of his employment and agency.

18 21. At all times mentioned herein, Officer Nicole Yellow was an employee,
19 agent, and/or officer of the Navajo Nation Police under the Navajo Division of Public
20 Safety, and was acting within the course and scope of her employment and agency.

21 22. At all times mentioned herein, Sergeant Rodney Yazzie was an employee,
22 agent, and/or officer of the Navajo Nation Police under the Navajo Division of Public
23 Safety, and was acting within the course and scope of his employment and agency.

24 23. At all times mentioned herein, Officer Phylishia Todecheene was an
25 employee, agent, and/or officer of the Navajo Nation Police under the Navajo Nation
26 Division of Public Safety, and was acting within the course and scope of her employment
27 and agency.

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1 24. At all times mentioned herein, Captain Ivan Tsosie was an employee, agent
2 and/or officer of the Navajo Nation Police under the Navajo Nation Division of Public
3 Safety, and was acting within the course and scope of his employment and agency.

4 25. At all times mentioned herein, Captain Harry Sombrero was an employee,
5 agent, and/or officer of the Navajo Nation Police under the Navajo Nation Division of
6 Public Safety, and was acting within the course and scope of his employment and agency.

7 26. At all times mentioned herein, Director John Billison was an employee,
8 agent and/or officer of the Navajo Nation Police under the Division of Public Safety, and
9 was acting within the course and scope of his employment and agency.

10 27. At all times mentioned herein, U.S. Highway 160 in the vicinity of
11 Milepost 346 was a public road running in a general easterly and westerly direction in the
12 County of Coconino, State of Arizona.

13 28. At all times mentioned herein, U.S. Highway 160 in the vicinity of Milepost
14 346 had one lane for eastbound moving traffic and one lane for westbound moving traffic.

15 29. On March 28, 2014, Plaintiff's Decedent, Tomohiro Hirayama was a
16 restrained driver operating a vehicle traveling westbound in the westbound moving lane of
17 U.S. Highway 160 in the vicinity of Milepost 346 in the County of Coconino, State of
18 Arizona.

19 30. On March 28, 2014, Plaintiff's Decedent Sachiyo Hirayama was a restrained
20 passenger in the vehicle being driven by her husband, Tomohiro Hirayama, deceased, in a
21 westerly direction on U.S. Highway 160 in the vicinity of Milepost 346 in the County of
22 Coconino, State of Arizona.

23 31. On March 28, 2014, Plaintiff's Decedent Yuki Hirayama, was a restrained
24 passenger in the vehicle being driven by his father, Tomohiro Hirayama, deceased, in a
25 westerly direction on U.S. Highway 160 in the vicinity of Milepost 346 in the County of
26 Coconino, State of Arizona.

27 32. On March 28, 2014, Plaintiff, R.H., a minor, was a restrained passenger in
28 the vehicle being driven by her father, Tomohiro Hirayama, deceased, in a westerly

1 direction on U.S. Highway 160 in the vicinity of Milepost 346 in the County of Coconino,
2 State of Arizona.

3 33. On March 28, 2014, Kee Brown, deceased, was operating a vehicle
4 traveling eastbound on U.S. Highway 160, in the County of Coconino County, State of
5 Arizona.

6 34. On March 28, 2014 Sergeant David Butler, Officer Nicole Yellow, Sergeant
7 Rodney Yazzie, Officer Phylishia Todecheenee, Captain Ivan Tsosi, Captain Harry
8 Sombrero, and Director John Billison, while engaged in Navajo Nation law enforcement
9 patrol duties under the aforesaid 93-638 Contract, engaged in the pursuit on U.S. Highway
10 160 of an eastbound vehicle later determined to be driven by Kee Brown, deceased.

11 35. At all times mentioned herein the vehicle being pursued was being driven in
12 a manner that made it apparent that its driver was impaired.

13 36. The aforesaid pursuit of the vehicle being driven by Kee Brown, deceased,
14 was conducted with the emergency lights on the Tribal squad cars activated and the sirens
15 engaged.

16 37. In response to the aforesaid pursuit, the vehicle being operated by Kee
17 Brown, deceased, increased its speed.

