

UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH DAKOTA
SOUTHERN DIVISION

MICAH ROEMEN;)	Civ. No. 4:19-CV-4006-LLP
TOM TEN EYCK,)	
Guardian of Morgan Ten Eyck; and)	
MICHELLE TEN EYCK,)	
Guardian of Morgan Ten Eyck,)	
)	
Plaintiffs,)	
)	
v.)	THIRD
)	AMENDED COMPLAINT
UNITED STATES OF AMERICA,)	
ROBERT NEUENFELDT, individually)	
and UNKNOWN SUPERVISORY)	
PERSONNEL OF THE UNITED)	
STATES, individually,)	
)	
Defendants.)	

COMES NOW, Plaintiffs Micah Roemen, Tom Ten Eyck, and Michelle Ten Eyck, Guardians of Morgan Ten Eyck, by and through their undersigned attorneys, and for their third amended complaint against Defendants, alleges as follows:

JURISDICTION

1. Plaintiff, Micah Roemen, is a resident of Minnehaha County, state of South Dakota.
2. Plaintiffs, Tom Ten Eyck and Michelle Ten Eyck, as guardians of Morgan Ten Eyck, are residents of Moody County, state of South Dakota.
3. Jurisdiction is proper pursuant to 28 U.S.C. §1346(b) and the Federal Tort Claims Act, 28 U.S.C. §2671, et seq., as amended and Pub.L.No. 103-138, Tit. III, § 308, Nov. 11, 1993, 107 Stat. 1416.

4. Jurisdiction is also proper pursuant to 42 U.S.C.A. §§ 1981, 1983, 1985 and 1988 and *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 388, 397, 91 S. Ct. 1999, 29 L. Ed. 2d 619 (1971), as well as under the United States Constitution, including its Fourth, Eighth and Fourteenth Amendments, and the Constitution of the State of South Dakota.

5. At all relevant times herein, the United States, by and through its Department of the Interior, Bureau of Indian Affairs, contracted with the Flandreau Santee Sioux Tribe and its Police Department pursuant to 25 U.S.C. 45f, et seq., Indian Self Determination Act, to provide law enforcement services on the Flandreau Santee Sioux Indian Reservation.

6. At all relevant times herein, the Flandreau Santee Sioux Tribe and its Police Department operated a police department on the Flandreau Santee Sioux Indian Reservation and employed numerous employees, who were performing functions under the contract entered into pursuant to 25 U.S.C. 450f, et seq, which renders said employees, United States Government employees.

7. At all relevant times herein, Defendant, Robert Neuenfeldt was acting as Flandreau Chief of Police under the color of state and federal law, and in violation Plaintiffs' federally protected rights.

8. On or about April 27, 2018, Plaintiffs Tom Ten Eyck and Michelle Ten Eyck submitted an Administrative Tort Claim in the amount of \$150,000,000, as required by 28 USC § 2675 to the United States Department

of the Interior, Office of the Solicitor, 5600 American Boulevard West, Suite 270, Bloomington, Minnesota, 55437.

9. On or about April 27, 2018, Plaintiff Micah Roemen submitted an Administrative Tort Claim in the amount of \$1,000,000, as required by 28 USC § 2675 to the United States Department of the Interior, Office of the Solicitor, 5600 American Boulevard West, Suite 270, Bloomington, Minnesota, 55437.

10. On December 3, 2018, the United States Department of the Interior denied Plaintiffs' administration claims, thereby allowing this Complaint.

11. As to Defendant, United States, this action is timely pursuant to 28 U.S.C.A. §2401(b) in that it was presented to the appropriate agency within two years of accrual, and this action was filed within six months of receipt of the certified letter sent by the United States Department of the Interior denying the claim.

12. Plaintiffs further invokes this Court's pendent jurisdiction over any and all state law claims and causes of action that derive from the same nucleus of operative facts that give rise to the federally based claims and causes of action pursuant to 28 U.S.C.A. § 1367.

FACTS

13. On June 18, 2017, Micah Roemen was a passenger in a vehicle driven by Tahlen Bourassa.

14. On June 18, 2017, Morgan Ten Eyck was a passenger in a vehicle driven by Tahlen Bourassa.

15. In the early morning hours of June 18, 2017, the Flandreau Tribal Police Officers, along with the Moody County Deputy Sheriffs, the South Dakota Highway Patrol, and the City of Flandreau Police Department stopped a vehicle driven by Tahlen Bourassa.

