

**UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION**

**JANE DOE, and B.D., and R.D.,
individually, and as parents and
natural guardians of Jane Doe,**

Case No.: 8:17-cv-1678-T-26-TGW

Plaintiffs,

vs.

**UNITED STATES OF AMERICA
and PINELLAS COUNTY SCHOOL
BOARD,**

Defendants.

_____ /

**PLAINTIFFS' RESPONSE IN OPPOSITION TO UNITED STATES OF
AMERICA'S MOTION TO DISMISS COUNTS I, II, AND VI**

Plaintiffs, JANE DOE, B.D. and R.D., individually, and as parents and natural guardians of Jane Doe, by and through their undersigned counsel, hereby file this Memorandum of Law in Opposition to Defendant UNITED STATES OF AMERICA's ("**United States**" or "**Defendant**") Motion to Dismiss and state as follows:

LEGAL STANDARD

On a motion to dismiss, the Court must accept as true all factual allegations in the complaint and construe them in the light most favorable to the plaintiff. *Jackson v. Bellsouth Telecomms.*, 372 F.3d 1250, 1262 (11th Cir. 2004). The Court favors the plaintiff with all reasonable inferences drawn from allegations in the complaint. *Stephens v. Dep't of Health & Human Servs.*, 901 F.2d 1571, 1573 (11th Cir. 1990). "To survive a motion to dismiss, a complaint must contain sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its fact.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949 (2009).

SUMMARY OF FACTUAL ALLEGATIONS

Plaintiff Jane Doe (“**Jane**”) was a minor child and high school student participating in the Marine Corps Junior Reserve Officers’ Training Corps (“**MCJROTC**”) at Clearwater High School in Pinellas County, Florida. Jane was seduced, coerced, and ultimately raped multiple times by Marine Instructor Master Sergeant James Millard Knuckles (“**MSG Knuckles**”) who was her MCJROTC training instructor. (Complaint at ¶ 16). Plaintiffs do not allege forcible rape, but rape in that Jane was a minor child and unable to provide legal consent to sexual intercourse with MSG Knuckles.

The complaint alleges that Defendants were joint employers of MSG Knuckles and knew or should have known of the of the potential for rape, seduction, and/or coerced sexual intercourse of female student cadet recruits by MCJROTC instructors because the same violations have occurred numerous times in the past. *Id.* at ¶¶ 17-18. The complaint further alleges that MSG Knuckles was unqualified to continue in his position as a MCJROTC Marine Instructor. *Id.* at ¶ 27. As a MCJROTC instructor, MSG Knuckles was required to attend and complete annual training, which he did not. *Id.* at ¶ 56.

Although being unqualified as a mentor and instructor, the complaint alleges that while MSG Knuckles was mentoring and grooming Jane as an ROTC Cadet, he was at the same time grooming her for sexual abuse. *Id.* at ¶ 19. MSG Knuckles sexual pursuit of his student/cadet recruit, Jane, continued throughout September, October, November, and December of 2014. *Id.* at ¶ 32. On five separate occasions MSG Knuckles used his power and authority to coerce and pressure his student/cadet recruit, Jane, to engage in sexual intercourse with him. *Id.* at ¶¶ 35-39.

On November 17, 2015, MSG Knuckles was convicted of unlawful sexual activity with a minor and sentenced to prison; and is currently serving that sentence and upon release will be

registered as a sexual predator. *Id.* at ¶ 41. As a result of MSG Knuckles' sexual abuse, Plaintiff Jane has suffered extreme mental anguish, depression, and her life is at a standstill. *Id.* at ¶ 42. As a further result of MSG Knuckles' sexual abuse of Jane, her mother was badgered so badly at work that she was forced to quit her job and Jane's father, who had planned to transfer with his job to New Jersey, was compelled to resign from his job to remain with his daughter. *Id.* at ¶ 43.