18 38. In response to the increase in speed of the pursued vehicle, the aforesaid
19 pursuers increased the speed of the squad cars.

20 39. On March 28, 2014, Sergeant David Butler, Officer Nicole Yellow,
21 Sergeant Rodney Yazzie, Captain Ivan Tsosie, Officer Phylishia Todecheenee, Captain
22 Harry Sombrero and John Billison engaged in a high speed chase of the vehicle being
23 operated by Kee Brown, deceased.

24 40. On March 28, 2014 at approximately 10:03 p.m. the aforesaid pursuers
25 chased the eastbound vehicle being operated by impaired driver Kee Brown, deceased,
26 across the center line into a lane on US Highway 160 reserved for westbound traffic, and
27 into a head-on collision in the vicinity of Mile Post 346 with the vehicle being operated by

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41. Plaintiff's decedent Tomohiro Hirayama and containing Plaintiff's decedent Sachiyo Hirayama, Plaintiff's decedent Yuki Hirayama, and Plaintiff's minor R.H.

42. Of the six people occupying the two colliding vehicles, the only survivor of the crash was Plaintiff's minor, R.H., a nine year old child.

CAUSES OF ACTION
COUNT I – WRONGFUL DEATH
Kaori Stearney, Plenary Guardian of R.H., a minor,
for the wrongful death of her father Tomohiro Hirayama, deceased

43. Plaintiff, Kaori Stearney, Plenary Guardian of R.H., a minor, for, by and on behalf of R.H., a minor for the wrongful death of her father Tomohiro Hirayama, deceased repeats and realleges each and every allegation contained in paragraphs 1 through 41 of this Complaint and incorporates the same herein by reference as if fully set forth as paragraphs 1 through 41 of Count I of this Complaint.

43. In the performance of the law enforcement patrol services described herein pursuant to 93-638 Contract, the Defendant and the employees and agents of the Navajo Nation, including but not limited to those persons identified in Paragraphs 20 through 26 of this Complaint, had a duty to exercise reasonable care for the safety of others and to refrain from negligence, reckless conduct, gross negligence, willful and wanton conduct, and conduct creating an unreasonable risk of bodily harm to others, including the Plaintiffs and the Plaintiff's decedents.

44. At all times mentioned herein the Defendant and the employees and agents of the Navajo Nation Police Department, including those employees and agents identified herein, were negligent, grossly negligent, reckless, willful and wanton, and acted with a conscious disregard for the safety of others in one or more of the following respects:

- a. Improperly conducted this pursuit;
- b. Conducted this pursuit at speeds that created the risk of harm to the general public and to the Plaintiffs and Plaintiff's decedents;
- c. Failed to discontinue high speed pursuit where significant risk of harm to the general public caused by the pursuit was reasonably foreseeable;

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- d. Chased the fleeing vehicle into a head-on collision with on-coming traffic;
- e. Violated authoritative procedures, standards, and accepted practices regarding high speed chases and police pursuit;
- f. Failed to properly train and supervise Tribal Police, including those employees and agents identified herein, in the proper conduct of police pursuit;
- g. Conducted unreasonable pursuit in a manner that created the risk of injury and death to innocent bystanders;
- h. Conducted high speed pursuit in a manner that made significant risk of injury to innocent bystanders reasonably foreseeable;
- i. Failed to exercise due care in the conduct of this pursuit;
- j. Failed to have safe and/or appropriate policies in place governing pursuit and apprehension of motorists by the Navajo Nation Police;
- k. Failed to implement and enforce Navajo Nation Police Department policies and procedures in effect governing pursuit and apprehension of motorists by the Navajo Nation Police Department;
- l. Were guilty of gross negligence in the manner in which they conducted pursuit; and
- m. Were otherwise careless, negligent, grossly negligent, willful and wanton and acted with conscious disregard for the safety of others in the conduct of this pursuit.

45. As a direct and proximate result of one or more of the foregoing acts and/or omissions of the Defendant, and the aforesaid employees and agents of the Navajo Nation, the plaintiff's decedent, Tomohiro Hirayama suffered serious and permanent injuries which resulted in his death on March 28, 2014.