16. Robert Neuenfeldt, Chief of Police for Flandreau Santee Sioux Tribe, threatened to take Bourassa to jail. Bourassa then fled.

17. Neuenfeldt and Logan Baldini, an uncertified deputy for Moody County Sheriff's Office, both got in Neuenfeldt's tribal police cruiser and initiated pursuit.

18. Sargent Kurtz, South Dakota Highway Patrol, was also initially involved in the pursuit.

19. It is believed that Tahlen Bourassa, Micah Roemen and Morgan Ten Eyck had not committed any crimes to justify the pursuit.

20. At the time the Bourassa vehicle was stopped, Neuenfeldt, and the other officers at the scene, knew the identity of the driver, Tahlen Bourassa.

21. Neuenfeldt and the other officers at the scene, knew that Tahlen Bourassa was actively being monitored by the South Dakota Parole Board through a GPS ankle bracelet.

22. Notwithstanding that the officers knew specifically who was driving the vehicle, knew that there had been no violations of the law, and knew that two innocent passengers were in the vehicle, a high-speed pursuit took place for over thirty minutes reaching speeds in excess of 100 miles per hour on gravel roads.

23. On two occasions, spike strips were laid out without proper authorization.

24. Just prior to the accident, spike strips were laid out and a barricade of police cars forced Tahlen Bourassa to take a dead-end gravel road.

25. Defendants knew the dead-end road would result in an accident.

26. Prior to the catastrophic accident, which caused Claimant's life-threatening injuries, the South Dakota Highway Patrol aborted the pursuit.

27. It is believed that Neuenfeldt disregarded orders to terminate the pursuit.

28. Once the Highway Patrol terminated the pursuit, Neuenfeldt and Baldini continued the pursuit causing Bourassa's vehicle to lose control and roll several times throwing all three occupants from the vehicle.

29. All occupants suffered incapacitating injuries and were life flighted from the scene.

30. Micah Roemen sustained a serious closed head injury, pulmonary contusion, broken wrist, vertebral body fractures at C1, C2, and C6 and required a halo placement.

31. As a result of the accident, Plaintiff Micah Roemen has sustained thousands of dollars in medical bills.

32. Morgan Ten Eyck was in a coma for weeks, and sustained a serious traumatic brain injury, a broken femur, and a severe injury to her liver.

33. As a result of the accident, Morgan Ten Eyck is completely incapacitated.

34. As a result of the accident, Plaintiffs Tom Ten Eyck and Michelle Ten Eyck have sustained thousands of dollars in medical bills for their daughter's care.

COUNT I: NEGLIGENCE

Plaintiffs realleges the information set forth in the paragraphs above and further alleges:

35. Defendants owed a duty of care to Micah Roemen as an innocent bystander and passenger of the fleeing vehicle, and breached this duty by failing to follow mandatory pursuit policies, causing severe and permanent damages to Micah Roemen.

36. Defendants owed a duty of care to Morgan Ten Eyck as an innocent bystander and passenger of the fleeing vehicle, and breached this duty by failing to follow mandatory pursuit policies, causing severe and permanent damages to Morgan Ten Eyck.

37. Defendants' numerous violations of the pursuit policies constitute reckless disregard for the safety of others.

38. Defendants failed to follow the mandatory pursuit policy in the following respects:

- a. It is determined a vehicle pursuit is a use of force. This use of force is confined to appropriate tribal jurisdiction. No pursuit can be initiated when it is outside their area of jurisdiction. In addition, the officer failed to reasonably believe that the suspect, if

allowed to flee, presents potential danger to human life or may cause serious injury;

- b. In “all areas of the jurisdiction,” officers are expected to end their involvement of pursuit whenever the risk of their own safety or safety of others outweigh the danger to the community if the suspect is not apprehended;
- c. It is mandatory that the officer in the primary unit notify the dispatch of five items. No such notification occurred;
- d. A secondary unit will be engaged to move into position and assume the communication responsibility;
- e. The secondary unit will coordinate the activities of other assessing units;
- f. The supervisor is ultimately responsible for terminating the pursuit or allowing it to continue;
- g. The supervisor will continually weigh the risk based on information being received from dispatch and the pursuing unit;
- h. The supervisor will immediately terminate the pursuit when the pursuit is not in compliance with the requirements of this section;
- i. Supervisors shall evaluate their actions based on the potential benefits of their actions outweigh the risks that are involved;
- j. Pursuits are limited to two police vehicles. Additional units may participate if directed by the supervisor or senior officer on duty;