ARGUMENT

I. Plaintiffs have alleged sufficient facts to state a claim against United States for negligent hiring and supervision of its employee Master Sergeant James Millard Knuckles

Sufficient facts have been pled to defeat Defendant's Motion to Dismiss on negligent hiring and supervision grounds. Junior Reserve Officers' Training Corps ("JROTC") units are established and maintained by the Secretary of the Military department concerned. 10 U.S.C. § 2031(a)(1). The military department concerned in the present matter is the Department of the Navy. The Secretary of the Navy supports the JROTC by detailing officers and noncommissioned officers to institutions having JROTC units. *Id.* § 2031(c)(1). The Secretary of the Navy also authorizes the employment of retired officers and noncommissioned officers as administrators and instructors. *Id.* § 2031(d). The Secretary of the Navy approves the qualifications of these employed administrators and instructors. *Id.*

Defendant states in its motion to dismiss that educational institutions, like Clearwater High School, "pay the [MCJROTC] instructors directly, but may seek reimbursement" from the Secretary of the Navy. Defendant's Motion p. 2, citing 10 U.S.C. § 2031(d)(1). In reading the statute as a whole, a retired officer/instructor will receive his/her retired or retainer pay and any additional amount paid to the instructor by the institution, and "the Secretary of the military department concerned shall pay to that institution the amount equal to one-half of the amount

paid to the retired member. . .” 10 U.S.C. § 2031(d)(1). This means that, while the Defendant does not compensate MCJROTC Marine Instructors directly, it compensates them indirectly because it provides the school district funds for a portion of their salaries.

Defendant USA cites *Cavazos v. United States*, 776 F.2nd 1263 (5th Cir. 1985) for the proposition that, as a matter of federal law, MSG Knuckles is not an employee of the United States. In that case the Fifth Circuit affirmed summary judgment for the United States under facts that were different than the facts in the case at bar. First, the *Cavazos* case dealt with a motion for summary judgment, wherein discovery and depositions were done. The instant case deals with a Motion to Dismiss before discovery has really begun. If the facts alleged in the Amended Complaint are taken as true, it is alleged that MSG Knuckles was “in service and under control of his joint employers, the United States and PCSB.” *Am Comp. Par. 18*. Defendant USA did much more than subsidize MSG Knuckles’ pay. It advertised and facilitated his employment with the PSCB. *Am. Comp. Par. 22-23*. It promulgated certain standards for a MCJROTC Marine Instructor, particularly concerning potential sexual abuse. *Am Comp. Par. 20-21*. It required certification of the Marine Instructor and required the Instructor attend a ROTC instruction training course within a year after MSF Knuckles began employment with PCSB. *Am. Comp. Par. 24-25*.

In light of those allegations, dismissal of the United States prior to discovery as to whether MSG Knuckles was an employee of the United States, would be premature.

II. Plaintiffs B.D. and R.D. alleged sufficient allegations to be entitled to recover for loss of consortium of their daughter Jane Doe.

Sufficient facts have been pled to defeat Defendants Motion to Dismiss on scope of loss of consortium. In its motion, Defendant does not address Plaintiffs’ loss of consortium claim. Instead, Defendant merely states that the count should be dismissed. A parent is entitled to

recover damages for significant permanent injury to their minor child. Fla. Stat. Section 768.0415.

These damages include permanent loss of services, comfort, companionship, and society. *Id.*

Plaintiffs do not argue that a parent is entitled to recovery of filial consortium of an adult child. However, Jane's injuries were sustained when she was still a minor, dependent on her parents, R.D. and B.D. Plaintiffs have alleged that as a result of the injuries and mental and emotional stress and anguish sustained by Jane, Plaintiffs B.D. and R.D. have sustained damages of mental pain and suffering as well as have lost the services, support, and companionship of their daughter; and will continue to lose her services and companionship in the future. "Filial consortium award to parent of child allegedly injured as result of school board's negligence should only have been calculated from date of incident to date child attained majority." *Broward County School Bd. V. Cruz ex rel. Cruz*, 761 So. 2d 388, at 396 (Fla. 4th DCA 2000). Jane's parents R.D. and B.D are entitled to recover damages they sustained up through her eighteenth birthday.

Further, although MSG Knuckle's last sexual contact with the parents' daughter was on February 13, 2015, the full extent of damages suffered by Plaintiff, B.D. and R.D. did not occur until months later. Also, although the parents' signed claim was mailed on May 17, 2017, the United States was on notice of their claim within the two-year period, as evidenced by its denial of their claim on January 12, 2017.

CONCLUSION

For all of the foregoing reasons, Plaintiffs respectfully request that Defendant United States' Motion to Dismiss Counts I, II, and VI be denied.

CERTIFICATE OF SERVICE

I CERTIFY that on this 11th day of October, 2017, a true and correct copy of the foregoing has been electronically filed with the Clerk of the Court using the CV/ECF system. I

further certify that a copy hereof was served by email to Sean P. Flynn., (sean.flynn@usdoj.gov),
United States Attorney's Office, 400 North Tampa Street, Suite 3200, Tampa, FL 33602.

/s/ Joseph H. Saunders

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