46. Plaintiff's decedent, Tomohiro Hirayama, is survived by R.H., a minor, who has suffered substantially and will continue to suffer personal and pecuniary loss as a result of her father's death, including, but not limited to loss of society, love, affection, care, comfort, support and protection, and grief, sorrow, and mental suffering and other personal and pecuniary injuries.

47. At all times mentioned herein, there was in effect in the State of Arizona a Wrongful Death Act, A.R.S. § 12-611 *et seq.*, and this action is brought pursuant to that Act.

WHEREFORE Plaintiff, Kaori Stearney, Plenary Guardian of R.H., a minor, demands judgment, for, and on behalf of R.H., a minor for the wrongful death of her father, Tomohiro Hirayama against the Defendant United States of America in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

49. Plaintiff, Kaori Stearney, Plenary Guardian of R.H., a minor for, by, and on behalf of R.H., a minor for the wrongful death of her mother, Sachiyo Hirayama, deceased repeats and realleges each and every allegation contained in paragraphs 1 through 48 of this Complaint and incorporates the same herein by reference as if fully set forth as paragraphs 1 through 48 of Count II of this Complaint.

50. In the performance of the law enforcement patrol services described herein pursuant to 93-638 Contract, the Defendant and the employees and agents of the Navajo Nation, including but not limited to those persons identified in Paragraphs 20 through 26 of this Complaint, had a duty to exercise reasonable care for the safety of others and to refrain from negligence, reckless conduct, gross negligence, willful and wanton conduct, and conduct creating an unreasonable risk of bodily harm to the Plaintiffs and Plaintiff's decedents.

51. At all times mentioned herein the Defendant and the employees and agents of the Navajo Nation Police Department including those employees and agents identified herein, were negligent, grossly negligent, reckless, willful and wanton, and acted with a conscious disregard for the safety of others in one or more of the following respects:

- a. Improperly conducted this pursuit;
- b. Conducted this pursuit at speeds that created the risk of harm to the general public and to the Plaintiffs and Plaintiff's decedents;

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- c. Failed to discontinue high speed pursuit where significant risk of harm to the general public caused by the pursuit was reasonably foreseeable;
- d. Chased the fleeing vehicle into a head-on collision with on-coming traffic;
- e. Violated authoritative procedures, standards, and accepted practices regarding high speed chases and police pursuit;
- f. Failed to properly train and supervise Tribal Police, including those employees and agents identified herein, in the proper conduct of police pursuit;
- g. Conducted unreasonable pursuit in a manner that created the risk of injury and death to innocent bystanders;
- h. Conducted high speed pursuit in a manner that made significant risk of injury to innocent bystanders reasonably foreseeable;
- i. Failed to exercise due care in the conduct of this pursuit;
- j. Failed to have safe and/or appropriate policies in place governing pursuit and apprehension of motorists by the Navajo Nation Police Department;
- k. Failed to implement and enforce Navajo Nation Police Department policies and procedures in effect governing pursuit and apprehension of motorists by the Navajo Nation Police Department;
- l. Were guilty of gross negligence in the manner in which they conducted pursuit; and
- m. Were otherwise careless, negligent, grossly negligent, willful and wanton and acted with conscious disregard for the safety of others in the conduct of this pursuit.

52. As a direct and proximate result of one or more of the foregoing acts and/or omissions of the Defendant, and the aforesaid employees and agents of the Navajo Nation, the Plaintiff's decedent, Sachiyo Hirayama suffered serious and permanent injuries which resulted in her death on March 28, 2014.

53. Plaintiff's decedent, Sachiyo Hirayama, is survived by R.H., a minor, who has suffered substantially and will continue to suffer personal and pecuniary loss as a result of her mother's death, including, but not limited to loss of society, love, affection, care, comfort, support and protection, and grief, sorrow, and mental suffering, and other personal and pecuniary injuries.

54. At all times mentioned herein, there was in effect in the State of Arizona a Wrongful Death Act, A.R.S. § 12-611 *et seq.*, and this action is brought pursuant to that Act.

55. Plaintiff, Kaori Stearney, is the Plenary Guardian of R.H., a minor and brings this action for the wrongful death of her mother Sachiyo Hirayama by, for, and on behalf of R.H., a minor, the only surviving child of the decedent.