- k. If the pursuit extends off roadway, assessment of the risk must be determined to decide whether to continue the pursuit;
- l. Officers in pursuit must have received approved IPA training in the use of BIA-OJS tire deflation devices;
- m. Because use of tire deflating devices is considered a roadblock, only the chief of police or a supervisor can authorize their use.
The suspect must be a dangerous fleeing felon;
- n. Safety circumstances must be an important factor;
- o. Determination of the most suitable safest location must be made;
- p. Tire deflation device must never be used if you believe the location is unsafe;
- q. Tire deflation devices should never be deployed with pedestrians in the immediate vicinity;
- r. Only deploy a tire deflation device after you have identified a safe location to observe the pursuit;
- s. A pursuit may only be extended beyond the reservation line if the primary control of pursuit is relinquished as soon as practical to police personnel of entered jurisdiction (here the pursuit was never on tribal land);
- t. Officers must follow LE Handbook Section 2-24-02, authorization for pursuit when joining a pursuit initiated by another jurisdiction;

- u. OJS officers will discontinue pursuits initiated by another jurisdiction when pursuit continues outside their jurisdiction unless officer's safety becomes a consideration;
 - v. High speed pursuits shall be limited to substantial crimes that require immediate action;
 - w. High speed pursuits should not occur when the identity of the driver is known; and
 - x. High speed pursuits should be ended whenever the risks to the safety of others outweigh the danger to the community if the suspect is not apprehended.
39. Defendants violated every requirement as set forth in paragraph 38 above.
40. Defendants' actions also violated the policies regarding the use of road blocks and spike strips.
41. The use of road blocks, and or spike strips, may only be used in the case of suspected fleeing felons whose escape poses a danger to life.
42. Tahlen Bourassa was not a fleeing felon whose escape posed a danger to life.
43. Defendants and the Bureau of Indian Affairs, an agency of the United States of America, acting by and through their servants and employees, all acting within the course and scope of their agency and employment with Defendant, were negligent and reckless through numerous violations of their own pursuit policies.

44. If Defendant, United States, were a person, it would be liable in accordance with the laws of South Dakota and the Flandreau Santee Sioux Tribe.

45. As a direct legal result of Defendants' negligent, reckless, and willful and wanton disregard for the safety of Plaintiff, Micah Roemen sustained serious injuries and damages, which required substantial medical care and have resulted in permanent injuries and future medical care.

46. As a direct legal result of Defendants' negligent, reckless, and willful and wanton disregard for the safety of Plaintiff, Morgan Ten Eyck sustained serious injuries and damages, which require substantial medical care and have resulted in permanent disability.

COUNT II: 42 U.S.C.A § 1983 (BIVENS ACTION)

Plaintiffs realleges the information set forth in the paragraphs above and further alleges:

47. This claim for relief is brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 288, 397, 91 S. Ct. 1999 29 L.Ed.2d 619 (1971), for violations of Plaintiffs' rights under the Fourth and Fifth Amendments of the United States Constitution when Defendant Neuenfeldt used excessive, unreasonable, and unwarranted force during the pursuit.

48. During all times herein, Defendant Neuenfeldt acted under color and pretense of federal statutes, ordinances, regulations, policies, practices, customs and uses of the United States of America.

49. On June 18, 2017, Plaintiff, Micah Roemen, had the right under the Fourth Amendment to be free from unreasonable searches and seizures of her person.

50. On June 18, 2017, Plaintiff, Morgan Ten Eyck, had the right under the Fourth Amendment to be free from unreasonable searches and seizures of her person.

51. On June 18, 2017, Plaintiff, Micah Roemen, possessed the rights guaranteed by the Fifth Amendment to not be deprived of life and liberty without due process of law, including but not limited to, the right not to suffer physical harm from persons acting under the color of law that is intentionally or wantonly inflicted or which is accomplished with deliberate, reckless, or callous indifference to his constitutional rights.

52. On June 18, 2017, Plaintiff, Morgan Ten Eyck, possessed the rights guaranteed by the Fifth Amendment to not be deprived of life and liberty without due process of law, including but not limited to, the right not to suffer physical harm from persons acting under the color of law that is intentionally or wantonly inflicted or which is accomplished with deliberate, reckless, or callous indifference to her constitutional rights.

