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SUPERIOR COURT OF CALIFORNIA, COUNTY OF SANTA CLARA

JANE DOE, a minor, by and through her Guardian ad Litem, John Doe,

Plaintiff,

vs.

UNION SCHOOL DISTRICT, SAMUEL NEIPP, JACQUELINE HORJES, MARY L. BERKEY, CAROLE CARLSON, and ROES 1 through 125, inclusive,

Defendants.

Case No. 19CV343088

PLAINTIFFS' MEMORANDUM OF POINTS & AUTHORITIES IN SUPPORT OF MOTION TO CONSOLIDATE CASES

Date:
Time: 9:00 am
Dept.: 21
Judge: The Honorable Thang Barrett

INTRODUCTION

Several female minor students were sexually molested by Samuel Neipp at Dartmouth Middle School. The cases were consolidated for discovery purposes. Consolidation for trial is now sought. All plaintiffs stipulate to consolidation.

The liability issues are the same: The Union School District ["District"] and its employees breached their duty to protect each plaintiff while a minor under their care and to properly supervise and control Neipp's activities. As such, each victim's experience is relevant to demonstrate that breach in each case, which means that each girl would have to testify repeatedly and before many strangers to the atrocities perpetrated upon her.

Other witnesses would have to present at several trials if the cases are not consolidated. Consolidation would reduce the days to be expended by this court in conducting voir dire, determining in limine motions, and hearing the same evidence. It would also preserve juror resources.

FACTUAL SUMMARY

In 2009, a 13-year-old Dartmouth student was groomed by Neipp. In late 2009 and/or early 2010, this child was sexually molested by Neipp in his classroom/office at lunch time, including oral copulation. This is the case of JANE DOE 2 [Santa Clara County Case Number 19CV343101].

In 2010, JANE DOE 1 [Santa Clara County Case Number 19CV348167] [hereinafter "JANE DOE 3"] was repeatedly called to Neipp's office, whereupon he would close the door and make her hug him. She felt compelled to afford him her cell phone number upon his request. He thereupon repeatedly texted her inappropriate messages, to the point JANE DOE 3 felt "creeped out." Administration was informed by her mother, and District retained a law firm to conduct an "investigation" to maintain confidentiality. Neipp was merely told to maintain a professional tone in his texts and was promoted only days later.

Subsequently, this mother wrote an 8-page letter to Superintendent Horjes expressing her dissatisfaction with the situation, providing a chronology of her issues with Neipp, and opining that he demonstrated predatory behaviors. In January of 2011 the Assistant Superintendent [Berkey] advised that District investigated the hugging incident by Neipp with her daughter, which Neipp confirmed when confronted. District refused to provide the mother the investigation report and refused her request that Neipp be psychologically evaluated.

Five months later [May 24, 2011], the Principal wrote a glowing performance evaluation of Neipp. Come August of 2011, Neipp became a tenured District employee.

A week later, on May 30, 2011, another parent emailed Carlson to make her aware that a teacher was texting a minor female student as late as midnight and only gave his number to favorite students. The parent recommended District enact a policy regarding employee-student electronic communications. District took no action in response to this

complaint. If it had, it would have learned that teacher was Neipp and he was violating previous directives.

In January of 2013, the mother of another former student of Neipp conveyed his inappropriate text messages with her minor daughter to District. District acknowledged that there had been 397 texts exchanged between Neipp and the former student from August of 2011 through January of 2013. Nearly one-half of those texts occurred within one month, demonstrating escalation of his focus on this child. District did not report Neipp to the authorities. Instead, a written reprimand was issued mimicking the same instructions issued in 2010 … instructions that had obviously been violated with no consequences. District took no further action against Neipp, nor did it have his activities properly supervised.

In 2014, Neipp showed plaintiff JANE DOE [Case No. 19CV343088] special attention. He texted her that he found her attractive and that he liked her. He spent time with her alone in his office. There, he kissed her, progressing from pecks to tongue kissing. He then had JANE DOE repeatedly orally copulate him in his office more than 20 times before she turned 14 years of age. He digitally penetrated her and had sexual intercourse with her on school grounds while she was only 14 years old. He continued to sexually abuse JANE DOE at Dartmouth thereafter (while she was present for volunteer work) up until October of 2017. He sent her a plethora of inappropriate electronic communications. When Neipp threatened to expose videos of her if she didn't make more time for him, JANE DOE called the police in October of 2017. Neipp was then arrested.

In 2014 another parent complained to District about Neipp including that he had been acting inappropriately with and texting female students.