WHEREFORE Plaintiff, Kaori Stearney, Plenary Guardian of R.H., a minor demands judgment for and on behalf of R.H., a minor for the wrongful death of her mother Sachiyo Hirayama, deceased, against the Defendant the United States of America in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

COUNT III – WRONGFUL DEATH

Kaori Stearney, Independent Administrator of the Estate of Yuki Hirayama, a deceased minor, for the Wrongful Death of Yuki Hirayama, Brought by and on behalf of the Estate of Yuki Hirayama v. United States of America

56. Plaintiff, Kaori Stearney, Independent Administrator of the Estate of Yuki Hirayama, a deceased minor, on behalf of the Estate of Yuki Hirayama, repeats and realleges each and every allegation contained in paragraphs 1 through 55 of this Complaint and incorporates the same herein by reference as if fully set forth as paragraphs 1 through 55 of Count III of this Complaint.

57. In the performance of the law enforcement patrol services described herein pursuant to 93-638 Contract, the Defendant and the employees and agents of the Navajo Nation, including but not limited to those persons identified in Paragraphs 20 through 26 of this Complaint, had a duty to exercise reasonable care for the safety of others and to refrain from negligence, reckless conduct, gross negligence, willful and wanton conduct, and conduct creating an unreasonable risk of bodily harm to the Plaintiffs and Plaintiff's decedents.

58. At all times mentioned herein the Defendant and the employees and agents of the Navajo Nation Police Department including those employees and agents identified

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herein, were negligent, grossly negligent, reckless, willful and wanton, and acted with a conscious disregard for the safety of others in one or more of the following respects:

- a. Improperly conducted this pursuit;
- b. Conducted this pursuit at speeds that created the risk of harm to the general public and to the Plaintiffs and Plaintiff's Decedents;
- c. Failed to discontinue high speed pursuit where significant risk of harm to the general public caused by the pursuit was reasonably foreseeable;
- d. Chased the fleeing vehicle into a head-on collision with on-coming traffic;
- e. Violated authoritative procedures, standards, and accepted practices regarding high speed chases and police pursuit;
- f. Failed to properly train and supervise Tribal Police, including those employees and agents identified herein, in the proper conduct of police pursuit;
- g. Conducted unreasonable pursuit in a manner that created the risk of injury and death to innocent bystanders;
- h. Conducted high speed pursuit in a manner that made significant risk of injury to innocent bystanders reasonably foreseeable;
- i. Failed to exercise due care in the conduct of this pursuit;
- j. Failed to have safe and/or appropriate policies in place governing pursuit and apprehension of motorists by the Navajo Nation Police Department;
- k. Failed to implement and enforce Navajo Nation Police Department policies and procedures in effect governing pursuit and apprehension of motorists by the Navajo Nation Police Department;
- l. Were guilty of gross negligence in the manner in which they conducted pursuit; and
- m. Were otherwise careless, negligent, grossly negligent, willful and wanton and acted with conscious disregard for the safety of others in the conduct of this pursuit.

59. As a direct and proximate result of one or more of the foregoing acts and/or omissions of the Defendant, and the aforesaid employees and agents of the Navajo Nation, the Plaintiff's deceased minor, Yuki Hirayama suffered serious and permanent injuries which resulted in his death on March 28, 2014.

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60. As a direct and proximate result of one or more of the foregoing acts and/or omissions of the Defendants, and the aforesaid employees and agents of the Navajo Nation, the Estate of Yuki Hirayama, a deceased minor, has suffered substantial personal and pecuniary loss as a result of his premature death including all damages supported by the evidence and permitted by law.

61. At all times mentioned herein, there was in effect in the State of Arizona a Wrongful Death Act, A.R.S. § 12-611 *et seq.*, and this action is brought pursuant to that Act, by the Estate of Yuki Hirayama, a deceased minor, since there is no surviving spouse and there are no surviving parents or children of the decedent by which this action may be brought.