53. On June 18, 2017, Plaintiff, Micah Roemen, had the rights guaranteed by the Equal Protection Clause and the Due Process Clause of the Fifth Amendment of the United States Constitution.

54. On June 18, 2017, Plaintiff, Morgan Ten Eyck, had the rights guaranteed by the Equal Protection Clause and the Due Process Clause of the Fifth Amendment of the United States Constitution.

55. On June 18, 2017, Defendant Neuenfeldt, while acting under the color of federal law as a United States Employee, intentionally deprived Plaintiff, Micah Roemen, of his Fourth Amendment right to be free from unreasonable seizures by subjecting her to excessive force during the pursuit.

56. On June 18, 2017, Defendant Neuenfeldt, while acting under color of federal law as a United States Federal Employee, intentionally violated Plaintiffs' rights guaranteed by the Fifth Amendment to not be deprived of life and liberty without Due Process of law, including but not limited to the right not to suffer physical harm from persons acting under color of law that is intentionally or wantonly inflicted or which is accomplished with deliberate, reckless, or callous indifference to his constitutional rights. While acting under color of federal law as a United States Federal Agent, Defendant Neuenfeldt was motivated by evil intent and conduct in which he engaged in by use of excessive force in the pursuit and this conduct showed reckless or callous indifference to her Constitutional rights.

57. Defendant Neuenfeldt, by using such unreasonable force, caused injury and damage to Plaintiff, Micah Roemen, ultimately causing life threatening injuries.

58. Defendant Neuenfeldt, by using such unreasonable force, caused injury and damage to Plaintiff, Morgan Ten Eyck, ultimately causing life threatening injuries.

59. At the time of the June 18, 2017, pursuit, Plaintiff, Micah Roemen, was not engaged in any assaultive behavior toward Defendant, Neuenfeldt or any other persons.

60. At the time of the June 18, 2017, pursuit, Plaintiff, Morgan Ten Eyck, was not engaged in any assaultive behavior toward Defendant Neuenfeldt or any other persons.

61. The pursuit by Defendant Neuenfeldt was entirely unjustified by any action of Plaintiff, Micah Roemen, and said pursuit constituted an unreasonable and excessive use of force in violation of Plaintiff's guaranteed rights under the 14th Amendment of the United States Constitution, which protects pretrial detainees from punishment.

62. The pursuit by Defendant Neuenfeldt was entirely unjustified by any action of Plaintiff, Morgan Ten Eyck, and said pursuit constituted an unreasonable and excessive use of force in violation of Plaintiff's guaranteed rights under the 14th Amendment of the United States Constitution, which protects pretrial detainees from punishment.

63. Defendant Neuenfeldt acted specifically with the intent to deprive Plaintiffs, Micah Roemen and Morgan Ten Eyck, of the following rights and privileges guaranteed under the United States Constitution:

1. Freedom from unreasonable seizures, in the form of the use of excessive force;
2. Freedom from deprivation of liberty without Due Process of law;
3. Freedom from punishment prior to conviction for any crime; and
4. Equal protection of the laws.

64. After the pursuit, Plaintiffs, Micah Roemen and Morgan Ten Eyck, suffered life threatening, permanent injuries. Plaintiffs suffered severe physical, emotional and psychological damage as a result of the conduct of Defendant Neuenfeldt and the Flandreau Santee Sioux Tribe.

65. Defendant Neuenfeldt and the Flandreau Santee Sioux Tribe subjected Plaintiffs to the aforementioned deprivations by either actual malice or deliberate indifference and disregard of Plaintiff's civil rights.

66. As a direct and proximate result of the aforementioned acts of Defendant Neuenfeldt and the Flandreau Santee Sioux Tribe, Plaintiffs, Tom Ten Eyck and Michelle Ten Eyck suffered general damages in the form of conscious pain and suffering, the loss of the value of Morgan Ten Eyck's life, and the loss of aid comfort, love, and society, and for special damages for the loss of economic support and seek compensatory damages against Defendant Neuenfeldt in his individual capacity.