During the 2015-2016 school year, JANE DOE 2 [Case Number 19CV348167] [hereinafter "JANE DOE 4"] was an 8th Grade drum major at Dartmouth Middle School. Neipp had her enter his office, locking the door with the lights off. He would then ask her questions about her sex life while leaning forward in his chair and rubbing her inner thighs. The conduct continued until ~ September 25, 2017, when his hands roamed to her hips, making plaintiff flee in fright. As JANE DOE 4 was leaving, Neipp told her not to tell her mother about the

conversation.

These cases were previously consolidated for discovery purposes. All plaintiffs stipulate to consolidation for trial. [Cerri Declaration at ¶3.]

LEGAL ANALYSIS

Code of Civil Procedure §1048(a) provides for a joint trial of actions "involving a common question of law or fact." In *Todd-Stenberg v. Dalkon Shield Claimants Trust* (1996) 48 Cal.App.4th 976, consolidation of six cases (down to three by time of trial) was appropriate. *Id.* at p. 979. There, plaintiffs alleged pelvic inflammatory disease from use of the Dalkon Shield. "The trial court correctly anticipated that a large portion of the trial would be devoted to issues common to the three cases: how PID occurs, whether it can be caused by the use of Dalkon Shield, and what other factors might cause or contribute to the disease." *Ibid.*

Here, each victim's case is premised upon District's breach of its duty to protect her[1] and to properly supervise Neipp.[2] As such, each girl's experience is relevant to show that District's procedures, training, and communications to administrators and teachers resulted in breach of the duty to protect the children entrusted to its care. For example, why didn't anyone question the camera mounted over Neipp's classroom that he monitored in his office? Why didn't the repeated beckoning of certain girls to Neipp's office during recess arouse any suspicion?[3] The intricacies of District's training on sexual abuse prevention and predatory red flags will have to be re-hashed in each case, with the consequences of each victim demonstrating that District's training was

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[1] *Virginia G. v. ABC Unified School Dist.* (1993) 15 Cal.App.4th 1848: "[A] special relationship is formed between a school district and its students so as to impose an affirmative duty on the district to take all reasonable steps to protect its students.' [Citation.] Thus, the District had a duty to protect Virginia G. from assaults by her teacher, Ferguson." *Id.* at 1853.

[2] "[T]he special relationship between public school personnel and students imposes on the District's administrative and supervisory employees a duty of reasonable care to protect a student from foreseeable dangers, including those from other school employees." *C.A. v. William S. Hart Union High School Dist.* (2012) 53 Cal.4th 861, 869 [emphasis added.] "[W]here a school fails to provide supervision and an injury results from conduct that would not have occurred had supervision been provided, liability may be imposed. [Citations.] *Thompson v. Sacramento City Unified School Dist.* (2003) 107 Cal.App.4th 1352, 1372.

[3] The law dictates that a pupil "shall not be required to remain in school during the intermission at noon, or during any recess." 5 CCR §352. See, also, Education Code §44807.5 [student's time for recess may be restricted only for disciplinary purposes.]

woefully insufficient and/or not enforced. Indeed, District's failure to repudiate Neipp's misconduct at each step along the way either prevented the early victims from recovering [*i.e.*, to vindicate them and show that the shame is not theirs], and contributed heavily to the perpetration of his abuse of JANE DOE and JANE DOE 4 several years later.

These child victims should not be compelled to testify repeatedly to their traumatizing experiences merely to ensure that the other victims are afforded justice. The Legislature implicitly recognized the need to protect such young victims from re-living the horrors when it added Code of Civil Procedure §2032.340 to limit a defense mental examination to three hours.

In addition, Jane Doe 1's mother and the other parents who complained are crucial witness in each action. They should not be compelled to present themselves three to four times for multiple trials.

Consolidation is in this court's best interests as well. It will take less than half the time to try all three cases together as it will to try them apart. Voir dire to empanel several sets of jurors will consume numerous days when one jury panel can hear and decide all of the evidence. We should not waste resources of our jurors performing their civic duty on repetitive issues. Consolidation before a single jury avoids inconsistent rulings on admissibility of evidence on motions in limine as well.[4]

CONCLUSION

Consolidation for trial protects the mental health of traumatized children from repeatedly testifying to embarrassing details before several panels of strangers. It also avoids imposition on third-party witnesses from having to repeatedly present themselves at the courthouse to testify at several trials. Consolidation promotes the efficiency and economy of this court.

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[4] In anticipation of any concern about admissibility of some evidence in one case but not the other, plaintiff cites *Jud Whitehead Heater Co. v. Obler* (1952) 111 Cal.App.2d 861: "The fact that evidence in the one case might not have been admissible in the other does not bar a consolidation. [Citation.] Nor does the fact that all the parties are not the same. [Citations.]" *Id.*, at p. 867.

Respectfully submitted,

Dated: May 26, 2020

CORSIGLIA, MCMAHON & ALLARD LLP

By: _____

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