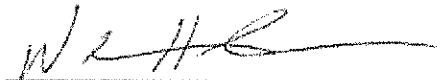


the State nor its officials acting in their official capacities are “persons” under § 1983. Hafner, 520 N.W.2d at 591 (quoting Will, 491 U.S. at 71, 109 S.Ct. at 2312, 105 L.Ed.2d at 58). Insofar as Supervisors were sued in their official capacities, they were entitled to summary judgment as a matter of law. *Hansen v. South Dakota Dept. of Transp.*, 584 N.W.2d 881 (1998).

While the Counterclaim mentions the County Commissioners, it does not name them as parties. Even if Defendant had named the individual Commissioners as parties, the Counterclaim would still be fatally flawed. Indeed, the focus of Defendant’s allegations are actions taken by the Commissioners in their official capacities. Defendant’s Counterclaim makes no colorable claim that the “Commission is charged with or exercises anything other than discretionary, policy-making functions and duties, for which there can be no tort liability.” *Hansen v. South Dakota Dept. of Transp.*, 584 N.W.2d 881 (S.D. 1998) (citing SDCL 1-44-14).

WHEREFORE, Plaintiff is entitled to an order from this Court dismissing the Counterclaim.

Dated this 12th day of June, 2020.



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