**COUNT III: COMMON LAW ASSAULT AND BATTERY AGAINST
DEFENDANT NEUENFELDT**

Plaintiffs realleges the information set forth in the paragraphs above and further alleges:

67. The actions, set forth above, constitute common law assault and battery.

68. The actions of the Defendants were malicious, reckless, intentional and caused damages to the Plaintiffs.

69. Micah Roemen sustained a serious closed head injury, pulmonary contusion, broken wrist, vertebral body fractures at C1, C2, and C6 and required a halo placement. As a result of the accident, Plaintiff Micah Roemen has sustained thousands of dollars in medical bills.

70. As a direct and proximate result of the aforementioned acts of Defendant Neuenfeldt and the Flandreau Santee Sioux Tribe, Plaintiffs, Tom Ten Eyck and Michelle Ten Eyck suffered general damages in the form of conscious pain and suffering, the loss of the value of Morgan Ten Eyck's life, and the loss of aid comfort, love, and society, medical expenses incurred and future medical expenses, and for special damages for the loss of economic support and seek compensatory damages against Defendant Neuenfeldt in his individual capacity.

**COUNT IV: SECOND CLAIM FOR RELIEF FOR SUPERVISORIAL
RESPONSIBILITY FOR VIOLATIONS OF THE CIVIL RIGHTS
UNDER COLOR OF LAW (*BIVENS* ACTION)**

Plaintiffs realleges the information set forth in the paragraphs above and further allege:

71. This claim for relief is brought pursuant to *Bivens v. Six Unknown Named Agents of Federal Bureau of Narcotics*, 403 U.S. 288, 397, 91 S. Ct. 1999 29 L.Ed.2d 619 (1971), for violation of Plaintiffs, Micah Roemen and

Morgan Ten Eyck's rights under the Fourth and Fifth Amendments of the United States Constitution.

72. On and before June 18, 2017, Defendants implemented and maintained customs, policies, and/or practices to encourage the use of excessive force by Defendant Neuenfeldt. Defendant Neuenfeldt intentionally, deliberately, and/or was indifferent to the violation of the constitutional rights of persons in the same situation as and including Plaintiffs Micah Roemen and Morgan Ten Eyck.

73. On June 18, 2017, Defendant participated in, encouraged, fostered, condoned, and ratified the conduct of Defendant Neuenfeldt when Defendant Neuenfeldt used excessive force in the pursuit and injuring Plaintiffs Micah Roemen and Morgan Ten Eyck, even though Plaintiffs were defenseless, had no weapon of any kinds, and was not threatening the Defendant or any third party.

74. As a direct and proximate result of Defendants intentional, deliberate, and/or indifference to the use of excessive force by Defendant Neuenfeldt, Plaintiff Micah Roemen sustained life-threatening injuries on June 18, 2017.

75. As a direct and proximate result of Defendants' intentional, deliberate, and/or indifference to the use of excessive force by Defendant Neuenfeldt, Plaintiff Morgan Ten Eyck sustained permanent, life-threatening injuries on June 18, 2017.

76. By consciously and deliberately overlooking the use of excessive force by Defendant Neuenfeldt, the Unknown Supervisory Personnel of the United States established a pattern, custom, and practice of condoning and ratifying such misconduct and criminal activity and established a tolerated pattern of constitutional violations amongst their subordinate officers including Defendant Neuenfeldt. The condoning of misconduct by Defendant Neuenfeldt was so comprehensive and well known that Unknown Supervisory Personnel of the United States was emboldened to blatantly violate the constitutional rights of Plaintiffs, Micah Roemen and Morgan Ten Eyck to commit crimes such as the excessive force used in the pursuit.

77. Because of their failure to prevent the continuing constitutional violations by the subordinates and because the establishment of the policies and practices described above as well as their failure to adequately train their subordinates, Unknown Supervisory Personnel of the United States are individually liable for the constitutional violations committed by Defendant Neuenfeldt inclusive and for the injuries to Plaintiffs, Micah Roemen and Morgan Ten Eyck as a result of the June 18, 2017 pursuit.

78. Because of their acts and/or omission in their failure to prevent the continuing constitutional violations by their subordinates and because of their establishment of the policies and practices described above as well as their failure to adequately train their subordinates, Defendant Neuenfeldt is liable for his own independent acts and/or omissions which were a contributing factor in causing the constitutional violations which caused the

injuries to Plaintiffs, Micah Roemen and Morgan Ten Eyck as a result of the June 18, 2017 pursuit.