62. Plaintiff, Kaori Stearney is the Independent Administrator of the Estate of Yuki Hirayama, a deceased minor, and Plaintiff brings this action on behalf of the Estate of Yuki Hirayama, a deceased minor. Plaintiff's Letters of Office for the Estate of Yuki Hirayama are attached as Exhibit E.

WHEREFORE Plaintiff, Kaori Stearney, Independent Administrator of the Estate of Yuki Hirayama, a deceased minor, on behalf of the Estate of Yuki Hirayama demands judgement against the Defendant the United States of America in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

COUNT IV – NEGLIGENCE/GROSS NEGLIGENCE
Kaori Stearney, Plenary Guardian of the Estate of
R.H., a minor, on behalf of R.H. v. United States of America

63. Plaintiff, Kaori Stearney, Plenary Guardian of R.H., a minor, on behalf of R.H. repeats and realleges each and every allegation contained in paragraphs 1 through 62 of this Complaint and incorporates the same herein by reference as if fully set forth as paragraphs 1 through 62 of Count IV of this Complaint.

64. In the performance of the law enforcement patrol services described herein pursuant to 93-638 Contract, the Defendant and the employees and agents of the Navajo Nation, including but not limited to those persons identified on Paragraphs 20 through 26 of this Complaint, had a duty to exercise reasonable care for the safety of others and to

1 refrain from negligence, reckless conduct, gross negligence, willful and wanton conduct,
 2 and conduct creating an unreasonable risk of bodily harm to the Plaintiffs and Plaintiff's
 3 Decedents.

4 65. At all times mentioned herein the Defendant and the employees and agents
 5 of the Navajo Nation Police Department including those employees and agents identified
 6 herein, were negligent, grossly negligent, reckless, willful and wanton, and acted with a
 7 conscious disregard for the safety of others in one or more of the following respects:

- 8 a. Improperly conducted this pursuit;
- 9 b. Conducted this pursuit at speeds that created the risk of harm to the
 10 general public and to the Plaintiffs and Plaintiff's Decedents;
- 11 c. Failed to discontinue high speed pursuit where significant risk of
 12 harm to the general public caused by the pursuit was reasonably
 13 foreseeable;
- 14 d. Chased the fleeing vehicle into a head-on collision with on-coming
 15 traffic;
- 16 e. Violated authoritative procedures, standards, and accepted practices
 17 regarding high speed chases and police pursuits;
- 18 f. Failed to properly train and supervise Tribal Police, including those
 19 employees and agents identified herein, in the proper conduct of
 20 police pursuit;
- 21 g. Conducted unreasonable pursuit in a manner that created the risk of
 22 injury and death to innocent bystanders;
- 23 h. Conducted high speed pursuit in a manner that made significant risk
 24 of injury to innocent bystanders reasonably foreseeable;
- 25 i. Failed to exercise due care in the conduct of this pursuit;
- 26 j. Failed to have safe and/or appropriate policies in place governing
 27 pursuit and apprehension of motorists by the Navajo Nation Police
 28 Department;
- 29 k. Failed to implement and enforce Navajo Nation Police Department
 policies and procedures in effect governing pursuit and apprehension
 of motorists by the Navajo Nation Police Department;
- 30 l. Were guilty of gross negligence in the manner in which they
 conducted pursuit; and
- 31 m. Were otherwise careless, negligent, grossly negligent, willful and
 wanton and acted with conscious disregard for the safety of others in
 the conduct of this pursuit.

66. As a direct and proximate result of one or more of the aforesaid acts and/or omissions of Defendant, the United States of America, and the aforesaid employees and agents of the Navajo Nation the Plaintiff, R.H., a minor, was seriously and permanently injured, and has suffered and will continue to suffer damages of a personal and pecuniary nature.

WHEREFORE Plaintiff, Kaori Stearney, Plenary Guardian of R.H., a minor, on behalf of R.H., demands judgement against the Defendant the United States of America in an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

COUNT V – NEGLIGENT INFLECTION OF EMOTIONAL DISTRESS
Kaori Stearney, Plenary Guardian of the Estate of R.H., a minor,
On behalf of R.H., a minor v. United States of America

67. Plaintiff, Kaori Stearney, repeats and realleges each and every allegation contained in paragraphs 1 through 66 of Count VII of this Complaint and incorporates the same herein by reference as if fully set forth as paragraphs 1 through 66 of Count V of this Complaint.