79. Defendant Neuenfeldt's actions were intentional, willful, malicious, egregious, grossly reckless and negligent, and unprovoked.

COUNT V: NEGLIGENT TRAINING, SUPERVISION & RETENTION

Plaintiffs realleges the information set forth in the paragraphs above and further allege:

80. Defendant, United States of America, hired and retained Robert Neuenfeldt as a tribal police officer before, during, and after June 17 and June 18, 2017, as a tribal police officer for the Flandreau Santee Sioux Tribe.

81. Defendant, United States of America, retained and empowered Officer Neuenfeldt as a tribal police officer by allowing him to carry a gun and operate a motor vehicle without sufficient training and supervision contrary to the manual set forth as Bureau of Indian Affairs Office of Justice Services Law Enforcement Handbook 3rd Edition, as well as contrary to other regulations requiring training and supervision set forth in the United States Code.

82. Defendant, United States of America, failed to train or properly supervise Officer Neuenfeldt to ensure that he was complying with the laws of the United States, the regulations of the United States, as well as the Law Enforcement Handbook 3rd Edition.

83. Defendant, United States of America, failed to abide by the Law Enforcement Handbook 3rd Edition by failing to present the Law Enforcement Handbook 3rd Edition to tribal officer Neuenfeldt and failed to abide by the

duties set forth in the handbook including but not limited to the following:

(Handbook page 13; Directive page1)

“It shall be the duty of all OJS personnel to familiarize themselves with the contents of this Handbook and conduct themselves in accordance with its precepts.”

Failure included not ever providing to Officer Neuenfeldt the Bureau of Indian Affairs Handbook in any respect and failing to train Officer Neuenfeldt of these responsibilities set forth in the handbook.

84. It is further established through the Law Enforcement Handbook 3rd Edition, that “this handbook shall be the standing orders governing the actions of all personnel of this office and will supersede any former handbook editions and any current special orders.” It was a complete failure by the United States government not to advise Officer Neuenfeldt of this standing order and of all of the regulations set forth in the BIA Handbook given the fact that Officer Neuenfeldt had never received the BIA Handbook at any time during his employment including, but not limited to, the time of this incident on June 17 – June 18, 2017.

85. Defendant, United States of America, through the Bureau of Indian Affairs, failed to properly supervise, retain, and train Officer Neuenfeldt.

86. Defendant, United States of America, through the Bureau of Indian Affairs, failed to provide “Field Training and Evolution Program Training as is required by Law Enforcement Handbook 3rd Edition. Such failure included failure to train in the use of firearms, failure to train in pursuit policies, and

failure to train in jurisdiction and the prohibition of pursuits outside of tribal jurisdiction.

87. In addition to the specific failures of the Law Enforcement Handbook 3rd Edition, the Defendant United States of America failed to obtain the required certifications of the Law Enforcement Code of Ethics that include the primary responsibility of police officers, the performance of the duties of police officers, the use of force, and the law enforcement code of conduct. The Law Enforcement Code of Ethics was not signed as required by the handbook by either Officer Neuenfeldt or any instructor or supervisor. Such failure is a breach of the duty to supervise, retain, and train.

88. Defendant, United States of America, through the Bureau of Indian Affairs, and other entities failed to properly train Officer Neuenfeldt regarding jurisdictional parameters including, but not limited to, the use of force and pursuits.

89. Defendant, United States of America, failed to train and supervise Officer Neuenfeldt in arrest procedures, pre-arrest procedures, pursuit policies, use of force, as well as proper traffic stops.

90. Defendant, United States of America, failed to train, retain, and supervise regarding high-speed traffic risk in which the policy, set forth by the Law Enforcement Handbook 3rd Edition, is that any officer is required:

To ensure the safety of the officer and the public, officers will employ high-risk stop techniques when stopping vehicles containing persons known or suspected of committing a serious crime.

At no time was there any training regarding this directive.

91. Defendant, United States of America, failed in its supervision, retention, and training in regards to pursuit policy, which is set for in the Law Enforcement Handbook 3rd Edition, Handbook pages 275-282. Specifically, there was no training, or supervision regarding the limitations of jurisdiction regarding any law enforcement action, including pursuits. Specifically, there was a failure to train and supervise on the proper factors to consider while in pursuit, including, but not limited to, having proper jurisdiction and considering all of the factors set forth in the law enforcement handbook cited above. Additionally, the guidelines for pursuit were completely ignored by Officer Neuenfeldt as a result of the failure of training regarding those guidelines set forth on Handbook pages 278-279, beginning with the jurisdictional requirements that were ignored by Officer Neuenfeldt; specifically, Section 2-24-06 indicates that actions cannot be taken without involvement of a supervisor or senior officer.

92. Not only was Officer Neuenfeldt improperly trained and retained, he was improperly supervised to the extent that the Law Enforcement Handbook 3rd Edition was not given to him at all; the duties and responsibilities of a police officer were never explained to him and he received no training regarding that, nor did he receive any training regarding jurisdiction until 5 months after the incident involving the Plaintiffs; and did not receive any training concerning pursuits on the tribal jurisdiction or off tribal jurisdiction.

93. Defendant, United States of America, was aware of the failure to train, failure to advise, and failure to supervise Officer Neuenfeldt before and during the incident of June 17 – June 18, 2017; yet did nothing to protect the Plaintiffs such as Morgan Ten Eyck and Micah Roemen, knowingly or should have known that Officer Neuenfeldt was in no position to abide by the Law Enforcement Handbook 3rd Edition rules and procedure given the fact that he was not apprised of them.

94. Defendant, United States of America, knew or should have known that Officer Neuenfeldt was exposing the public, including, but not limited to, Morgan Ten Eyck and Micah Roemen, to injury since there was a failure to train, retain, and supervise the actions of Officer Neuenfeldt.

95. Defendant, United States of America, was well aware of the pattern and practice of Officer Neuenfeldt prior employment and conduct of high speeds pursuits without authority and in a reckless nature contrary to pursuit policies.

96. Defendant, United States of America, negligently entrusted Officer Neuenfeldt with firearms and a motor vehicle without training as specified above. As a result of that knowledge, the United States knew or should have known that training was necessary prior to Officer Neuenfeldt's actions that injured others. As a direct and legal result of United States failure to train, supervise, and retain Officer Neuenfeldt, the Plaintiffs were seriously and permanently injured on June 18, 2017.

97. As a direct, proximate, and legal result of the Defendant United States of America's negligence, carelessness, and recklessness, Plaintiffs have been injured, resulting in excruciating pain, life threatening and permanent injury, surgeries, disability, temporary and permanent pain and suffering, substantial medical expense, and future substantial medical expense for related medical care, substantial temporary and permanent emotional anguish, and substantial temporary and permanent loss of enjoyment of life.

WHEREFORE, Plaintiffs respectfully prays that this Court will:

- a. Award compensatory damages to the Plaintiff Micah Roemen, and against the Defendants, jointly and severally, in the amount of \$2,500,000.00.
- b. Award compensatory damages to the Plaintiffs Tom Ten Eyck and Michelle Ten Eyck, and against the Defendants, jointly and severally, in the amount of \$150,000,000.00.
- c. Award punitive damages to Plaintiffs, and against Defendants, jointly and severally.
- d. Award Plaintiffs' costs and attorney's fees, pre-judgment and post judgment interest, all other damages allowed by law, and such other further relief the Court deems just and equitable.

Respectfully submitted this 3rd day of October, 2024.

BEARDSLEY, JENSEN & LEE, Prof. L.L.C.

By: /s/ *Conor P. Casey*
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DEMAND FOR JURY TRIAL

Pursuant to the provisions of Federal Rule of Civil Procedure 38, as to causes of action against Defendants Neuenfeldt and Unknown Supervisory Personnel of the United States, pursuant to *Bivens* and its progeny, Plaintiffs hereby demand a trial by jury of any issue triable of right by jury.

CERTIFICATE OF SERVICE

I hereby certify that on the 3rd day of October, 2024, I sent to:

Diana Ryan
Aron Hogden
Alexis Warner
Assistant United States Attorneys
P.O. Box 2638
Sioux Falls, SD 57101-2638
Attorneys for Defendant United States of America

Michael F. Tobin
Kristin N. Derenge
Boyce Law Firm
P.O. Box 5015
Sioux Falls, SD 57117-5015
Attorneys for Defendant Robert Neuenfeldt

by e-filing through PACER, a true and correct copy of the foregoing **THIRD AMENDED COMPLAINT** relative to the above-entitled matter.

/s/ Conor P. Casey
Conor P. Casey