68. In the performance of the law enforcement patrol services described herein pursuant to 93-638 Contract, the Defendant and the employees and agents of the Navajo Nation, including but not limited to those persons identified on Paragraphs 20 through 26 of this Complaint, had a duty to exercise reasonable care for the safety of others and to refrain from negligence, reckless conduct, gross negligence, willful and wanton conduct and conduct creating an unreasonable risk of bodily harm to the Plaintiffs.

69. At all times mentioned herein the Defendant and the employees and agents of the Navajo Nation Police Department including those employees and agents identified herein, were negligent, grossly negligent, reckless, willful and wanton, and acted with a conscious disregard for the safety of others in one or more of the following respects:

- a. Improperly conducted this pursuit;
- b. Conducted this pursuit at speeds that created the risk of harm to the general public and to the Plaintiffs and Plaintiff's Decedents;

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- c. Failed to discontinue high speed pursuit where significant risk of harm to the general public caused by the pursuit was reasonably foreseeable;
- d. Chased the fleeing vehicle into a head-on collision with on-coming traffic;
- e. Violated authoritative procedures, standards, and accepted practices regarding high speed chases and police pursuit;
- f. Failed to properly train and supervise Tribal Police, including those employees and agents identified herein, in the proper conduct of police pursuit;
- g. Conducted unreasonable pursuit in a manner that created the risk of injury and death to innocent bystanders;
- h. Conducted high speed pursuit in a manner that made significant risk of injury to innocent bystanders reasonably foreseeable;
- i. Failed to exercise due care in the conduct of this pursuit;
- j. Failed to have safe and/or appropriate policies in place governing pursuit and apprehension of motorists by the Navajo Nation Police;
- k. Failed to implement and enforce Navajo Nation Police Department policies and procedures in effect governing pursuit and apprehension of motorists by the Navajo Nation Police Department;
- l. Were guilty of gross negligence in the manner in which they conducted pursuit; and
- m. Were otherwise careless, negligent, grossly negligent, willful and wanton and acted with conscious disregard for the safety of others in the conduct of this pursuit.

70. As a direct and proximate result of one or more of the aforesaid acts and/or omissions of Defendant, the United States of America, and the aforesaid employees and agents of the Navajo Nation, the defendant caused and created unreasonable risk of bodily harm to Tomohiro Hirayama, Sachiyo Hirayama, Yuki Hirayama and R.H., a minor.

71. As a direct and proximate result of one or more of the foregoing acts and/or omissions of Defendant, the United States of America, and the aforesaid employees and agents of the Navajo Nation, caused bodily harm and death to Tomohiro Hirayama, Sachiyo Hirayama, Yuki Hirayama and caused severe bodily harm to R.H.

72. As a direct and proximate result of one or more of the foregoing acts and/or omissions of Defendant, the United States of America, and the aforesaid employees and

1 agents of the Navajo Nation, R.H. directly witnessed the bodily harm and deaths suffered
2 by Tomohiro Hirayama, Sachiyo Hirayama, and Yuki Hirayama and R.H. suffered severe
3 emotional distress which resulted in physical injury and/or illness to R.H.

4 73. The injuries suffered by R.H., a minor, and her loss of her father, mother
5 and brother permanently caused severe, profound, and permanent injuries to R.H., a
6 minor, including emotional distress.

7 WHEREFORE, Plaintiff, Kaori Stearney, Plenary Guardian of R.H., a minor, on
8 behalf of R.H., demands judgment against the Defendant the United States of America in
9 an amount in excess of Seventy-Five Thousand Dollars (\$75,000.00).

10 Dated: September 17, 2017.

11 Respectfully submitted,

12 Dennis T. Schoen, P.C.

13 By: s/ Dennis T. Schoen
14 Attorney for Plaintiffs

15 **CERTIFICATE OF SERVICE**

16 I hereby certify that on September 17, 2017, I electronically transmitted the
17 attached document to the Clerk's office using the CM/ECF System for filing which
18 transmitted copy of the following registrant of the CM/ECF System:

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25
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